

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

**Findings and Order in the matter of
a complaint regarding the Leech Lake Band of Ojibwe**

Summary of the Allegations and Responses

On April 20, 2007, David Hoch, on behalf of Minnesotans for Responsible Government ("Complainant") filed a complaint against the Leech Lake PAC ("the Committee"), a political committee registered with the Campaign Finance and Public Disclosure Board ("the Board") alleging that the Committee violated Minnesota Statutes Chapter 10A.

Complainant alleges that in 2006, the Leech Lake PAC accepted a contribution of \$4,000 from an entity identified as "Leech Lake Gaming Division". Complainant alleges that the Leech Lake Gaming Division is an association not registered with the Board and that the contribution, which was not accompanied by any additional disclosure, was given and accepted in violation of Minnesota Statutes, Section 10A.27, subd. 13. That section prohibits an unregistered association from donating and a political committee from accepting a contribution in excess of \$100 unless the contribution is accompanied by disclosure from the donor as specified in the statute.

Complainant further alleged that the Committee violated Minnesota Statutes, Section 10A.15, subd. 5, which requires a political committee to include its registration number on any check it uses to make a contribution to a candidate. Although he asserted a violation, Complainant did not provide any evidence or allege any facts to support this assertion. Due to the absence of any alleged factual basis, this allegation was not investigated by the Board.

The Board provided a copy of the complaint to the Committee and offered it an opportunity to respond. The Committee responded in the form of a letter from Michael L. Garbow, Tribal Attorney, dated May 16, 2007, and a letter from Rodney White, Treasurer, dated May 18, 2007.

The Committee acknowledged the transfer of funds from the Leech Lake Gaming Division to the Leech Lake PAC and acknowledged that at the time the transfer was made, no disclosure from the Leech Lake Gaming Division was provided.

Mr. Garbow explained that the Leech Lake Gaming Division is an operating division of the Leech Lake Band of Ojibwe ("the Band"). It is not a separate entity, but is a financial accounting and organizational unit of the Band. The political committee is considered by the Band to be another division of the Band rather than a separate entity. Thus, from the Band's perspective, the transfer of funds from the Gaming Division to the Committee was not a contribution, but an internal transfer of funds which were, and still remain, funds of the Band itself.

After the Committee confirmed that the Band was the source of the funds under investigation, the Board notified the Band itself of the investigation and gave the Band the opportunity to separately respond. Tribal Attorney Michael Garbow responded separately on behalf of the Leech Lake Band by letter dated June 5, 2007. Mr. Garbow also appeared before the Board at its meeting of July 10, 2007, on behalf of the Committee and the Band.

Based on the organization of the Band's divisions, the Band disputes the categorization of the transfer as a contribution to the Committee. Although the Band and the Committee do not consider the transfer to be subject to the requirements of Minnesota Statutes, Section 10A.27, subd. 13, the Band provided disclosure consistent with the Board's requirements with Mr. Garbow's letter of May 16, 2007.

In its response, the Committee stated that its legal assistant called Board staff prior to filing the October report to inquire as to whether there were special reporting requirements that would be applicable. Board staff also completed a telephone interview with the legal assistant. According to the Committee and the legal assistant, she was advised to report the transaction on the next report, which she did. She was not advised of the additional disclosure requirement under Section 10A.27, subd. 13.

Reports filed with the Board indicate that the transfer was reported on the Committee's pre-general-election report, filed with the Board on October 31, 2006. Board staff did not take any action or contact the Committee or the Band as a result of the October 31 disclosure of the Band's contribution without the required additional disclosure.

Prior to the filing of the complaint in this matter, during its routine year-end compliance review, the Board sent a letter to the Committee on April 19, 2007, notifying the Committee that the required disclosure for the Band's contribution had not been provided and requesting that the Committee provide it by May 1, 2007. The filing of the complaint in this matter intervened and the investigation was commenced on April 25, 2007, at which time the Committee was directed to respond in the context of the investigation rather than to the Board's compliance letter.

In his appearance before the Board, Mr. Garbow indicated that it was the Band's and the Committee's intent to provide the disclosure required by the Board at the time each transfer is made from the Band to the Committee. Subsequent to the Board meeting of July 10, 2007, Mr. Garbow sent a copy of a memorandum that he directed to the Band's Tribal Council advising them of the requirements.

