

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

.....

**February 14, 2012
Room 225
Minnesota Judicial Center**

.....

MINUTES

The meeting was called to order by Chair McCullough.

Members present: Bettermann, Luger, McCullough, Scanlon, Swenson

Member Wiener informed the Executive Director prior to the meeting that she would not be able to attend.

Member Swenson arrived during the Executive Director Topics.

Others present: Goldsmith, Sigurdson, Larson, White, Pope, staff; Hartshorn, counsel

MINUTES (January 3, 2012)

Member Scanlon's motion:	To approve the January 3, 2012, minutes as drafted.
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Vote on motion:	Unanimously passed. (Swenson absent)
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CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for Tuesday, March 6, 2012.

Mr. Goldsmith informed members that two new member appointments are in process in the Governor's office to replace member Bettermann and Member Swenson and, as tradition for the recognition of the retiring members, a luncheon will be arranged in April after member Bettermann's return from vacation.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations.

Response to letter from Senator Parry

Mr. Goldsmith presented the Board with a copy of the letter received by Senator Parry as well as a copy of the response letter which is attached to and made a part of these minutes.

Review and adoption of Fiscal Year 2010-11 Annual Report

Executive Director Goldsmith presented the Board with a memorandum and a copy of the Annual Report for fiscal years 2010 and 2011 which are attached to and made a part of these minutes by reference.

The Annual Report is required by Minnesota Statutes, section 10A.02, subd. 8. The report is provided to the governor, legislative leadership and is made available to the public through the Board website. The report is required to contain the fiscal operations of the Board, including the names, duties and salaries of staff. The report also reviews the major programs administered by the Board.

Mr. Goldsmith requested members to pay particular attention to the executive summary section of the report. In its current form the executive summary is intended to continue a discussion with the legislature and the governor's office on the need for additional staff resources to fully implement the enforcement and disclosure provisions of Chapter 10A.

After discussion the following motion was made,

Member Bettermann's motion: To adopt the Annual Report for fiscal years 2010 and 2011.

Vote on motion: Unanimously passed.

Discussion of Board position on House File 1780

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

House File 1780 amends the definition of "public official" under Chapter 10A by adding the following positions: District Court judge, Appeals Court judge, Supreme Court judge, and county commissioner.

Mr. Goldsmith explained that part of the problem caused by simply expanding the definition of "public official" is that no consideration is given to Minn. State. §10A.09, which specifies the requirements for filing Statements of Economic Interest.

Mr. Goldsmith explained that filing requirements could be clarified by amending the bill to address the §10A.09 issues, but that, no amendment to the bill can alter the fact that it will place additional administrative burdens on the Board at a time when its staff resources are already stretched thin.

After discussion the Board the consensus was that though the Board generally supports the policies requiring disclosure, due to the current level of Board resources, the additional work to

implement the change cannot be accomplished without additional resources or the elimination of other work that is now being done.

Correspondence; complaint of the DFL regarding Senator David Thompson

Mr. Goldsmith presented the Board with a memorandum which is made a part of these minutes by reference regarding the complaint filed by the Minnesota State DFL regarding Senator David Thompson.

Mr. Goldsmith pointed out that the complaint is very limited in scope, alleging that Senator Thompson omitted from his Statements of Economic independent contractor income from the Republican Party of Minnesota that should have been disclosed.

Mr. Goldsmith explained that the Economic Interest Statement statute requires disclosure of "associated businesses" and the definition of "associated business" is narrow. The definition specifies both the types of businesses that are covered as well as the relationships between the business and the official that would trigger disclosure. An independent contractor relationship is not one of the relationships that makes a business an "associated business" of the official and, therefore subject to disclosure. Thus, Senator Thompson's omission of independent contractor income from his Statement of Economic Interests would not be a violation of Chapter 10A.

The complaint did not provide any allegations of fact to support an investigation as to whether Senator Thompson was an employee or an independent contractor. A letter declining to accept the complaint for investigation was sent the Minnesota State DFL.

ENFORCEMENT REPORT

The Board considered the monthly enforcement report, presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the Enforcement Report:

Consent Items

Confirmation of the administrative termination for the following lobbyist at the request of the lobbyist association:

Craig Whitney, president of the Fargo Moorhead West Fargo Chamber of Commerce, requests the termination of Kelli Poehls, lobbyist, who is no longer employed by the Chamber. The effective termination date is December 31, 2011.

Joel Rosenberg, a lobbyist for Ellegon Inc., registered on January 14, 2011, as a designated lobbyist. He passed away on June 2, 2011, before the June 15, 2011, report was due. Felicia Herman from Ellegon responded to a staff inquiry stating no disbursements were made by Mr. Rosenberg.

After discussion the following motion was made,

Member Luger's motion: To approve the consent items.

Vote on motion: Unanimously passed.

Discussion Items

Waiver Requests

A. See the attached memo from the Executive Director regarding the following Watershed District Public Officials Request for Waiver of late filing fee:

Marvin Hedlund, \$25 late fee, paid \$5, no previous waiver granted
LeRoy Ose, \$100 late fee, \$200 civil penalty, no previous waiver granted
Darrell Johnson, \$75 late fee, no previous waiver granted
Dean Spaeth, \$25 late fee, no previous waiver granted

After discussion the following motion was made,

Member Bettermann's motion: To waive the late filing fees for the requesting individuals and to return the \$5 payment made by Mr. Hedlund.

Vote on motion: Unanimously passed.

Informational Items

A. Payment of a late filing fee for Annual Report of Lobbyist Principal:

MednetWorld, \$30
Turnstone Group LLC, \$35

B. Payment of a late filing fee for 2010 Report of Receipts and Expenditures:

Brian Boedekker Campaign Committee, \$237
Zach Freitag for State Rep, \$200

C. Payment of a late filing fee for 2011 Pre-special Election Report of Receipts and Expenditures:

Volunteers for Peter Wagenius, \$150

D. Payment of a late filing fee for 2011 Report of Receipts and Expenditures:

53rd Senate District DFL, \$25
Margaret Ferger Volunteer Committee, \$75

E. Payment of a civil penalty for exceeding special source aggregate limit:

Tim Mahoney for House, \$465- 5th installment

F. Payment of a civil penalty for filing a false report:

Terri Griffiths, \$800- 6th and 7th installment

G. Payment of Service of Process Fees collected from Dept of Revenue:

Michael Bidwell, \$45.12
Brian Fulcher, \$79

Robert Garrison, \$39
Daniel Johnson, \$46.26

H. Deposit to the General Fund, State Elections Campaign Fund:

Mark Dayton for Governor, \$215 (anonymous)
Joshua Graham Committee, \$75 (terminating, gift to state)
Friends of Bruce Vogel Committee, \$30 (anonymous)

ADVISORY OPINION REQUEST

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes.

Advisory Opinion #423 has been made public by release of consent from the requestor.

Advisory Opinion #423 asks whether in-kind contributions to ballot question political committees or funds may be made by two types of possible donor associations: (1) those that have registered political funds and (2) those that have not. The response addresses the two types of donor associations as well as the two general types of in-kind contributions that might occur: (1) those that result from providing association services to another entity and (2) those that result from paying a vendor for something that benefits another entity.

The Board discussed the request and the applicable provisions of Chapter 10A.

After discussion, the following motion was made:

Member Bettermann's motion: To adopt the Advisory Opinion #423 as amended by staff.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order and the following items were reported from the Executive Session:

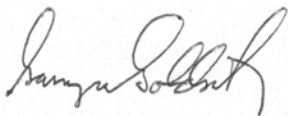
Findings in the matter of the acceptance of contributions by the RT Rybak for Governor Committee from registered lobbyists John Arlandson, Rod Halverson, Roger Moe during the 2010 legislative session.

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Orders which are attached to and made a part of these minutes.

OTHER BUSINESS

There being no other business, the meeting was adjourned by the Chair.

Respectfully submitted,



Gary Goldsmith
Executive Director

Attachments:

Letter and response letter to Senator Parry
Fiscal Years 2010-11 Annual Report
February 8, 2012, memorandum regarding House File 1780
February 8, 2012, memorandum regarding watershed district manager waiver requests
February 8, 2012, memorandum regarding Advisory Opinion #423
Advisory Opinion #423
Findings in the matter of acceptance of Contributions from registered lobbyist during the 2010 legislative session by the RT Rybak for Governor Committee
Findings in the matter of registered lobbyist John Arlandson contribution to the RT Rybak for Governor Committee during the 2010 legislative session

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Findings in the matter of registered lobbyist Rod Halvorson contribution to the RT Rybak for Governor Committee during the 2010 legislative session

Findings in the matter of registered lobbyist Roger Moe contribution to the RT Rybak for Governor Committee during the 2010 legislative session



COMMITTEE ON STATE GOVERNMENT INNOVATION AND VETERANS

11 DEC 15 PM 4:12

CAMPAIGN FINANCE &
PUBLIC DISCLOSURE BOARD

December 15, 2011

Chair: Mike Parry
Capitol Building, 309
St. Paul, MN 55155
651.296.4167

Vice Chair: Ted Daley

Minority Lead:
Charles W. Wiger

Members:

John J. Carlson
Richard J. Cohen
Paul E. Gazelka
Barb J. Goodwin
Jeff Hayden
Ted H. Lillie
Gen Olson
Julianne E. Ortman
Dave A. Thompson
Patricia Torres Ray

Gary Goldsmith, Executive Director
Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Mr. Goldsmith,

It is with great interest that I have followed the actions of the Campaign Finance & Public Disclosure Board in regard to ballot question expenditures. I have reviewed the Board's carefully crafted communications on the topic, including the "Statement of Guidance" documents. I am writing to express my concern that the current proceedings are outside of the process the Legislature has prescribed to the Board.

As you are aware, legislative bodies delegate power to administrative agencies by statute. The Legislature created specific powers for the Board including the power to issue and publish advisory opinions on the requirements of Chapter 10A. The legislature also expressly subjects the Board to Chapter 14, the rulemaking process, when there is intention to broadly apply principles of law or policy. The Board has stated the purpose of the guidance is to recognize certain definitions and enforcement positions that staff and others may rely on when applying registration and reporting requirements. The guidance appears to be creating new law of general applicability and future effect, or a rule.

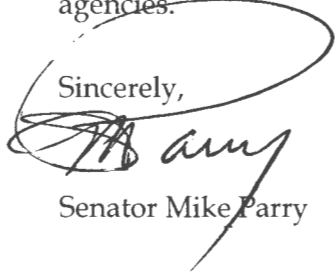
The intention of Chapter 14 is to strike a fair balance between public access and the need for efficient, economical, and effective government administration. I appreciate the Board may have intended to be efficient and effective in anticipation of ballot expenditures when they approved the "safe harbor" policies and definitions in advance of an administrative rulemaking procedure. However, I have heard numerous complaints that the guidance has had a chilling effect on free speech. Such concerns cannot be taken lightly.

COMMITTEE ON STATE GOVERNMENT INNOVATION AND VETERANS

Room 123 Capitol
Monday and Wednesday
1:00 p.m. - 2:30 p.m.

I request that you respond with information on any historical uses of a Statement of Guidance and how the current approach is consistent with the directives of the Legislature in Chapters 10A and 14. I am sure you understand my concern that agencies strictly follow the process created by the legislature. Any other process risks unsettling public accountability of administrative agencies.

Sincerely,



Senator Mike Parry

Minnesota
*Campaign Finance and
Public Disclosure Board*



January 19, 2012

Senator Mike Parry
Room 309, Minnesota State Capitol
St. Paul, MN 55155

Re: Campaign Finance and Public Disclosure Board guidance on application of Chapter 10A

Dear Senator Parry:

Thank you for your letter of December 15, 2011, and for your interest in the Board's efforts to provide guidance on the application of Chapter 10A over the past several months. Also thank you for your willingness to meet in the near future to further discuss this matter. Because they have also expressed interest in the Board's work, I am sending a copy of this letter to Senator Vandever and Representative Peppin.

In general, the concept of a statement of guidance has been used very sparingly. Often a question is narrow or relates to something a single entity wants to do. In those cases an advisory opinion will provide the needed guidance. However, no association other than the requester may legally rely on an advisory opinion. When the Board issues a statement of guidance, it is to provide insight into the Board's approach to Chapter 10A in a way that every association may consider, should it choose to do so.

The first Board guidance was issued in 2008 when the Republican Party held its national convention in Minnesota. Many questions were surfacing about application of Minnesota's prohibition of gifts by lobbyists and principals to officials. The Board was aware that public officials would be convention attendees or delegates. Corporations that had lobbyists would be involved in general funding for the convention as well as in sponsoring hospitality rooms or events.

