

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

**FINDINGS REGARDING
GOVERNOR TIM PAWLENTY, THE ALL TERRAIN VEHICLE ASSOCIATION OF
MINNESOTA, AND POLARIS INDUSTRIES, INC.**

Procedural Background

On June 9, 2005, Senator John Marty filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) against Governor Tim Pawlenty, the All Terrain Vehicle Association of Minnesota (“ATVAM”), and Polaris Industries, Inc (“Polaris”). In his complaint, Senator Marty alleged that Governor Pawlenty, a public official, and ATVAM and Polaris, lobbyist principals, violated Minnesota Statutes Chapter 10A when Governor Pawlenty rode and damaged an all terrain vehicle (ATV) manufactured by Polaris at an event sponsored by ATVAM, if Governor Pawlenty was not charged for the use of the ATV or the damage it sustained. Senator Marty alleged that the cost of the ATV ride and the cost to repair the damaged vehicle were gifts prohibited by Minn. Stat. 10A.071, subd. 2. In support of his complaint, Senator Marty provided copies of three newspaper articles related to this incident.

On June 10, 2005, David Schultz filed a complaint against the same parties alleging that “if Governor Pawlenty was allowed to rent or use a Polaris vehicle at this event for free, when other members of the public would have had to pay for its use” and “if Polaris Corporation’s decision to pay for the damages to its vehicle by Tim Pawlenty were an exception to a damage policy it would offer to other members of the general public” then Polaris and Governor Pawlenty would have violated Minn. Stat. §10A.071, subd. 2. Mr. Schultz also alleged that the ATVAM and Governor Pawlenty violated Minn. Stat. §10A.071, subd. 2, “if the All Terrain Vehicle Association of Minnesota charged other members of the public to attend their convention and participate in the ride and it did not similarly charge the Governor a fee.”

By letters dated June 10, 2005, the Board notified Governor Tim Pawlenty, ATVAM and Polaris of the complaint and offered each party an opportunity to respond.

George Soule and Kristine Donatelle responded on behalf of Polaris by letter received June 24, 2005. Mr. Soule and Ms. Donatelle asserted that Polaris did not violate Minn. Stat. 10A.071 because Polaris did not charge any individual who rode an ATV at the ATVAM event. In support of this assertion, Mr. Soule and Ms. Donatelle provided an affidavit signed by Marlys Knutson, External Relations Manager for Polaris. In her affidavit, Ms. Knutson stated, “it is Polaris’ long-standing policy not to charge members of the public who test drive our demonstration models.” In response to the allegation that the repair of the ATV was a gift, Ms. Knutson stated, “During a long history of making these machines available for test drives, we have had mishaps that have resulted in damages to demonstration models. In each of those cases, the member of the public who was riding the demonstration model at the time of the mishap was not charged for the repairs that were needed to the demonstration model.”

Eric Lipman responded on behalf of Governor Pawlenty by letter received June 27, 2005. Mr. Lipman asserted that Governor Pawlenty did not violate Minn. Stat. 10A.071 because “no one, not even public officials, are obliged to pay for the opportunity to drive a Polaris ATV demonstration model.” Mr. Lipman stated that because no registration was required to participate in the pre-convention Ride, Governor Pawlenty’s attendance at the pre-convention ride did not constitute a gift. Mr. Lipman stated that because no other member of the public would have incurred liability to Polaris for damage, the cost of repairing the demonstration model did not constitute a gift. Mr.

Lipman contended that had the Governor's attendance at the pre-convention ride, the ATV ride, or the repair to the ATV been considered as "gifts" that steps would have been taken to accept the gifts "on behalf of the state in advance of the event," citing Minn. Stat. §§116J.035 and 116U.35 (authorizing acceptance of certain gifts by certain officials to promote tourism).

