

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

.....
May 1, 2012

**Room 225
Minnesota Judicial Center**

.....

MINUTES

The meeting was called to order by Chair McCullough.

Members present: Beck, Luger, McCullough, Peterson, Scanlon, Wiener

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

MINUTES (April 3, 2012)

Member Luger's motion: To approve the April 3, 2012, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Update on Board member confirmations

New Members George Beck and Neil Peterson have been confirmed in both chambers of legislature.

Board meeting schedule

Discussion of the meeting schedule was deferred until the executive session portion of the meeting. At the conclusion of the executive session, the Chair reported that the Board decided that the next scheduled meeting would be Friday, May 18, 2012, at 9:00 A.M. and that all future Board meetings will start at 9:00 A.M. instead of 9:30 A.M.

Member Wiener informed Members that she would be out of town on May 18th, 2012, but would be able to participate through conference call.

EXECUTIVE DIRECTOR'S TOPICS

Executive Director Goldsmith reported on recent Board office operations. Following that report, Mr. Goldsmith introduced the discussion topic related to requests for exemption from disclosure requirements in certain situations.

Discussion of procedure for requesting exemption from the contribution itemization requirement

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes that, if adopted, would specify the process for an individual requesting the right to make contributions under chapter 10A without disclosing the individual donor's information. The purpose of the procedures is to implement the requirements of Minnesota Statutes section 10A.20, subdivisions 8-10, and the associated Minnesota Rules related to those sections.

Mr. Goldsmith explained that the proposed procedure would permit two tracks for requesting an exemption, each with different levels of protection of the requester's identity. The anonymous proceeding track would permit the requester to proceed using a pseudonym. Under this proceeding, the Board's consideration of the matter would be in public session and the application itself would be public. Use of the second track, which permits a confidential proceeding, would require Board approval. A confidential proceeding would be used when the requester could be identified by the facts included in the request, even if the requester's name is not known. In a confidential proceeding, the requester would proceed using a pseudonym and, in addition, the request would be not public data. The Board's consideration of the application would occur in executive session at a special meeting of the Board.

Members discussed the draft procedure and Mr. Goldsmith provided additional information and answered questions.

After discussion the following motion was made,

Member Wiener's motion: To adopt the procedures as drafted.

Vote on motion: Unanimously passed.

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:

Discussion Items

A. Waiver request – 2011 Year-End Report of Receipts and Expenditures

Citizens for Reform in Minn Senate Dist. 12 for Steve Park, \$250. Mr. Park states the software indicated his report had been sent. Staff assumes the reason he received that message was because he tried to send the 2010 report again. The committee has terminated.

After discussion the following motion was made,

Member Luger's motion: To waive the \$250 late filing fee for the Citizens for Reform in Minn Senate Dist. 12 for Steve Park Committee.

Vote on motion: Unanimously passed.

B. Request for motion to approve the withdrawal of registration

Stop Zebra Mussel Association, Terry Frazee, treasurer. In his request dated March 26, 2012, Mr. Frazee states that the association thought they needed to be registered as a political committee. The committee registered with the Board February 25, 2011. The 2011 Report of Receipts and Expenditures disclosed \$24,995 in contributions raised. the ending balance is \$.50. The only expenditure made was to pay a lobbyist who registered July 2011 to represent the association. The Annual Report of Lobbyist Principal filed by the association discloses \$20,000 spent for lobbying in 2011.

After discussion the following motion was made,

Member Peterson's motion: To approve the withdrawal of registration for the Stop Zebra Mussel Association Committee.

Vote on motion: Unanimously passed.

Vote Gallagher, Steven Gallagher. In a letter dated April 17, 2012, Steven Gallagher states he would like to withdraw his committee registration. Mr. Gallagher registered a committee on March 15, 2012. He opened up a bank account with \$25 from his own funds. He did not receive the endorsement by the party and did not raise contributions for the campaign. A candidate that does not raise or spend in excess of \$100 does not need to register a committee.

After discussion the following motion was made,

Member Wiener's motion: To approve the withdrawal of registration for the Vote Gallagher Committee.

Vote on motion: Unanimously passed.

Prosperity MN, Representative Keith Downey, Senator Dave Thompson

Mr. Goldsmith reported that Representative Downey and Senator Thompson had recently registered a political committee named Prosperity MN, naming themselves as officers of the political committee. Mr. Goldsmith contacted Rep. Downey and Senator Thompson and informed them of the existence of Minnesota Statutes section 10A.105, subdivision 1, which prohibits a candidate from directly or indirectly controlling a committee other than the candidate's own principal campaign committee. Upon being

informed of this prohibition, Rep. Downey and Senator Thompson requested that the Board permit them to withdraw the registration of Prosperity MN.