In order to explain how the Board would apply the gift prohibition and its exceptions over a range of scenarios, the Board analyzed the statute and issued a statement of guidance on the subject. The statement explained in particular certain scenarios that would result in exceptions to the gift prohibition. It did not establish any new requirement, but specified concepts that the Board would apply when evaluating potential gifts under Chapter 10A.

Prior to issuing its first statement of guidance, the Board reviewed the statutes and Minnesota Supreme Court authority and concluded that issuance of a statement indicating how the Board expects to apply Chapter 10A would not constitute the adoption of an administrative rule without formal promulgation. I believe that the statements of guidance issued by the Board in 2011 are

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For TTY/TDD communication contact us through the Minnesota Relay Service at 800-627-3529

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also within the Board's authority and do not constitute unpromulgated rules. I base this opinion primarily on three points: (1) in any enforcement matter, the Board intends to allow the subject association the benefit of the guidance insofar as the guidance identifies transactions for which disclosure is not required, (2) to the extent that transactions are involved that are not excluded from disclosure by the statement of guidance, Chapter 10A, not the guidance itself, will be the authority for determining any disclosure obligation, and (3) the guidance provides a starting point for examination of a transaction. Any final Board decision will depend on the facts of the particular matter under review. For further information on this issue, I attach a copy of a memorandum that was provided to the Board when it issued its 2008 guidance.

The Board next took up the task of issuing guidance regarding Chapter 10A in January, 2010, after the Supreme Court decision in *Citizens United*. The Court's holding in *Citizens United* had the effect of declaring Minnesota's prohibition of corporate independent expenditures unconstitutional. The Board was not certain that the legislature would enact statutes to address the decision and, as a result, it began consideration of how it could accommodate these new corporate independent expenditures in the existing structure of Chapter 10A. At the same time, the Board made recommendations to the legislature, some of which were incorporated into the bill that was eventually adopted.

In addressing Chapter 10A's requirements, the Board wanted to ensure that the required level of disclosure was properly related to the state's interest in providing voters with information about who is trying to influence their votes. The result of the legislative action was to establish clear requirements for the disclosure of underlying sources of corporate money used for independent expenditures and to establish a \$1,000-or-more itemization threshold for those underlying sources rather than the more-than-\$100 threshold provided in existing statutes.

The 2010 legislative action relieved the Board of the need to adopt a statement reflecting how it would apply Chapter 10A to corporate independent expenditures. However between January and May, the Board had developed multiple draft statements and was prepared to provide Board guidance on how to operate within the existing provisions of Chapter 10A had the legislature not acted.

Advertising that was brought to the Board's attention during the 2010 election season brought to the forefront the question of whether there would be constitutional amendments on the 2012 ballot. Anticipating questions about ballot question disclosure, Board staff began to review the authority that governed the use and disclosure of money in the ballot question context.

Staff recognized that the questions the Board would have to address would primarily be related to associations that had a major purpose other than to promote or defeat a ballot question ("non-major-purpose associations"). These associations include corporations, other legal entities, and unincorporated groups of people. Unlike political committees, which report on *all* of their financial activity, non-major-purpose associations report *only* on money raised or spent to influence the nomination or election of candidates or to promote or defeat a ballot question.

Staff also recognized that the questions the Board would need to address would likely include: (1) what activity would trigger a requirement that a non-major-purpose association register a political fund; (2) what disclosure is required when a non-major-purpose uses its own general treasury money to promote or defeat a ballot question; (3) what differentiates an association's general treasury money from a "contribution" as that word is defined in Chapter 10A; and (4) what determines whether spending by an association is "to promote or defeat a ballot question"

so as to require disclosure? Some of these questions involved constitutional issues that had been addressed in the 2010 independent expenditure political committee or fund legislation.

The Board's efforts to address the application of Chapter 10A to associations engaging in efforts to promote or defeat a ballot question started with the adoption of legislative recommendations. I will be happy to review the progression of these recommendations in detail at your request. The end result of the Board's legislative initiative was that its recommendations were incorporated into SF1225, introduced by Senator Robling, and into a House companion bill.

Both the Senate and the House bills passed out of committee to the floor. A vote was expected on the bills but was called off at the last minute. Through discussions with members and others, I learned that some associations with interest in the ballot question components of the bills believed that the bills would require *more* disclosure than was required under existing law. I was surprised at this misconception since the Board's recommendations would actually require less disclosure than existing statutes.

In further discussion with various parties I realized that at least some potentially regulated corporations believed that the existing more-than-\$100 itemization requirements, set forth in of §10A.12, subd. 5, and §10A.27, subd. 13, of the statutes, were not applicable to them. I further learned that their belief resulted from reliance on Advisory Opinion 257, which was issued some 14 years earlier.

Advisory Opinion 257 said, essentially, that corporations making ballot question expenditures were exempt from the disclosure requirements of Chapter 10A. The only basis for this conclusion was a statement in the opinion that the right of corporations to make ballot question expenditures under Chapter 211B was not reconcilable with the disclosure requirements of Chapter 10A. I was concerned that associations appeared to be relying on this advisory opinion as if it were law.

An advisory opinion is binding on the Board only with respect to the original requester. In fact, if the Board wants an advisory opinion to have binding effect beyond the original requester, it must promulgate the conclusions in an administrative rule. Any subsequent reader of an advisory opinion relies on its conclusions at its own risk.

However, if an old advisory opinion reached a conclusion that is supported by the law, it is likely that the Board would continue to apply its principles; not because they were announced in an advisory opinion, but because they state a valid application of Chapter 10A. In studying Advisory Opinion 257, I could not conclude that if asked today, the Board would consider its conclusions to represent a valid application of Chapter 10A. I will be happy to further discuss my analysis of this issue at your convenience.

As a result, I did not believe that staff could confidently represent Advisory Opinion 257 as being a reliable indicator of the Board's current position. Therefore, I took the matter to the Board. If the Board was not willing to ratify the principles of Advisory Opinion 257, the only way to prevent misplaced reliance on it seemed to be through formal revocation.

On May 31, 2011, the Board considered whether to revoke Advisory Opinion 257. At its meeting the Board discussed the matter and listened to comments from representatives of interested associations. In order to get more input, the Board voted to hold a public hearing on the question of revocation. That hearing took place at a special meeting on June 14, 2011, where the Board took testimony from individuals with various positions on the subject.

At that same meeting the question of disclosure under Chapter 10A by non-major-purpose associations was also discussed. Without the blanket exemption of Advisory Opinion 257, corporations were concerned about the level of disclosure that Chapter 10A would require. The Board had not yet fully considered the application of Chapter 10A to underlying source disclosure in the ballot question context. Based on its experience examining Chapter 10A in the *Citizens United* context, the Board had some concern about the requirements of §§10A.12, subd. 5, and 10A.27, subd. 13, as applied in the ballot question context. In order to obtain more input from staff, the Board laid the question of revocation of Advisory Opinion 257 over to its June 30, 2011, meeting.

After the June 14th meeting, staff continued to review Chapter 10A so that they could advise the Board regarding the various disclosure requirements and the burden associated with each.

During this review, we recognized that the 2010 legislation implementing the *Citizens United* decision addressed some of the constitutional issues that now concerned the Board in the ballot question context. In fact, the 2010 corporate independent expenditure statutes had become the model for the Board's 2011 ballot question legislative recommendations. As we prepared to advise the Board at its June 30 meeting, staff returned to the statutory language adopted in 2010.

That language defines independent expenditure political committees or funds as associations that make only independent expenditures "and disbursements permitted under section 10A.121, subdivision 1." The plain language of the statute permits independent expenditure political committees or funds to make *any* expenditure that does not constitute a contribution to a candidate or to a party unit. This was not an unintentional effect. During the drafting of the bill it was recognized that after *Citizens United* the only remaining prohibition on corporations was the making of direct or indirect contributions to candidates and political committees or funds. The bill was drafted to preserve only that limited prohibition.

Staff and the Board had previously recognized that independent expenditure political committees or funds could also make ballot question expenditures. In our further consideration of the statutes we recognized that independent expenditure political committees or funds also could make *only* ballot question expenditures if they chose to do so. Thus, an association that wanted to make only ballot question expenditures could use the new disclosure provisions of the 2010 law that allow an association to provide less disclosure while still being in compliance with Chapter 10A.

On June 30, 2011, the Board voted to revoke Advisory Opinion 257. At the same time, the Board announced its recognition that associations that accept corporate contributions may disclose under the independent expenditure political committee or fund statutes even if they make only ballot question expenditures. Although this announcement was framed as a "statement of guidance", the same result could have been achieved by a direction from the Board to staff, since no statutory interpretation was involved. All the "guidance" did was to announce that the Board would apply the plain and clear language of the statute.

The action of June 30, 2011, eliminated the requirement that associations comply with either §10A.12, subd. 5, or §10A.27, subd. 13, when using general treasury money for ballot question purposes. With the elimination of this requirement certain constitutional concerns were also eliminated. However, the Board has made it clear that its statement on June 30 recognized a

new option for non-major-purpose associations. It did not prohibit them from disclosing under the previously recognized options provided in §§10A.12, subd. 5, and 10A.27, subd. 13.

After the Board's action on June 30, certain issues remained with respect to the application of Chapter 10A to ballot question political committees or funds. These issues included the registration and reporting threshold for ballot question political committees or funds as well as the definitions of "contribution" and "expenditure" in the ballot question context.

The Board was concerned about the registration and reporting threshold because a federal Circuit Court of Appeals had recently held that a registration threshold of \$200 was too low to be constitutional. This holding was based on the court's conclusion that the state's interest in an association that spends only \$200 is not sufficient to justify the burden of registration and disclosure.

The Board addressed the registration and reporting threshold by adopting an enforcement position and direction to staff. Chapter 10A provides that the Board "may" impose late filing fees and civil penalties for the failure to register or for the failure to file reports. The Board adopted a position that it would not exercise its authority to impose late filing fees or civil penalties against an association involved in ballot question activities as long as that association registers as a political committee or registers a political fund once it had raised more than \$5,000 in contributions or made more than \$5,000 in ballot question expenditures.

In subsequent meetings the Board provided guidance that associations may use to make classification decisions regarding money received and money spent. I believe you have followed these actions. I attach to this letter a compilation of all of the guidance that the Board has provided, beginning with its June 30, 2011, action.

The Board does not consider these statements to be enforceable or to be binding on associations. Rather, they announce the Board's general intention as to approaches that it expects to use if it is required to decide a ballot question disclosure issue. Associations are free to make their own interpretations of the requirements of Chapter 10A and to apply them when they submit their disclosure. If an association's disclosure is called into question, the Board will look to Chapter 10A in deciding the question, but will allow the association to rely on the guidance to the extent that the guidance supports the association's position.

The Board recognizes that when statutory interpretation is required, it has multiple options. As you have noted, it may issue advisory opinions or engage in administrative rulemaking. Advisory opinions have the disadvantage of being binding only with respect to the requester. Rulemaking cannot provide assistance to associations who need immediate answers.

Additionally, administrative agencies may engage in statutory interpretation during the process of adjudicating matters that come before them. However, this approach applies an interpretation after the event triggering its application. It does not assist affected associations in understanding the statute's application before a potential violation occurs.

Rather than being silent on issues of importance; issues which its staff must address on almost a daily basis; the Board elected to explain some of its general approaches in advance. While not binding on anyone, this explanation at least provides factors that associations may consider as they engage in ballot question activities.

In summary, the Board, believes that the actions it has undertaken to provide guidance on the application of Chapter 10A are within its jurisdiction and do not result in any violation of the Minnesota Administrative Procedures act or of Chapter 10A, itself.

I look forward to meeting with you to further discuss this matter and to answer any remaining questions you may have. Again, thank you for the opportunity to respond to your concerns and for your interest in the Board's work.

Sincerely,



Gary Goldsmith
Executive Director

Attachments:

May 9, 2008, memorandum regarding issuing Board guidance statements
Compilation of Board Guidance

Report of the Minnesota Campaign Finance and Public Disclosure Board



Covering the Biennium for Fiscal Years 2010 and 2011

JULY 1, 2009 - JUNE 30, 2011

Issued: February, 2012

CAMPAIGN FINANCE and PUBLIC DISCLOSURE BOARD

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Minnesota

Campaign Finance and Public Disclosure Board

DATE: February 6, 2012

TO: The Honorable Mark Dayton, Governor
The Honorable Michelle Fischbach, President of the Senate
The Honorable David Senjem, Senate Majority Leader
The Honorable Kurt Zellers, Speaker of the House
The Honorable Matt Dean, House Majority Leader
The Honorable Thomas Bakk, Senate Minority Leader
The Honorable Paul Thissen, House Minority Leader

FROM: Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

SUBJECT: Annual Report, for the Biennium July 1, 2009, through June 30, 2011

Pursuant to Minnesota Statutes, chapter 10A.02, subd. 8 (a), the Campaign Finance and Public Disclosure Board submits this report of the Board's activities during the 2010 – 2011 Biennium.

