

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

**Findings and Order in the matter of the Complaint of the Minnesota DFL Party
regarding A Stronger America - Minnesota**

Summary of the Complaint and Responses

On February 7, 2007, The Minnesota DFL Party (“Complainant”) filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) regarding A Stronger America – Minnesota, a political committee registered with the Board, alleging that the Committee violated various provisions of Minnesota Statutes Chapter 10A.

The complaint points out that two organizations exist with similar names: A Stronger America, an organization established under section 527 of the Internal Revenue Code (“the National Organization”), and A Stronger America – Minnesota (“ASA-MN” or “the Committee”), the political committee registered with the Board. According to documents filed with the complaint, the two entities use the same mailing address, which is a private mailbox.

Complainant points out that the National Organization and ASA-MN report some of the same contributions and expenditures on their reports even though the National Organization is not registered with the Board. Notably, the National Organization reports a number of contributions received from corporations which are not disclosed on the ASA-MN report. The Board noted that the reports on which the Complainant relied do not cover the same time spans, as year-end reports were not available for the National Organization at the time the complaint was filed. The Board’s analysis is based on year-end reports obtained by the Board for both entities.

It appears to be complainant’s position that the reports indicate that the National Organization and ASA-MN may be a single entity, selectively reporting contributions and expenditures on each report, or that the donations are received by the National Organization and are then used by, transferred to, or merely reported by ASA-MN.

Complainant also notes that ASA-MN reports no expenditures for overhead or support such as telephone, private mailbox rent, office space, or similar items, which Complainant believes must have been required for the Committee’s operation.

The following provisions of Minnesota Statutes Chapter 10A were specifically noted by Complainant or identified by the Board as having possible relevance to the Complaint:

1. §10A.14, which requires a political committee to register with the Board within 14 days of raising or spending more than \$100 to influence the nomination or election or a candidate (as applicable to the question of whether the National Organization was required to register);
2. §10A.15, subd 3, which requires every political committee registered with the Board to establish a bank account in its name and deposit all contributions directly into that account;
3. §10A.20, which requires a political committee to report all receipts and expenditures;

4. § 211B.15, which generally prohibits use of corporate money in Minnesota campaigns. This statute is not within the Board's jurisdiction; however, corporate contributions also constitute contributions from unregistered associations under Minnesota Statutes, Section 10A.27, subd. 17, which are prohibited if in excess of \$100 and not accompanied by specified financial disclosure and which are under the Board's jurisdiction;
5. §10A.29, which prohibits circumvention of Chapter 10A by making a contribution through another entity.

The Board notified ASA-MN of the complaint by letter dated February 14, 2007, and offered the Committee an opportunity to respond. Joseph Deoudes, Treasurer, responded on behalf of ASA-MN in a letter dated March 5, 2007. The Board requested additional information and subsequent responses were received from Douglas Kelley, attorney for ASA-MN, dated March 22, 2007, and April 23, 2007.

In its responses, ASA-MN states that it has complied with all Minnesota campaign finance laws. Both Mr. Deoudes and Mr. Kelley state that ASA-MN and the National Organization maintained separate bank accounts. The ASA-MN account was named "A Stronger America Minnesota Account". The National Organization had two accounts, named "A Stronger America" and "A Stronger America Personal Account". Mr. Deoudes stated that every contribution shown on the Minnesota report was deposited directly into the ASA-MN account, not into any account of the National Organization.

With regard to the fact that the Minnesota political committee's transactions were reported on the report of the National Organization, Mr. Kelley said:

"The Form 8872 [the Internal Revenue Service ("IRS") reporting form for section 527 organizations] and the Minnesota forms serve different purposes. The Form 8872 requires the listing of all receipts and disbursements for any entities sharing the same Employee Identification Number because the IRS wants aggregate activity on a consolidated report. The IRS requires all this information for the organization to receive tax exempt status. The Minnesota report requires the reporting of all activity that impacted Minnesota."

To explain why ASA-MN reports no expenses for office space, telephone service, or similar items, Mr. Deoudes stated that "A Stronger America – Minnesota was effectively run by volunteers, without the need for office space, telephone service, staff or other support infrastructure." In a subsequent response, ASA-MN's attorney explained that the organization did not maintain an office or storefront. Essentially, ASA-MN's volunteer staff received contributions and contracted with vendors to perform all of the work of the Committee.

According to Mr. Deoudes, ASA-MN was required to list a contact telephone number on its IRS and Minnesota registrations so he used his office telephone number. Mr. Deoudes estimates that not more than ten calls were made on behalf of the Committee using his employer's office space and telephone service.

ASA-MN acknowledges that it used a pro-rata share of a private mailbox. The rental for that mailbox was paid by a corporate vendor in the amount of \$123.00 for 18 months. ASA-MN states that it will amend its 2006 year-end Report of Receipts and Expenditures to account for its share of the mailbox cost.

Board Analysis

This matter was considered by the Board at its meetings on March 13, April 10, and May 8, 2007.

The Board obtained a copy of the National Organization's year-end form 8872 from ASA-MN. Having the calendar year reports from both ASA-MN and the National Organization, a comparison analysis was done.

The Board noted that all expenditures shown on the National Organization's report were also reported on the ASA-MN report, with the exception of two wire transfer fees in December, 2006. ASA-MN's attorney produced a copy of a page from an ASA-MN bank statement showing that the fees were paid by ASA-MN. An amendment to the ASA-MN year-end report will be required to account for these expenditures. With this change, it appears that the National Organization did not make any expenditures out of its separate accounts.

