

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF BRIAN WOJTALEWICZ REGARDING TIM MILLER, CITIZENS FOR TIM MILLER, SOUTHERN MINN BEET SUGAR COOPERATIVE PAC, AND RENVILLE COUNTY RPM

On October 10, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Brian Wojtalewicz regarding Tim Miller, Citizens for Tim Miller, Southern Minn Beet Sugar Cooperative PAC (SMBSC PAC), and Renville County RPM (RCRPM). Citizens for Tim Miller is the principal campaign committee of Tim Miller for the seat in the House of Representatives for district 17A. SMBSC PAC is a political committee registered with the Board. RCRPM is a party unit registered with the Board.

The complaint is based on the financial status of the RCRPM prior to receiving a contribution from the SMBSC PAC, and on the timing and sequence of a subsequent contribution to Citizens for Tim Miller. The complaint alleges the following violations: (1) a \$5,000 contribution from the SMBSC PAC to the RCRPM was earmarked for a \$4,500 contribution to Citizens for Tim Miller, in violation of Minnesota Statutes section 10A.16; and (2) because the RCRPM used the SMBSC PAC money to make a \$4,500 contribution to Citizens for Tim Miller, the resulting contribution was actually from the SMBSC PAC and, therefore, exceeded the 2015-2016 election segment contribution limit of \$1,000, in violation of Minnesota Statutes section 10A.27, subdivision 1(a)(5).

At the prima facie determination stage, the Board chair concluded that the complaint was sufficient to state a prima facie violation.

On October 24, 2016, the Board received the RCRPM's response for the probable cause hearing. The treasurer for the party unit stated that he had no contact with the SMBSC PAC. He explained that, at the RCRPM's board meeting in July, "the notion was Miller could use more funds from RCRPM" and that "when the SMBSC contribution was received . . . the decision to send a big part of it to Miller was made."

On October 24, 2016, the Board also received the SMBSC PAC's response for the probable cause hearing. Michael Ahern, representing the SMBSC PAC, first stated that the SMBSC PAC did not believe the earmarking statute applied to it under the stated facts "because that statute only prohibits the solicitation and acceptance of earmarked contributions, but not the contributions themselves." He further explained the timeline of the matter, saying that in mid-July the SMBSC PAC approached Rep. Miller with the idea of hosting a fundraiser on his behalf. However, Rep. Miller "encouraged SMBSC PAC to instead contribute funds to the Renville RPM." Mr. Ahern states that while the SMBSC PAC directors "noted that there was no guarantee that the Renville RPM would use any money contributed to support the Miller Campaign," they nevertheless chose to make the contribution. He finally explains that Chris

Long, the SMBSC PAC chair, had a conversation with the RCRPM's chair regarding the contribution made to the party unit, saying:

Mr. Long did not condition the contribution on the Renville RPM's support for the Miller Campaign and was not promised that SMBSC PAC's contribution would be used to support that campaign. Mr. Long did express the PAC directors' support for the Miller Campaign.

He summarizes the RCRPM's position that "being hopeful that a contribution will be used to assist a candidate does not constitute earmarking under Minnesota Law." He also states:

In sum, while SMBSC PAC hoped that its contribution to the [RCRPM] might benefit Representative Tim Miller's campaign . . . , its contribution to the Renville RPM was not earmarking under Minnesota law. SMBSC PAC did not make support for the Miller Campaign, directly or indirectly, a condition of its contribution to the Renville RPM and did not act with a certainty that its contribution would be used to benefit the Miller Campaign.

Reid LeBeau, representative for Tim Miller, appeared before the Board in executive session at its meeting of November 10, 2016, and his comments were taken into consideration.

Analysis

Minnesota Statutes section 10A.16 states that "an individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient." The SMBSC PAC is correct that, under the facts as stated in the complaint, the earmarking claim may only apply to the RCRPM, the Miller committee, and/or Tim Miller. The SMBSC PAC acknowledges, however, that when SMBSC PAC approached Rep. Miller in mid-July about assisting his campaign, Rep. Miller suggested that the SMBSC PAC make a contribution to the RCRPM instead of conducting a fundraiser on Rep. Miller's behalf.

Board records indicate that, at the time of this conversation, SMBSC PAC had donated \$500 to Rep. Miller's committee and, thus, could contribute only \$500 more before reaching its contribution limit. The Board also notes that the costs of sponsoring a fundraiser for the Miller committee would constitute an in-kind contribution from SMBSC PAC to Miller. The SMBSC PAC contributed an additional \$500 to the Miller committee on August 26, 2016, and reached the 2015-2016 election segment contribution limit.

At the time of the conversation the RCRPM, on the other hand, could still contribute \$8,000 to Citizens for Tim Miller's available aggregate party unit limit. However, on July 18, 2016, before the RCRPM received the SMBSC PAC contribution, it had only \$3,075.93 in available funds, an insufficient amount for its later contribution to Citizens for Tim Miller. After receiving the \$5,000 contribution from the SMBSC PAC, the RCRPM made the \$4,500 contribution to Citizens for Tim Miller on the same day. These facts raise the concern of whether when SMBSC PAC made

its contribution to RCRPM there was a condition to earmark the contribution for Citizens for Tim Miller.

Minnesota Statutes section 10A.29 prohibits “an individual or association [from] attempt[ing] to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association.” The complaint claimed a violation of the contribution limits by SMBSC PAC and the Miller campaign by attributing to the SMBSC PAC the \$4,500 contribution made by the RCRPM to the Miller campaign. The SMBSC PAC is limited to contributing \$1,000 to the Miler campaign during the 2015-2016 election segment. The assertion that this contribution should be attributed to the SMBSC PAC relies on the implied assertion that SMBSC PAC redirected the contribution through the RCRPM in violation of the prohibition on circumvention. The SMBSC PAC explained that it expressed its support for Tim Miller when making the contribution to the RCRPM. The extent of this message of support is unknown, but it raises the question of whether a condition existed to earmark the contribution in order to circumvent the contribution limits.

Given the timing and sequence of the contributions, the fact that the statements provided by the respondents are not evidence but instead are offers of what the parties intend to prove during an investigation, and the fact that certain factual questions can be resolved only through an investigation, the Board issues the following:

Order

1. Probable cause exists to believe that Tim Miller, Citizens for Tim Miller, and the Renville County RPM violated the earmarking prohibition in Minnesota Statutes section 10A.16.
2. Probable cause exists to believe that Tim Miller, Citizens for Tim Miller, the Renville County RPM, and the Southern Minn Beet Sugar Cooperative PAC violated the circumvention prohibition in Minnesota Statutes section 10A.29.
3. Probable cause exists to believe that Citizens for Tim Miller and the Southern Minn Beet Sugar Cooperative PAC exceeded the contribution limits set forth in Minnesota Statutes section 10A.27.
4. An investigation is ordered for the purpose of determining the facts surrounding the subject contributions and whether any violations of the campaign finance laws occurred. Documentary evidence and testimony from relevant individuals will be collected. The use of subpoenas is authorized, if necessary, to further the investigation.
5. Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.

/s/ Daniel Rosen
Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: November 10, 2016