The Board, consistent with its objectives and administrative procedures, provided guidance to the thousands of individuals and associations whose disclosure of certain political, economic interest, and lobbying activities is regulated by the Campaign Finance and Public Disclosure Act, Minnesota Statutes, Chapter 10A.

Included in this report is information about the campaign finance disclosure associated with the 2010 election cycle, the filing of lobbyist disbursement and lobbyist principal reports, and the filing of Statements of Economic Interest by public officials.

Throughout its activities the Board strives to accomplish its mission; which is to promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the board.

We recognize the importance the State of Minnesota places on public disclosure laws and the regulation of campaign finance activity and appreciate the trust placed in the Board and its staff by the Legislature and the Office of the Governor.

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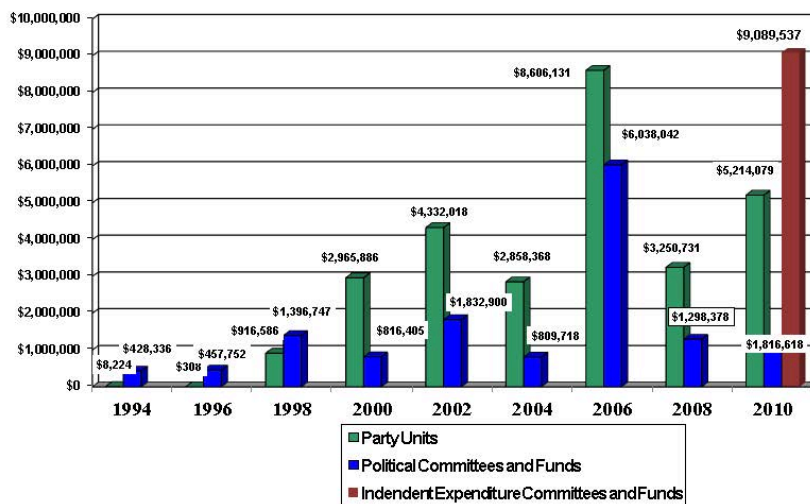
 Penalties Paid for Late Filing of Disclosure Reports and other Violations of Chapter 10A30

EXECUTIVE SUMMARY

The Campaign Finance and Public Disclosure Board is charged with the administration of the Campaign Finance and Public Disclosure Act, Chapter 10A of Minnesota Statutes. During fiscal years 2010 and 2011 the Board was challenged to administer the campaign finance provisions of Chapter 10A in light of the United States Supreme Court Ruling in *Citizens United v. Federal Election Commission*. This decision overturned Minnesota's prohibitions on the use of corporate funds to finance independent expenditures for or against candidates. The effect of this decision on the Board's clients and activities was dramatic. Board staff spent much of the 2010 legislative session providing analysis, assisting in the drafting of proposed statutory language, and supporting efforts by the legislature to amend provisions of Minnesota statutes to comply with the *Citizens United* ruling. At the same time, the Board worked on a plan to integrate corporate independent expenditures into Chapter 10A in the event that a legislative solution was not achieved. Through hard work by all parties involved major legislation to modify Chapter 10A was passed with strong bipartisan support on the last day of the 2010 legislative session.

However, for the Board, the passage of the legislation was only the beginning of the work needed to implement the *Citizens United* ruling. Forms and processes for registration and reporting for the newly authorized independent expenditure committees and funds had to be created in time for the 2010 election reporting periods later that same year. During 2010 newly created independent expenditure committees and funds made independent expenditures of \$9,134,914. The new sources of funding for independent expenditures as well as an apparent shift in the types of committees that made independent expenditures are seen in the following graph.

Independent Expenditures by Party Units, Political Committees and Funds and Independent Expenditure Committees and Funds



As the 2010 election year unfolded the Board was the subject of a lawsuit that challenged both the new statutes regulating independent expenditures, and some long established provisions of Chapter 10A. Staff supported the Attorney General's Office defense of Minnesota statutes with many hours of analysis and research during the litigation. As of the date of this report, the Board is awaiting a decision on the litigation by the full Circuit Court of Appeals for the Eighth Judicial District. .

Even without the *Citizens United* decision, the 2010 election year was set to be challenging as all legislative and constitutional offices were on the ballot. Public subsidy payments totaling \$4,011,037 were made to 364 eligible candidates at the 2010 election. Additionally, 2010 was the first election at which political committees and funds were required to file five reports of financial activity, compared to three reports in prior election years. With the additional reports came more report processing and client support demands on Board staff.

While the Board faced challenges in administering the campaign finance provisions of Chapter 10A in a changing landscape of court decisions and new statutory provisions, the lobbyist program remained relatively stable. About 1,450 lobbyists were registered with the Board at any one time throughout the two year period. The lobbyists represented about 1,300 principals. The principals reported total expenditures of \$59,199,895 in calendar year 2010, and \$62,904,757 in calendar year 2009.

The economic interest disclosure program for public officials was also stable in number at about 2,200 individuals required to file Economic Interest Statements with the Board. However, the election of Governor Dayton in 2010 did create a wave of new appointments to public official positions with the requisite processing of statements filed with the Board. Unfortunately, the Board has not yet been successful in fully integrating 800 BWSR members into its systems. Obtaining economic interest disclosure from BWSR members continues to be a difficult program to administer.

During the biennium the Board held twenty one scheduled meetings, one emergency meeting, and one special meeting at which public testimony was taken. During the meetings the Board issued nine advisory opinions; reviewed and approved sixty-one Findings of Probable Cause that resolved investigations based both on complaints filed with the Board and on inquiries initiated by the Board from the staff review of disclosure reports; and offered forty-two Conciliation Agreements to resolve contribution and spending limit violations of Chapter 10A.

Despite the increased work load the Board was able to operate within its budget. Primarily due to not filling staff vacancies, the Board returned over \$65,000 to the state general fund at the end of the 2010 – 2011 biennium. The decision to keep a position vacant for part of the biennium was difficult because it decreased the services provided by the Board to both the general public and the regulated community.

However, because of the considerable uncertainty over the Board's budget, filling the positions only to face one or more layoffs in the 2012 – 2013 biennium would have been even more damaging to Board operations due to unemployment compensation expenses.

The Board's budget is sufficient to maintain only 7.6 full-time equivalent staff positions. Based on its current and historical workloads, the Board needs nine staff members to maintain the levels of professionalism and service expected by its clients and the public. The Board looks forward to working with the legislature and the Governor's office in defining the type of disclosure and enforcement the people of Minnesota need and expect, as well as the budget that will be needed to accomplish the task.

INTRODUCTION TO THE BOARD

Authority

The Campaign Finance and Public Disclosure Board was established by the state legislature in 1974 through enactment of Chapter 10A of the Minnesota Statutes. Throughout its history the Board has enforced the provisions of Chapter 10A, promulgated and enforced Minnesota Rules 4501 through 4525, and issued advisory opinions to guide clients in meeting the chapter's requirements.

Mission Statement

To promote public confidence in state government decision-making through development, administration, and enforcement of disclosure and public financing programs which will ensure public access to and understanding of information filed with the Board.

Functions

Core functions of the Board include administration and management of the:

- registration and public disclosure by state legislative, constitutional office, and judicial office candidates, political party units, political committees, and political funds;
- state public subsidy program that provides public funding to qualified state candidates and the state committees of political parties;
- registration and public disclosure by lobbyists and principals attempting to influence state legislative action, administrative action, and the official action of metropolitan governmental units;
- disclosure of economic interest, conflicts of interest, and representation of a client for a fee under certain circumstances for designated state and metropolitan governmental unit officials.

Goals and Objectives

- Create better compliance with the Campaign Finance and Public Disclosure Act by moving to an educational model in which providing easy to access information and training reduces the number of violations.
- Provide fair and consistent enforcement of the Act.
- Help citizens become better informed about public issues related to the Act.

Board and Staff

- The Board consists of six members, none of who may be an active lobbyist, a state elected official, or an active candidate for state office. The Board is not non-partisan; rather it is multi-partisan, with no more than three of the members of the Board supporting the same political party. Additional information about Board composition and members is found below.
- The Board is able to maintain only 7.6 full time equivalent positions. Based on its current and historical workloads, the Board needs nine staff members to maintain the levels of professionalism and service expected by its clients and the public. Additional information about Board staff is found beginning on page 26.

Board Member Qualifications

The Board consists of six citizen members who are responsible for the administration of the Campaign Finance and Public Disclosure Act. Members of the Board are appointed by the Governor to staggered four-year terms. Their appointments must be confirmed by a three-fifths vote of the members of each house of the legislature. Two members must be former members of the legislature who support different political parties; two members must be persons who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment; and the other two members must support different political parties. The Board holds regular monthly meetings, which are open to the public and executive session meetings which are closed to the public.

Board Members - July 1, 2009 through June 30, 2011

Terri Ashmore - Left Board March, 2011



Terri Ashmore was appointed in January 2003, by Governor Tim Pawlenty and reappointed in January 2007 for a term ending in January 2011. Pending appointment of a new member she served through the March 1, 2011 Board Meeting. She served as a member of the Republican Party of Minnesota and has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of her appointment. Ms. Ashmore is the Managing Director of the Basilica of St. Mary. She serves on the Board of the Lundstrum Center of the Performing Arts which provides arts education and experiences for children and youth in North Minneapolis and volunteers for the Jeremiah Program, a housing and education program for single mothers.

Felicia Boyd - Left Board July, 2010



Felicia Boyd was appointed in April 2004, by Governor Tim Pawlenty and reappointed in January 2008. Ms. Boyd resigned from the Board July 29, 2010. She served as a member of the Republican Party of Minnesota with no restrictions on previous activities. Felicia J. Boyd is a partner with Barnes & Thornburg LLP in the firm's Minneapolis office, where she is a member of the firm's Intellectual Property Department. Ms. Boyd focuses her practice on complex intellectual property litigation and has led plaintiff and defense litigation on a large variety of claims related to patents, copyrights, trademarks, and trade dress. She is a graduate of the University of Minnesota Law School and St. Olaf College.

Bob Milbert - Left Board March, 2011 Board Chair Calendar Year 2010



Bob Milbert was appointed in January 2003, by Governor Tim Pawlenty and reappointed in January 2007 for a term ending in January 2011. Pending appointment of a new member he served through the March 1, 2011 Board Meeting. He is a former member of the legislature from the Democratic Farmer Labor party where he served as a member of the Minnesota House of Representatives for 16 years. He is a graduate of Dartmouth College. Mr. Milbert is the CEO of Milbert Company, a Culligan Water dealership. He is a Board member of the Minnesota Amateur Sports Commission, a former member of the USA Hockey Foundation, and volunteers for the United Way.



Hilda Bettermann - Board Chair Calendar Year 2009

Hilda Bettermann was appointed in April 2004, by Governor Tim Pawlenty and reappointed in January 2008 for a term ending in January 2012. She is a former member of the legislature from the Republican Party where she served in the Minnesota House of Representatives for eight years. Ms. Bettermann is currently a Board member of the Brandon History Center and the Douglas County Hospital Board. She is also a former member of the Central Lakes Area Sanitary District Advisory Council, Rural Health Advisory Council, the Workers Compensation Council and the MNSCU Trustee Advisory Council.



John Scanlon - Board Chair Calendar Year 2011

John Scanlon was appointed in October 2008, by Governor Tim Pawlenty to fill an unexpired term and reappointed in January 2010 for a term ending in January 2014. He fills a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment to the Board. Mr. Scanlon is an assistant general counsel with 3M Company. He currently provides general legal counsel to several 3M divisions and U.S.-based subsidiaries in a variety of substantive areas of law including contract, antitrust, product liability, product representation, and distribution. Previously he was an attorney with Dorsey and Whitney in Minneapolis and a law clerk to U.S. District Court Judge Paul A. Magnuson. He is a graduate of the University of Notre Dame and Notre Dame Law School.



Andy Luger

Andy Luger was appointed in March 2011, by Governor Mark Dayton for a term ending in January 2015. He fills a Board position requiring a member who supports a political party but otherwise has no restrictions on previous political activities. Mr. Luger is a partner at the Minneapolis law firm of Greene Espel, PLLP where he practices business litigation and white collar criminal defense. Previously, he was an Assistant United States Attorney in Minnesota and New York focusing on white collar criminal matters. He graduated from the Georgetown University Law Center magna cum laude and is a summa cum laude graduate of Amherst College.



