

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

**FINDINGS IN THE MATTER OF A COMPLAINT
REGARDING THE TIM PAWLNTY FOR GOVERNOR CAMPAIGN
AND THE REPUBLICAN PARTY OF MINNESOTA**

Procedural Background

On September 20, 2002, Nancy Jorgenson, Chair of the Independence Party of Minnesota, ("Complainant"), filed a Complaint with the Campaign Finance and Public Disclosure Board ("Board") alleging that the Tim Pawlenty for Governor Committee ("Pawlenty Committee") and the Republican Party of Minnesota ("Republican Party") violated certain provisions of Minnesota Statutes, Chapter 10A.

The Complainant alleged that television commercials identified as independent expenditures by the Republican Party were coordinated with the Pawlenty Committee. The Complainant also alleged that these advertisements were approved expenditures subject to statutory contribution limits and voluntary expenditure limits.

As evidence, the Complainant submitted an article from the *Star Tribune* dated September 15, 2002, a videotape of one of the advertisements referenced in the Complaint, and a notarized affidavit signed by Laura Holzschuh on October 6, 2002.

By letters dated September 23, 2002, the Pawlenty Committee and the Republican Party were notified of the allegations and afforded an opportunity to respond to the Complaint. The Board requested the parties to provide certain documents for Board review. The Board also requested the parties to have individuals knowledgeable about the matter provide testimony at a special executive session of the Board held on October 3, 2002.

Christopher Dietzen, legal representative for the Pawlenty Committee, provided a written response to the Complaint on September 30, 2002. In his response and testimony before the Board, Mr. Dietzen stated that the Complaint was based on presumptions of coordination between the Pawlenty Committee and the Republican Party, that there was no evidence of actual coordination, and that the Pawlenty Committee did not participate or coordinate with the Republican Party in the production or use of the commercials identified in the Complaint. Mr. Dietzen's response acknowledged that the videotape footage of Tim Pawlenty used in the commercials produced by the Republican Party was originally filmed and paid for by the Pawlenty Committee. Mr. Dietzen testified that Patrick McCarthy, the media consultant for the Pawlenty Committee, sold the videotape footage to the Republican Party for \$7,000 without the authorization or knowledge of the Pawlenty Committee.

Mr. Dietzen submitted as evidence an invoice from Dawson McCarthy Nelson Media, LLC, ("DMNM") dated August 22, 2002, a \$25,000 check dated August 22, 2002, from the Pawlenty for Governor Committee to DNMM, and an affidavit from Patrick McCarthy dated October 2, 2002.

Tony Trimble, legal representative for the Republican Party, provided a written response to the Complaint on September 30, 2002. In his response and testimony before the Board, Mr. Trimble stated that the Complaint was based on presumptions of agency, not factual allegations, and should be dismissed by the Board. Mr. Trimble further stated that Corey Miltimore, Executive Director of the Republican Party, made all decisions regarding independent expenditures by the Republican Party, and that Mr. Miltimore

did not have any discussions with the Pawlenty Committee about any aspect of the advertisements cited in the Complaint.

Mr. Trimble submitted as evidence an invoice from Upgrade Films dated August 27, 2002, an invoice from DMNM dated September 15, 2002, invoices from Strategic Media Services dated August 27, 2002, September 10, 2002, and September 17, 2002, a confidentiality agreement between Dawson McCarthy Nelson Media, LLC and the Republican Party dated September 23, 2002, and a affidavit from Randall Skoglund dated September 20, 2002.

The Board took testimony and considered the matter in special executive sessions on October 3, 2002, and October 9, 2002. Presenting testimony on behalf of the Pawlenty Committee were Chris Georgacas, Pawlenty Committee Chair, Chris Dietzen, Legal Counsel, Peter Hong, Press Secretary, Tim Commers, Campaign Manager, and Patrick McCarthy, Media Consultant for the Pawlenty Committee. Presenting testimony on behalf of the Republican Party was Corey Miltimore, Executive Director of the Republican Party, Tony Trimble, Legal Counsel, Bill Walsh, Deputy Executive Director and Randall Skoglund, Media Consultant for the Republican Party. Making statements on behalf of the Complainant were Mike Padden, Legal Counsel, and Nancy Jorgenson, Chair of the Independence Party of Minnesota. The matter was considered based on the Complaint, documents provided by the Complainant, the Respondents, and testimony from the individuals listed above.