In support of his assertions, Mr. Lipman provided affidavits signed by the following individuals; Matt Kramer, Commissioner of the Minnesota Department of Employment and Economic Development; John Edman, Director of Explore Minnesota Tourism; and Eric Lipman as Acting General Counsel for Governor Pawlenty.

Karen Janisch submitted a letter on behalf of Governor Pawlenty on September 9, 2005. Ms. Janisch stated that the Governor's use of the ATV "was not a personal benefit but rather part of his official functions in promoting Minnesota and its businesses".

Patrick Robben responded on behalf of the ATVAM by letter received June 28, 2005. Mr. Robben asserted that Governor Pawlenty's ATV ride was not a gift because the "Pre-Convention Ride was an event open to ATVAM members and guests and others." In support of this assertion, Mr. Robben provided an affidavit, signed by David Hendicks, president, All Terrain Vehicle Association of Minnesota.

Senator Marty and Mr. Schultz provided additional correspondence on July 14, 2005, and reasserted their belief that the ATV ride and repair met the statutory definition of "gifts." Senator Marty submitted a third letter to the Board on September 2, 2005, that responded to statements and conclusions provided in the response from Ms. Donatelle and Mr. Soule on behalf of Polaris Sales, Inc.

On July 22, 2005, the Board sent letters asking additional questions of Governor Pawlenty, ATVAM, and Polaris. Specifically, the Board asked questions of each party pertaining to how the Governor's ATV ride may have differed from test drives offered to members of the public who attended the convention.

Ms. Donatelle and Mr. Soule responded by letter dated August 4, 2005, on behalf of Polaris. Ms. Donatelle and Mr. Soule stated, "Governor Pawlenty and at least 20 other riders rode ATVs...to lunch and back, a total distance of approximately 10 miles. At least two members of the public rode Polaris ATVs for the same duration and distance as the Governor on this ride. Other members of the public rode Polaris ATVs for variable durations and distances because they did not have the same destination as the group that included the Governor. To the best of our knowledge, all of the members of the public rode ATVs under the same terms as the Governor – none paid any fee for the ride." Ms. Donatelle and Mr. Soule further stated, "With respect to the cost of repair aspect of the complaints, Polaris notes that other products on similar demonstration rides have been damaged...in all such instances, the damage was repaired by Polaris or its dealer – at the expense of Polaris and not the participant".

Mr. Robben responded by letter dated August 8, 2005, and stated "It is estimated that Governor Pawlenty attended the Pre-Convention ride on May 6, 2005, from about 11:00 a.m. until departing at or about 2 p.m.... The length of the ride is estimated to be 10 miles or less." Mr. Robben further stated, "Governor Pawlenty was not afforded any services or riding opportunity different than those afforded to other participants on the ride".

Mr. Lipman responded on behalf of Governor Pawlenty by letter dated August 8, 2005. Mr. Lipman stated, "Governor Pawlenty was not offered, and did not receive, a benefit that was different from opportunities that are available to the general public".

The Board considered this matter in executive session at its meetings on July 19, 2005, and August 23, 2005. The Board's decision was based upon Senator Marty's complaint and the documents he provided in support of his complaint, Senator Marty's letters dated July 14 and September 2, 2005, Dr. Schultz's complaint, Dr. Schultz's letter dated July 15, 2005, Mr. Soule and Ms. Donatelle's responses and the affidavit they provided, Mr. Lipman's responses and the affidavits he provided, Ms. Janisch's letter dated September 9, 2005, and Mr. Robben's responses and the affidavits he provided.