Deanna Wiener

Deanna Wiener was appointed in March 2011 by Governor Mark Dayton for a term ending in January of 2015. She fills the position of a former DFL legislator and served as a state senator from 1993-2003. Ms. Wiener has been a Realtor since 1977 and is currently a Broker and Co-owner of Cardinal Realty Co. She is also a partner in land development businesses. Currently she serves as a director to the National Association of Realtors and is a board member of the St. Paul Association of Realtors and serves on the board of the Friends of Mississippi. She is a graduate of St. Mary's Jr. College, now St. Catherine's, with an associate degree in nursing.



Greg McCullough

Greg McCullough was appointed in May 2009 by Governor Tim Pawlenty for a term ending in January 2013. He fills a Board position requiring a member who has not been a public official, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the member's appointment to the Board. Mr. McCullough is a communications leader at GE. In previous roles, he led marketing operations for Fortune-class companies in the information technology, chemical, and commercial real estate industries. He earned BA and MS degrees from Northwestern University and an MBA from the University of Minnesota.



David Swenson

David Swenson was appointed in December 2010, by Governor Tim Pawlenty, to complete a term ending in January 2012. He fills a Board position requiring a member who supports a political party but otherwise has no restrictions on previous political activities. He grew up in New Hope, MN, attended Boston College, then earned his law degree from the University of Minnesota Law School and his Masters in Public Affairs from the University's Humphrey Institute. After school, Mr. Swenson clerked for the Minnesota State Court of Appeals, followed by the U.S. Court of Appeals for the Federal Circuit in Washington, D.C., then practiced law in Washington for ten years. He returned to Minnesota in 2007, and is a partner at the law firm of Robins, Kaplan, Miller & Ciresi LLP, practicing in the area of patent litigation and appeals. Mr. Swenson also serves on the Community Board of the Blaisdell YMCA.

Summary of Board Activities

Meetings

The Campaign Finance and Public Disclosure Board held 21 scheduled meetings, one emergency meeting, and one special meeting at which public testimony was accepted, during the biennium. Minutes of Board meetings are published on the Board's web site.

Advisory Opinion Procedure

The Board is authorized to issue advisory opinions on the requirements of the Campaign Finance and Public Disclosure Act (Minn. Stat. chapter 10A) and the Hennepin County Disclosure Law (Minn. Stat. §§ 383B.041 - 383B.058). Individuals or associations may ask for advisory opinions based on real or hypothetical situations to guide their compliance with these laws.

A request for an advisory opinion and the opinion itself are nonpublic data. The Board provides Consent to Release Information forms to individuals requesting opinions as part of the procedures under this law. If the requester does not consent to the publication of the requester's identity, the Board generally publishes a public version of the opinion, which does not identify the requester.

A written advisory opinion issued by the Board is binding on the Board in any subsequent Board proceeding concerning the person making or covered by the request and is a defense in a judicial proceeding that involves the subject matter of the opinion and is brought against the person making or covered by the request unless: 1) the Board has amended or revoked the opinion before the initiation of the Board or judicial proceeding, has notified the person making or covered by the request of its action, and has allowed at least 30 days for the person to do anything that might be necessary to comply with the amended or revoked opinion; 2) the request has omitted or misstated material facts; or 3) the person making or covered by the request has not acted in good faith in reliance on the opinion.

A total of nine advisory opinions were issued in fiscal years 2010 and 2011, and two advisory opinions were revoked. A summary of each advisory opinion issued during the biennium is provided in the review of programs administered by the Board.

Education and Training Outreach

To accomplish the goal of educating clients and the interested public on the compliance and reporting requirements of Chapter 10A Board staff conducted the following training during the biennium:

- 13 compliance training sessions for candidates, treasurers and chairs of principal campaign committees, political party units, and political committees and funds
- 13 computer lab training classes for clients who use the Campaign Finance Reporter software
- 1 seminar prior to the legislative session for lobbyists.

Recognizing the cost and inconvenience for clients to attend training in St. Paul the Board provided, for the first time, web based training to clients. The Board conducted two live training sessions over the internet for users of Campaign Finance Reporter and internally produced eight videos on specific topics related to using Campaign Finance Reporter. The videos are available on the Board's web site. Based on favorable client feedback both of these training tools will be used more extensively in the future.

Additionally Board staff participated in numerous panels, presented at many continuing legal education courses, and spoke to interested groups of the public on the requirements of Chapter 10A.

Use of Technology

The Board has long recognized the value of receiving disclosure reports in electronic format. Electronic reports may be moved directly into Board databases where the records are analyzed for compliance issues and then ported to the Board's website for faster disclosure to the public. Electronic filing eliminates the cost and errors associated with data entry of paper reports.

To facilitate electronic filing the Board developed web based applications for filing lobbyist disbursement reports, lobbyist principal reports, and the annual certification by public officials of the Economic Interest Statement. Use of these web based applications is optional, clients may still file a paper report, but all three applications have participation rates of well over 90%, which indicates that clients also prefer electronic filing.

Additionally, beginning in 1998, the Board has offered a free PC based reporting application known as Campaign Finance Reporter for use by candidates, political parties, and political committees and funds. In 2010 the

legislature acknowledged the advantages of electronic filing in promoting disclosure to the public and passed a Board recommendation that electronic filing be mandatory for campaign finance reports beginning with the 2012 election cycle. Since the passage of this requirement Board staff has been developing a XML schema that will be the standard for the electronic filing of campaign finance reports using any vendor's software. The use of XML is also being incorporated into Campaign Finance Reporter so that the Board only needs to support one electronic file format.

The Board increasingly turns to the internet to provide the point of access for clients and the general public to Board applications and information. During fiscal year 2010 the Board's website received 103,650 separate visits; in fiscal year 2011 the site received 93,548 separate visits.

The Board website offers

- Board meeting notices and minutes;
- Board Enforcement Actions - Findings and Conciliation Agreements;
- Advisory Opinions;
- Lists of lobbyists and associations, candidate committees, political committees, political funds, party units, and public officials;
- Copies of all campaign finance and lobbyist reports;
- Electronic filing for lobbyists and lobbyist principals;
- Electronic filing of the *Annual Statement of Economic Interest* for public officials;
- All Board publications and forms;
- Searchable databases of campaign finance contributions;
- Searchable database of independent expenditures;
- Campaign Finance Summaries;
- Lobbyist Disbursement Summaries;
- Annual Report of Lobbyist Principal Expenditures;
- Training videos on the use of Campaign Finance Reporter

PROGRAM REVIEWS

The Board administers three major and several minor programs as authorized by Minnesota Statutes Chapter 10A. The major programs are campaign finance, lobbying, and economic interest disclosure. The review of each major program includes a general description of the program, a review of legislation passed during the biennium that affects the program, a review of any Board advisory opinion issued during the time period for the program area, and an overview of administrative activity that occurred during the biennium.

CAMPAIGN FINANCE PROGRAM

Program Overview

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern campaign finance laws for principal campaign committees, political committees, political funds, political party units, and independent expenditure committees and funds.

During a non-election year these committees and funds file one year-end report disclosing receipts and expenditures to the Board. During the 2010 election year candidates and political party units filed three reports; all other committees and funds filed five. The 2010 election was the first year that political committees and funds were required to file more reports than candidates or party units. The number of filed reports will increase to six reports a year in 2012 for political committees and funds, but will remain at three a year for candidates and party units. Information on the number of reports filed is found on page 18.

Each filed report is reviewed by Board staff for compliance with the disclosure law requirements, including accurate accounting and reporting, and adherence to applicable contribution and expenditure limits. Violations of contribution and expenditure limits are resolved through either a Conciliation Agreement or in some cases a Board Finding of Probable Cause. Information on Board investigations and enforcement actions is found on page 21.

As a part of the campaign finance program the Board administers and regulates the distribution of payments for the state's public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties. Payments are made following the state primary election to candidates and monthly to the state committees of political parties. Information on the payments is found on page 19.

Legislative Action

Legislation passed in 2010 amended Minnesota Statutes Chapter 10A in the following ways:

- If a volunteer using the volunteer's own personal automobile chooses not to be reimbursed for the expense the use of the automobile is NOT recognized as an in-kind contribution. Unreimbursed volunteer automobile use is no longer a reportable transaction. This treatment of automobile use also applies to use of the candidate's automobile by the candidate.
- Established two new registered entities, the independent expenditure political committee, and the independent expenditure political fund. These entities may accept contributions and transfers from corporations and other associations not registered with the Board. These entities may make independent expenditures on behalf of candidates or expenditures on ballot questions, but may NOT make contributions to candidates, political parties, or regular political committees or funds.
- Established standards for the disclosure of underlying contributions made to independent expenditure committees and funds from unregistered associations.
- An association that makes qualifying independent expenditures without registering an independent expenditure political committee or fund is subject to a civil penalty of up to four times the amount of the independent expenditure, not to exceed \$25,000, except when the violation was intentional.
- Announcing a formal public endorsement of a candidate for public office is not an independent expenditure, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure.
- Established a new non-campaign disbursement; costs paid to a third party for processing contributions made by a credit card, debit card, or electronic check.

- All registered political committees and funds, political party units, and candidate committees must provide e-mail addresses for officers and the website address for the committee if one exists.
- Campaign Finance reports must be filed electronically in a standards-based open format specified by the Board beginning in 2012. For good cause, the Board must grant exemptions to this requirement.
- All campaign finance reports are nonpublic data until 8:00 a.m. on the day following the day the report was due.
- The campaign finance reports of the state central committees and legislative caucuses of the Republican and Democratic Farmer Labor parties may not be released to the public until the report from the equivalent unit of the opposing party is on file with the Board.
- During an election year political committees and funds must file Reports of Receipts and Expenditures 56, 28, and 15 days prior to the state primary election, 42 and 10 days prior to the state general election, and a year-end report.
- Political party units and candidate committees must file Reports of Receipts and Expenditures 15 days prior to the state primary election, 10 days prior to the state general election, and a year-end report.
- Each Report of Receipts and Expenditures includes activity from January 1 to the close of the reporting period.
- The late filing fee for a year-end report was increased from \$5 to \$25 per day, with the maximum total late fee raised from \$100 to \$1,000.

- The late fee for pre-primary and pre-general election reports begins the day after the report was due without notice. The maximum total late fee rose from \$500 to \$1,000.
- In an election year the contribution limit to Secretary of State and State Auditor candidates increased from \$500 to \$1,000. In a nonelection year the limit increased from \$100 to \$200.
- A contribution limit of \$2,000 in an election year for the office sought and \$500 in a year in which the candidate is not on the ballot was set for all judicial candidates.
- A candidate who is eligible for a public subsidy payment may not receive the payment until the candidate has filed the pre-primary Report of Receipts and Expenditures. A candidate who does not file the pre-primary report prior to the deadline for submitting the pre-general report is no longer eligible to receive a public subsidy payment.
- A candidate must sign the public subsidy agreement no later than 3 weeks prior to the date of the primary election in a state general election year, and no later than the day after the close of filing for office in the case of a special election.
- The Affidavit of Contributions must be signed and filed by the candidate no later than the deadline for filing the pre-primary report in a state general election year, and within 5 days of the close of the filing period for a special election.
- Eligible contributions received during the calendar year prior to the year on which the candidate is on the ballot may be counted towards the amount of qualifying contributions needed to receive a public subsidy payment.

Advisory Opinions Issued Related to the Campaign Finance Program

- Advisory Opinion 408 answered questions on whether the use of a motor vehicle as an advertising device for a principal campaign committee would result in an in-kind contribution from the vehicle owner to the committee even when the vehicle is not being used specifically for campaign activities.
- Advisory Opinion 410 provided that an independent expenditure is an expenditure 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 any candidate's principal campaign committee or agent.” Communications with others that do not involve any candidate, candidate's principal campaign committee, or agent, will not defeat the independence of an expenditure.
- Advisory Opinion 411 stated that the use of the noncampaign disbursement category for expenses of serving in office is not available to pay for home health care of a close relative while a public official is traveling. The Board declined to establish a new noncampaign disbursement category to permit this proposed use of principal campaign committee funds.
- Advisory Opinion 412 considered whether a candidate's contribution to, or support of, an independent expenditure political committee or fund affects the independence of expenditures by that political committee or fund benefitting other candidates. The opinion provided that in specific situations a candidate as an individual may contribute to or otherwise support an independent expenditure committee, but that a candidate who has signed the public subsidy agreement may not use their committee funds to contribute to an independent expenditure committee or fund.
- Advisory Opinion 415 considered whether a candidate's committee could make a contribution to a fund established to pay for the costs of that candidate's election ballot recount. The opinion provided that such a contribution could be made and that the Board would use the opinion to create a new

noncampaign disbursement category for candidates.

- On June 30, 2011, the Board revoked Advisory Opinions 257 and 343. These two opinions provided that a corporation that donates to ballot question committees and funds are not required to disclose information on the underlying source(s) of the corporation's funding. The Board determined that the conclusions of these two opinions were not consistent with provisions of Minnesota Statutes requiring disclosure from unregistered associations.