EVIDENTIARY FINDINGS

1. Strategic Media Services ("SMS") is a media planning and placement firm with offices located at 1023 31st St. NW, 4th Floor, Washington, D.C. According to a report of receipts and expenditures filed by the Pawlenty Committee for the period January 1 through August 19, 2002, the Pawlenty Committee paid SMS a total of \$40,000 between February 18, 2002, and February 26, 2002, for radio advertisements prior to the Republican Party Convention.
2. Dawson McCarthy Nelson Media LLC ("DMNM") is a communication and advertising firm that specializes in developing strategy, messages, and advertising for political candidates. The offices of DMNM are located at 1023 31st St. NW, 4th Floor, Washington, D.C. Randall Skoglund and Patrick McCarthy both work for DMNM. Patrick J. McCarthy, Jr. is a principal of DMNM. Randall Skoglund is an independent contractor for DMNM.
3. According to the Pawlenty Committee's report of receipts and expenditures for the period January 1 through August 19, 2002, the Pawlenty Committee paid DMNM \$200 for advertising-related services on April 24, 2002. DMNM produced a video for the Pawlenty Committee that was mailed to delegates prior to the Republican state convention and also produced a video that was shown during the convention.
4. Upgrade Films, LLC ("Upgrade Films") films and edits advertisements and serves as the production company for DMNM. Upgrade Films' offices are located at 1023 31st St. NW, 4th Floor, Washington, D.C. DMNM owns Upgrade Films. Upgrade Films is a wholly owned subsidiary of and shares office staff with DMNM. McCarthy is a principal of Upgrade Films. According to the Pawlenty Committee's report of receipts and expenditures for the period January 1 through August 19, 2002, the Pawlenty Committee paid Upgrade Films a total of \$32,122.99 for advertising-related services between March 12, 2002, and August 5, 2002. Both DMNM and Upgrade Films sublease office space from SMS.

5. Randall Skoglund provides script writing and other consulting services to DMNM. Skoglund was hired by then chair of the Republican Party, Chris Georgacas, to serve as a research director between 1994 and 1997. Georgacas then hired Skoglund to be his deputy in the Norm Coleman gubernatorial campaign in 1998. Georgacas is the current chairperson of the Pawlenty Committee and a personal friend of Skoglund's. Skoglund worked as a volunteer for candidate Pawlenty during the 2002 Republican Party Convention. Skoglund and McCarthy are both working on the Second Congressional District race of John Kline.
6. Corey Miltimore is currently the Republican Party Executive Director. Shortly after the Republican Party Convention in June 2002, Miltimore informed Tim Pawlenty that the Republican Party had decided to make independent expenditures to assist the Pawlenty Committee.
7. In early August 2002, the Republican Party hired the Washington, D.C. firm of Fabrizio, McLaughlin & Associates to do "message development" and polling. A poll of Minnesota voters was conducted approximately August 8-9, 2002. The Republican Party shared the polling results with the Pawlenty Committee during an August 12, 2002, meeting attended by at least McCarthy, Skoglund, and Commers. The Pawlenty Committee and the pollsters provided suggestions to McCarthy to assist in developing broadcast advertisements.
8. On or about August 12, 2002, the Pawlenty Committee hired McCarthy as their representative to conceive, write, film, produce, and broadcast television commercials for the Pawlenty Campaign. McCarthy's understanding was that he was to write and produce television and radio ads for the Campaign. Tim Commers, the campaign manager for the Pawlenty Committee, negotiated the Pawlenty Committee's contract with McCarthy. Under the agreement, which was not reduced to writing, the Pawlenty Committee paid no retainer to McCarthy but agreed to pay McCarthy all production costs as well as a percentage of the overall advertising costs.
9. McCarthy, Commers, and Georgacas participated in the decision to shoot film footage for the Pawlenty Committee's advertisements during the third week of August. McCarthy developed ideas and advertising scripts and provided them to Commers and Georgacas for their review and approval. Some of the scripts approved by Pawlenty Committee representatives included text for "pop-up" messages to be incorporated into the final advertisements during the production process.
10. August 19, 2002, was the closing day for the receipts and expenditures report, which both the Pawlenty Committee and the Republican Party were required to file with the Board on August 26, 2002.
11. On August 22, 2002, a representative of DMNM sent an electronic-mail message to Commers requesting on behalf of McCarthy that the Pawlenty Committee pay \$25,000 by wire transfer or overnight delivery as a deposit for an August 25, 2002, film shoot. Commers immediately responded by sending a \$25,000 check from the Pawlenty Committee to DMNM.
12. On August 23, 2002, the Republican Party hired Skoglund as a media consultant to develop broadcast commercials supporting the election of Tim Pawlenty.
13. On August 26, 2002, an eight-person crew hired by DMNM filmed footage of Tim Pawlenty over a six-hour period at various places including Pawlenty's current residence, a West St. Paul grocery store, South St. Paul High School, and Pawlenty's childhood home. McCarthy

