

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF LUKE MIELKE REGARDING SAFER HENNEPIN

On February 5, 2024, the Campaign Finance and Public Disclosure Board received a complaint submitted by Luke Mielke regarding Safer Hennepin. Safer Hennepin (30709) is an independent expenditure political fund registered with the Board. Safer Hennepin's supporting association is a nonprofit corporation of the same name.¹

The complaint alleges that voters in Minneapolis Wards 5 and 10 received a mailer from Safer Hennepin that endorsed candidates for Minneapolis city council. The complaint includes copies of the mailers which contain a disclaimer that reads "Prepared and paid for by Safer Hennepin, 730 N Washington Ave Ste 427, MPLS, MN 55401" and is followed by the text "MPLS Forward is a Safer Hennepin organization." Mpls Forward (41347) is a political committee that registered with the Board on November 3, 2023. The complaint states that Safer Hennepin failed to file a 2023 pre-general or year-end report, and Board records confirm that Safer Hennepin had not filed any reports of receipts and expenditures covering 2023 at the time the complaint was filed.

The complaint also alleges that Safer Hennepin paid for digital advertisements in support of four Minneapolis city council candidates via Mpls Forward. The complaint asserts and provides evidence that the same website address, mplsforward.com, was listed on both the mailers and the digital advertisements. The complaint includes copies of five digital advertisements and estimates for the cost of publishing each advertisement on Meta's social media platform. The digital advertisements each contained a disclaimer that reads "Paid for by Mpls Forward." The complaint also states that if the advertisements were not independent expenditures, then they may have been approved expenditures. In that case, the cost of the digital advertisements would have exceeded the \$600 per-candidate contribution limit applicable to Minneapolis City Council candidates. The complaint alleges that Safer Hennepin violated Minnesota Statutes section 10A.01, subdivision 18.

On February 27, 2024, the Board's chair determined that the complaint states a prima facie violation of Minnesota Statutes sections 10A.20 and 211B.04. The Board's chair determined that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.01, subdivision 18, which defines the term "independent expenditure" and does not prohibit any conduct.

On March 8, 2024, Safer Hennepin filed its 2023 year-end report and provided a response to the complaint. Safer Hennepin's response stated that the report was filed late "[d]ue to confusion with another PAC that Safer Hennepin did work (Mpls Forward) with and a lack of

¹ mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=c4fc9b1b-6d04-ed11-9061-00155d01c614

understanding that any expenditure, even if the committee does not receive funds in that calendar cycle, needs to be reported.” Board staff contacted Safer Hennepin regarding problems with the 2023 year-end report as filed. On March 18, 2024, Safer Hennepin filed an amended 2023 year-end report (amendment #1).

On April 24, 2024, Board staff requested further information from Safer Hennepin. On May 8, 2024, Safer Hennepin provided a response. The response stated that Safer Hennepin did not include one of the independent expenditure mailers on its report—the mailer for Victor Martinez—because Mpls Forward paid for the mailer’s postage and printing and was responsible for the mailer. The response also stated that Mpls Forward was responsible for the social media advertisements included in the complaint.

The response stated that Safer Hennepin retained Impact Printing for the mailers on October 5, 2023, to print and mail the advertisements. Safer Hennepin stated that Impact Printing did not create the graphics for the two mailers, and confirmed on May 17, 2024, that the graphics were created in-house.

In the Board’s April 24, 2024, letter to Safer Hennepin, Board staff specifically inquired why Safer Hennepin did not use the independent expenditure disclaimer as required by Minnesota Statute section 211B.04 on the advertisements included in the complaint. Safer Hennepin’s response to that question stated “[i]n the case of Safer Hennepin not using a disclaimer in the piece in question, [Mpls] Forward was the agent that mailed/paid for the advertisement of Victor Martinez’s piece and any social media advertisements.”