Board Analysis

Respondents acknowledge that a transfer was made from the account of the Band's gaming division to the Leech Lake PAC and that no disclosure was provided by the Band at the time the transfer was made. Respondents argue that no disclosure was required (1) because the transfer was not a "contribution" under Minnesota Statutes Chapter 10A, but rather an internal transfer within a single entity (the Band) and (2) because the Board did not advise the Committee of any disclosure requirement when the person responsible for filing reports with the Board specifically called for assistance on the reporting requirements.

In the disclosure provided by the Band on May 16, 2007, the Band states that it "does not waive any of its governmental immunities" and that the disclosure is provided "as suggested by Advisory Opinion 290". The Band also states that it is a federally recognized tribe and that it operates in the form of a government, not a business.

During the course of this investigation, the Board reviewed its relationship with Indian tribes in Minnesota and, specifically, its authority to enforce the provisions of Minnesota Statutes Chapter 10A with respect to political committees or funds established by the tribes. Minnesota case law states that the Board can compel tribal political committees or funds to register and otherwise comply with Minnesota Statutes Chapter 10A. It follows that, the Board has the

authority to enforce section 10A.27, subd. 13, with respect to the a political committee or fund established by a tribe. While the state's authority to regulate the financial activities, including transfers of funds, of the tribal government itself is less clear, the Board's jurisdiction over the recipient political committee or fund to prohibit its acceptance of contributions from unregistered entities unless they are accompanied by the required disclosure is not in doubt. A historical and legal discussion of the relationship between Minnesota Statutes Chapter 10A and Minnesota's Indian tribes is included in the Board Memorandum, which is made a part hereof.

The Board understands that it has been the position of Minnesota Indian tribes that because they are sovereign governmental entities, the state does not have the authority to enforce campaign finance disclosure statutes against them. From the tribes' perspective, the disclosure they provide under Minnesota Statutes, Section 10A.27, subd. 13, when they make transfers to their associated political committees or funds is provided voluntarily in the spirit of government to government cooperation and not because the Board has the authority to compel the disclosure.

During the investigation of this matter, Board staff reviewed the disclosure provided by other Minnesota Indian tribes making transfers to their political committees or funds from 1998 (the year the Board first began seeking such disclosure) to the present. Staff found that satisfactory disclosure was almost always provided, but in most cases the disclosure was provided later than the date of the transfer of funds. In many cases, the disclosure was provided with the year-end Report of Receipts and Expenditures, although in some cases, the disclosure was not provided until after a Board request to the recipient committee.

In the case of these previous transfers, the Board did not act to compel the tribes to provide the disclosure at the time of the transfer of funds. Neither did Board staff notify the tribes that the failure to provide contemporaneous disclosure was a violation of the statute.

The Leech Lake PAC offers three facts that it believes help explain why it did not understand the laws related to the subject disclosure statement:

1. The Committee states that its legal assistant called Board staff prior to filing the October report, explained that the Committee had received the transfer from the Band, and asked whether there were special reporting requirements that would be applicable. According to the Committee and the legal assistant, she was advised to report the transaction in the usual way on the next report, which she did.
2. The Committee's October, 2006, report was received by the Board and the Committee was not advised of any problem or deficiency in its filing.
3. In April, 2007, before the complaint in this matter was filed, the Committee received a letter from Board staff indicating that the required disclosure had not accompanied its year-end report and requesting that the disclosure be filed not later than May 1, 2007. The letter did not suggest that any action would be taken by the Board.

Only when a complaint was filed in regard to the transfer did the Board inform the Committee that the required disclosure was to have accompanied the original transfer and that because it did not, sanctions may result.

The Board does not agree that a committee's reliance on telephone advice is sufficient grounds to preclude a subsequent enforcement action related to a transaction. Likewise, deferral of an

enforcement until after the election year or after the filing of a complaint does not preclude the Board from enforcing a provision of Minnesota Statutes Chapter 10A.

