

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

**Findings and Order in the matter of the complaint of
Arvid Dixen regarding Philip Krinkie**

Summary of the Allegations and Responses

On December 19, 2006, Arvid Dixen (“Complainant”) filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) regarding (then) Representative Phil Krinkie. Mr. Dixen raised the question of whether certain campaign materials distributed as independent expenditures by the Republican Party of Minnesota (“the RPM”) were, in fact, independent of the candidate and his principal campaign committee, the Friends of Phil Krinkie committee (“the Krinkie Committee”).

An independent expenditure is an expenditure expressly advocating the election or defeat of a candidate that 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 candidate’s principal campaign committee or agent.” Minnesota Statutes, Section 10A.01, subd. 18. The concept of an independent expenditure is important because independent expenditures are not considered contributions to the affected candidate. If the expenditure is not independent, it is an “approved expenditure”, which is an in-kind contribution to the candidate that counts toward the contribution limit for the donor. An in-kind contribution of campaign literature would also result in a corresponding in-kind expenditure which would count toward the candidate’s campaign spending limits.

In support of his complaint, Mr. Dixen provided four brochures that included the disclaimer “Prepared and paid for by the Friends of Phil Krinkie” and four that included the disclaimer that they were independent expenditures paid for by the RPM. Mr. Dixen pointed out that the two sets of brochures included various similarities, including use of the same personal Krinkie family photos, the same or a similar logo, and similar or identical text.

Although the RPM was not specifically named as a responding party to the complaint, complainant’s allegations, if true, could result in violations for the RPM as well as for the Krinkie Committee. For that reason, the Board notified both Phil Krinkie and the RPM of the complaint and gave each an opportunity to respond.

For exhibit purposes, Board staff labeled the literature pieces K1 through K4 for the documents that carried the Krinkie Committee disclaimer and R1 through R4 for the documents that had the RPM independent expenditure disclaimer. Images of the original documents, with added exhibit and photograph numbers, are posted on the Board’s web site as an exhibit.

In response to the complaint, Mr. Krinkie submitted an affidavit stating that Documents K1, K2, and K3 were “authorized, approved, prepared and mailed and supervised by the Krinkie campaign committee”. The affidavit further stated that Mr. Krinkie had no knowledge of the document identified as K4, the fourth document that included the Krinkie Committee’s disclaimer.

The response of the RPM included a copy of Mr. Krinkie’s affidavit and further stated that the documents identified as independent expenditures paid for by the RPM were “created without the express or implied consent, or authorization, or cooperation of Phil Krinkie, his principal campaign committee or any agent in any way connected to his campaign”.

The RPM response further stated that each RPM independent expenditure document was created by Ryan Media, an independent contractor, and that the photographs used in the documents were the responsibility of Ryan Media.

The complaint also stated that there was “an unconfirmed report” that Republican House staff members were directed to work on Mr. Krinkie’s campaign. The complainant was advised that the Board would not be investigating the anonymous unconfirmed report, but would do so if additional evidence was available. No additional evidence was provided and no investigation of this allegation was conducted.

Board Investigation

The independent expenditure statute makes it clear that spending in the independent expenditure category must be truly independent of the candidate and the candidate’s principal campaign committee. It does not require active approval of the expenditure by a candidate or agent to defeat the categorization. Even implied consent, which can result from action or inaction could change the character of an expenditure from “independent” to “approved”.

The Board examined the submitted brochures to identify similarities. Two versions of a logo were used. They varied in the shade of the green background and the slant of the text. As detailed below, the Board learned that the three documents produced by the Krinkie committee used one version of the logo and the documents produced by the RPM used the second version of the logo.

Two personal photographs were identified as being particularly relevant because they were included in both the Krinkie Committee and the RPM documents. They were (1) Phil Krinkie and his daughter in front of a floral setting at a miniature golf course (the “miniature golf photo”), (2) Phil Krinkie, his wife, his daughter, and a dog at a lake (the “family lake photo”).

Certain text relating to Phil Krinkie’s role as husband and father was included in documents K4 and R4. Some passages of this text were identical in the two documents.