Campaign Finance Disclosure Reports Filed

Number of Reports of Receipts and Expenditures filed by candidates, political party units, political committees, and political funds during the biennium.

2010 Election Year	Paper Reports Filed	Electronic Reports Filed	Total
Candidate Committee (3 reports)	1,004	963	1,967
Political Party Unit (3 reports)	729	267	996
Political Committee or Fund (5 reports)	1,547	422	1,969
2010 Totals	3,280	1,652	4,932
2009 Nonelection Year			
Candidate Committee (1 report)	453	292	745
Political Party Unit (1 reports)	253	82	335
Political Committee or Fund (1 report)	327	72	399
2009 Totals	1,033	446	1,479

Electronic Filing of Campaign Finance Reports

Principal campaign committees, political committees, political funds, and political party units have been using the Campaign Finance Reporter software since 1998. The Board provides the software to registered committees without charge. The maintenance, upgrade, training, and helpdesk support of the software is provided by Board staff.

The software provides compliance checks and warning as records are entered, generates electronic reports for filing that reduce the data entry demands on Board staff, and provides contact management tools for the committees that use the software.

Number of Committees Filing Electronically	Reporting year	Principal campaign committees	Political committees, political funds, and political party units
	2010	376	174
	2009	292	154
	2008	278	135
	2007	201	114
	2006	228	126
	2005	174	75

Public Subsidy Payments

The Board administers the distribution of payments for the state's public subsidy program, which provides public funding to qualified state candidates and the state committees of political parties.

Payments Made for the 2010 State General Election

To be eligible to participate in the public subsidy program, a candidate must sign and file a public subsidy agreement with the Board in which the candidate agrees to abide by statutory campaign expenditure limits and to limit contributions by the candidate to the candidate's principal campaign committee. A candidate must also raise a specified amount in individual contributions and file an affidavit stating that this requirement has been met. Overall 416 of the 473 candidates who filed for a legislative seat or constitutional office in 2010 (or 88%) voluntarily signed public subsidy agreements.

The Campaign Finance and Public Disclosure Board distributed \$3,998,646 in public subsidy payments to 361 candidates in 2010 (fiscal year 2011). The 361 candidates who received a public subsidy payment represent 85% of the 422 major or minor party candidates who were on the general election ballot.

Public subsidy payments made by office and party in 2010 were as follows:

Office	DFL	RPM	IPMN
Governor	\$0	\$515,953	\$348,279
Attorney General	\$180,409	\$0	\$0
Secretary of State	\$67,214	\$58,967	\$0
State Auditor	\$67,214	\$58,967	\$0
State Senate	\$813,551	\$618,818	\$6,488
State House	\$750,620	\$496,934	\$15,226
Total	\$1,879,010	\$1,749,641	\$369,994

Political Contribution Refund Program

By statute candidates who sign the public subsidy agreement and political parties are allowed to give political contribution refund receipts to individual contributors. As part of the response to a state budget shortfall Governor Pawlenty used his authority of unallotment to eliminate funding for the political contribution refund program during fiscal years 2010 and 2011.

Political Party Payments

The state committees of political parties receive 10% of the tax check-offs to the party account of the State Elections Campaign Fund. Based on monthly certification from the Department of Revenue for the 2010 – 2011 biennium payments to political parties were as follows:

Party	FY 2010	FY 2011
Democratic Farmer Labor	\$45,582	\$40,391
Green Party of Minnesota	\$3,567	\$2,893
Independence Party of Minnesota	\$6,423	\$8,648
Republican Party of Minnesota	\$27,189	\$21,923
Total payments to State Party Committees:	\$82,762	\$73,855

Campaign Finance Enforcement Actions

The Board conducts investigations of possible violations of the provisions of Chapter 10A. An investigation is started in response to a complaint filed with the Board, or may be initiated by staff based on information disclosed on documents filed with the Board.

Investigations of possible violations of the contribution limits for a candidate, or the expenditure limit for a candidate who signs the public subsidy agreement, are typically resolved with the Board offering a Conciliation Agreement. The Conciliation Agreement will set the terms under which excess contributions are returned, and provide for a civil penalty to the committee for exceeding the contribution or expenditure limit.

Investigations of other possible violations of Chapter 10A are resolved through the issuing of a Board Finding of Probable Cause. The Board issues Findings if there is probable cause to believe that a violation of Chapter 10A occurred, and will issue a Finding stating that there is no probable cause to believe a violation occurred if warranted.

During fiscal year 2010 the Board issued thirty one Conciliation Agreements to resolve violations of Chapter 10A. In fiscal year 2011 an additional eleven Conciliation Agreements were offered. All of the Conciliation Agreements were accepted.

In fiscal year 2010 the Board issued twenty five Findings to conclude investigations. Of that total seven were in response to a complaint filed with the Board. In fiscal year 2011 the Board issued thirty six Findings, with ten of that total in response to complaints filed with the Board.

To insure compliance with disclosure deadlines Chapter 10A provides for late fees applied at the rate of \$25 dollars a day for year-end Reports of Receipts and Expenditures, and \$50 a day for pre-primary-election and pre-general-election Reports of Receipts and Expenditures. Disclosure reports that are filed after a \$1,000 late fee has accumulated may also be subject to an additional \$1,000 civil penalty.

Civil penalties and late fees collected by the Board are deposited in the state general fund. A breakdown of late fees and civil penalties collected as enforcement of the campaign finance program is provided on page 30.

LOBBYIST PROGRAM

Program Overview

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern registration and public disclosure by lobbyists and their principals attempting to influence state legislative action, administrative action, and the official action of metropolitan governmental units.

Lobbyists are required to report disbursements for lobbying purposes to the Campaign Finance and Public Disclosure Board two times each year (January 15 and June 15). On the June 15th report the lobbyist must provide a general description of the subject(s) lobbied on during the previous 12 months.

Individuals or associations that hire lobbyists or spend \$50,000 or more to influence legislative action, administrative action, or the official action of certain metropolitan governmental units, are “principals” and are required to file an annual report disclosing total expenditures on these efforts. The report is due March 15th, and covers the prior calendar year.

Legislative Action

There were no statutory changes to the provisions of Chapter 10A that regulate lobbyists and principals during the 2010 – 2011 Biennium.

Advisory Opinions Issued Related to the Lobbying Program

- Advisory Opinion 407 provided that an offer by the Minnesota Twins (a principal) to allow Hennepin County local officials the right to purchase a ticket to the Minnesota Twins opening game from a pool of tickets reserved for people directly and substantially involved in bringing the ballpark project to successful completion was a prohibited gift.

- Advisory Opinion 409 looked at situations in which communication with public officials for compensation would bring an individual within the definition of a lobbyist. The opinion also provided that once a person is a lobbyist all support for the lobbyist's communication is reported as lobbyist disbursements. Underlying support activities for a project are not lobbyist disbursements unless they support a lobbyist's communications.
- Advisory Opinion 413 reviewed how corporate structure may affect the registration of lobbyists with the Board. The opinion states that lobbyists must register on behalf of each association whose interests they promote, regardless of the mechanism used to retain or direct the efforts of the lobbyists.
- Advisory Opinion 414 reviewed a very specific set of facts regarding an award given to a public official by a principal and found that a presentation item that is in the form of a decorative axe is a plaque with a resale value of five dollars or less and, thus, is exempt from the gift prohibition.

Lobbyist Disbursement Reports

The Board has developed a web based reporting system for lobbyists. Use of the system is voluntary, but as shown below it is used by most lobbyists as the reporting method of choice. Lobbyist disbursement reports are available for review on the Board web site.

Reporting year	Reports filed	Electronically filed
2010	3,950	98%
2009	4,028	93%
2008	4,022	92%
2007	3,798	90%
2006	3,445	88%

Principal Expenditures

Chapter 10A requires principals to file an annual report disclosing expenditures made in Minnesota to influence legislative, administrative, or official actions by a metropolitan governmental unit. The disclosure is a single number which may be rounded to the nearest \$20,000. Total principal expenditures for calendar years 2009 and 2010 are shown below.

2010	\$59,172,799
2009	\$62,909,757

Lobbyist Program Enforcement Actions

The Board completed one investigation and issued one Finding regarding the requirement to register as a lobbyist during the biennium. In addition during the biennium eight lobbyists were penalized for making contributions to candidates during a legislative session.

Information on late fees and civil penalties paid by lobbyist and principals for missing a report filing deadline is found on page 30.

ECONOMIC INTEREST PROGRAM

Program Overview

The Board administers the provisions of Chapter 10A of the Minnesota Statutes that govern disclosure of economic interests by public officials and local officials in metropolitan governmental units. There are approximately 2,200 public officials who file with the Board. Local officials use forms developed by the Board, but file with the local government unit.

Original statements of economic interest must be filed at the time of appointment, or for candidates, when the candidate files for office. All incumbent candidates and appointed officials must file annually by April 15th of each year a supplemental statement if there are changes to be reported from the previously filed statement. The Board has developed a web based system for submitting supplemental economic interest statements.

Legislative Action

There were no statutory changes to the provisions of Chapter 10A that regulate economic interest statements during the 2010 – 2011 Biennium.

Advisory Opinions Issued

No advisory opinions related to economic interest statements were issued during the biennium.

OTHER BOARD PROGRAMS

Potential Conflict of Interest

A public or local official who in the discharge of the official's duties would be required to take an action or make a decision that would substantially affect the official's financial interest or those of an associated business must under certain circumstances file a *Potential Conflict of Interest Notice*, or a written statement describing the potential conflict. If there is insufficient time to comply with the written requirements oral notice must be given to the official's immediate supervisor of the possible conflict. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must file the Notice with the Board and a local official must file with the governing body of the official's political subdivision. The statement must be filed within one week of the action taken.

Public Employees Retirement Association (PERA) Trustee Candidates

Candidates for election as PERA Trustees are required to file certain campaign finance disclosure reports with the Campaign Finance and Public Disclosure Board under Minn. Stat. § 353.03, subd. 1. Under this statute, the Board prescribes and furnishes to trustee candidates the reporting form and instructions for completing the form.

Enterprise Minnesota, Inc

The agency name was changed from Minnesota Technology, Inc (MTI) to Enterprise Minnesota in 2008. Minn. Stats. §§116O.03 and 116O.04 require certain disclosure by the board of directors and the president of Enterprise Minnesota upon appointment and annually thereafter during their terms in office. Under these statutes, the Board prescribes and furnishes to the directors and president the reporting form and instructions for completing the form.

State Board of Investment (SBI)

Minn. Stat. §11A.075 requires certain disclosure by SBI members upon appointment and SBI employees upon hire and by both annually until termination of appointment or employment. Under this statute, the Board prescribes and furnishes to the members and employees the reporting form and instructions for completing the form.

Representation Disclosure

A public official who represents a client for a fee before any individual board, commission, or agency that has rule making authority in a hearing

conducted under Minnesota Statutes, Chapter 14, and in the cases of rate setting, power plant and powerline siting, and granting of certificates of need under Minn. Stat. §216B.243, must file a *Representation Disclosure Statement* within 14 days after the appearance has taken place, disclosing the official's part in the action.

Local Pension Plans

Members of a governing board of a covered pension plan and the chief administrative officer of the plan are required to file certain *Statements of Economic Interest* with the governing board under Minn. Stat. §356A.06, subd. 4.

The Office of the State Auditor prescribes the statement and instructions for completing the statement. The chief administrative officer of each covered pension plan must submit to the Campaign Finance and Public Disclosure Board a certified list of all pension board members who filed statements with the pension board no later than January 15th. Approximately 755 pension plans are required to file with the Board under this law. The Board does not have jurisdiction over enforcement of this certification requirement.

STAFF DUTIES

Executive Director

Facilitate achievement of the Board's goals and objectives. Set agenda and prepare materials for Board and committee meetings. Direct all agency and staff operations. Draft advisory opinions for Board consideration. Serve as the Board's representative to the Legislative and Executive Branch. Educate and assist clients in compliance with reporting requirements, limits, and prohibitions. Administer the preparation of the biennial budget.

Assistant Executive Director

Serve as advisor to the Executive Director and assist in management of the operations for the agency. Conduct complex investigations and prepare drafts for Board consideration. Reconcile and report on the Board's financial systems. Supervise the agency's compliance programs and information resources. Administer the state public subsidy payment program.

**Office Manager
Office Services Supervisor**

The duties of this position were distributed to other Board staff and the Smart Team offered by the Department of Administration for small agencies.

**Policy and Planning Analyst
Management Analyst 2**

Develop documentation of Board operations and policies. Serves as an internal management consultant providing support and analysis of agency operations, policy, procedures, and management structures and makes recommendations for improvement based on those studies.