was on location and directed the filming. Bill Smith, a freelance production coordinator for DMNM, served as producer for the filming. At various times throughout the day, McCarthy gave Pawlenty scripted lines, which Pawlenty then memorized and recited for the camera. During the course of the filming, the camera operator was instructed to frame shots to leave room for "pop-up titling" so that the finished advertisements would have a "dating show" look. Upgrade Films later paid members of the film crew for their services.

14. Later that day, the same film crew shot footage for the John Kline campaign and the RNCC.
15. Through his contact with the Kline campaign, Skoglund became aware of the Pawlenty filming sometime prior to August 26, 2002.
16. On August 27, 2002, the Republican Party, working through Skoglund, purchased the August 26th film footage of Pawlenty and other creative materials from Upgrade Films for \$7,000. Miltimore authorized the purchase on behalf of the Republican Party.
17. Also on August 27, 2002, the Republican Party was billed \$168,390 by SMS to purchase television airtime to run advertisements on behalf of Pawlenty between September 7 and September 16, 2002. Between September 10 and September 17, 2002, the Republican Party was billed by SMS another \$469,600 for additional television time to air advertisements on behalf of Pawlenty.
18. The Republican Party was billed \$20,000 by DMNM to produce political advertisements on behalf of Pawlenty. At the same time the DMNM was under contract to provide the same or similar services to the Pawlenty Committee.
19. The first of several advertisements sponsored by the Republican Party in support of Tim Pawlenty began airing on September 7, 2002. Each of the finished advertisements sponsored by the Republican Party used footage shot on behalf of the Pawlenty Committee on August 26, 2002, and incorporated visual images, concepts, ideas, and scripted material created by McCarthy and DMNM at the request and with the approval of the Pawlenty Committee.
20. Representatives of the Pawlenty Committee first became aware that McCarthy had sold their footage of Pawlenty after seeing a television advertisement on September 7, 2002, which they realized had not been produced or paid for by the Pawlenty Committee. Commers called and questioned McCarthy about the ad and was informed that McCarthy had sold the footage to the Republican Party.
21. On September 15, 2002, Commers learned that McCarthy had sold the footage to the Republican Party for \$7,000 when he read McCarthy's quotes in a newspaper article published in the *Star Tribune*.
22. Since September 7, 2002, the Republican Party has aired additional television ads featuring Pawlenty, all of which were produced using footage from the August 26, 2002, film shoot.
23. Even though the Pawlenty Committee maintains that McCarthy exceeded his authority by selling the film footage, the Pawlenty Committee has not demanded that McCarthy return its payment for the film shoot nor has the Pawlenty Committee asked McCarthy to surrender any portion of the sale price he received from the Republican Party. In addition, the Pawlenty Committee has not asked the Republican Party to cease running its advertisements in support

of Pawlenty, all of which were produced with material from the August 26, 2002, film shoot directed by McCarthy.