Although the specific factors urged by the Committee and the Band are rejected, the Board recognizes that, with respect to Indian tribes, the focus of Board actions has been on obtaining the disclosure consistent with Advisory Opinion 290 and that it has not on enforcing the requirement that the disclosure be made contemporaneously with each transfer. Had such enforcement been ongoing, the general understanding of the requirement on the part of tribal governments and their political committees or funds might be different.

Review of Board actions with respect to non-tribal transfers under Section 10A.27, subd. 13

The Board recognizes that in other matters where unregistered associations have made contributions to registered political committees or funds, the Board has been consistent in ordering a return of the contribution and imposing civil penalties against both the donor and the recipient. The immediate matter and the matters of similarly situated tribes are distinguishable in at least two important respects.

First, there is question regarding the Board's authority to regulate and to impose civil penalties against the unregistered associations involved in the other matters. The Board clearly has jurisdiction over associations that have no claim of specific immunity.

Second, except in the case of tribal transfers to their own political committees or funds, the Board's advice and enforcement has been consistent so as to put recipient committees on notice of the requirement that they obtain contemporaneous disclosure along with contributions that are subject to section 10A.27, subd. 13. These political committees or funds are not able to claim reliance on Board action or inaction as a basis for their failure to comply with the disclosure provisions.

Even with respect to Indian tribes, the Board has enforced section 10A.27, subd. 13, when the transfer from the tribe was to an entity other than its own political committee or fund. In a 2004 matter in which the Mille Lacs Band of Ojibwe made a direct contribution to a party unit registered with the Board without providing the 10A.27, subd. 13, disclosure, the Board found that the Band violated the statute and imposed a civil penalty, which was paid, and the recipient party unit returned the contribution. It is only with respect to transfers between a tribe and its affiliated political committee or fund that the Board has not consistently enforced the contemporaneous disclosure requirement of Minnesota Statutes, Section 10A.27, subd. 13.

Conclusions

Since the Board began its efforts to obtain the Section 10A.27, subd. 13, disclosure from tribes in 1998, compliance by the tribes and their political committees and funds has generally been forthcoming, with the exception of the timing of the disclosure which the Board has not previously sought to enforce. Whether the compliance is voluntary, as the tribes consider it to be, or mandatory, as the Board considers it to be is irrelevant if the disclosure is provided.

While the Board is sometimes required to assert its authority, by judicial means if necessary, it does not believe that the Leech Lake PAC contribution, or those of similarly situated tribes present matters that cannot be resolved by a clear statement of the Board's position and the cooperation of those affected.

Based on the foregoing, the Board makes the following:

FINDINGS


1. There is probable cause to believe that the Leech Lake Band of Ojibwe made a transfer of \$4,000 to the Leech Lake PAC, a political committee registered with the Campaign Finance and Public Disclosure Board on October 23, 2006, and that the transfer was not accompanied by the disclosure described in Minnesota Statutes, Section 10A.27, subd. 13. There is no probable cause to believe that the failure to provide the statutory disclosure was with the intent to violate Minnesota Statutes Chapter 10A.
2. Disclosure acceptable to the Board under Section 10A.27, subd. 13, was voluntarily provided by the Band after it was requested by the Board.
3. Reports filed with the Board indicate that transfers from Minnesota Indian tribes to their related political committees or funds made since 1998 have not consistently been accompanied by the Section 10A.27, subd. 13, disclosure, but that such disclosure was provided by the tribes subsequent to the date of the subject transfer.

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

ORDER

1. The Leech Lake Band of Ojibwe has provided the required disclosure and has stated its intention to comply with the Minnesota Statutes, Section 10A.27, subd. 13, in the future. Based on the Band's compliance and based on the Board's analysis as detailed in this document, no sanctions are imposed on the Band or The Committee.
2. The Board's Executive Director shall notify each political committee and fund affiliated with a Minnesota Indian tribe that it is the Board's position that disclosure under Minnesota Statutes, Section 10A.27, subd. 13, is required at the time of each transfer of tribal funds to an affiliated tribal political committee or fund.
3. The Executive Director shall also provide the notice described in the previous section to the head of each tribal government and to the legal counsel of each tribe that has, or in the future registers, a political committee or fund with the Board.
4. 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: August 21, 2007