**Compliance Officer
Investigator**

Investigate complaints and draft Conciliation Agreements and Findings for Board consideration. Serve as investigative liaison to the Board, Executive Director, and Attorney General's office. Monitor cases for Revenue Recapture and Minnesota Department of Revenue Collections Division. Prepare and submit reports to the Department of Finance regarding civil penalties. Prepare and conduct training classes for clients on campaign finance reporting requirements.

**Programs Administrator
Office and Administrative
Specialist Principal**

Provide for distribution, collection, data entry, and filing of disclosure required by Minn. Stat. chapter 10A. Collect, store, and retrieve data for the preparation and analysis of summaries of documents filed with the Board. Provide database advice and guidance to Board staff and clients.

**Information Technology
Specialist III**

Develop, maintain, and manage complex database applications to support administration of all Board programs and activities. Provide technical service, assistance and training to Board staff. Develop, administer, and provide technical support for the Board's website. Provide client training and support in the use of the Campaign Finance Reporter Software.

**Information Technology
Specialist III**

Insure that the technology resources of the Board support applicable business rules and statutory obligations. Provide application design development and administration in response to management requests. Provide high-level programming. Design and support multiple complex relational databases.

**Programs Assistant
Office and Administrative
Specialist Intermediate**

Provide assistance with data entry and initial desk review for all filed reports. Assist with mailing, copying, and filing of all documents filed with the Board in all agency programs. Maintain agency receipts for deposit with the State Treasurer. Provide general administrative and program support.

Staff Salaries

Fiscal Years 2010 and 2011

Position	Staff	FY 2010	FY 2011
Executive Director	Gary Goldsmith	\$90,619	\$94,226
Assistant Executive Director	Jeffrey Sigurdson	\$88,439	\$86,439
Office Manager	LuAnn Swanson	\$6,898	NA
Policy and Planning Analyst	Rebecca Shedd	\$39,399	\$28,738
Investigator	Joyce Larson	\$51,386	\$51,385
Information Technology Specialist III	Jon Peterson	\$54,051	\$54,374
Information Technology Specialist II - III	Jon Glass	\$41,572	\$44,352
Office and Administrative Specialist Principal	Marcia Waller	\$38,356	\$39,134
Office and Administrative Specialist Intermediate	Yalana Johnstone	\$4,938	NA
Office and Administrative Specialist Intermediate	Elizabeth White	\$11,365	\$30,521
Total Salaries		\$425,086	\$429,172

BOARD FINANCIAL INFORMATION

Biennial Budget Fiscal Years 2010 and 2011

Income Summary	FY 2010	FY 2011
Original Appropriation	\$748,000	\$748,000
Fiscal Year 2010 Unallotment	(\$28,000)	
Fiscal Year 2011 Unallotment		(\$9,000)
Photocopy Revenue	\$117	\$90
Service Processes Fees Recovered		
Miscellaneous Income		\$495
Carry Forward from fiscal year 2010 (A)		\$58,882
Total	\$720,117	\$798,467

Expenditure Summary		
Operating budget expenditures	(\$661,235)	(\$732,910)
Operating budget balance forward to fiscal year 2011 (B)	(\$58,882)	
Returned to State General Fund at End of Biennium		\$65,557

Board Operating Budget

The Campaign Finance and Public Disclosure Board is funded by a direct appropriation from the Minnesota Legislature. Over 80% of the Board's budget is used to pay the fixed costs of salary and benefits, rent, and postage for required mailings.

Salary and Benefits	FY 2010	FY 2011
Full time staff (salary and fringe)	561,144	563,512
Workers compensation	233	206
Per diem	2,475	2,860
Vacation payment/retirement	13,086	0
Unemployment Benefit	3,900	2,414
Salary and Benefits Sub Total	580,838	568,992
Operating Expenses		
Office rent	40,262	41,931
Postage	10,169	10,915
Telephone	4,838	5,048
Miscellaneous Rents	350	0
Photocopy machine leases	6,087	3,151
Travel	3,403	3,833
Printing	33	1,675
Board meeting expenses	2,312	2,364
Staff / Board development	2,969	7,836
Subscriptions, Memberships	685	612
Supplies/Equipment	5,403	52,925
Purchased services	1,581	27,745
Legal costs	1,016	572
Repairs and Maintenance	0	1,341
E-Government	937	3,969
Operating Expense Sub Total	80,398	163,917
Board Operating Budget Total	\$661,235	\$732,910

Penalties Paid for Late Filing of Disclosure Reports and other Violations of Chapter 10A

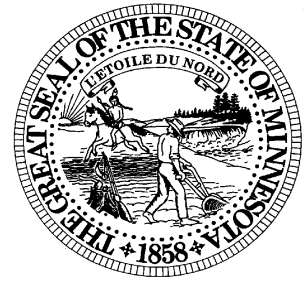
The following is a listing of fees and fines paid during the biennium. Some fees and fines may have been assessed prior to fiscal year 2010, and some fees and fines assessed during the biennium were not paid by June 30, 2011.

Late Filing Fees	FY 2010 Dollars Paid	Number of Violations	FY2011 Dollars Paid	Number of Violations
Principal Campaign Committees	3,534	28	17,139	124
48 Hour Notice	350	3	5,665	33
Political Committees and Funds	500	5	14,305	110
Political Party Units	200	1	6,150	36
Economic Interest Statements	705	14	820	19
Lobbyist Disbursement Report	653	13	450	7
Lobbyist Principal Annual Report	950	33	2,095	60
Total Late Fees	6,893	97	46,624	389

Civil Penalties	FY 2010 Dollars Paid	Number of Violations	FY2011 Dollars Paid	Number of Violations
Contribution from Unregistered association				
Unregistered association	3,025	6	3,508	6
Political Committees and Funds	2,850	3	400	1
Political Party Units	1,380	2		
Candidate			2,050	2
Contribution limits violations				
Candidates accepted in excess of limit	14,130	15	670	4
Special source (20%) aggregate limit	3,716	13	1,598	8
PCF Contribution exceeded limits	16,353	6	170	2
Excess lobbyist contributions	100	1		
Excess Party Unit Contribution	850	2		
Candidate Exceeded Spending Limit			664	1
Prohibited contributions during session				
Political Committee and Funds	2,000	2	1,250	2
Terminating Candidates	500	1	930	5
Lobbyist	550	2	800	3
Failure to file disclosure report				
Candidate Committees	5,970	20	3,057	15
Political Committees and Funds	1,000		400	1
Political Party Units			300	1
Lobbyist Principal	400	1	2,300	5
Failure to file amended report			1,281	5
Economic Interest Statement	300	1		
Certified False Information	3,000	1		
Total Civil Penalties	56,124		19,378	
Total Late Fees and Civil Penalties Deposited in State General Fund	63,017		66,002	

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: February 8, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: House File 1780

House File 1780 amends the definition of "public official" under Chapter 10A by adding the following positions: District Court judge, Appeals Court judge, Supreme Court justice, and county commissioner.

Adding to the list of positions that are "public officials" has the effect of expanding the economic interest disclosure program. From an administrative standpoint, we have still not been able to fully integrate into our systems the expansion of 2008 in which soil and water groups were added to the definitions, increasing the number of public officials by about 800.

Part of the problem caused by simply expanding the definition of "public official" is that no consideration is given to Minn. Stat. §10A.09, which specifies the requirements for filing Statements of Economic Interest. For example, people running for a state office file an Economic Interest Statement when they file to be on the ballot. However, even though they file to be on the ballot, this filing trigger does not apply to soil and water conservation district supervisors and it would not generally apply to county commissioners, because they are not filing for "state office". Without changes in the Economic Interest Statement filing requirements, the Board is left to decide how the requirements apply to new groups that are dissimilar to historic Economic Interest Statement filers.

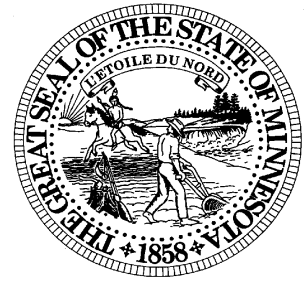
Filing requirements could be clarified by amending the bill to address the §10A.09 issues. If the bill gets a hearing, I will inform the committee of this need. However, no amendment to the bill can alter the fact that it will place additional administrative burdens on the Board at a time when its staff resources are already stretched thin.

The bill would add 315 judges and 447 county commissioners to the Economic Interest Statement program. While our computer databases could fairly easily be modified to accommodate these new groups, a significant effort will be required to educate filers, obtain initial reports, and enter those reports into our database. Additional efforts will be required at the time of filing for office during each general election year, after each general election, and at the time that annual supplementary reports are due. About half of the county commissioners and about one-third of the judges are on the ballot in each general election year.

Last year I was asked if the Board had a position on a similar bill. The purpose of this agenda item is to allow the Board an opportunity for discussion in case the question arises again.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: February 8, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Watershed District manager waiver requests

Staff recommends that the four requests for waivers of late filing fees and civil penalties for Watershed District managers on the February 14, 2012, agenda be granted and that the one late filing fee that was paid be refunded. This recommendation is based on irregularities in the handling of these particular matters and is not intended to modify the Board's general approach to waiver requests.

Watershed District managers are appointed by many different appointing authorities. Because of the large and diverse body of appointing authorities and limited staff resources, we have not yet been able to develop the databases, processes, and training that would enable us to obtain timely notice of appointments and retirements. Rather, we rely on an annual certification process through which a Watershed District updates a manager list that we send to it. This often results in the disclosure of new managers who have been serving for substantial periods prior to our knowing about it. In some cases, the statutory time within which to file a Statement of Economic Interest has already passed by the time we have notice of the appointment. This was the case with each of the subject individuals.

When we receive a late notice of appointment of a Watershed District manager, we give the manager 60 days from the date of our notice to file their Statement of Economic Interest. It has been an internal practice to advise filers of the potential for a late filing fee prior to the time that fee starts.

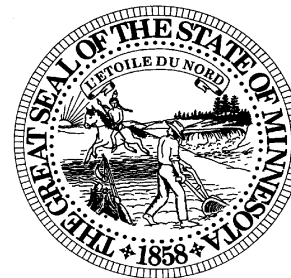
These four matters arose as we were anticipating a July 1, 2011, state government shutdown. As a result, we requested the statements be submitted prior to the 60 day extended due date so that we could process them before the shutdown. Unfortunately, the original filing notice did not address the question of a late filing fee.

None of the subject statements came in before the shutdown. After the shutdown, there was substantial work involved in clearing a backlog of higher priority Board business. As a result, our usual outreach to these individuals was not accomplished. Although in some cases, ineffective attempts were made to reach these filers, in some cases, the next communication they received from us was a letter advising them that a late filing fee had already begun to accrue.

I have reviewed with staff the policies we had in place to handle these late notices of appointment. We are studying and will implement changes to speed up the filing process, to be more pro-active with filers, and to ensure that adequate notices have been given in all cases before late filing fees begin. Within the next 60 days I expect to bring the results of our work to the Board in the form of a formal policy for Board consideration and possible adoption.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: February 8, 2012

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Advisory Opinion 423

Attached please find a copy of a letter from Mr. John Pratt of the Minnesota Council of Nonprofits requesting an advisory opinion related to in-kind contributions in the ballot question context. The request results in part from the Board's response to Issue Seven of Advisory Opinion 421 which mentioned in-kind contributions but actually asked about reporting of an expenditure. For your information I am also attaching a copy of Advisory Opinion 421.

Pursuant to a consent for release of information, this request and the draft response are public data.

The request asks whether in-kind contributions to ballot question political committees or funds may be made by two types of possible donor associations: (1) those that have registered political funds and (2) those that have not. The response addresses the two types of donor associations as well as the two general types of in-kind contributions that might occur: (1) those that result from providing association services to another entity and (2) those that result from paying a vendor for something that benefits another entity.

The draft response follows past Board practice in the ballot question and independent expenditure contexts. For example, reports from the 2006 ballot question that provided additional funding for arts and environmental causes show that associations made various expenditures and were not required to register because they made the expenditures as in-kind contributions coordinated with registered political committees or funds which, in turn, reported the transactions. In the independent expenditure context during the 2010 elections, for-profit corporations made contributions of services to independent expenditure political committees without triggering a registration requirement.

The draft recognizes, first, that under the statutes prior to 2010, associations could make in-kind contributions under §10A.27, subd. 13, without registering and, second, that §10A.27, subs. 14 and 15, were enacted to provide alternatives to subd. 13. The conclusion provided for Board consideration is that the 2010 alternatives should be given the same scope of application as the previous statute and, thus, include in-kind contributions as well as monetary contributions.

The draft recognizes that disclosure statutes should not have the effect of preventing associations from working in cooperation with one another to achieve their goals as long as in

doing so they do not circumvent the disclosure that Chapter 10A requires. The draft provides flexibility without sacrificing disclosure.