The Board also noted that with one exception, all receipts shown on the ASA-MN report are also included on the National Organization's report. The exception is a receipt of \$10,000 on September 27, 2006, from Stanley Hubbard, which is reported by ASA-MN but not by the National Organization. While this does not indicate a reporting violation for ASA-MN, it is inconsistent with the explanation of its reports given by ASA-MN. When questioned about this apparent inconsistency, ASA-MN stated that the omission of the Hubbard receipt from the report of the National Organization was an error which would be corrected.

With the explanation of the Hubbard contribution, it appears that ASA-MN received contributions from individuals and from political committees or political funds registered with the Board, while the National Organization received contributions from other individuals and from corporations.

Board staff reviewed the reports of the donating political committees and political funds and found that each donor listed its donation as going specifically to A Stronger America Minnesota and listed the recipient's Minnesota registration number as required.

The Board also requested clarification from ASA-MN as to whether two large contributions received from individual donors from out of the state of Minnesota were donations to ASA-MN or to the National Organization. ASA-MN's attorney indicated that the donations were made by wire transfer from the donors. In order to make the transfer, the donors had to be aware of the name of the entity receiving the donation and of its bank account number, as they wired the funds directly to the ASA-MN bank account.

The fact that the two organizations may be treated as parts of the same entity by the IRS does not necessarily require that they be treated as one entity under Minnesota Statutes Chapter 10A. Key to the Board's decision is the fact that ASA-MN had its own bank account, separate from the accounts of the National Organization, and that contributions reported by ASA-MN were received by it and deposited directly into its separate bank account.

The responses of ASA-MN further indicate that all of the expenditures to influence the nomination or election of candidates in Minnesota were made from the account of ASA-MN and not from the accounts of the National Organization.

ASA-MN acknowledged that the committee failed to account on its 2006 year-end Report of Receipts and Expenditures for an unpaid bill for private mailbox rental and for two expenditures for wire transfer fees.

ASA-MN also acknowledged using the treasurer's office telephone number as its contact number. Although the use by the treasurer of his employer's office space and telephone service was apparently minimal, ASA-MN nevertheless benefited from the availability and use of those services. ASA-MN will be required to determine the fair market value of having office space and telephone service available to its treasurer and report the cost as an unpaid bill on an amended 2006 year-end report.

Based on the complaint, the responses, filings with the Board, and the Board investigation, the Board makes the following:

Findings Concerning Probable Cause

1. There is no probable cause to believe that A Stronger America, (the National Organization) received contributions or made expenditures to influence the nomination or election of a candidate in Minnesota so as to trigger a requirement that it register as a political committee with the Campaign Finance and Public Disclosure Board.
2. There is no probable cause to believe that A Stronger America – Minnesota did not comply with the provisions of Minnesota Statutes, Section 10A.15, subd 3, which requires every political committee registered with the Board to establish a bank account in its name and deposit all contributions directly into that account.
3. There is probable cause to believe that A Stronger America – Minnesota failed to report all expenditures as required by Minnesota Statutes, Section 10A.20 when it failed to account for the cost of private mailbox service, use of office space, and telephone service; and when it failed to report two wire transfer fees deducted from its checking account.
4. There is no probable cause to believe that A Stronger America – Minnesota violated Minnesota Statutes, Section 10A.27, subd. 17, which prohibits contributions in excess of \$100 from associations not registered with the Board unless the contribution is accompanied by specified financial disclosure.
5. There is no probable cause to believe that the transactions described in the complaint give rise to a violation of Minnesota Statutes, Section 10A.29, which prohibits circumvention of Chapter 10A by making a contribution through another entity.

Order

Based on the foregoing findings concerning probable cause, it is hereby ordered:

1. A Stronger America – Minnesota must amend its 2006 year-end Report of Receipts and Expenditures (a) to disclose the two wire transfer fees it paid and failed to disclose, (b) to disclose as an unpaid bill the amount which represents its share of private mailbox services paid by another entity and, (c) to disclose as an unpaid bill the fair market value of having office space and telephone service available for use by its treasurer.
2. The aforementioned amendment must be filed with the Board within 10 days of the date of receipt of this order by A Stronger America – Minnesota.
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: May 8, 2007

A handwritten signature in cursive script, reading "Felicia Boyd", written over a horizontal line.

Felicia Boyd, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.14 REGISTRATION.

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

10A.15 CONTRIBUTIONS.

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Subd. 3. **Deposit.** All contributions received by or on behalf of a candidate, principal campaign committee, political committee, political fund, or party unit must be deposited in an account designated "Campaign Fund of (name of candidate, committee, fund, or party unit)." All contributions must be deposited promptly upon receipt. . .

10A.20 CAMPAIGN REPORTS.

Subdivision 1. **First filing; duration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must begin to file the reports required by this section in the first year it receives contributions or makes expenditures in excess of \$100 and must continue to file until the committee, fund, or party unit is terminated.

Subd. 1a. **If treasurer position is vacant.** If the position of treasurer of a principal campaign committee, political committee, political fund, or party unit is vacant, the candidate, chair of a political committee or party unit, or association officer of a political fund is responsible for filing reports required by this section.

Subd. 2. **Time for filing.** (a) The reports must be filed with the board on or before January 31 of each year and additional reports must be filed as required and in accordance with paragraphs (b) and (c).

(b) In each year in which the name of the candidate is on the ballot, the report of the principal campaign committee must be filed 15 days before a primary and ten days before a general election, seven days before a special primary and a special election, and ten days after a special election cycle.

(c) In each general election year, a political committee, political fund, or party unit must file reports 15 days before a primary and ten days before a general election.

Subd. 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.

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. . . .

10A.27 CONTRIBUTION LIMITS.

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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.

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10A.29 CIRCUMVENTION PROHIBITED.

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.