

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

**Findings and Order in the matter of
A Complaint Regarding Senator Michael Jungbauer and the
(Michael) Jungbauer Volunteer Committee**

Summary of the Allegations and Responses

On September 6, 2006, Mike Starr, ("Complainant") filed a complaint against Senator Michael Jungbauer and the (Michael) Jungbauer Volunteer Committee ("the Committee"), the principal campaign committee of Senator Jungbauer ("Respondents") alleging that the Committee violated Minnesota Statutes Chapter 10A and Minnesota Statutes Chapter 211B.

Complainant alleges that in 2006, Respondents accepted a contribution of \$600 from Anoka Air Charter, Inc. and that this contribution was a corporate contribution in violation of Minnesota Statutes Section 211B.15. Complainant also alleges that the contribution is in excess of the contribution limits set forth in Minnesota Statutes, Section 10A.27.

Complainant further alleges that Respondent Michael Jungbauer converted campaign committee money to personal use in violation of Minnesota Statutes, Section 211B.12(7).

Complainant states: "I know that the Board does not administer these provisions" [the Chapter 211B provisions]. He says he raises the issues "to demonstrate that there is reason to believe that there are probably additional violations. . . "

Complainant indicates that "there are numerous other entries [recorded on the report] connected with the aviation industry". Complainant requests investigation of these items as well as a general examination of all of Respondents' financial activities, including unitemized contributions received.

Upon receipt of the complaint, Board staff notified Senator Jungbauer of the allegations and afforded him an opportunity to respond. In addition to the specific allegations of the complaint, Senator Jungbauer was asked to explain the following items:

1. an expense reported as a campaign expenditure for "dinner for workers",
2. two expenses reported as "Aviation Fund, food and beverages",
3. miscellaneous spending totaling \$170 was listed with the vendor "Unknown".

Senator Michael Jungbauer responded on September 19, 2006.

In his response, Senator Jungbauer apologized for "numerous errors" that were included in the Committee's 2006 preprimary Report of Receipts and Expenditures. He explained that his campaign manager since October, 2005, resigned in mid-August, 2006. Up until that time, Senator Jungbauer reports, he "had not seen any of the financial records – contributions, copies of checks, disbursements, or receipts for expenditures."

The hard drive on the computer where the records were stored was lost and the electronic records could not be recovered. Senator Jungbauer retained an accountant to re-create the

data and reports and states that "In fact, I never saw this original report until after it was filed with the Board".

With respect to the specific allegations of the Complaint and questions raised by the report during the investigation, Senator Jungbauer provided the following responses:

The Committee acknowledges acceptance of a corporate contribution in the amount of \$600 from Anoka Air Charter, Inc. on February 22, 2006. Senator Jungbauer states that the contribution was returned on September 7, 2006 when he discovered it after preparing his preprimary Report of Receipts and Expenditures.

The payment of \$812 listed as "Aviation Insurance" was actually a payment made to Eric Gunderson to reimburse him for the cost of insurance required for a fundraising event held February 22, 2006. The actual provider of the insurance was Star Insurance Agency, White Bear Lake, Minnesota.

The payment of \$117.33 to Diamonds listed as "food for workers" as a campaign expenditure, should have been listed as food and beverages for a fundraising event and should have been reported as a noncampaign disbursement.

The payments of \$230.93 and \$276.25 to individuals for food and beverages for "Aviation Fund" should have been listed as reimbursements to those individuals for food and beverages for a fundraising event. The person who recorded the transactions listed "Aviation Fund" rather than "Aviation Fundraiser".

The payments to Historic Sales totaling \$741.39 for airplane models were for "airplane models that we will use for a silent auction at a future fundraising event . . ." Senator Jungbauer states that "I am not using these models personally and they are presently are in storage until the auction is held."

An expense of \$150 to a vendor listed as "Unknown" was paid to Tony St. Joyavich as reimbursement for food and beverages used at a fundraising event. The committee has not been able to determine the actual vendor of the items for which the reimbursement was paid. The remaining \$20 becomes part of the Committee's unitemized expenditures.

The Committee's response that the insurance coverage was for a fundraising event implied that some facility was involved. The Committee's Report did not include any cost of facility rental for the event. Senator Jungbauer was asked to provide details concerning the insurance and the facility at which the event was conducted, including ownership information.