After discussion the following motion was made,

Member Luger's motion: To approve the withdrawal of registration for the Prosperity MN political committee.

Vote on motion: Unanimously passed.

Informational Items

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

Mike Bidwell Volunteer Committee, \$25
Team (Laura) Brod, \$75
Neighbors for Jim Davnie, \$75
DeGree (Thomas) for House, \$25
Alex DeMarco for Senate, \$25
Volunteers for Dorian Eder, \$250
Tom Ellenbecker for House, \$50.09
Jeffrey Gunness for House, \$25
Joe Hoppe Volunteer Committee, \$100
Mena (Kaehler) for House, \$25
Steve Kelley for MN, \$100
Tom Kelly for Attorney General, \$25
Ann Lenczewski Volunteer Committee, \$50
Neighbors for Carlos Mariani, \$25
Vote Luke Michaud for 52B, \$25
Sean Nienow Volunteer Committee, \$25
Friends of Dustin Norman, \$100
Trevor Oliver for Judge, \$25
Mark Olson Volunteer Committee (House), \$25
Mark Olson Volunteer Committee (Senate), \$25
Pete Phillips Citizens Committee, \$70.51
(Sharon) Ropes for Senate, \$350
Ken Rubenzer for House, \$375
Citizens for Dan Sanders, \$275
Ben Schwanke for Senate, \$75
Steve Smith Volunteer Committee, \$375
Mark Thorson Campaign Committee, \$25
Eastsiders for Avi (Viswanathan), \$225
Deb White Volunteer Committee, \$50
Rhett Zenke for HD31A, \$25

AFSCME Local 8 People Fund, \$100
IFAPAC, \$50
Local 28 Political Fund, \$25

MAIDA, \$250
North Star SFAA PAC, \$175
Somali Action Alliance, \$350
Teamsters Local 120, \$25
UAW Minn State CAP, \$125

14th Senate District RPM, \$25
52nd Senate District RPM, \$375
Mahnomen County RPM, \$125
Pope County DFL, \$200
Watonwan County RPM, \$25

B. Payment of a late filing fee for January 17, 2012, Lobbyist Disbursement Report:

Pam Luinenburg, MN Coalition of Licensed social workers, \$10
Michael Wilhelmi, Unite HERE, St. Cloud Area Chamber of Commerce, Coalition for the St. Croix River, \$25
Scott mown, Fish & Wildlife Legislative Alliance, \$45

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

Tim Mahoney for House, \$465- 8th installment

Friends of Kurt Bills Committee, \$100. In 2011 the Committee accepted \$1,350 in contributions from special sources. The total amount of these contributions exceeded by \$50 the 2011 limit on aggregate contributions from special sources, which was \$1,300. Representative Bills entered into a conciliation agreement on April 18, 2012.

D. Payment of a civil penalty for exceeding 2011 aggregate party limit:

Gary Dahms for State Senate, \$475. During 2011, the Committee accepted \$3,075 in contributions from special sources. The total amount of these contributions exceeded by \$475 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$2,600. Senator Dahms entered into a conciliation agreement on March 11, 2012.

Committee to Elect Kelby Woodard, \$245. During 2011, the Committee accepted \$1,545 in contributions from special sources. The total amount of these contributions exceeded by \$245 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$1,300. Representative Woodard entered into a conciliation agreement on March 12, 2012.

E. Payment of a civil penalty for excess contributions:

RT Rybak for Governor, \$1,000. During 2010, the Committee accepted cumulative contributions from an individual that total \$3,000. The contributions exceeded by \$1,000 the individual contribution limit, which was \$2,000. Mr. Rybak entered into a conciliation agreement on March 2, 2012.

Kathy Brynaert for State Representative Committee, \$375. During 2011, the Committee reported accepting facially excessive contributions from two individuals, one in the amount of \$200 and one in the amount of \$125. In total the two donations exceeded the applicable contributions limit by \$125. In total the two donations exceeded the applicable contribution limit by \$125. Representative Brynaert entered into a conciliation agreement on March 10, 2012.

Committee for Carolyn McElfatrick, \$100. During 2011, the Committee accepted cumulative contributions totaling \$200 from an individual. The contributions exceeded the applicable contribution limit by \$100. Representative McElfatrick entered into a conciliation agreement on March 14, 2012.

Charles Wiger for Senate Volunteer Committee, \$100. During 2011, the Committee accepted two \$100 contributions from Faegre Baker Daniels State-Registered Political Fund for a total of \$200. The contributions exceeded the applicable contribution limit by \$100. Senator Wiger entered into a conciliation agreement on April 3, 2012.

