

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

**Findings and Order In The Matter Of A Complaint
Regarding the Pete Nelson for State Representative Committee**

Summary of Allegations and Responses

On October 23, 2006, Patrick J. Rich ("Complainant") filed a complaint with the Campaign Finance and Public Disclosure Board ("the Board") against the Pete Nelson for State Representative Committee ("the Committee").

Based on the Committee's 2006 Pre-primary Report of Receipts and Expenditures the Complainant alleged two violations of the disclosure provisions of Minnesota Statutes Chapter 10A. The complaint states that Representative Nelson participated as a candidate in four parades during the summer of 2006. According to the Complaint all four parades had entry fees which in total amount to \$370. The Complainant states, "The fees were not reported in his August 2006 report (which showed only \$14.55 in non-itemized expenses)."

Additionally, the Complainant alleges that the cost of a printing produced by Brooklyn Printing for a legislative session wrap up is mischaracterized by the Committee as a noncampaign disbursement. The Complainant states, "His August 2006 report also included \$1,349.71 in printing costs as non-campaign expenses, dated August 14, more that 60 days after the end of the 2006 legislative session."

By letter dated October 24, 2006, Representative Nelson was notified of the complaint and afforded an opportunity to respond. With the notification the Board asked for information on the mailing or distribution date(s) of the session wrap up provided as a constituent service. In a letter dated November 6, 2006, Representative Nelson responded on behalf of the Committee.

In response to the Complainant's allegation that the Committee failed to report the cost of participation in four parades Representative Nelson states, "Please notice on our Campaign Report dated 10/28/2006 a reimbursement to me for campaign expenses in the amount of \$493.16. This amount includes reimbursing me for the four parades you had questioned."

In response to the allegation that the Committee improperly reported the cost of the session wrap up as a noncampaign disbursement Representative Nelson states that Brooklyn Printing produced the legislative session wrap up in question and that the mailing of the wrap up was completed by Capital Direct. Representative Nelson notes that the payments to Brooklyn Printing and to Capitol Direct are both reported as 50% campaign expenditure and 50% noncampaign disbursement.

In response to a Board staff request the Committee provided copies of the invoice from Brooklyn Printing and Capitol Direct. The Brooklyn Printing invoice provides that the legislative session wrap up was printed on June 16, 2006. The Capitol Direct invoice provides that the legislative session wrap up was mailed on July, 6, 2006. Both invoices contain hand written notes by the Committee treasurer indicating the check number and date on which the vendor was paid. For both invoices the date of payment matched the date recorded with the expenditures on the Committee's pre-primary report of Receipts and Expenditures.

The matter was considered by the Board in executive session on November 28, 2006. The Board's decision was based upon the complaint, the response and documentation provided by Representative Nelson, and Board records.

Board Analysis

In regard to the reporting of the parade fees Minnesota Statutes, section 10A.01, subdivision 9, provides that a campaign expenditure occurs at the time a good or service is either purchased or an obligation to pay a good or service is incurred. Minnesota Statutes, section 10A.20, subdivisions 3 (h) and (m), require that the Report of Receipts and Expenditures filed with the Board include all expenditures and noncampaign disbursements made by the reporting entity during the reporting period. Minnesota Statutes, section 10A.20, subdivision 13, provides that a reimbursement to a third party must "report the purpose of each expenditure or disbursement for which the third party is being reimbursed." Of the four parades listed in the complaint three occurred prior to August 21, 2006, (the end of the reporting period for the pre-primary report). The Committee did not provide timely disclosure of the unpaid reimbursement owed to Representative Nelson for the parade fees. The reimbursement should have been included as an unpaid bill owed to Representative Nelson on the Committee's pre-primary Report of Receipts and Expenditures with a description of the underlying purpose of the reimbursement. In this case, "parade fees" or a similar description may have provided sufficient description so that the complainant would understand that the Committee was reporting the cost of participating in the parades.

The Committee's pre-general Report of Receipts and Expenditures which includes the reimbursement to Representative Nelson for payment of parade fees was filed prior to the submission of the complaint. Therefore, there is no reason to believe that the omission of the parade fees from the pre-primary Report of Receipts and Expenditures was done to mislead or provide false information in the report.