In response to this subsequent request, Senator Jungbauer provided an invoice from Star Insurance Agency of White Bear Lake, Inc. in the amount of \$712 for "liability and host liquor" insurance coverage for February 22, 2006 through February 23, 2006. Senator Jungbauer also submitted a copy of a check written by Jamie Gunderson in the amount of \$712 to the Star Insurance agency.

Additionally, Senator Jungbauer provided a letter from Craig A. Schiller, director of Golden Wings Museum in Blaine, MN. Mr. Schiller indicated that the Museum's hangar was used for the fundraising event. In the letter, he states:

"The hangar facility where Senator Mike Jungbauer held his campaigning (sic) fundraiser back on February 22nd of 2006 is personally owned by Greg Herrick, Herrick Family Partners and Yellowstone Aviation Inc."

He further states:

"Aviation enthusiasts Tim Loth and Paul Weske personally asked the owner for the use of the space as sponsors for Sen. Jungbauer's fundraising event. . . . Greg Herrick personally allowed Tim Loth and Paul Weske the use of the hangar for sponsorship of this fundraising event."

In the course of the investigation, Mr. Schiller spoke with Board staff and indicated that he was uncertain of the actual ownership of the hangar from a legal perspective. He indicated that the Museum previously rented out its facility for events such as weddings, but that the size of the airplane collection now prohibits most event use. It is still made available for limited aviation related events. He said that the subject fundraiser included use of the hangar, in which historic airplanes are stored and available for viewing by fundraiser guests, and also included the provision of tables, chairs, and similar items.

Investigation of the records of Anoka County, in which the hangar is located indicate that ownership is listed as "Greg Herrick/Yellowstone Av".

This matter was considered by the Board in executive session on October 17, 2006. The Board's decision is based on the complaint, the responses, results of the Board investigation, and Board records.

Board Analysis

Respondents acknowledge acceptance by the (Michael) Jungbauer Volunteer Committee of a corporate contribution of \$600 from Anoka Air Charter, Inc. Although he alleges Chapter 211B violations in his complaint, Complainant understands that the Board does not administer that chapter. The Board will limit its analysis to the application of Minnesota Statutes Chapter 10A to the subject contribution.

Complainant alleges that the corporate contribution violates the provisions of Chapter 10A.27 which limit contributions to principal campaign committees. Respondents acknowledge that they retained the contribution for more than 60 days. A contribution retained for more than 60 days is deemed accepted and subject to any applicable penalties even if it is subsequently returned to the donor.

The basic contribution limits are set forth in Section 10A.27, subd. 1. However, Section 10A.27, subd. 13, specifically further limits donations from entities not registered with the Board. Under this section a principal campaign committee may, if not otherwise prohibited by law, accept a contribution of up to \$100 from an entity not registered with the Board. If not otherwise prohibited, the committee may accept higher contributions if they are accompanied by the detailed disclosure specified in Minnesota Statutes, Section 10A.20. There is no suggestion that the subject contribution included any such disclosure.

Minnesota Statutes, Section 10A.27, subd. 13, provides that if a committee accepts a contribution from an unregistered association in excess of \$100, the committee is subject to a civil penalty of up to 4 times the excess amount.

Complainant also alleges that Senator Michael Jungbauer converted campaign funds to personal use in violation of Minnesota Statutes Chapter 211B. As noted, Minnesota Statutes Chapter 211B is not within the Board's jurisdiction and allegations of conversion of principal campaign committee funds to personal use are not subject to review by the Board.

The Committee reported a cost of \$812 for "Aviation Insurance", but did not provide a vendor name or further explanation. Complete reporting of transactions falls within the Board's jurisdiction under Minnesota Statutes Chapter 10A. With respect to the aviation insurance, Respondents explained that the expense was incorrectly reported and that it was actually a reimbursement to an individual for the cost of liability insurance covering a facility used for a fundraising event. Respondents provided an invoice for the insurance and a copy of the check used by the individual to pay for it. The invoice and check were for \$712, while the reported expenditure was in the amount of \$812.

The Committee reported reimbursing expenses for food and beverages with the designation "Aviation Fund". The level of explanation for these items was not sufficient to meet the reporting requirements of Minnesota Statutes, Section 10A.20, subd. 3(g) which requires disclosure of the purpose of each expenditure. During the course of the investigation, Respondents clarified that the expenses were for an aviation themed fundraising event conducted by the Committee.

Most of the reporting or classification errors raised by Board staff during the investigation were clarified and corrected by the Committee. One item remains with insufficient disclosure: there is no information regarding the underlying vendor associated with the reimbursement to Tony St. Joyavich. For reimbursing expenditures, Minnesota Statutes, Section 10A.20, subd. 13, requires disclosure of the items for which the third-party payee was reimbursed.