Citizens for Linda Runbeck, \$300. During 2011, the Committee reported accepting a facially excessive contribution from a registered lobbyist in the amount of \$250. The contribution exceeded the applicable contribution limit by \$150. Representative Runbeck entered into a conciliation agreement on April 12, 2012.

Dan Skogen for Senate, \$100. During 2011, The Committee reported accepting a facially excessive contribution from the Minn CAP-PAC, a political committee registered with the Board, in the amount of \$150. The contribution exceeded the applicable contribution limit by \$50. Mr. Skogen entered into a conciliation agreement on April 11, 2012.

Roger Reinert for Duluth, \$100. During 2011, the Committee reported accepting a facially excessive contribution from the Minn Power PAC, a political committee registered with the Board in the amount of \$150. The contribution exceeded the applicable contribution limit by \$50. Senator Reinert entered into a conciliation agreement on April 9, 2012.

Tony Cornish for State Representative, \$3,000. During 2011, the Committee reported accepting facially excessive contributions from ten individuals. The combined total by which the ten facially excessive contributions exceeded the individual limit was \$1,000. Representative Cornish entered into a conciliation agreement on April 12, 2012.

(Michelle) Benson for Senate, \$100. In 2011 the Committee reported accepting cumulative contributions from an individual that totaled \$200. The contributions exceeded the applicable limit by \$100. Senator Benson entered into a conciliation agreement on April 18, 2012.

Minn Power PAC, \$100. In 2011 the Minn Power PAC Committee made a \$150 contribution to the Roger (Reinert) for Duluth Committee. The contribution exceeds by \$50 the applicable limit. Bernadette Nelson, treasurer, entered into a conciliation agreement on April 9, 2012.

Minn CAP-PAC, \$100. In 2011 the Minn CAP-PAC Committee made a \$150 contribution to the Dan Skogen for Senate Committee. The contribution exceeds by \$50 the applicable limit. Patrick McFarland, treasurer, entered into a conciliation agreement on April 10, 2012.

Faegre Baker Daniels Political Fund, \$100. in 2011 the Faegre Baker Daniels State-Registered Political Fund made two contributions that cumulatively total \$200 to the (Charles) Wiger for Senate Volunteer Committee. The cumulative contributions exceeded by \$100 the applicable limit. Laurie Schrader, treasurer, entered into a conciliation agreement on April 9, 2012.

F. Payment of a civil penalty for a contribution from an unregistered association:

Klun Law Firm, \$50

G. Deposit the General Fund, State Elections Campaign Fund:

Patricia Torres Ray for State Senate, \$75 (anonymous contribution)
DFL House Caucus, \$9,203.39 (anonymous- could not determine source)

ADVISORY OPINION REQUESTS

Advisory Opinion 425 – Application of Chapter 10A to a conduit fund operated by a union.

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

The request that results in Advisory Opinion 425 is non-public data and was received by the Board on March 19, 2012, from a representative of a local labor union. The matter was laid over at the April meeting because of the timing of the request.

The request is similar to the requests resulting in Advisory Opinions 6 and 406. Both of those opinions recognized a type of fund into which an individual could put money for later use in making contributions to candidates. Because the individual owner of the money remained independent from the operator of the fund and from other individual participants, the Board recognized that the fund did not constitute a political committee or political fund under Chapter 10A.

The only difference in this opinion is that the requester represents a labor union rather than a corporation. The analysis supporting this and previous similar opinions is not based on the type of association managing the fund. Staff, believes that the fact that this opinion relates to a non-corporate association would not support a result different than that reached in Advisory Opinions 6 and 406.

The Board discussed the request and the applicable provisions of Chapter 10A. Mr. Goldsmith answered questions and provided additional explanation.

After discussion, the following motion was made:

Member Wiener's motion: To adopt the Advisory Opinion #425 as drafted.

Vote on motion: Unanimously passed.

Advisory Opinion 426 - Relating to ballot question disclosure.

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

The request that results in Advisory Opinion 426 is non-public data and was received by the Board on March 22, 2012. The matter was laid over at the April meeting because of the timing of the request.

Mr. Goldsmith explained that in December, 2011, and January, 2012, the Board issued a series of advisory opinions related to ballot question disclosure. The responses were based on the relevant provisions of chapter 10A, as clarified by guidance issued by the Board.

Because advisory opinions are binding on the Board only with respect to the requestor, a new requestor has submitted a request which duplicates some of the questions answered in Advisory Opinions 419 and 421.

Since the questions are the same, the responses in the draft Advisory Opinion were taken directly from the previous opinions. In some cases slight changes were made for grammatical purposes or for clarification.

