

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

**In the matter of the Complaint Regarding the
Wilkin County RPM**

Statement of the Allegations and Responses

On November 17, 2006, Mackenzie Taylor ("Complainant") filed a complaint with the Campaign Finance and Public Disclosure Board (the Board) regarding the Wilkin County Republicans and Bob Westfall, who is identified as the President of that association. The complaint included copies of newspaper advertisements published in the *Hawley Herald*, *Detroit Lakes Tribune* and the *Barnesville Record Review* during the period of October 2 to October 23, 2006. The advertisements vary in content but all include the statement "Vote Holle For District 9 Senate" and the disclaimer "Ad Prepared And Paid For By Wilkin County Republicans, Bob Westfall, Rothsay, President, 218 867-2621".

The Complainant states that the association "Wilkin County Republicans" violated the provisions of Minnesota Statutes Chapter 10A in by failing to register and report to the Board. The Complainant states, "First and foremost the organization responsible for these advertisements has made no attempt to register and report their activities to the Campaign Finance Board... The organization in question, "Wilkin County Republicans" has yet to file with you." In reference to the Chapter 10A requirement that registered committees report contributions and expenditures to the Board the Complainant further states, "There appears to be a willful disregard to comply with these provisions and provide the public disclosure required by Chapter 10A."

Additionally, the complaint states that the advertisements appear to be independent expenditures made without the knowledge of the Holle for Senate Committee. The Complainant stated, "...written communications such as the ones provided to the Board must contain a statement in conspicuous type that the activity is an independent expenditure."

Board records disclose the "Wilkin County RPM" registered with the Board as a unit of the Republican Party of Minnesota on April 18, 2002. The Wilkin County RPM registration lists Robert Westfall as its Chair. Board staff forwarded a copy of the allegations to Mr. Westfall and provided him an opportunity to respond. In the notification of the complaint the Board noted that the pre-general election report of Receipts and Expenditures filed by the Wilkin County RPM for the period covering January 1 to October 23, 2006, did not disclose any in-kind donations or independent expenditures on behalf of the Holle for Senate Committee.

On December 4, 2006, the Board received an amendment to the Wilkin County RPM pre-general election Report of Receipts and Expenditures filed by Roger Johnson, Treasurer. The amendment discloses \$2,047.31 in expenditures for newspaper advertisements which were provided as in-kind contributions to the Holle for Senate Committee.

The pre-general election Report of Receipts and Expenditures filed by the Holle for Senate Committee did not disclose any in-kind contributions from the Wilkin County RPM. In order to verify that the newspaper advertisements were not independent expenditures, the Board contacted the Wilkin County RPM by letter dated December 13, 2006 requesting a copy of the

written permission a political party unit is required to obtain from a candidate prior to making an approved expenditure on a candidate's behalf.

On December 29, 2006, Mr. Johnson submitted to the Board a copy of the Wilkin County RPM meeting minutes for September 13, 2006. The minutes state that present at the meeting were Paul Holle, candidate, and Angie Holle, treasurer, for the Holle for Senate Committee. At the meeting the members of the Wilkin County RPM voted "to spend up to \$2,000 on advertising in Wilkin County and District 9" for the Holle for Senate Committee. The minutes further provide "It was also noted that Paul Holle was present at this meeting and approved of this action for advertising funds." The minutes are signed by Mary Ann Conrad, secretary.

Mr. Johnson submitted a letter to the Board on January 8, 2007, which further explained the actions of the Wilkin County RPM relative to the investigation of the complaint. In explaining why the approved expenditures on behalf of the Holle for Senate Committee were not originally reported on the pre-general election Report of Receipts and Expenditures Mr. Johnson stated, "The October...report did not include newspaper advertising billing statements due to the fact that not all of the advertisement had been run and billed to us by the filing deadline of the report."

In reference to the lack of written permission from the Holle for Senate Committee for the approved expenditures Mr. Johnson states, "Paul Holle and his wife, Treasurer, Angie Holle were at our...meeting. Being present and participating, they were aware of, and approved of us running advertisements on their behalf."

On January 31, 2007, the Holle for Senate Committee filed the 2006 year-end Report of Receipts and Expenditures. The report discloses an in-kind donation of "News Paper Advertisements" from the Wilkin County RPM in the amount of \$2,047.31.

The matter was considered by the Board in executive session on November 28, 2006, January 9, 2007, and February 13, 2007. The Board's decision was based upon the complaint, the responses and documentation provided by the Wilkin County RPM, the 2006 year-end Report of Receipts and Expenditures filed by the Holle for Senate Committee, and Board records.

Board Analysis

The belief by the Complainant that an unregistered association purchased the newspaper advertisements apparently stems from the disclaimer which states that they were paid for by the "Wilkin County Republicans" instead of the "Wilkin County RPM" and listing Bob Westfall as the "president" rather than the chair of the committee. The form of the disclaimer provided on campaign literature is regulated by Minnesota Statutes, section 211B.04. The Board has no authority outside of Chapter 10A, and therefore did not investigate whether any violation of Chapter 211B occurred as a result of the committee name and officer title used in the disclaimer.

