

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA DFL REGARDING THE DR. SCOTT JENSEN FOR GOVERNOR COMMITTEE AND HEAL MINNESOTA

On October 24, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by the Minnesota DFL regarding the Dr. Scott Jensen for Governor committee and Heal Minnesota. Dr. Scott Jensen for Governor is the principal campaign committee of Dr. Scott Jensen. Heal Minnesota is an independent expenditure political committee, assigned Board registration number 41322.

The complaint alleges and provides evidence that Heal Minnesota issued several tweets advocating for the defeat of Governor Tim Walz. One of those tweets, dated October 18, 2022, contained a 30-second video with audio stating “End Tim Walz’s chaos. Vote Scott Jensen for governor.”¹ The video included text stating “VOTE SCOTT JENSEN FOR GOVERNOR” and a text disclaimer stating that it was paid for by “HEAL MINNESOTA PAC.” The tweet included a link to a webpage where individuals could make a contribution to Heal Minnesota.² The complaint alleges and provides evidence that Dr. Jensen quote-tweeted Heal Minnesota’s tweet containing the video, adding the word “Wow!”, on October 18, 2022.³ The complaint alleges and provides evidence that Matt Birk, Dr. Jensen’s running-mate and candidate for lieutenant governor, retweeted the same tweet, as did Angela Cooperman. The complaint asserts that Ms. Cooperman is the campaign manager for the Jensen campaign. The complaint alleges and provides evidence that the act of retweeting the October 18 tweet “substantially increased the reach of the campaign material” because Heal Minnesota had only 166 followers on Twitter while Dr. Jensen and Mr. Birk had approximately 91,900 and 39,600 followers, respectively.

The complaint also alleges and provides evidence that Heal Minnesota issued a tweet on October 17, 2022, stating in relevant part that “[e]veryone is feeling the heavy weight of Tim Walz’s failed leadership. Vote Him OUT!”⁴ The complaint alleges and provides evidence that Ms. Cooperman retweeted that tweet.

The complaint alleges that the actions of Dr. Jensen, Mr. Birk, and Ms. Cooperman “undermine the independence of the expenditures” and made them coordinated expenditures because the candidates participated in the distribution of the final product. The complaint asserts that as a result of retweeting one or more tweets, the candidates and their agent

¹ twitter.com/HealMNPAC/status/1582385966844907520

² secure.anedot.com/heal-minnesota-pac/website-links

³ twitter.com/drscottjensen/status/1582467231497089032

⁴ twitter.com/HealMNPAC/status/1582038574542700544

have expressly consented to not only that specific expenditure but also to the subsequent publication of similar campaign materials affecting the race. The candidates and the campaign are saying to Heal Minnesota, “we like what you are doing, keep it up.” This endorsement of the campaign material means that all subsequent campaign material distributed by Heal Minnesota supporting the election of Scott Jensen and Matt Birk or advocating for the defeat of Governor Tim Walz are “coordinated expenditures” and must be reported as contributions subject to the \$4,000 contribution limit.

The complaint further asserts that because the October 18 tweet included a link to Heal Minnesota’s contribution webpage, Dr. Jensen and Mr. Birk “engaged in fundraising of . . . money for Heal Minnesota . . . which renders all expenditures supporting their election or the defeat of Governor Walz made during this election ‘coordinated expenditures.’”

Determination

An expenditure generally consists of “a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate” and an “expenditure made for the purpose of defeating a candidate . . . is considered made for the purpose of influencing the nomination or election of that candidate . . . or any opponent of that candidate.” Minn. Stat. § 10A.01, subd. 9.

Minnesota Statutes section 10A.01, subdivision 18, defines the term independent expenditure, in relevant part, as follows:

"Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate or local candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent or any local candidate or local candidate's agent. An independent expenditure is not a contribution to that candidate or local candidate.