24. At least one of the ads run by the Republican Party had a disclaimer at the beginning of the ad in violation of Minn. Stat. §10A.17, subd. 4, which requires the disclaimer for an independent expenditure to appear at the end of all broadcast advertisements.
25. McCarthy continues to be a media consultant to the Pawlenty Committee. Skoglund continues to be a media consultant to the Republican Party. DMNM continues to provide services to the Pawlenty Committee and the Republican Party.
26. Georgacas testified that shortly after the Republican Party Convention, the Pawlenty Committee optimistically budgeted \$1,000,000 for post-convention broadcast media. As of October 3, 2002, the Pawlenty Committee had not aired a single television commercial of its own.
27. On September 23, 2002, the Board delivered a letter to the Republican Party notifying it of the Board's investigation herein and requesting the Republican Party to produce certain relevant documents and make witnesses possessing knowledge of relevant facts available for testimony.
28. The Republican Party provided a copy of a unilateral confidentiality agreement dated September 23, 2002, to the Board. The agreement was for the express purpose of protecting the Republican Party through DMNM's agreement not to disclose any information regarding proposals, plans, or budgets concerning independent expenditures on behalf of Republican candidates. Miltimore testified that he believed the agreement covered Skoglund even though it was not signed by Skoglund but by Sam Dawson on behalf of DMNM. Skoglund testified that he believed the agreement was actually executed on August 23 rather than September 23.
29. On September 30, 2002, the same crew that filmed Pawlenty on August 26, 2002, shot additional footage for four new ads. Four representatives of the Republican Party were present along with McCarthy as Pawlenty read lines from a teleprompter and complied with requests from McCarthy at various times during the filming.

CONCLUSIONS CONCERNING PROBABLE CAUSE

1. There is probable cause to believe that the media agent for the Republican Party and the media agent for the Pawlenty Committee cooperated while working for DMNM to produce an ad promoting Pawlenty's candidacy.
2. There is probable cause to believe that McCarthy, the agent for the Pawlenty Committee, consented to the Republican Party's use of videotape footage and creative ideas developed by or on behalf of the Pawlenty Committee.
3. There is probable cause to believe there was express or tacit consent for the use of the footage and documents by the Republican Party by an agent of the Pawlenty Committee in connection with the transfer of those items to the Republican Party. The fact that the

Republican Party made payment for the footage and creative materials does not preclude consent.

4. There is probable cause to believe that the Pawlenty Committee's agent acted in cooperation and concert with the Republican Party in the transfer of scripting, creative materials, and videotape and in the post-production work.
5. There is probable cause to believe that Tim Pawlenty, or representatives of the Pawlenty Committee, ratified the sale of the footage and creative materials to the Republican Party when, after obtaining full knowledge of all material facts surrounding the transaction, the Pawlenty Committee acquiesced in the actions of McCarthy in connection with the sale.
6. There is probable cause to believe that the Republican Party violated Minn. Stat. §10A.17, subd. 2, when the Republican Party made expenditures on behalf of the Pawlenty Committee without first obtaining written authorization.
7. There is probable cause to believe that the Republican Party violated Minn. Stat. §10A.17, subd. 4, when it represented that the ads constituted independent expenditures.
8. There is probable cause to believe that the expenditures for the ads are in-kind campaign contributions to and in-kind campaign expenditures on behalf of the Pawlenty Committee that substantially exceed the political party contribution limit of \$20,000.

ORDER

1. Probable cause having been found that the Republican Party violated Minn. Stat. §10A.17, subd. 2, the Board imposes a \$1,000 civil penalty on the Republican Party for failure to obtain written authorization for the expenditures from the Pawlenty Committee.
2. Probable cause having been found that the Republican Party violated Minn. Stat. §10A.17, subd. 4, the Board imposes a \$3,000 civil penalty on the Republican Party.
3. The Board directs the Pawlenty Committee to report the cost of the expenditures referenced in the Complaint as in-kind contributions to and in-kind campaign expenditures on behalf of the Pawlenty Committee.
4. The Board directs the Republican Party of Minnesota to report the expenditures referenced in the Complaint as in-kind contributions to the Pawlenty Committee.
5. Pursuant to Minn. Stat. §10A.28, subd. 3, there being substantial evidence that contributions to the Pawlenty Committee exceed the limit, the Board directs staff to enter into the mandatory conciliation process with the Pawlenty Committee.
6. To facilitate the forgoing conciliation process, the Board directs the Republican Party to timely disclose to the Pawlenty Committee and to the Board complete information regarding all expenditures relative to this matter.