Phil Krinkie was interviewed by Board staff and explained that he designs his own brochures and then has someone put them into electronic format for use by his printer. He may select an existing piece to update or on which to base a new document. He selects photographs from his personal photos, from other literature, or from his set of photographs from the House of Representatives photo files. These are files of photos taken by the house photographers or by house staff and are available to members.

Mr. Krinkie recognized documents K1, K2, and K3 as ones that he had designed. He did not recognize document K4 and said that it was not produced or distributed by his committee even though it included his committee’s disclaimer.

After completing his design ideas and text and selecting photographs, Mr. Krinkie transferred the materials to Rebecca Stark, who put them into a format that the printer could use. Ms. Stark was employed by the House Republican Caucus as a media specialist, but her work on Mr. Krinkie’s brochures was done as an independent contractor at her home on her own computer and outside of her employment hours. The Krinkie Committee’s Report of Receipts and Expenditures includes payments to Rebecca Stark for her work.

Mr. Krinkie did not have specific knowledge of how the two personal photos were obtained by the RPM for use in its materials. No one asked him for photos and he did not give permission to anyone to transfer his personal photos to the RPM.

An interview with Rebecca Stark and a review of her archival files confirmed that the two personal photos under review were provided to her by Mr. Krinkie. Rebecca Stark also confirmed that she did the electronic graphics design for all of the Krinkie Committee literature for 2006, but she did not design Document K4, even though it included the Krinkie Committee's disclaimer.

Ms. Stark recalled that at some point she received a contact from Kevin Watterson requesting Krinkie family photographs. She knew Mr. Watterson, as he had worked with her as a media specialist with the House Republican Caucus. At the time of his e-mail, however, he was employed by the House Republican Campaign Committee (the "HRCC"), which is the campaign committee of the caucus. Ms. Stark knew that Mr. Watterson was working for the HRCC and she assumed that he wanted the photos to produce literature.

Mr. Watterson said that he knew Rebecca Stark was working on Krinkie literature, but he did not recall how he knew this. He thought that it was due to the fact that they had worked together as communications specialists for the House Republican Caucus and he knew that Mr. Krinkie was one of the house members for whom Ms. Stark served as communications specialist. He states that no one asked him to get photos from Ms. Stark and that no one told him that she had Krinkie family photos.

Assuming it to be an appropriate accommodation, Ms. Stark sent Mr. Watterson some Krinkie photos via e-mail. Ms. Stark did think about the matter again until questioned by Board staff. At no time did she inform Mr. Krinkie that the transfer had been made.

A review of Ms. Stark's email indicated that she transferred the family lake photo to Mr. Watterson on the evening of October 24, 2006. There is no e-mail and she has no recollection related to the transfer of the miniature golf image.

File and printing dates obtained during the investigation indicate that both Ms. Stark and Mr. Watterson obtained the miniature golf image between the evening of October 24, 2006 and the morning of October 25, 2006. Although the investigation did not result in direct evidence, the circumstantial evidence supports a conclusion that Ms. Stark transferred this photo to Mr. Watterson.

Rebecca Stark stated that her responsibility was limited to producing electronic files of the Krinkie documents in a format that a printing company could use. She said that she would transfer the electronic documents to the printer and would usually send an e-mail telling them that the document was there. She states that she did not represent the Krinkie Committee to printers or have any authority to act on its behalf. Neither Ms. Stark nor Phil Krinkie considered Ms. Stark to be a member of the Krinkie Committee. Ms. Stark stated that she did no fundraising for the committee and was only minimally involved in committee activities.

A review of files at Brooklyn Printing, the printer for the Krinkie literature, indicated that Rebecca Stark was listed as the contact person for the electronic media for each piece. The files also included notes indicating that Phil Krinkie or Mary Krinkie, his spouse, approved photos and print quantities and were in control of the printing projects. A staff review of Ms. Stark's e-mails indicated that Phil Krinkie was closely involved in the design of each literature piece, had final approval of each piece, and reviewed the printer's proofs before approving the piece for printing.

Board staff interviewed Kevin Watterson. He recalled contacting Rebecca Stark to request Krinkie photos and that she provided photos to him. Mr. Watterson was working on literature for a number of candidates, including Phil Krinkie. He identified document K4 as a document he designed to be an independent expenditure relating to Phil Krinkie. Document K4 used both the miniature golf photo and the family lake photo. In a subsequent interview, Mr. Watterson confirmed that he also designed document R2, which included the family lake photo.