“To be an independent expenditure, a communication and all of the processes leading to its eventual publication must meet the requirements of the independent expenditure definition cited above.” In the Matter of the Investigation of Expenditures Made by the Minnesota DFL Senate Caucus Party Unit (Dec. 17, 2013), at 6⁵ The independence of an expenditure is not destroyed by using campaign material in the public domain when there is no evidence that a candidate or their agent provided consent to, or cooperated with, an entity in making that entity’s expenditure. In the Matter of the Complaint of the Republican Party of Minnesota Regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee (Jan. 6, 2015), at 3.⁶

⁵ Available at cfb.mn.gov/pdf/bdactions/1296_Findings.pdf.

⁶ Available at cfb.mn.gov/pdf/bdactions/1331_Probable_cause_determination.pdf.

Minnesota Statutes section 10A.01, subdivision 4, defines the term approved expenditure as follows:

"Approved expenditure" means an expenditure made on behalf of a candidate or a local candidate by an entity other than the candidate's principal campaign committee or the local candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate or local candidate, the candidate's principal campaign committee, or the candidate's or local candidate's agent. An approved expenditure is a contribution to that candidate or local candidate.

Minnesota Statutes section 10A.175 defines several terms for purposes of that section through section 10A.177. The term candidate "means a candidate as defined in section 10A.01, subdivision 10, the candidate's principal campaign committee, or the candidate's agent." The term agent "means a person serving during an election segment as a candidate's chairperson, deputy chairperson, treasurer, deputy treasurer, or any other person whose actions are coordinated." The term coordinated "means with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate. A coordinated expenditure is an approved expenditure under section 10A.01, subdivision 4." Finally, the term spender means "an individual, an association, a political committee, a political fund, an independent expenditure political committee, an independent expenditure political fund, or a party unit."

Minnesota Statutes section 10A.176, subdivision 7, provides that:

An expenditure is a coordinated expenditure if the expenditure is made with the candidate's participation in the following:

- (1) any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or
- (2) any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure.

Minnesota Statutes section 10A.176, subdivision 2, provides as follows with respect to fundraising:

- (a) An expenditure is a coordinated expenditure if the expenditure is made on or after January 1 of the year the office will appear on the ballot by a spender for which the candidate, on or after January 1 of the year the office will appear on the ballot, has engaged in fundraising of money that is not general treasury money, as defined in section 10A.01, subdivision 17c, of the spender.
- (b) For purposes of this subdivision, candidate fundraising includes:

- (1) soliciting or collecting money for or to the spender that is not general treasury money; and
- (2) appearing for the spender as a speaker at an event raising money that is not general treasury money.
- (c) This subdivision does not apply to a candidate's fundraising on behalf of a party unit.

A coordinated expenditure is an approved expenditure, therefore it is a contribution to the candidate on whose behalf it was made and is subject to the individual contribution limit. The individual contribution limit applicable to candidates for governor and lieutenant governor running together during the 2021-2022 election cycle segment is \$4,000. Minn. Stat. § 10A.27, subd. 1 (a) (1).

Minnesota Statutes section 10A.121, subdivision 1, provides that independent expenditure political committees may make independent expenditures, while subdivision 2 provides penalties for certain actions by an independent expenditure political committee. The statute provides that

a) An independent expenditure political committee or independent expenditure political fund is subject to a civil penalty of up to four times the amount of the contribution or approved expenditure if it does the following:

- (1) makes a contribution to a candidate, local candidate, party unit, political committee, or political fund other than an independent expenditure political committee or an independent expenditure political fund; or
- (2) makes an approved expenditure.

(b) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

The term approved expenditure is defined in a manner designed to prevent a candidate from communicating with an association about an independent expenditure in support of that candidate or against that candidate's opponent that the association may intend to make. Minnesota Statutes sections 10A.175 through 10A.177 describe relationships, communication, and other connections that would cause an expenditure to be a coordinated expenditure and not an independent expenditure. Those provisions do not prohibit all relationships between candidates and entities that may make independent expenditures. For example, Minnesota Statutes section 10A.177 provides that a candidate may, without destroying the independence of any subsequent expenditure, provide "to a spender names of potential donors, as long as the spender does not state or suggest to the candidate that funds received from use of the donor list will be used for independent expenditures to benefit the candidate." Minnesota Statutes section 10A.177 provides that a spender may make a contribution to a candidate that it is not otherwise prohibited from making, without destroying the independence of any future expenditure related to that candidate, and an independent expenditure may include a link to a

candidate's website or social media page. Minnesota Statutes section 10A.177 also provides that a spender may use "a photograph, video, or audio recording obtained from a publicly available source or public event" without destroying the independence of an expenditure.

The complaint does not allege that Dr. Jensen, Mr. Birk, or Ms. Cooperman directly asked anyone to make a contribution to Heal Minnesota. Rather, the complaint alleges and provides evidence that they retweeted a tweet containing a video, text, and a link to Heal Minnesota's contribution webpage. Without more, retweeting a tweet that contains a link to a webpage where someone may make a contribution to a spender does not constitute "soliciting or collecting money" for that spender within the meaning of Minnesota Statutes section 10A.176, subdivision 2. Therefore, expenditures made by Heal Minnesota are not coordinated expenditures by virtue of the inclusion of a donation link within the October 18 tweet.

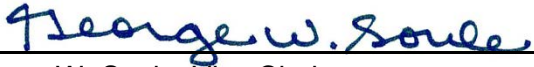
Minnesota Statutes section 10A.176, subdivision 7, classifies an expenditure as coordinated if it "is made with the candidate's participation in... (1) any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, and distribution of the final product." In this case any expenditures made by Heal Minnesota likely consisted of the cost to produce the video embedded within the October 18 tweet, and a significantly lesser amount for any services related to creating and sending the two tweets as well as creating the graphics included in the October 17 tweet.

The complaint does not allege that the Jensen committee made an expenditure in order to retweet the tweets of Heal Minnesota, or otherwise disseminate the video or graphics included in those tweets. The complaint does not allege that the Jensen committee coordinated with Heal Minnesota prior to, or during, any of the processes used to create and develop the expenditures, as provided in Minnesota Statutes section 10A.176, subdivision 7. The complaint does not allege that the Jensen committee communicated with Heal Minnesota after those expenditures were made, or after the expenditures had been released to the public domain. Without more, retweeting a tweet that contains content that is an independent expenditure, that is in the public domain, at no cost, does not constitute making an expenditure with the candidate's participation within the meaning of Minnesota Statutes section 10A.176, subdivision 7. Therefore, expenditures made by Heal Minnesota are not coordinated expenditures by virtue of Dr. Jensen, Mr. Birk, and Ms. Cooperman retweeting the tweets referenced in the complaint.

Having concluded that the tweets referenced in the complaint were not coordinated expenditures based on the facts alleged in the complaint, the question that remains is whether the tweets or their content were nonetheless approved expenditures. The complaint asserts that by retweeting the tweets in question, the candidates consented to Heal Minnesota's expenditures. However, consent cannot be given after the fact, or in this case, after the independent expenditure has been released to the public. Further, retweeting the content of one expenditure by a spender does not by itself constitute consent to any expenditure that may be made in the future by that same spender. At the time the tweets referenced in the complaint were retweeted, the expenditures that the complaint alleges were made had already occurred.

The alleged violation of the individual contribution limit and any alleged violation of the prohibition on contributions by independent expenditure political committees, stated by the complaint, is premised upon the assertion that Heal Minnesota made a contribution to the Jensen committee. Because the facts alleged in the complaint do not support that assertion, the complaint does not state a prima facie violation of Minnesota Statutes sections 10A.27, subdivision 1, or 10A.121.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (c), this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the Vice Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.



George W. Soule, Vice Chair
Campaign Finance and Public Disclosure Board

Date: November 4, 2022