During the investigation, it was disclosed that the Committee conducted a fundraising event on February 22, 2006. The event required the purchase of liability insurance for the facility used for the event. The Committee's 2006 preprimary Report of Receipts and Expenditures did not include any expenses for facility or equipment rental. Upon inquiry, Respondents indicated that the event was held in the airplane hangar of the Golden Wings Museum in Blaine, Minnesota.

The value of use of a facility and of equipment for a fundraising event are in-kind contributions to the Committee from the owners of the facility and equipment. No in-kind receipts and no corresponding in-kind expenditures for facility or equipment use were reported by the Committee.

In-kind contributions to committees are to be recorded and reported at their fair market value. That value may be established by the price for which the same services are available from the vendor to the general public or to all principal campaign committees. If the same services are not available to all principal campaign committees, then the fair market value may be established by comparison to similar services offered by other providers.

The Board recognizes that the unreported in-kind contribution(s) in this matter may include corporate contributions. Regardless of this fact, Minnesota Statutes Chapter 10A requires that the contributions be reported. Whether a violation of Minnesota Statutes Chapter 211B also exists is not a matter for the Board to decide.

Based on the evidence before it, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is probable cause to believe that the 2006 preprimary Report of Receipts and Expenditures for the (Michael) Jungbauer Volunteer Committee incorrectly reports the amount of an expenditure listed as \$812 for "Aviation Insurance"; that it failed to report the payee for the expenditure; and that it failed to report the underlying vendor for this reimbursing expenditure.
2. There is probable cause to believe that the Committee accepted a contribution of \$600 from an entity not registered with the Board and without the disclosure required under Minnesota Statutes, Section 10A.27, subd. 13.
3. There is probable cause to believe that the Committee failed to report in-kind contributions and corresponding in-kind expenditures for the provision of a facility and equipment for a fundraising event.

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

ORDER

1. The Committee must amend its 2006 preprimary Report of Receipts and Expenditures to report the correct amount of the expenditure listed as "Aviation Insurance" and to list the payee and underlying vendor for the reimbursement. With respect to this expenditure, the Committee must provide a legible copy of both sides of the Committee check used to make the reimbursement.
2. The Committee must amend the Report to include the in-kind contributions for use of the airplane hangar with its collection of historic planes available for guests to view and any equipment or other services provided. The Committee must also report the corresponding in-kind expenditures for these items. For these transactions, the Committee must explain how it made its determination of the legal name and status of each donor and must explain in detail the method by which it determined the value of each item.
3. A civil penalty of \$500 is imposed on the Committee for the acceptance of a contribution in excess of \$100 from an unregistered entity not in compliance with Minnesota Statutes, Section 10A.27, subd. 13. The committee must include with payment of the civil penalty a copy of both sides of the Committee Check used to return the contribution.
4. Items 1 and 2 above must be completed within 10 days after the Committee's receipt of this order. The civil penalty must be paid within 30 days after the committee's receipt of this order by sending to the Campaign Finance and Public Disclosure Board a check in the amount of \$500 payable to the State of Minnesota.
5. Upon receipt of the amended Report, the Board's Executive Director shall examine the changes and may request additional information or clarification from the Committee. The Executive Director shall report back to the Board on this matter during the regular session of its next meeting.

6. 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: October 17, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Statutes

Minnesota Statutes, Chapter 10A

10A.20 Campaign reports.

Subd. 3. Contents of report.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity . . . A donation in kind must be disclosed at its fair market value.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

Subd. 13. **Third-party reimbursement.** An individual or association filing a report disclosing an expenditure or noncampaign disbursement that must be reported and itemized under subdivision 3, paragraph (g) or (l), that is a reimbursement to a third party must report the purpose of each expenditure or disbursement for which the third party is being reimbursed. An expenditure or disbursement is a reimbursement to a third party if it is for goods or services that were not directly provided by the individual or association to whom the expenditure or disbursement is made. Third-party reimbursements include payments to credit card companies and reimbursement of individuals for expenses they have incurred.

10A.27 Contribution limits.

Subdivision 1. **Contribution limits.** (a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

(4) to a candidate for state senator, \$500 in an election year for the office sought and \$100 in other years; and

Subd. 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

- (1) fails to provide a written statement as required by this subdivision; or
 - (2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.
- (c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.