

**State of Minnesota
Campaign Finance and Public Disclosure Board**

**In the matter of the Complaint Regarding the
Mike McGinn for State Senate Committee**

Statement of the Allegations and Responses

On August 6, 2006, Paul V. Bartlett ("Complainant") filed a complaint regarding the Mike McGinn for State Senate Committee (the "Committee").

The complaint included a copy of a one page two-sided publication titled "The McGinn Monitor". The publication was dated October 4, 2004, and included endorsements urging the election of Representative Lynn Wardlow, Representative Tim Wilkin, President George W. Bush and Congressman John Kline. The publication also reports that Senator McGinn is busy preparing for the elections and that he is up for election in two years.

Complainant argues that the publication violates the provisions of Minnesota Statutes Chapter 10A for two reasons: first, because the cost of producing and mailing the publication is not included on the Committee's Report of Receipts and Expenditures for 2004 and, second, because Chapter 10A generally prohibits contributions from a candidate's committee to the principal campaign committees of other candidates and to the committees of people seeking federal office.

Upon receipt of the complaint, Board staff notified Senator Michael McGinn of the allegations and afforded him an opportunity to respond.

On September 5, 2006, Attorney Ryan L. Kaess responded on behalf of the Committee. In his response, Attorney Kaess states that the publication was copied on the Committee's copy machine using supplies that were reported on the 2004 Report of Receipts and Expenditures. Attorney Kaess further states that the mailing went to approximately 400 of Senator McGinn's supporters and was put together by volunteers. He states that the postage used was left over from 2002 and 2003 and was reported on those years' reports.

According to Attorney Kaess, the total cost of producing and mailing the publication was under \$200.

Attorney Kaess states that the purpose of the publication was not to influence the nomination or election of other candidates, but to remind voters that Mike McGinn was still their senator and to present him as a strong and loyal member of the Republican Party.

Discussion

The Committee states that the cost of supplies for producing the publication were reported on its 2004 Report of Receipts and Expenditures. The Committee has identified a specific itemized expenditure to Office Depot as being for those supplies.

The Committee states that the postage used to mail the publication was left over from 2002 and 2003 and reported on the reports for those years. The 2002 Report shows \$1090.50 in itemized postage expenditures. The 2003 Report shows unitemized campaign expenditures of \$393.51, but no itemized purchases of stamps

Complainant urges the board to find that, as it relates to two named federal officeholders, the publication constitutes a contribution to a federal candidate which is prohibited under Minnesota Statutes Chapter 10A Section 10A.27 subd. 9(c). However, to be a contribution, the benefit (here the in kind value of the publication) must be accepted or approved by the recipient. In this matter, there is no evidence that either President Bush or Congressman Kline knew about or approved the publication in any way.

By definition, the pro-rated cost of the publication is not an “independent expenditure” on behalf of the federal officeholders. Under Minnesota Statutes Chapter 10A Section 10A.01, subd. 18, an independent expenditure is made on behalf of a “candidate”. Chapter 10A limits the definition of a “candidate” to include only individuals running for state level offices.

With respect to the portion of the publication dedicated to federal officeholders, the Board agrees with the Committee’s position that the publication was designed to enhance the reputation of Senator McGinn with his Republican supporters and to keep his name before the voters. Costs of such efforts are campaign expenditures and were reported appropriately.

The portion of the publication dedicated to the State Representative candidates requires a different analysis. There is no evidence that the state representatives or their committees approved the expenditures; however, the publication clearly identifies them and advocates their re-election. Thus, the costs attributable to that portion of the publication fall within the definition of independent expenditures.

Senator McGinn signed a public subsidy agreement which covered the relevant period. In doing so, he agreed that his principal campaign committee would not make independent expenditures. Since this Committee expenditure is prohibited by the public subsidy agreement, Senator McGinn will be required to reimburse the Committee with his personal funds.

Based on the above analysis, the Board makes the following:

EVIDENTIARY FINDINGS

1. The Mike McGinn for State Senate Committee produced and mailed a publication in October, 2004 titled “The McGinn Monitor” at a total cost that did not exceed \$200.
2. The cost of producing the report was included on the Committee’s 2004 Report of Receipts and Expenditures and the cost of postage was included on the Committee’s 2002 and 2003 Reports.
3. The federal officeholders, George W. Bush and John Kline, did not approve the publication or accept its value as an in kind contribution.
4. The state candidates, Lynn Wardlow and Tim Wilkin, did not approve the publication or accept its value as an in kind contribution.

5. The publication expressly advocates the election of the clearly identified state candidates, Representatives Lynn Wardlow and Tim Wilkin.

6. Senator Michael McGinn signed a public subsidy agreement covering 2004 through which he agreed that his principal campaign committee would not make independent expenditures.

Based on the above analysis, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

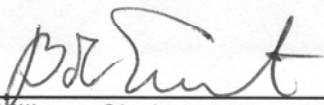
1. There is no probable cause to believe that the Mike McGinn for State Senate Committee failed to report costs of "The McGinn Monitor" properly on its Reports of Receipts and Expenditures.
2. There is no probable cause to believe that costs associated with the publication constituted a contribution to, or an independent expenditure on behalf of, a person seeking federal office.
3. But for the Committee's agreement not to make independent expenditures, the pro-rated cost of that part of the publication dedicated to state candidates would have been an independent expenditure on behalf of those candidates. Because the Committee is prohibited from making such independent expenditures, those costs are not a permitted use of Committee funds.

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

ORDER

1. The Committee shall calculate and provide to the Board an itemization of the cost of preparing and mailing "The McGinn Monitor". The Committee shall pro-rate the cost based on the portion of the publication that is dedicated to state representative candidates and shall provide to the Board an explanation of the calculation. Senator McGinn shall reimburse the Mike McGinn for State Senate Committee from his personal funds for the pro-rata cost of that portion of the publication dedicated to state representative candidates, as calculated above.
2. The Committee must report this reimbursement as miscellaneous income on its next Report of Receipts and Expenditures.
3. The Board's investigation of this matter is concluded and the records of the investigation are hereby made a part of the public records of the Board pursuant to Minnesota Statutes, Section 10A.02, subdivision 11.

Dated: September 15, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 Definitions.

Subdivision 1. **Application.** For the purposes of this chapter, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

. . .

Subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge.

. . .

Subd. 18. **Independent expenditure.** "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified 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.

. . .

10A.25 Spending limits.

Subdivision 1. **Limits are voluntary.** The expenditure limits imposed by this section apply only to a candidate who has signed an agreement under section 10A.322 to be bound by them as a condition of receiving a public subsidy for the candidate's campaign.

. . .

Subd. 3a. **Independent expenditures.** The principal campaign committee of a candidate must not make independent expenditures.