After discussion, the following motion was made:

Member Scanlon's motion: To adopt the Advisory Opinion 426 as drafted.

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. Members reviewed the report and requested that in the future additional information be included to explain why a matter is on hold.

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 complaint of Christopher Connor regarding the 66A House District RPM

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

Findings in the matter of contributions accepted by the 4th Congressional District GPM from the (David) Unowsky for Council and Bee Kevin Xiong Campaign Committee, unregistered associations

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

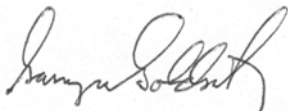
Revised Findings in the matter of the complaint of Steven J Timmer regarding Representative Ernest Leidiger and Steven Nielsen

The Chair reported that in its executive session, the Board reconsidered the above matter at the request of Mr. Nielsen and made revised findings and issued an order in the above matter. See Revised Findings and Order 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:

April 24, 2012, memorandum regarding the draft procedures for requesting an exemption from the contribution itemization requirement

April 24, 2012, memorandum regarding Advisory Opinion #425

Advisory Opinion #425-public version

April 24, 2012, memorandum regarding Advisory Opinion #426

Advisory Opinion #426-public version

Findings in the matter of the complaint of Christopher Connor regarding the 66A House District RPM

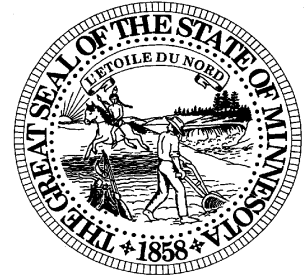
Findings in the matter of contributions accepted by the 4th Congressional District GPM from the (David) Unowsky for Council and Bee Kevin Xiong Campaign Committee, unregistered associations

Revised Findings in the matter of the complaint of Steven J Timmer regarding Representative Ernest Leidiger and Steven Nielsen

Minnesota

Campaign Finance and

Public Disclosure Board



Date: April 24, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Draft Procedures for requesting exemption from the requirement to provide name, address, and employment information for contributions of more than \$100

This document presents for Board consideration a set of procedures that, if adopted, will specify the process for an individual requesting the right to make contributions under Chapter 10A without disclosing the individual donor's identifying information. The purpose of these procedures is to implement the requirements of Minnesota Statutes section 10A.20, subdivision 9, and the associated Minnesota Rules related to that section.

These procedures do not address the law applicable to deciding whether to grant or deny an application for exemption, nor do they address exemption requests from associations rather than from individuals.

**Procedures for requesting exemption from requirement
to provide and disclose identifying information
for contributions of more than \$100**

1. Exemption

An exemption granted under Minnesota Statutes section 10A.20, subdivision 9, relevant Minnesota Rules, and these procedures, exempts the individual contributor from the requirement that the contributor provide his or her name, address, and employment information with any contribution of more than \$100 to any recipient included in the scope of the order granting the exemption. The exemption also exempts the recipient association from the requirement that it record and report the name, address, and employment information for the individual to whom the order is issued.

2. Proceeding in one's true and correct name

While permitted, the Board does not anticipate an applicant for exemption proceeding in the applicant's true name because to do so could result in the type of publicity the potential donor wishes to avoid by seeking the exemption from disclosure. Therefore, these procedures are intended to provide a framework for applications for exemption in which the applicant's identity is protected from public disclosure.

3. Anonymous proceeding

- (a) An anonymous proceeding is a public proceeding in which an applicant uses a pseudonym. In this proceeding, the application document and supporting materials are public data and the Board's consideration of whether to grant or deny the exemption will occur at a Board meeting open to the public. In this proceeding, the Board may question the applicant concerning the applicant's need to proceed anonymously. If it does so, that portion of the proceeding will occur at a Board meeting not open to the public and not publicly announced.
- (b) An applicant may initiate an application for exemption in an anonymous proceeding by filing an application meeting the requirements of section 4 of these procedures.
- (c) In an anonymous proceeding, the identity of the applicant will not be disclosed to the public. Disclosure of the identity of the applicant to Board members or staff will be restricted to the extent possible.

4. Content of application for exemption in an anonymous proceeding

The application of an applicant who wishes to proceed anonymously must comply with the following requirements.