7. If the Pawlenty Committee exceeds the expenditure limit as a result of the above, the Board will enter into a conciliation process to remedy the matter as required by Minn. Stat. §10A.28.
8. The Board directs the Republican Party to cease using the independent expenditure disclaimer on the advertisements referenced in the Complaint.
9. The record in this matter and all correspondence is hereby entered into the public record in accordance with Minn. Stat. §10A.02, subd.11.

Board staff shall provide copies of these Findings to the Complainant, the Republican Party, and the Pawlenty Committee.

Dated: Oct 10, 2002

Douglas A. Kelley

Douglas A. Kelley, chair
Campaign Finance and Public Disclosure Board

Memorandum

This Complaint raises an issue similar to those addressed by the Board in its Advisory Opinion number 338. In that Opinion, we addressed several questions surrounding the role of political consultants in connection with coordination of expenditures between a candidate's principal campaign committee and a political party unit. As we observed there, a consultant who is simultaneously employed by both a principal campaign committee and a political party unit making independent expenditures *may* provide their services, so long as those services are provided in an environment totally isolated from the independent expenditures. We noted, however, that to comply with Minn. Stat. § 10A.01, subd. 18, such an environment would require strict adherence to internal controls and procedures that established and maintained separation between the consultant and those making the independent expenditures, and that prohibited any contact or communication between them regarding such expenditures. While our decision today is consistent with the Advisory Opinion, we do not rely on it for policies or principles of law. Instead, our decision is rooted in the language of Minn. Stat. § 10A.01, subd. 18, which defines "independent expenditure" for purposes of Minnesota Law:

"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."

Applying the law to the facts in this case, we decide that both the campaign committee and the party organization failed to maintain a separation sufficient to insure the independence of the party's expenditures on behalf of the candidate. The principal campaign committee and the party unit making the purportedly independent expenditures used the same media consultants. These media consultants were in a position to communicate, and did communicate, regarding the advertising plans and needs of the candidate, and the party's desire to engage in expenditures on behalf of the candidate. The film footage and other creative materials exchanged by the consultants was itself a powerful medium of communication between the agents regarding these matters. It is difficult to imagine a clearer indication of what the candidate and his committee would like to see communicated to the public on his behalf than the contents of those materials.

Randall Skoglund was clearly acting as the agent of the Republican Party of Minnesota for all purposes related to the production of the ads in question. The record also supports our conclusion that Patrick McCarthy was acting as the agent of the Pawlenty Committee during his interactions with Mr. Skoglund. Even if Mr. McCarthy arguably did not have such authority before the sale of the film footage and related materials, the Pawlenty Committee ratified those actions by its subsequent acquiescence. *Lyman Lumber Co. v. Three Rivers Co.*, 400 N.W. 2d 811 (Minn. Ct. App. 1987). Minn. Stat. § 10A.01, subd. 18, does not distinguish between coordination achieved by direct communication between the candidate and his party, or through the cooperation of their agents such as media consultants. In either case, the law regards such coordination as destroying the independence of the expenditure.

The Board is mindful of the federal cases that have construed certain limitations on independent political expenditures as violating the First Amendment to the Constitution. However, the Board believes that its decision in this case is entirely consistent with such cases, including *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996) and *Republican Party of Minnesota v. Pauly*, 63 F.Supp. 2d 1008 (D. Minn. 1998). Unlike those cases, this Complaint presents substantial evidence of actual coordination between the party unit and the campaign committee. The Board has not presumed such coordination to exist, but has concluded that it existed based on the evidence in the record before the Board. The Eighth Circuit Court of Appeals upheld Minnesota's basic campaign financing program of providing public subsidy money in exchange for a candidate's promise to abide by expenditure limits in *Rozenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir. 1996). Today's decision is in furtherance of that program, which also requires that parties, and candidates who have agreed to abide by spending limits, not evade the contribution and spending limits by means of independent expenditures that are not truly independent.