The draft also discusses the practical application of statutory disclosure requirements so that both donors and recipients of in-kind contributions will understand how to report the various transactions discussed.

Please call or email me if you have questions or comments.

Attachments:

Request letter from Minnesota Council of Nonprofits

Draft response designated as Advisory Opinion 423

Copy of Advisory Opinion 421, adopted on December 8, 2011

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information signed by the requester

Mr. John Pratt
Executive Director
Minnesota Council of Nonprofits
2314 University Ave. S., Suite 20
St. Paul, MN 55114

Advisory Opinion 423

Summary: Chapter 10A provides that associations may make donations in-kind to ballot question political committees or funds. This opinion discusses the various types of transactions likely to be encountered and explains the reporting requirements for each.

As the representative of an association whose members are nonprofit corporations, you ask for an advisory opinion on behalf of your organization's members based on the following facts:

1. The organization you represent is itself comprised of a number of associations, some of which have an interest in constitutional amendment questions that may appear on the ballot in November of 2012.
2. Some of your members may wish to establish political funds and register them with the Board for the purpose of influencing a ballot question.
3. The response to Question Four in recently published Advisory Opinion 421 appears to your members to say that an association may not make a ballot question expenditure and treat that expenditure as an in-kind contribution to a registered ballot question political committee or fund.
4. To clarify the Campaign Finance and Public Disclosure Board's advice on that question, your members ask a series of questions, which are reproduced below.

Opinion

Background

A "contribution" is money or anything else of value that is given to a registered political committee or fund. When something other than money is given, the contribution is referred to in statute as a "donation in-kind." In practice, the phrase "in-kind contribution" is used interchangeably with the phrase "donation in-kind". Both phrases can refer to either the transaction from the perspective of the donor who makes an in-kind contribution or from the perspective of the recipient who receives an in-kind contribution.

For clarification, the Board has restated your questions in the issue sections below.

Question One

Does the discussion in Issue Seven of Advisory Opinion 421 mean that associations with registered ballot question political funds may not make in-kind contributions to other ballot question political committees or funds? If not, how is an in-kind contribution different from the expenditures described in Issue Seven of Advisory Opinion 421?

Opinion

In Issue Seven of Advisory Opinion 421, an association asked if an expenditure to promote or defeat a ballot question should be reported as an in-kind contribution to its own political fund or as an in-kind contribution to a political committee that supports the same ballot question. The question did not suggest that the expenditure was made for the benefit of, or coordinated with, another political committee or fund.

In Opinion 421, the Board concluded that the transaction in question constituted an expenditure that must be reported on the association's political fund report schedule of ballot question expenditures. This Opinion, on the other hand, considers transactions where goods or services are either transferred to a recipient political committee or fund, or used on behalf of a recipient committee or fund.

Advisory Opinion 421 did not conclude that an association that has registered a political fund is prohibited from making in-kind contributions to other associations. Under Chapter 10A, associations may make in-kind contributions to other associations regardless of whether the donor has registered a political fund or not.

Question Two

How should an association that has registered its own political fund report an in-kind contribution that it makes to another political committee or fund?

Opinion

Reporting the use of association services

It is common for associations that have registered political funds to make use of association staff or resources for their own political fund purposes. It is also common for such associations to make staff or other resources available to other political committees or funds for ballot question purposes. Chapter 10A requires disclosure for both types of resource use. The disclosure is slightly different depending on whether the association making the resources available uses them for its own political fund purposes or transfers control to some other association for its purposes.

Regardless of whether an association will use its resources through its own political fund or transfer the use of the resources to some other association, the first transaction that must be disclosed is the allocation of the resources by the association to its own political fund account. This allocation is reported on the appropriate contribution schedule, depending on whether the source of the allocation is business revenue or general treasury money. The Board recognizes that an association's use of its own money to promote or defeat a ballot question is not

technically a "contribution" to the association's political fund. However, such an allocation is disclosed with other contributions to provide citizens with a simple means to examine all money and resources that have been made available to the association for ballot question purposes.¹ If statutory thresholds are met, the association must provide the Minn. Stat. §10A.27, subd. 15, underlying source disclosure for an allocation of resources to its political fund account.

In addition to documenting the allocation of resources on its schedule of contributions received, the donor association must account for the use of the resources. If the association maintains control of the resources and uses them for its own activities to promote or defeat a ballot question, the use of the resources is disclosed as an in-kind expenditure. If the association surrenders control and use of the resources to some other association, the use of the resources is reported as an in-kind contribution to the recipient committee or fund.

Underlying source disclosure requirements apply when the association allocates the resources to its political fund account. Thus, any underlying source disclosure statement will be retained by the original association and filed with its political fund report. If use of the resources is transferred to some other committee or fund as an in-kind contribution, an underlying source disclosure statement is not required because the in-kind contribution is from a registered ballot question fund. The recipient association must report the value of the resources as a donation in-kind received from the registered political fund of the donor association. The recipient association must also account for the use of the resources by recording a corresponding in-kind expenditure.

Reporting the use of purchases made for the use and benefit of another association.

The Board recognizes that, in their efforts to promote or defeat a ballot question, associations may collaborate and that a lead, or "umbrella" association, may coordinate the work of other associations. In this context one association may agree to pay vendors or service providers for goods or services that are specifically for the benefit of, and coordinated with, another association, such as an umbrella association.

Regardless of the relationships and agreements between associations, Chapter 10A requires disclosure that will reflect the actual transactions between the associations and the vendors or service providers involved.

This section of this Opinion considers reporting requirements when an association that has registered a political fund ("the donor association") enters into a prior agreement with another association that is a registered political committee or has registered a political fund ("the recipient association") under which the recipient association agrees to accept the benefit of a purchase and to report it as an in-kind contribution from the donor association. Under this scenario, the recipient association will approve the content, medium, timing, and other aspects of the goods or services purchased so that the transaction also constitutes an in-kind expenditure by the recipient association.

The Board recognizes that the above transaction occurs in the same manner as a Chapter 10A "approved expenditure" except for the fact that approved expenditures are expenditures for the benefit of candidates. An approved expenditure transaction uses a more streamlined reporting procedure for the donor, which the Board will also permit in the ballot question context.

¹ In addition to the disclosure method described in this opinion, the Board has recognized a streamlined reporting method for associations that use *only* their own money to promote or defeat a ballot question. That method is still available to those associations who meet the requirements for its use.

For transactions that fit the scenario described in this section of this Opinion, the donor association may report the entire transaction as a single entry on the schedule of contributions made. The contribution entry will identify the recipient committee or fund that benefited from the expenditure. The amount paid to the vendor or service provider must be listed in the "cash" column, since the payment reduces the donor fund's cash on hand. The donor association must also indicate that the donation was in the form of a payment to a vendor, listing the vendor's name and address and describing the goods or services provided that were used for the donation in-kind.

The recipient committee or fund will report the receipt of an in-kind contribution of goods or services from the donor association and a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received.

Question Three

May an association that does not have a political fund registered with the Board pay for goods and services as an in-kind contribution to a ballot question political committee or fund under Minnesota Statutes section 10A.27, subd. 14 or 15? If so, what reporting is required?

Opinion

In 2010, the legislature enacted statutes that allow corporations and other associations to make independent expenditures either by making their own independent expenditures, which will be reported through a political fund account, or by contributing money to an existing registered political committee or fund. In a recent statement of guidance, the Board indicated that it would allow ballot question political committees or funds to register and report under the 2010 legislation.

The option of contributing money to a registered political committee or fund makes it possible for associations to make monetary contributions to promote or defeat a ballot question without being required to register with the Board. If statutory thresholds are met, these donor associations must provide specified disclosure of the underlying sources of money used to make their contributions.

The provisions that allow an association to make contributions without registering are found in §10A.27, subds. 14 and 15, both of which refer to contributions of "revenue", which in its ordinary sense, means money. The Board interprets your question as asking whether an association may also donate staff services and association resources, or pay for vendors on behalf of a recipient association without registering its own political fund.

Both the legislative history and the language of subdivisions 14 and 15 make it clear that the 2010 disclosure options were enacted to provide alternatives to §10A.27, subd. 13. That section provides a mechanism for making both monetary and in-kind contributions without registering. Because subdivisions 14 and 15 are alternatives to subdivision 13, the Board construes them as being applicable to the same scope of transactions; that is, to "contributions" in general; not only to monetary contributions. The reference in the 2010 statutes to contributions of "revenue" is interpreted to mean contributions of revenue or of goods or services paid for with the type of revenue specified in the respective subdivision.

This interpretation results in the conclusion that an association that has not registered a political fund account with the Board may make in-kind contributions to registered political committees or funds under the provisions of Minn. Stat. §10A.27, subs. 14 and 15, and will not be required to register its own political fund.

Typical in-kind contributions consist of staff services, office space, phone banks, mailing lists and similar services. However, the additional question raised in this request is whether an association that does not have a political fund registered with the board may make purchases from outside vendors or service providers and report those purchases as in-kind contributions to a registered political committee or fund.

Past Board filings provide evidence of the practice of unregistered associations coordinating with registered political committees or funds to pay vendors and report the payment as a contribution to the registered political committee or fund rather than as an expenditure that would require the unregistered association to register. However, the Board has not previously addressed this practice in a formal way.

An association that makes more than \$5,000 in Chapter 10A "expenditures" to promote or defeat a ballot question must register with and report to the Board. An association that does not make "expenditures" or accept Chapter 10A "contributions" is not required to register. Therefore, it is important to recognize the distinction between making in-kind contributions that result from the payment for goods and services and making "expenditures", as the latter may trigger a registration requirement.

When an association retains final authority to decide on the content, medium, timing, and other aspects of the purchase of goods or services to promote or defeat a ballot question, the transaction results in a Chapter 10A expenditure.

A purchase of goods or services may be reported as an in-kind contribution to a registered political committee or fund if the following conditions are met:

1. The association making the purchase (the donor association) has not registered a political fund account with the Board and is not required to do so;
2. The donor association has entered into a prior agreement with an association that is a registered political committee or an association that has registered a political fund (the recipient association) under which the recipient association agrees to accept the benefit of the purchase and to report it as an in-kind contribution from the donor association; and
3. The recipient association has final authority to approve the content, medium, timing, and other aspects of the goods or services purchased.

When the donor association makes an in-kind contribution, either of its own services or resources, or by the purchase of goods or services as described above, the donor association must provide to the recipient association any underlying source disclosure required under Minnesota Statutes section 10A.27, subd. 15. The recipient association must file the underlying source statement with its Report of Receipts and Expenditures that includes the in-kind contribution.

The recipient association must report the transaction as the receipt of an in-kind contribution of goods or services from the donor association and must report a corresponding in-kind expenditure. Reporting the receipt of an in-kind contribution requires describing the goods or services received. If the donated goods or services result from the donor association's payment to a vendor or service provider, the description of the goods and services must also include the name and address of the vendor or service provider from whom they were purchased by the donor association.

An association not registered with the Board that makes in-kind contributions consistent with this advisory opinion is operating under the provisions of Minn. Stat. §10A.27, subd. 14 or 15, and is not required to register with or report to the Board.

Issued February 14, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Draft - Not adopted by Board

Relevant Statutes

10A.01 DEFINITIONS.

. . .

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. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

. . .

Subd. 11. **Contribution.** (a) "Contribution" means money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit.

. . .

Subd. 13. **Donation in-kind.** "Donation in-kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in-kind.

. . .

Subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

10A.20 CAMPAIGN REPORTS.

. . .

Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in-kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in-kind. A donation in-kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the

aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

. . .

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

. . .

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.

. . .

10A.26 CONTRIBUTIONS

. . .

Subd. 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.

Subd. 14. **Contributions of business revenue.** An association may, if not prohibited by other law, contribute revenue from the operation of a business to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13.

Subd. 15. **Contributions of dues or contribution revenue.** (a) An association may, if not prohibited by other law, contribute revenue from membership dues or fees, or from contributions received by the association to an independent expenditure political committee or an independent expenditure political fund without complying with subdivision 13. Before the day when the recipient committee or fund's next report must be filed with the board under section 10A.20, subdivision 2 or 5, an association that has contributed \$5,000 or more in aggregate to independent expenditure political committees or funds during the calendar year must provide in writing to the recipient's treasurer a statement that includes the name, address, and amount attributable to each individual or association that paid the association dues or fees, or made contributions to the association that, in total, aggregate \$1,000 or more of the contribution from the association to the independent expenditure political committee or fund. The statement must also include the total amount of the contribution from individuals or associations not subject to itemization under this section. The statement must be certified as true and correct by an officer of the donor association.

