

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

Findings Regarding Minnesotans for Better Roads and Transit

Summary of Investigation

On August 29, 2006, the Minnesotans for Better Roads and Transit Committee ("MBRT"), a registered ballot question political committee, filed the pre-primary Reports of Receipts and Expenditures with the Campaign Finance and Public Disclosure Board ("the Board"). As a result of routine exception tests run on the report submitted by MBRT the Board was aware that MBRT received contributions from a large number of unregistered associations.

By letter dated February 16, 2007, Mark Chronister, treasurer, MBRT, stated that nine of the contributions from unregistered associations to MBRT were accepted without the disclosure required in Chapter 10A. The total amount of the contributions from the nine unregistered associations was \$43,750.

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

In his letter of February 16, 2007, Mr. Chronister states: "An MBRT internal audit disclosed in September of 2006 that the committee had accepted contributions from unregistered non-corporate associations that were not accompanied by the proper disclosure. MBRT immediately took three actions. It: Implemented a system in which all contributions from associations are compared with the Secretary of State's business records to identify non-corporate association contributions. ...Refunded all non-corporate association contributions that were not accompanied by written statements. ...Designed and provided to contributors a disclosure form ..."

Among the nine contributions from unregistered associations received by the MBRT were contributions from the Federal Express PAC, a political committee not registered in Minnesota, and the Cement Masons, Plasterers & Shophands Local No. 633, a labor union. In reference to these contributions Mr. Chronister states: "MBRT staff did not understand that a PAC registered with the Federal Election Commission but not the MCFB must provide a written statement with its contributions." Mr. Chronister further stated: "Also, MBRT staff erroneously believed all labor unions are corporations."

The MBRT provided to the Board copies of the checks and cover letters used to return the contributions to unregistered associations. A contribution may be returned for up to 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. In reference to this statutory provision Mr. Chronister states: "MBRT refunded some 2006 unregistered non-corporate association contributions that were not accompanied by disclosure statements more than 60 days after deposit. It did not discover its error in accepting the contributions without disclosure statements until after 60 days."

In a second letter to the Board dated April 9, 2007, Mr. Chronister reviewed factors that he believed the Board should consider when imposing any possible penalty on the MBRT. Mr. Chronister asked that the Board take into account that the problem contributions were returned prior to the general election, and that disclosure from the unregistered associations that sent a second contribution to the MBRT was obtained and provided to the public prior to the general election, (with the exception of the contribution from the Federal Express PAC).

Additionally, Mr. Chronister states that the relevant statutes are difficult to follow, "The disclosure requirements for ballot question campaigns are especially confusing. There are two different standards. Individual contributors and corporations are not required to disclose information regarding their contributions. Unregistered non-corporate associations are."

Mr. Chronister also states that the Board should consider that only nine of the hundreds of contributions received by the MRBT, with a value of over four million dollars, were accepted without proper disclosure or returned within 60 days. Additionally, Mr. Chronister asserts that the possible fines provided in statute are unfairly high for ballot question committees because the penalty is based on the size of the contribution and, unlike a candidate's committee, ballot question committees do not have limits on the size of contributions.

At the May 8, 2007, Board meeting Mark Chronister, Mark Olson, and Robert Hentges provided information and answered questions on behalf of MRBT.

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 correspondence from Mr. Chronister, correspondence from the unregistered associations that contributed to the MBRT, testimony provided by Mr. Chronister, Mr. Olson, and Mr. Hentges, and Board records.

The correspondence and records received from the MBRT, and unregistered associations that contributed to the MBRT, provide evidence that Minnesota Statutes, section 10A.27, subdivision 13, was violated, and that the contributions from the nine contributors in question were not returned within 60 days.

Mr. Chronister contends that the public policy goal of disclosure was met because copies of the disclosure statements from unregistered associations were obtained and provided to the Board, and therefore to the public, prior to the general election. The Board received copies of most disclosure statements on October 31, 2006. Minnesota Statutes, section 10A.27, subdivision 13, provides in part that "...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." All nine of the problem contributions were received prior to the cut off date for reporting contributions in the pre-primary Report of Receipts and Expenditures (August 21, 2006). If the disclosure statements had been provided with the contributions the statements would of have been forwarded to the Board at that time.

Mr. Chronister also notes that the disclosure requirements for ballot question committees are complicated and difficult to administer. 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 policy basis for distinguishing between corporations as defined in Chapter 211B and other types of business entities 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.

Finally, Mr. Chronister asks the Board to consider that the possible penalty for violating Minnesota Statutes, section 10A.27, subdivision 13, is very severe for ballot question committees compared to candidates because of the lack of contribution limits for ballot question committees. As already noted ballot question committees do have greater latitude in the type of association from which they accept contributions, and in the amount of the contributions. The Board does not agree with the assertion that a political committee given the right to accept contributions in unlimited amounts is being subjected to unduly severe penalties compared to a principal campaign committee when, in each case, the potential penalty reflects the magnitude of the contribution causing the violation.

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 the MBRT inadvertently violated Minnesota Statutes, section 10A.27, subd. 13, when the MRBT accepted nine contributions in excess of \$100 from unregistered associations that were required to provide disclosure.
2. There is probable cause to believe that the contributions were not returned within 60 days and were 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:

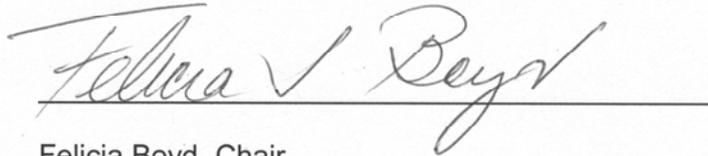
ORDER

1. The Board imposes a civil penalty of \$42,850, one times the amount by which the nine contributions exceeded \$100, on MBRT for acceptance of nine

contributions in excess of \$100 from unregistered associations that failed to provide the disclosure required by Minnesota Statutes, section, 10A.20.

2. MBRT is directed to forward to the Board payment of the civil penalty of \$42,850 by check or money order payable to the State of Minnesota, within thirty days of receipt of this order.
3. If MBRT does not comply with the provisions of this order, the 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 V. Boyd", is written over 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.

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