Document K4 was produced as an independent expenditure, but includes a disclaimer that it was prepared and paid for by the Krinkie Committee. Mr. Watterson said he did not realize that the K4 brochure included the Krinkie Committee disclaimer when he sent it to the printer, but he became aware of the problem at some time after that.

Mr. Watterson explained that the document was originally created as a template that could be used for multiple candidates by changing photographs and modifying text. Some of the candidate committees paid for their version of the brochure so it included the candidate's disclaimer. Although Mr. Watterson knew that this was to be an independent expenditure and he understood what the correct independent expenditure disclaimer was, he used the candidate's disclaimer rather than the independent expenditure disclaimer when he created the Krinkie version of the document.

Mr. Watterson provided the Board with a copy of an invoice from Rapit Printing indicating that the RPM had paid for the printing of document K4.

Mr. Watterson stated that he did not have any conversations with Phil Krinkie regarding his production of Krinkie independent expenditure literature.

Dax Bennett of Ryan Media was interviewed and related that he worked full-time on Republican literature during the 2006 election season. He was paid in part by the HRCC and in part by the RPM. He did not make a distinction as to what entity paid for which specific documents he produced.

Mr. Bennett's work was virtually all done at the HRCC office at the Kelly Inn in St. Paul; the same office where Kevin Watterson did his work on the Krinkie materials. With regard to Krinkie brochures, Mr. Bennett said: "We did, maybe, four or five of them and they were split up between myself and Kevin", referring to Kevin Watterson.

The Board's investigation disclosed that the HRCC actually produced six independent expenditure literature pieces related to the Krinkie election. Two early pieces were more generic and did not include personal Krinkie photos. In a subsequent interview, Mr. Bennett said that he had designed those documents and that they were used for almost every candidate because they were small and inexpensive to produce.

Mr. Bennett designed document R4, which includes the miniature golf photo on the cover and is most similar to K4, the document originally assumed to have been produced by the Krinkie Committee. The similarities of these documents, now known to have both been produced as independent expenditures, was the main basis for the complaint. Mr. Bennett was asked about the use of the miniature golf photo and he related that he and Kevin Watterson were working together on the Krinkie materials. Bennett said that if Kevin had a photo that he could use, Kevin might pass it off to him. He said "that happened a lot", as they would ask back and forth if others had material they might use for various brochures.

He was asked about the fact that text passages in R4 and K4 (designed by Watterson) were the same. He said it was not surprising and that text was passed back and forth regularly. He also said that the husband and father theme of the language was a theme that had been used in the past and that both brochures may have taken text from past work.

Mr. Bennett said he had no contact with Phil Krinkie in relation to his work for the HRCC and that he did not obtain any photographs or materials from Mr. Krinkie or his principal campaign committee.

Board staff questioned Dax Bennett, Kevin Watterson and Gregg Peppin about the process by which the decision was made that the HRCC would produce independent expenditure literature related to Phil Krinkie beyond the two generic pieces that are done for most candidates.

The HRCC did polling for candidates during the election cycle. The costs of this polling are duly reported as independent expenditures on the HRCC Reports of Receipts and Expenditures for 2006. Polling results came in periodically and immediately after the results were available, the HRCC steering committee would meet to discuss how their independent expenditure strategy should change. Gregg Peppin acted as director of the HRCC's election efforts and reports that it was the result of this polling that the decision was made to produce the five independent expenditure pieces that are part of this investigation.

Phil Krinkie was not at any time in 2006 on the HRCC steering committee and did not have input into its decisions.

Staff also interviewed Mr. Krinkie's former Legislative Assistant and his former Committee administrator to determine their involvement with the Krinkie Committee and to ascertain whether either of them, as a representative of the Krinkie Committee, was involved in the HRCC decision to produce independent expenditure literature related to Phil Krinkie. While each volunteered for the Krinkie Committee, there is no evidence that either of them made any statement or engaged in any conduct that would affect the independent nature of the RPM expenditures relating to the Krinkie election.

