

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

Findings Regarding Boulay Heutmaker Zibell & Co. PLLP

Summary of Investigation

The Minnesotans for Better Roads and Transit Committee (“MBRT”), a registered ballot question political committee, notified the Campaign Finance and Public Disclosure Board (“the Board”) that the MBRTC received a \$500 contribution from Boulay Heutmaker Zibell & Co. PLLP (“BHZ”), an unregistered association, on July 5, 2006. The contribution was made without providing the required disclosure.

Minnesota Statutes, section 10A.27, subdivision 13 (b), prohibits an unregistered association from making a contribution to a registered political committee unless, at the time the contribution was made, the unregistered association provides the recipient with the disclosure required by Minnesota Statutes, section, 10A.20.

On March 27, 2007, the Board notified BHZ that the contribution the association made to the MBRT in 2006 appeared to violate the provisions of the aforementioned statute.

Peter A. Koller, attorney, responded on behalf of BHZ on May 7, 2007. Mr. Koller stated that: “BHZ relied entirely and in good faith on MBRT to ensure that its \$500 contribution was fully compliant with the Minnesota laws governing campaign financing. BHZ was, therefore, surprised when it was advised by MBRT that a written disclosure form was required for contributions by “incorporated associations.” In reference to the provisions of Minnesota Statutes, section, 211B.15, Mr. Koller further stated:”Even while recognizing that the point may be academic, from a legal perspective, the distinction created under Minn. Stat. §211B.15 between “corporations” and all other forms of business enterprise is inexplicable, and the statute could be argued to ...impliedly extend to businesses (like BHZ) that operate in the form of registered Minnesota limited liability partnerships...”

On September 22, 2006, the MBRT returned the \$500 contribution to BHZ. A copy of the check and cover letter used to return the contribution was provided to the Board. A contribution may be returned within 60 days after it was deposited by the recipient to avoid a violation of Chapter 10A. After 60 days the contribution is deemed accepted by the receiving committee under the provisions of Minnesota Statutes, section 10A.15, subdivision 3.

BHZ made a second donation of \$500 to the MBRTC with the required disclosure on October 2, 2006.

Board Analysis

This matter was considered by the Board in executive sessions in its meetings on April 10, 2007 and May 8, 2007. The Board’s decision was based upon the correspondence from Mr. Koller, the MBRT, and Board records.

A political committee formed to support or oppose a ballot question has greater latitude in the type of organizations from which it may receive a contribution compared to other types of political committees and political party units. Minnesota Statutes, section

211B.15, subdivision 4, provides in part that “A corporation may make contributions to promote or defeat a ballot question...” For the purposes of this statute “corporation” is defined to include for profit and nonprofit corporations, and limited liability companies formed under Minnesota Statutes Chapter 322B or similar laws of another state. The firm BHZ is a limited liability partnership that was formed under the provisions of Minnesota Statutes Chapter 323A.

The policy basis for distinguishing between businesses organized under these two chapters may not be readily apparent. Nonetheless, the Board is required to apply the statute as written and cannot extend the definition of a corporation to other associations that may contribute to a ballot question committee.

An association that does not meet the definition of corporation provided in Chapter 211B may still make a contribution to a ballot question committee registered with the Board if the appropriate disclosure is provided with the donation. Although BHZ did eventually provide the required disclosure the disclosure was not provided with the contribution as provided in Minnesota Statutes, section 10A.27, subdivision 13. This statute further provides that an unregistered association that makes a contribution to a political committee without the required disclosure is subject to civil penalty of up to \$1,000.

Based on the evidence before it and the above analysis the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that BHZ inadvertently violated Minnesota Statutes, section 10A.27, subdivision 13, when it made a contribution in excess of \$100 to the MBRT without providing the required disclosure.
2. There is probable cause to believe that the contribution was not returned within 60 days and was therefore accepted by the MBRT under the provisions of Minnesota Statutes, section 10A.15, subdivision 3.

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

ORDER

1. The Board imposes a civil penalty of \$400, one times the amount of the contribution over \$100, on BHZ for making a contribution to a registered political committee without providing the required disclosure.
2. BHZ is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within thirty days of receipt of this order.
3. If BHZ does not comply with the provisions of this order, the Board’s Executive Director shall request that the Attorney General bring an action for the remedies available under Minnesota Statutes, section 10A.34.

4. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, subdivision. 11, and upon payment by the civil penalty imposed herein, this matter is concluded.

Dated: May 8, 2007

A handwritten signature in cursive script, reading "Felicia J. Boyd", is written above a solid horizontal line.

Felicia Boyd, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.27, subdivision 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.

211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

Subdivision 1. **Definitions.** For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

....

Subd. 4. **Ballot question.** A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.

...