

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

**Findings and Order in the Matter of the Complaint of James Carson regarding the (Peter) Fischer for Representative and the (Chuck) Wiger for Senate Volunteer committees**

**The Allegations in the Complaint**

On September 11, 2012, the Campaign Finance and Public Disclosure Board received a complaint from James Carson regarding the (Peter) Fischer for Representative and the (Chuck) Wiger for Senate Volunteer committees. Attached to the complaint were copies of three literature pieces jointly mailed by the Fischer and Wiger committees shortly before the August 14, 2012, primary. The committees' campaign finance reports show that the committees split the cost of the pieces equally. The literature pieces refer to both Mr. Fischer and to Sen. Wiger and directly ask voters to support both candidates at the primary. Sen. Wiger, however, had no primary opponent and his name did not appear on the primary ballot. The complaint therefore alleges that by paying for half of the mailed pieces, the Wiger committee "made an illegal expenditure on behalf of Peter Fischer's primary bid for the Minnesota House."

**The Response to the Complaint**

In their responses, Sen. Wiger and Mr. Fischer agree that their committees jointly mailed the three literature pieces attached to the complaint. Sen. Wiger states that he did not learn until after the primary "that unopposed legislative candidates don't appear on the ballot unless there is a contested race by an opponent in another party."

Each literature piece was 11 inches by 5¾ inches. Although each literature piece discussed a different issue, they had similar layouts. Part of the piece stated the candidates' joint position on the issue and the rest contained pictures of the two men in various settings. The primary election was mentioned three times in the text on each piece and twice in slightly larger, bold print. In total, the references to the primary election comprised less than 2% of the total area of each literature piece.

The committees agree that the \$7,560 cost of mailing the literature pieces was split evenly between them. Mr. Fischer argues that this allocation was reasonable given the small portion of the literature pieces that referred to the primary election.

Sen. Wiger argues that the 50/50 split of the mailing costs was a reasonable allocation because

[t]he mailings were 1) jointly prepared by the Wiger and Fischer campaigns, 2) advocate for the election of both candidates and 3) dedicate equal space and attention to each candidate.

Sen. Wiger also argues that although the Fischer committee received an immediate benefit from the mailing, he received a more certain, long-term benefit because the literature pieces brought

his name and his views before voters who are certain to have the chance to vote for him at the general election. Sen. Wiger claims that this early exposure was particularly beneficial to him because the majority of people who received the mailing were recently added to his legislative district due to redistricting and they therefore are not very familiar with him.

### **Board Analysis**

Minnesota Rules part 4503.1000, subpart 2, provides:

A candidate who produces and distributes campaign materials, including media advertisements, which include images of, appearances by, or references to one or more other candidates, and which mention the candidacy of the other candidates or include a direct or indirect appeal for the support of the other candidates must collect from each of the other candidates a reasonable proportion of the production and distribution costs.

Here, the complaint alleges that the Fischer and Wiger committees violated the campaign finance laws by equally dividing the cost of the pre-primary literature pieces when Sen. Wiger was not on the primary ballot. The portion of each literature piece that refers to the primary, however, is less than 2% of the total area of the entire piece. The rest of the piece states the candidates' joint position on an issue and shows pictures of both candidates.

In addition, although Sen. Wiger may not have benefitted from the literature mailing immediately as did Mr. Fischer, Sen. Wiger received a different, longer-term benefit because the literature brought his name in front of voters who would definitely have the chance to vote for him at the general election. This exposure was particularly valuable because most of the people who received the mailing are new to Sen. Wiger's district and therefore are unfamiliar with him. Given the small portion area of the mailing that discussed the primary and the long-term benefit to Sen. Wiger's campaign, it was not unreasonable here for the Fischer and Wiger committees to allocate the cost of the literature mailings equally between the two committees.

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

### **Finding Concerning Probable Cause**

There is no probable cause to believe that the (Chuck) Wiger for Senate Volunteer committee made a prohibited contribution to the (Peter) Fischer for Representative committee when the two committees allocated the cost of the pre-primary literature mailings equally between themselves.