Based on the record before it, the Board issues the following:

EVIDENTIARY FINDINGS

1. Minn. Stat. §10A.071, subd. 1(c) defines an "official" in part as a public official. Minn. Stat. §10A.01, subd. 35, defines "public official" in part as a constitutional officer. Governor Pawlenty is a public official.
2. Minn. Stat. §10A.01, subd. 33, defines a "principal" as an individual or association that: spends more than \$500 in the aggregate in any calendar year to engage a lobbyist, compensate a lobbyist, or authorize the expenditure of money by a lobbyist or "spends a total of at least \$50,000 in any calendar year on efforts to influence legislative action, administrative action, or the official action of metropolitan governmental units, as described in section 10A.04, subd. 6." The All Terrain Vehicle Association of Minnesota and Polaris Industries, Inc. are principals.
3. Minn. Stat. §10A.071, subd. 1, (b), defines a "gift" as money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.
4. Minnesota Rules, 4512.0100, subp. 3, further provides that the following are included within the definition of a gift: meals and entertainment; loans of personal property for less than fair market value; giving preferential treatment for purchases; honoraria; and payments of loans or other obligations.
5. Minn. Stat. §10A.071, subd. 2, prohibits a principal from giving a gift to an official and prohibits an official from accepting a gift from a principal.
6. There is evidence that attendance at the pre-convention ATV event was made available free to the public. Because no indebtedness arises from a free service and a free public service does not otherwise fall within the definition of a gift in section 10A.071 and Minn. Rules 4512.0100, subp. 3, there is no evidence that by attending the event Governor Pawlenty accepted a prohibited gift.
7. There is evidence that the ATV drive at the ATVAM convention was made available free to the public. Because no indebtedness arises from a free service and a free public service does not otherwise fall within the definition of a gift in section 10A.071 and Minn. Rules 4512.0100, subp. 3, there is no evidence that by participating in the ATV drive Governor Pawlenty accepted a prohibited gift.
8. There is evidence that Polaris has an established policy of not charging members of the public for riding its demonstration machines. Because no indebtedness arises as a result of this policy and the free public service does not otherwise fall within the definition of a gift in section

10A.071 and Minn. Rules 4512.0100, subp. 3, there is no evidence that Governor Pawlenty accepted a prohibited gift.

9. There is evidence that Polaris has an established policy of not charging the public for damage incurred to ATVs used on demonstration rides. Because no indebtedness arises as a result of this policy, there is no evidence that the cost of repairing the ATV was a prohibited gift to Governor Pawlenty.

Based on the above Statement of the Evidence, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to believe that Governor Pawlenty violated Minn. Stat. §10A.071, subd. 2, by attending the pre-convention event because there is no evidence that the pre-convention event meets the definition of gift.
2. There is no probable cause to believe that Governor Pawlenty violated Minn. Stat. §10A.071, subd. 2, by riding the ATV because there is no evidence that the ATV ride meets the definition of gift.
3. There is no probable cause to believe that Governor Pawlenty violated Minn. Stat. §10A.071, subd. 2, when he did not pay Polaris for damage to the ATV, because there is no evidence that the cost of repairing the ATV meets the definition of gift.
4. There is no probable cause to believe that the All Terrain Vehicle Association of Minnesota violated Minn. Stat. §10A.071, subd. 2, by providing Governor Pawlenty an opportunity to attend the pre-convention event because there is no evidence that the pre-convention event meets the definition of gift.
5. There is no probable cause to believe that Polaris violated Minn. Stat. §10A.071, subd. 2, by providing Governor Pawlenty an opportunity to drive an ATV because there is no evidence that the ATV drive meets the definition of gift.
6. There is no probable cause to believe that Polaris Industries, Inc. violated Minn. Stat. §10A.071, subd. 2, by not charging Governor Pawlenty for the damage the ATV incurred because there is no evidence that the cost of repairing the ATV meets the definition of gift.

Based on the above Findings, the Board issues the following:

ORDER

1. The complaints regarding the alleged violations of Minn. Stat. §10A.071, subd. 2, are dismissed in their entirety.

2. The Board's investigation of this matter is hereby made a part of the public records of the Board pursuant to Minn. Stat. §10A.02, subd. 11.

Dated: September 13, 2005

A handwritten signature in cursive script, reading "Terri Ashmore", written over a horizontal line.

Terri Ashmore, Chair
Campaign Finance and Public Disclosure Board