Summary and Board Analysis

The Board considered this matter in executive session at its meetings on February 13, 2007, March 13, 2007, and April 10, 2007. The Board's decision is based on the complaint, the responses, the investigation, and Board records.

The Board's investigation of this matter revealed that of the eight documents submitted in support of the complaint, three were produced by the Krinkie Committee and five were printed and paid for by the RPM. Complainant's strongest evidence was the similarities between documents K4 and R4. The investigation has established that the documents were produced by Kevin Watterson and Dax Bennett and that both were paid for by the RPM as independent expenditures.

The logos on the three documents produced by the Krinkie Committee are visually distinct from those used by the RPM both in the shade of green used for the background and in the font used and do not provide evidence of collaboration on the documents.

The personal Krinkie photos that were used in four of the five RPM brochures were provided by Phil Krinkie to his graphic designer and forwarded by her to Kevin Watterson without Mr. Krinkie's knowledge, consent, or later approval. The designer was not acting on behalf of the candidate or

his committee and her individual action is not attributable to the candidate or the committee. There is nothing in the evidence to suggest that Phil Krinkie knew that the transfer of electronic images took place or that he played any role in the event.

The Board investigation also examined the process by which the HRCC reached its decision to make independent expenditures on behalf of Phil Krinkie. No evidence was found to suggest that the process was not independent from the candidate and his principal campaign committee.

Kevin Watterson was an employee of the HRCC when he designed document R4, which omitted the necessary independent expenditure disclaimer. He also had the authority to submit documents to the printer for production. Since the printing was to be paid for by the RPM, Watterson acted as its agent in approving the printing.

Minnesota Statutes 10A.17, subd. 4, requires a specific disclaimer to be included on publications that are produced and distributed as independent expenditures. Section 10A.17, subd. 5 provides for a civil penalty of up to \$3,000 for knowingly violating the independent expenditure requirement. Mr. Watterson, an agent of the RPM, knew and understood this requirement and he knew that document K4 was being produced as an independent expenditure. Mr. Watterson put the Krinkie Committee's disclaimer on the document and approved the printing of document. Careful proofreading and checking of disclaimer requirements could have prevented this violation. This combination of knowledge and actions constitutes a knowing violation of the statute.

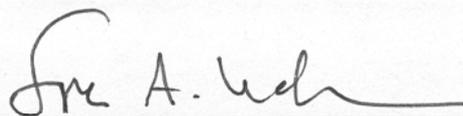
Findings Concerning Probable Cause

1. There is no probable cause to believe that expenditures claimed by the Republican Party of Minnesota to be independent expenditures on behalf of Phil Krinkie were made with the express or implied consent, authorization, or cooperation of, or in concert with or at the request or suggestion of, Mr. Krinkie or his principal campaign committee or agent.
2. There is probable cause to believe that the Republican Party of Minnesota, acting through its agent, knowingly violated the provisions of Minnesota Statutes 10A.17, subd. 4, when it printed and distributed a brochure advocating the election of Phil Krinkie which failed to include the required independent expenditure disclaimer.

Order

1. The Republican Party of Minnesota is ordered to pay a civil penalty of \$3,000 for its violation of Minnesota Statutes 10A.17, subd. 4. This fine shall be paid not later than 30 days from the date of this order by sending a check payable to the "State of Minnesota" to the Minnesota Campaign Finance and Public Disclosure Board. The Board declines to refer this violation for criminal sanctions.
2. The Board's investigation of this matter is concluded. The complaint is dismissed 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: April 10, 2007



Sven Wehrwein, Vice Chair
Campaign Finance and Public Disclosure Board

Exhibits - Brochures

Document K1
Document K2

Document K3
Document K4

Document R1
Document R3

Document R2
Document R4

Relevant Statutes

10A.01 Definitions.

Subdivision 1. **Application.** For the purposes of this chapter, the terms defined in this section have the meanings given them unless the context clearly indicates otherwise.

. . .

Subd. 4. **Approved expenditure.** "Approved expenditure" means an expenditure made on behalf of a candidate by an entity other than the principal campaign committee of the candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. An approved expenditure is a contribution to 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. An independent expenditure is not a contribution to that candidate.

. . .

10A.17 Expenditures.

. . .

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.