The second issue in the complaint is the timing of a legislative session wrap produced by Brooklyn Printing and mailed by Capitol Direct. The cost of printing the wrap up by Brooklyn Printing is reported by the Committee as 50% campaign expenditure, 50% noncampaign disbursement with a purchase date of August 14, 2006. Incumbent legislators may spend funds from their campaign committee to provide "constituent services" as provided for in Minnesota Statutes, section 10A.01, subdivision 26, clause (6). A constituent service is defined in Minnesota Rules part 4503.0100, subpart 6, as "services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district". Literature from a legislator that describes events during the legislative session, commonly referred to as a legislative session update or report, is a form of constituent service.

Minnesota Statutes, section 10A.01, subdivision 26, clause (6), provides that constituent services that are provided from the beginning of the term of office until the legislature adjourns sine die may be classified entirely as noncampaign disbursements. Constituent services that occur during the first sixty days after the legislature adjourns sine die may be allocated 50% campaign expenditure, 50% noncampaign expenditure. A constituent service provided more than sixty days after the adjournment of the legislature sine die must be allocated totally as a campaign expenditure.

The Minnesota legislature adjourned sine die on May 21, 2006. The period during which constituent services may be allocated 50% campaign expenditure and 50% noncampaign

disbursement ran from May 22 to July 21, 2006. Constituent services provided after July 21, 2006, are campaign expenditures.

Representative Nelson states, and the Brooklyn Printing and Capitol Direct Invoices document, that the dates provided on the pre-general Report of Receipts and Expenditures represent the dates that these two vendors were paid, not the date on which the items were purchased or mailed. The July 6, 2006, date on which the legislative session wrap ups were mailed is within the period during which the Committee may split the cost of producing and mailing the wrap up 50% campaign expenditure and 50% noncampaign disbursement. Using the dates of payment instead of the dates on which the printing and mailing were ordered created the impression that the mailing occurred outside of that period and underscores the importance of disclosing expenditures with the date that the item was ordered or purchased.

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

Findings Concerning Probable Cause

1. There is probable cause to believe that the Pete Nelson for State Representative Committee failed to timely report unpaid campaign expenditures related to the committee's participation in three parades that occurred prior to August 21, 2006. However, the cost of participating in the parades was reported by the Committee on the pre-general Report of Receipts and Expenditures.
2. There is no probable cause to believe that the payments made to Brooklyn Printing and Capitol Direct for a legislative session wrap up were improperly reported as 50% campaign expenditure and 50% noncampaign disbursement. There is probable cause to believe that the Pete Nelson for State Representative Committee improperly reported the dates that payment was made to Brooklyn Printing and Capitol Direct instead of the date that the printing and mailing was purchased.
3. There is no probable cause to believe that the reporting errors were intentional or done in order to circumvent the applicable 2006 campaign expenditure limits.

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

Order

1. The Pete Nelson for State Representative Committee is ordered to amend its 2006 pre-primary Report of Receipts and Expenditures to disclose an unpaid campaign expenditure to Representative Nelson in the amount of, and for the purpose of, participation fees for the three parades that occurred prior to August 21, 2006.
2. The Pete Nelson for State Representative Committee is ordered to amend the 2006 pre-primary and pre-general Report of Receipts and Expenditures to disclose the date on which the printing and mailing of the legislative session wrap up was purchased from

Brooklyn Printing and Capitol Direct. The amended reports must be filed within 10 days of the Committee receiving this order.

3. The Board's investigation into this matter is concluded and all records of the investigation is hereby entered into the public record in accordance with Minnesota Statutes, section 10A.02, subd. 11.

Board staff shall provide copies of these Findings to Patrick J. Rich and Representative Nelson.

Dated: November 28, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes and Administrative Rules

Minnesota Statutes, section 10A.01, subdivision 9. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate...

Minnesota Statutes, section 10A.01, subdivision 26. Noncampaign disbursement. "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes: ...

- (6) services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die; ...

Minnesota Statutes, section 10A.20, subdivision 3, Contents of report.

...

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period...

(m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

...

4503.0100 Definitions. Subpart 6. Services for a constituent; constituent services.

"Services for a constituent" or "constituent services" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district, but does not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures.