

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF NICK HARPER REGARDING SAFER HENNEPIN

On October 25, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Nick Harper regarding Safer Hennepin. Safer Hennepin, formerly known as Cannabis for Economic Growth, is an independent expenditure political fund assigned Board registration number 30709.

The complaint alleges that expenditures relating to Facebook advertisements were not properly reported by Safer Hennepin in its September 2022 report of receipts and expenditures due September 27, 2022, in violation of Minnesota Statutes section 10A.20, subdivision 3. The complaint alleges, and Board records reflect, that Safer Hennepin listed a total of \$20,150 in independent expenditures for local candidates within Hennepin County but failed to file Schedule B3B – HEN IE with its report, which would include any required itemization of those expenditures. The complaint includes publicly available data provided by Facebook regarding two advertisements supporting a candidate for Hennepin County attorney, the total cost of which totaled between \$1,600 and \$2,199. The complaint includes data showing that the advertisements ran from August 3, 2022, through August 9, 2022, the date of the primary election.

On November 3, 2022, Mr. Harper supplemented the complaint with a screenshot of four additional Facebook advertisements, at least some of which allegedly were independent expenditures made by Safer Hennepin for local candidates within Hennepin County. The supplement to the complaint notes that the 2022 pre-general report of receipts and expenditures filed by Safer Hennepin on November 1, 2022, did not contain Schedule B3B – HEN IE, which should include the required itemization of independent expenditures. For purposes of this probable cause determination the supplement will be considered part of the original complaint.

On November 4, 2022, the Board's chair determined the complaint alleged a prima facie violation of Minnesota Statutes section 10A.20, subdivision 3. On December 12, 2022, Safer Hennepin amended its pre-general report to include \$125,369.88 in independent expenditures supporting Martha Holton Dimick for Hennepin County Attorney. On December 13, 2022, Safer Hennepin also filed an affidavit of independent expenditures as required by Minnesota Statutes section 10A.20, subdivision 6a. This matter was considered by the Board at its meeting on January 4, 2023.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that

warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

If the Board finds that probable cause exists, the Board is required to determine whether the alleged violation warrants a formal investigation, considering the type and magnitude of the alleged violation, the knowledge of the respondent, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. If the Board finds that probable cause exists but does not order a formal investigation, the Board is required to either dismiss the complaint or order a staff review. Minn. R. 4525.0210, subp. 6.

Generally, Minnesota Statutes section 10A.20 pertains to reports that are required to be filed with the Board. Minnesota Statutes section 10A.20, subdivision 3, paragraph (h) requires political funds to report:

the name, address, and registration number if registered with the board of each individual or association to whom . . . independent expenditures . . . have been made . . . within the year in excess of \$200, together with the amount, date, and purpose of each expenditure, including an explanation of how the expenditure was used, and the name and address of, and office sought by, each candidate or local candidate on whose behalf the expenditure was made . . . and in the case of independent expenditures made in opposition to a candidate or local candidate, the candidate's or local candidate's name, address, and office sought.

Minnesota Statutes section 10A.20, subdivision 3, paragraph (j) requires political funds to report unpaid bills:

(j) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven.

Minnesota Statutes section 10A.025, subdivision 4, provides the time frame in which a political committee or fund registered with the Board must amend a report of receipts and expenditures after the committee or fund becomes aware of an error:

Material changes in information previously submitted and corrections to a report or statement must be reported in writing to the board within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy...

The complaint alleged and contained evidence that Safer Hennepin failed to file required information within its September 2022 and 2022 pre-general reports. The complaint alleged and provided evidence that Safer Hennepin incurred over \$200 in expenditures payable to Facebook for independent expenditure advertisements supporting a local candidate.

On December 8, 2022, Safer Hennepin's chair, Corey Day, spoke with Board staff regarding the reporting issue and stated that they needed additional time to respond. Mr. Day submitted an amended report and affidavit of independent expenditures on December 12, 2022. On December 15, 2022, the Board voted to lay the matter over to the January 4, 2023, Board meeting to allow Safer Hennepin more time to respond.

The Board concludes that Safer Hennepin properly amended its report in accordance with Minnesota Statutes sections 10A.025 and any ongoing violation of Minnesota Statutes section 10A.20, subdivision 3 can be resolved by working with Board staff to further amend the reports as necessary.

In determining whether a formal investigation is warranted, the Board must consider a variety of factors. Minn. R. 4525.0210, subp. 5. Reporting issues are typically resolved quickly after a treasurer is informed of an error and files an amended report as required by Minnesota Statutes section 10A.025, subdivision 4. In this case the violation has partially been remedied. While Safer Hennepin has not provided any direct response to the allegations made in the complaint, Board staff are currently communicating with the chair of Safer Hennepin and expect the reporting issue to be promptly resolved.

Order:

1. Based on the forgoing analysis, although probable cause exists to believe that Safer Hennepin failed to report expenditures as required by Minnesota Statutes section 10A.20, subdivision 3, a formal investigation is not warranted.
2. The Board's executive director is directed open a staff review to address any ongoing reporting issues. If the reporting issues are remedied, the executive director may close the staff review. If the staff review cannot be resolved via an amended report, the executive director is directed to prepare findings to resolve the matter.

/s/ David Asp
David Asp, Vice-Chair
Campaign Finance and Public Disclosure Board

Date: January 4, 2023