The responses and amendment submitted by the Wilkin County RPM makes it clear that for the purposes of this complaint the "Wilkin County Republicans" and the "Wilkin County RPM" are the same entity, and that registration of an additional political committee or political party unit is not required.

The meeting minutes of the Wilkin County RPM, the statement by Mr. Johnson, and the reporting of the in-kind donation of newspaper advertisements by the Holle Committee provide the basis for the Board to conclude that the newspaper advertisements were in-kind donations and not independent expenditures. Therefore, the portion of the complaint related to the lack of a statement of independence on the newspaper advertisements, or the reporting of independent expenditures, is not relevant.

The inability of the Complainant to identify the entity which was purchasing the newspaper advertisements and the Complainant's belief that the advertisements were independent expenditures, is understandable given the lack of disclosure provided to the public by the Wilkin County RPM and the Holle for Senate Committee. Mr. Johnson states that the Wilkin County RPM did not report the purchase of the newspaper advertisements on their pre-general Report of Receipts and Expenditures because some of the advertisements were not printed until after the close of the pre-general reporting period and because he did not pay the bills until November.

The statutory requirement provided in Minnesota Statutes, section 10A.01, subdivision 9, and section 10A.20, subdivision 3 (g) (h) is that campaign expenditures are reported when a purchase is "made or incurred". The newspaper advertisements became reportable as unpaid bills when the Wilkin County RPM ordered the advertisements, regardless of whether the advertisements had run or whether payment had been made. In recognition that the Wilkin County RPM pre-general election report was incomplete, Mr. Johnson submitted an amendment to disclose the newspaper advertisements as in-kind contributions to the Holle for Senate Committee.

Although not a violation referenced in the complaint, it became evident during the course of the Board investigation that the Wilkin County RPM did not obtain written permission to make approved expenditures on behalf of the Holle for Senate Committee. Minnesota Statutes, section 10A.17, subdivision 2, provides that a political party unit may not make an approved expenditure of more than \$20 without receiving written authorization from the principal campaign committee of a candidate. The written authorization needs to state the amount and purpose of the expenditure. This statute is intended as a protection to candidates because approved expenditures are in-kind contributions which count against the candidate's applicable contribution and expenditure limits. Additionally, the written authorization provides a record for the candidate's committee to refer to when reporting the in-kind contributions resulting from approved expenditures made on its behalf. A political party unit that fails to receive written permission for an approved expenditure is subject to a civil penalty of up to \$1,000.

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

FINDINGS CONCERNING PROBABLE CAUSE

1. There is probable cause to believe that the Wilkin County Republicans and the Wilkin County RPM are the same association. The Board finds that the Wilkin County Republicans did not need to separately register and report to the Board.
2. There is no probable cause to believe that costs associated with the publication of the newspaper advertisements referenced in the complaint were independent expenditures on behalf of the Holle for Senate Committee. The Board finds that no violation of Minnesota Statutes, section 10A.17, subdivision 4, occurred.

3. There is probable cause to believe that the Wilkin County RPM and the Holle for Senate Committee failed to disclose the cost of the newspaper advertisements on their pre-general election Report of Receipts and Expenditures. However, in view of the amended Report filed by the Wilkin County RPM and the year end Report filed by the Holle for Senate Committee there is no probable cause to find that reporting violations continue to exist.
4. There is no probable cause to believe that the reporting violations were intentional or done to circumvent contribution or expenditure limits.
5. There is probable cause to believe that the Wilkin County RPM did not secure written permission to make in-kind donations from the Holle for Senate Committee. The Board finds that the Wilkin County RPM violated Minnesota Statutes, section 10A.17, subdivision 2.

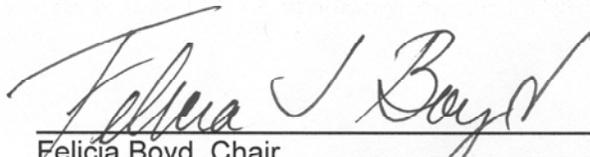
Based on the above Findings, the Board issues the following:

ORDER

1. For failure to acquire written permission to make in-kind donations from the Holle for Senate Committee, the Board imposes a civil penalty of \$250. The civil penalty must be paid within 30 days.
2. If the Wilkin County RPM does not comply with the provisions of this order, the Board's Executive Director shall refer this matter to the Ramsey County Attorney for civil enforcement pursuant to Minnesota Statutes, section 10A.273.
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.

Board staff shall provide copies of these Findings to Mackenzie Taylor, Bob Westfall, and Paul Holle.

Dated: February 13, 2007



Felicia Boyd, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS.

Subd. 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.

...

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.17 EXPENDITURES.

Subd. 2. **Written authorization.** An individual or association may not make an approved expenditure of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.

Subd. 4. **Independent expenditures.** An individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

Subd. 5. **Penalty.** A person who violates subdivision 2 is subject to a civil penalty imposed by the board of up to \$1,000. A person who knowingly violates subdivision 3a or 4 or falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

10A.20 CAMPAIGN REPORTS.

Subd. 3. **Contents of report.**

...

(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.

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

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