Felicia J. Boyd, Chair
Campaign Finance and Public Disclosure Board

Memorandum of the Board

The Minnesota Supreme Court case affirming the Board's authority over political committees or funds established by Indian tribe members was State of Minnesota by its Minnesota Ethical Practices Board (the former name of the Campaign Finance and Public Disclosure Board) v. The Red Lake DFL Committee (303 NW2. 54 1981). In that case members of the Red Lake Band of Chippewa Indians formed a political committee which spent money outside of the reservation to affect Minnesota state elections. The Minnesota Supreme Court held that where political committee established by tribe members engaged in activities that were intended to, and did, affect voters off the reservation, the political committee could be required to register with and report to the Board under Minnesota Statutes Chapter 10A.

Since that time Board records suggest that all tribal political committees or funds have registered with and reported to the Board.

The question of disclosure required from the tribe itself when making a contribution to an associated political committee or fund first arose in 1998. That year, as the result of a Board investigation and a separate complaint, a transaction between the Shakopee Mdewakanton Sioux Community ("the Community") and its associated political fund was examined. The Community had transferred \$27,500 to its political fund without any disclosure. It was the position of the Board and the complainant that Minnesota Statutes, Section 10A.27, subd. 13, required disclosure about the Community's sources of money for the contribution to its political fund.

The Community took the position that, as a sovereign governmental entity, it was immune from any authority of the Board to compel financial disclosure at the governmental level. It also maintained that the disclosure required under section 10A.27, subd. 13, applies only to contributions from "associations" and that as a government, it was not included in the types of entities defined as "associations".

During the investigation of the complaint, the Community, without waiving its claims of exemption from Chapter 10A, requested an advisory opinion from the Board determining that the Community was not an association. On the same day as the Board's findings on the underlying complaint were issued, the Board issued the first version of its Advisory Opinion 290. The Board stated its opinion that the Community was an association for the purposes of Minnesota Statutes Chapter 10A and that the Board had the authority to impose the disclosure requirements of Minnesota Statutes, Section 10A.27, subd. 13, against the Community.

In Advisory Opinion 290, the Board also opined that disclosure of the detailed financial activities of Indian tribes would not assist the public in making decisions about the election of candidates; one of the purposes of Minnesota Statutes Chapter 10A. The Board prescribed a form of disclosure which, if provided by a tribe with its contribution to its political committee or fund, would be accepted by the Board as complying with the statutory requirements.

In its Findings and Order regarding the complaint, the Board ordered the Community to provide the required disclosure. Litigation ensued as the Board attempted to enforce its order and the Community opposed the Board's authority over the Community as a sovereign government. The Community also requested that the Board reconsider its decision in Advisory Opinion 290. In July of 1998, more than two months after its original publication, the Board re-issued Advisory Opinion 290 in a revised form. This second, and final, version eliminated the conclusion that an Indian tribe was an "association" under Chapter 10A and also eliminated the conclusion that the

Board had the authority to compel financial disclosure at the tribal government level. What remained was a statement of the disclosure that the Board would accept as being in compliance with Minnesota Statutes, Section 10A.27, subd. 13, if it was provided by a tribe donating to its political committee or fund.

While it was the Board's position that Indian tribes are associations under Minnesota Statutes Chapter 10A and that the Board could compel the 10A.27, subd. 13, disclosure (if the subject contribution was not returned), the Tribes maintained that they were not associations and that they were voluntarily providing the disclosure rather than providing it under statutory mandate.

Without resolving the legal merit of the parties respective positions, the Community provided, and the Board accepted, the disclosure permitted under the revised Advisory Opinion 290 and the pending litigation was dismissed.

Board Direction

The Board recognizes that prior to the date of this order, there have been a substantial number of transactions in which an Indian tribe made a contribution to its associated political committee or fund without contemporaneously providing the disclosure required by Minnesota Statutes, Section 10A.27, subd. 13. In view of the Board's analysis and decision in this matter, the Board does not believe it is necessary that the Executive director commence a formal investigation into each such case. Rather, the Executive Director shall advise the tribes as required in the Order in this matter and shall provide a copy of these findings and order to each person or entity so advised.

Relevant Statutes

Minnesota Statutes, Chapter 10A

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.