After the complaint was filed Mpls Forward filed amended 2023 year-end reports that included the costs of the digital advertisements in support of the four Minneapolis city council candidates. The Board considered this matter at its meeting on June 5, 2024. Corey Day appeared before the Board on behalf of Safer Hennepin.

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 there are sufficient facts and reasonable inferences to be drawn therefrom to believe that a violation of law has occurred.

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.

Reporting Issues

Minnesota Statutes section 10A.01, subdivision 18, provides the definition of independent expenditure as “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.” That section provides a definition of independent expenditures, which is used to determine if advertisements or mailers are independent expenditures.

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 (j) provides that a report “must disclose the amount and nature of an advance of credit incurred by the reporting entity” Minnesota Statutes section 10A.20, subdivision 7a, states that a political fund “is not required to file any statement or report for a reporting period when the association accepted no contributions into the association's political fund and made no expenditures from its political fund since the last date included in its most recent filed report.” Safer Hennepin is an independent expenditure political fund. Safer Hennepin would not have been required to file any reports covering 2023 if it accepted no contributions and made no expenditures in 2023. However, the complaint alleged and provided evidence that Safer Hennepin made expenditures in 2023, which Safer Hennepin has acknowledged. Minnesota Statutes section 10A.20, subdivisions 2 and 2a, set forth the due dates for periodic reports of receipts and expenditures. Safer Hennepin incurred expenditures in 2023, and should have filed a 2023 year-end report. Safer Hennepin admitted in its response that it retained Impact Printing for the mailers on October 5, 2023, and therefore would have incurred an expense that should have been reported on the 2023 pre-general report, which was due on October 30, 2023.

Safer Hennepin stated that the graphics for the mailers were “created in-house.” Minnesota Statutes section 10A.01, subdivision 11, defines the term contribution, in relevant part, to mean “money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, local candidate, or party unit.” Minnesota Statutes section 10A.01, subdivision 13, defines the term donation in kind to mean “anything of value that is given, other than money or negotiable instruments.” If someone was compensated by Safer Hennepin to create the graphics for the mailers, that should be reported as an in-kind contribution to Safer Hennepin and/or Mpls Forward with corresponding in-kind independent expenditures. Therefore, the Board concludes that there is probable cause to believe that Safer Hennepin violated the reporting requirements in Minnesota Statutes section 10A.20.

Disclaimer Issues

Minnesota Statutes section 211B.04, subdivision 2, generally requires that a fund include a disclaimer on written independent expenditures that prominently states “This is an independent expenditure prepared and paid for by . . . (name of entity participating in the expenditure), . . . (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.” “The address must be either the entity’s mailing address or the entity’s website, if the website includes the entity’s mailing address.” Minn. Stat. § 211B.04, subd. 2.

The mailer for Minneapolis City Council candidate Bruce Dachis that Safer Hennepin paid for does not include the required independent expenditure disclaimer. The complaint includes copies of the mailers that contain a disclaimer that reads “Prepared and paid for by Safer Hennepin, 730 N Washington Ave Ste 427, MPLS, MN 55401” and is followed by the text “MPLS Forward is a Safer Hennepin organization.” The mailers do not contain any statement that the mailers are independent expenditures and that the mailers are not coordinated with or approved by any candidate nor is any candidate responsible for them. Therefore, the Board concludes that there is probable cause to believe that Safer Hennepin violated the disclaimer requirement in Minnesota Statutes section 211B.04.

Order

1. Probable cause exists to believe that Safer Hennepin violated the reporting requirements in Minnesota Statutes section 10A.20.
2. Probable cause exists to believe that Safer Hennepin violated the disclaimer requirements in Minnesota Statutes section 211B.04.
3. An investigation is ordered. If sufficient information is not provided voluntarily, the Board’s executive director may request authority to issue subpoenas pursuant to Minnesota Statutes section 10A.022, subdivision 2, and Minnesota Rules 4525.0500, subpart 6.



David Asp, Chair
Campaign Finance and Public Disclosure Board

Date: June 5, 2024