(b) To determine the membership dues or fees, or contributions made by an individual or association that exceed \$1,000 of the contribution made by the donor association to the independent expenditure political committee or fund, the donor association must:

(1) apply a pro rata calculation to all unrestricted dues, fees, and contributions received by the donor association in the calendar year; or

(2) as provided in paragraph (c), identify the specific individuals or associations whose dues, fees, or contributions are included in the contribution to the independent expenditure political committee or fund.

(c) Dues, fees, or contributions from an individual or association must be identified in a contribution to an independent expenditure political committee or fund under paragraph (b), clause (2), if:

(1) the individual or association has specifically authorized the donor association to use the individual's or association's dues, fees, or contributions for this purpose; or

(2) if the individual's or association's dues, fees, or contributions to the donor association are unrestricted and the donor association designates them as the source of the subject contribution to the independent expenditure political committee or fund. After a portion of an individual's or association's dues, fees, or contributions to the donor association have been designated as the source of a contribution to an independent expenditure political committee or fund, that portion of the individual's or association's dues, fees, or contributions to the donor association may not be designated as the source of any other contribution to an independent expenditure political committee or fund.

(d) For the purposes of this section, "donor association" means the association contributing to an independent expenditure political committee or fund that is required to provide a statement under paragraph (a).

Subd. 16. **Treasurer to submit disclosure statements.** The treasurer of a political committee or political fund receiving a statement required under subdivision 15, must file a copy of the statement before the deadline for the committee or fund's next report filed with the board under section 10A.20, subdivision 2 or 5, after receiving the statement.

Subd. 17. **Penalty.** (a) An association that makes a contribution under subdivision 15, and fails to provide the required statement within the time specified is subject to a civil penalty of up to four times the amount of the contribution, but not to exceed \$25,000, except when the violation was intentional.

(b) An independent expenditure political committee or an independent expenditure political fund that files a report without including the statement required under subdivision 15, is subject to a civil penalty of up to four times the amount of the contribution for which disclosure was not filed, but not to exceed \$25,000, except when the violation was intentional.

(c) No other penalty provided in law may be imposed for conduct that is subject to a civil penalty under this section.

Draft - Not adopted by Board

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

**Findings in the Matter of the Acceptance of Contributions from Registered Lobbyists
During the 2010 Legislative Session by the RT Rybak for Governor Committee**

Summary of the Facts

Minnesota Statutes, section 10A.273, subdivision 1(a), prohibits a candidate for a constitutional office or the candidate's principal campaign committee from soliciting or accepting a contribution from a registered lobbyist during a regular legislative session. A candidate that violates this section is subject to a civil penalty imposed by the Campaign Finance and Public Disclosure Board of up to \$1,000.

In 2010, the regular legislative session was held from February 4th through May 17th.

The 2010 Report of Receipts and Expenditures filed with the Board by the RT Rybak for Governor Committee (the "Committee") disclosed receipt of contributions from three registered lobbyists during the regular legislative session: a \$250 contribution from John Arlandson on April 18, 2010; contributions totaling \$250 from Rod Halvorson, on February 10, April 16, and April 22, 2010; and a \$250 contribution from Roger Moe on April 22, 2010. The total received from the three registered lobbyists was \$750.

In response to a Board inquiry, Peter Taylor, treasurer, confirmed that the Committee did receive the contributions during in the amounts and on the dates listed above. Board records show that this is the first violation of Minnesota Statutes, section 10A.273, subdivision 1(a), by the Committee.

This matter was considered by the Board in executive session on February 14, 2012. The Board's decision is based on the correspondence received from Peter Taylor and Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Finding Concerning Probable Cause

1. There is probable cause to believe that the RT Rybak for Governor Committee violated Minnesota Statutes, section 10A.273, subdivision 1(a), when the committee accepted \$750 in contributions from lobbyists during the 2010 regular legislative session.
2. There is probable cause to believe that the contributions were not returned within 60 days as permitted under Minnesota Statutes, Section 10A.15, subdivision 3.
3. There is no probable cause to believe that the RT Rybak for Governor Committee intentionally violated the provisions of Minnesota Statutes, section 10A.273, subdivision 1(a).

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The RT Rybak for Governor Committee is directed to refund \$250 to John Arlandson, \$250 to Rod Halvorson, and \$250 to Roger Moe and forward to the Board a copy of the checks returning the contributions within 30 days of receipt of this order.
2. The Board imposes a civil penalty of \$750, which is one times the amount of the contributions, on the RT Rybak for Governor Committee for acceptance of contributions from lobbyists during the 2010 regular legislative session in violation of Minnesota Statutes, section 10A.273, subdivision 1.
3. The RT Rybak for Governor Committee is directed to forward to the Board payment of the \$750 civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
4. If the RT Rybak for Governor Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statute, section 10A.34.
5. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: February 14, 2011

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.273, subdivision 1. **Contributions during legislative session.** (a) A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature, must not solicit or accept a contribution from a registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or from a party unit established by the party organization within a house of the legislature, during a regular session of the legislature.

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

**Findings In The Matter of the Acceptance of
Prohibited Contributions During the 2010 Legislative Session from John Arlandson,
Registered Lobbyist, to the RT Rybak for Governor Committee**

Summary of the Facts

Minnesota Statutes, section 10A.273, subdivision 1(b), prohibits a registered lobbyist from making a contribution to a candidate for constitutional office, or to the candidate's principal campaign committee during a regular legislative session. A lobbyist who violates this section is subject to a civil penalty imposed by the Campaign Finance and Public Disclosure Board ("the Board") of up to \$1,000.

The 2010 Report of Receipts and Expenditures filed with the Board by the RT Rybak Committee disclosed receipt of a contribution of \$250 from John Arlandson, a registered lobbyist, on April 18, 2010. The 2010 Legislative Session was held from February 4 through May 17, 2010.

In response to a Board inquiry, Peter Taylor, treasurer, confirmed that the Committee received the contributions during the 2010 Legislative Session.

In a letter dated January 18, 2012, John Arlandson confirmed making the contribution during the legislative session. Mr. Arlandson states "My records show that I did make a \$250...personal contribution in April 2010 to the campaign committee but obviously did not think about the contribution restrictions at the time. It was unintentional and I did not realize what I had done until I received the letter."

This matter was considered by the Board in executive session on February 14, 2012. The Board's decision is based on the correspondence received from Peter Taylor, John Arlandson, and Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Finding Concerning Probable Cause

1. There is probable cause to believe that John Arlandson violated Minnesota Statutes, section 10A.273, subdivision 1(b) by making a contribution to the RT Rybak for Governor Committee during the 2010 regular legislative session.
2. There is probable cause to believe that the contributions were not returned within 60 days as permitted under Minnesota Statutes, Section 10A.15, subdivision 3.
3. There is no probable cause to believe that John Arlandson intentionally violated the provisions of Minnesota Statutes, section 10A.273, subdivision 1(b).

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The Board imposes a civil penalty of \$250, which is one times the amount of the contributions, on John Arlandson, for contributing to a principal campaign committee during the 2010 legislative session in violation of Minnesota Statutes, section 10A.273, subdivision 1(b).
2. John Arlandson is directed to forward to the Board payment of the \$250 civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If John Arlandson does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statute, section 10A.34.
4. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: February 14, 2011

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.273, subdivision 1. **Contributions during legislative session.** (a) A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature, must not solicit or accept a contribution from a registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or from a party unit established by the party organization within a house of the legislature, during a regular session of the legislature.

(b) A registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or a party unit established by the party organization within a house of the legislature, must not make a contribution to a candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature during a regular session of the legislature.

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

**Findings In The Matter of the Acceptance of
Prohibited Contributions During the 2010 Legislative Session from Rod Halvorson,
Registered Lobbyist, to the RT Rybak for Governor Committee**

Summary of the Facts

Minnesota Statutes, section 10A.273, subdivision 1(b), prohibits a registered lobbyist from making a contribution to a candidate for constitutional office, or to the candidate's principal campaign committee during a regular legislative session. A lobbyist who violates this section is subject to a civil penalty imposed by the Campaign Finance and Public Disclosure Board ("the Board") of up to \$1,000.

The 2010 Report of Receipts and Expenditures filed with the Board by the RT Rybak Committee disclosed receipt of contributions totaling \$250 from Rod Halvorson, a registered lobbyist, on February 10, April 16, and April 22, 2010. The 2010 Legislative Session was held from February 4 through May 17, 2010.

In response to a Board inquiry, Peter Taylor, treasurer, confirmed that the Committee received the contributions during the 2010 Legislative Session.

In a letter dated January 17, 2012, Rod Halvorson confirmed making the contributions during the legislative session. Mr. Halvorson states "As you know from your records, this is my first violation. I was aware that I could not give a contribution to legislators and their opponents during the legislative session; however, I did not know that the same requirement applied to a non-legislator candidate for Governor."

This matter was considered by the Board in executive session on February 14, 2012. The Board's decision is based on the correspondence received from Peter Taylor, Rod Halvorson, and Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Finding Concerning Probable Cause

1. There is probable cause to believe that Rod Halvorson violated Minnesota Statutes, section 10A.273, subdivision 1(b) by making three contributions to the RT Rybak for Governor Committee during the 2010 regular legislative session.
2. There is probable cause to believe that the contributions were not returned within 60 days as permitted under Minnesota Statutes, Section 10A.15, subdivision 3.
3. There is no probable cause to believe that Rod Halvorson intentionally violated the provisions of Minnesota Statutes, section 10A.273, subdivision 1(b).

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The Board imposes a civil penalty of \$250, which is one times the amount of the contributions, on Rod Halvorson, for contributing to a principal campaign committee during the 2010 legislative session in violation of Minnesota Statutes, section 10A.273, subdivision 1(b).
2. Rod Halvorson is directed to forward to the Board payment of the \$250 civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If Rod Halvorson does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statute, section 10A.34.
4. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: February 14, 2011

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.273, subdivision 1. **Contributions during legislative session.** (a) A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature, must not solicit or accept a contribution from a registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or from a party unit established by the party organization within a house of the legislature, during a regular session of the legislature.

(b) A registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or a party unit established by the party organization within a house of the legislature, must not make a contribution to a candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature during a regular session of the legislature.

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

**Findings In The Matter of the Acceptance of
Prohibited Contributions During the 2010 Legislative Session from Roger Moe,
Registered Lobbyist, to the RT Rybak for Governor Committee**

Summary of the Facts

Minnesota Statutes, section 10A.273, subdivision 1(b), prohibits a registered lobbyist from making a contribution to a candidate for constitutional office, or to the candidate's principal campaign committee during a regular legislative session. A lobbyist who violates this section is subject to a civil penalty imposed by the Campaign Finance and Public Disclosure Board ("the Board") of up to \$1,000.

The 2010 Report of Receipts and Expenditures filed with the Board by the RT Rybak Committee disclosed receipt of a contribution of \$250 from Roger Moe, a registered lobbyist, on April 22, 2010. The 2010 Legislative Session was held from February 4 through May 17, 2010.

In response to a Board inquiry, Peter Taylor, treasurer, confirmed that the Committee received the contributions during the 2010 Legislative Session.

In a letter dated January 13, 2012, Roger Moe was notified of the statutory provision that appeared to be violated. Mr. Moe contacted staff and confirmed making a contribution on April 21, 2010.

This matter was considered by the Board in executive session on February 14, 2012. The Board's decision is based on the correspondence received from Peter Taylor, Mr. Moe's statement, and Board records.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Finding Concerning Probable Cause

1. There is probable cause to believe that Roger Moe violated Minnesota Statutes, section 10A.273, subdivision 1(b) by making a contribution to the RT Rybak for Governor Committee during the 2010 regular legislative session.
2. There is probable cause to believe that the contributions were not returned within 60 days as permitted under Minnesota Statutes, Section 10A.15, subdivision 3.
3. There is no probable cause to believe that Roger Moe intentionally violated the provisions of Minnesota Statutes, section 10A.273, subdivision 1(b).

Based on the above Findings Concerning Probable Cause, the Board issues the following:

ORDER

1. The Board imposes a civil penalty of \$250, which is one times the amount of the contributions, on Roger Moe, for contributing to a principal campaign committee during the 2010 legislative session in violation of Minnesota Statutes, section 10A.273, subdivision 1(b).
2. Roger Moe is directed to forward to the Board payment of the \$250 civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If Roger Moe does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statute, section 10A.34.
4. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: February 14, 2011

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A.273, subdivision 1. **Contributions during legislative session.** (a) A candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature, must not solicit or accept a contribution from a registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or from a party unit established by the party organization within a house of the legislature, during a regular session of the legislature.

(b) A registered lobbyist, political committee, political fund, or dissolving principal campaign committee, or a party unit established by the party organization within a house of the legislature, must not make a contribution to a candidate for the legislature or for constitutional office, the candidate's principal campaign committee, or a political committee or party unit established by all or a part of the party organization within a house of the legislature during a regular session of the legislature.