- (a) The application must include a clear statement that the applicant has elected to proceed anonymously.
- (b) The application must be submitted using a pseudonym by which the applicant wishes to be known for the purposes of the proceeding.
- (c) The applicant must provide the true and correct name, address, and telephone number of a person who is authorized to receive official notices or correspondence from the Board or upon whom service of legal process may be made. At the applicant's option, the telephone number may be provided separately to Board and will remain not public data.
- (d) If different from the person identified in part c of this section, the applicant must provide the true and correct name, address, and telephone number of a person who is authorized to appear for the applicant during the proceedings. At the applicant's option, the telephone number may be provided separately to Board and will remain not public data.
- (e) The application must state the scope of the exemption requested in sufficient detail for the Board to understand the request. For example, an application could state that its scope is to cover all contributions made to political committees or funds supporting the Minnesota photo ID amendment.
- (f) The application must include a sworn statement of the facts submitted by the applicant to justify proceeding anonymously.
- (g) The application must include a sworn statement of the facts supporting the applicant's contention that disclosure of the applicant's name, address, or

employment information would expose the applicant to the type of harm that would require the Board to issue an order of exemption.

- (h) The truth of the application must be sworn to and signed by the applicant under oath. In the case of an applicant who is proceeding anonymously, the applicant may sign in the name identified under part b of this section. Board staff are available to administer oaths and notarize affidavits for anonymous applicants.
- (i) At the applicant's option, the application may include a legal memorandum or such other information as the applicant believes supports the application.

5. Board review of need for anonymous proceeding

- (a) An application for exemption in an anonymous proceeding may be accepted by the Executive Director, contingent on possible Board review of the applicant's need to proceed anonymously.
- (b) Upon receipt of an application for exemption in an anonymous proceeding, the Executive Director must notify the Board Chair and Vice Chair of the receipt of the application. Upon direction of either the Chair or Vice Chair, the Executive Director must schedule a special meeting of the Board to rule on the request to proceed anonymously; not for the purpose of ruling on the exemption itself.
- (c) A special meeting called pursuant to section 5(b) of these procedures will not be open to the public and public notice of the meeting will not be given. The meeting must be held within 20 days after receipt of the application unless the applicant agrees to a longer time. The applicant may be asked to provide testimony directed to the need to proceed anonymously.
- (d) If the Board holds a hearing under this section, the Board will decide whether to grant the applicant's request for an anonymous proceeding. The form of motion that will be considered is a motion to grant the applicant's request for an anonymous proceeding. The vote of four Board members is required for the motion to be adopted. If the motion is not adopted, the request for an anonymous proceeding is not granted.
- (e) If the motion to permit an anonymous proceeding is not adopted, the applicant may withdraw the application.
- (f) An applicant who withdraws an application pursuant to part (e) of this section is not precluded from filing a subsequent application.

6. Conduct of anonymous proceeding

- (a) An application for exemption in an anonymous proceeding, along with any supporting materials, is public data. Board consideration of the merits of the application for exemption will occur at a regular or special meeting of the Board open to the public and subject to the notice requirements for public meetings.

- (b) In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application.
- (c) No testimony will be taken during the meeting at which the Board considers the merits of the application for exemption.

7. Confidential proceeding

- (a) A confidential proceeding is a proceeding in which an applicant uses a pseudonym. In this proceeding, the application document and supporting materials are not public data and the Board's consideration of whether to grant or deny the exemption will occur at a special meeting of the Board, not publicly announced and not open to the public. In this proceeding, the Board may question the applicant concerning the applicant's need to proceed in a meeting not open to the public and to have the application remain not public data. If it does so, that portion of the proceeding will occur at a Board meeting not open to the public and not publicly announced.
- (b) An applicant who believes that the content of an application to proceed anonymously would, nevertheless, result in identification of the applicant and in the applicant's being exposed to the type of harm on which the application for exemption request is based may request that the application be heard in a confidential proceeding.
- (c) An applicant may initiate an application for exemption in a confidential proceeding by filing an application meeting the requirements of section 8 of these procedures.
- (d) In a confidential proceeding, the identity of the applicant will not be disclosed to the public. Disclosure of the identity of the applicant to Board members or staff will be restricted to the extent possible.

8. Content of application for an exemption in a confidential proceeding

- (a) In addition to the requirements for an application for exemption in an anonymous proceeding, an application for an exemption in a confidential proceeding must include a sworn affidavit supporting the applicant's belief that the content of the application itself would result in identification of the applicant, even though the applicant would proceed using a pseudonym.
- (b) The application itself and any cover letter must be clearly marked "Submitted for non-public consideration." The applicant or the applicant's representative should confirm with the Board's Executive Director that the application has been received as an application for exemption in a confidential proceeding.

9. Board review of need for confidential proceeding

- (a) An application for an exemption in a confidential proceeding may be accepted by the Executive Director, contingent on Board review of the applicant's need to

proceed anonymously.

- (b) Upon receipt of an application for exemption in an confidential proceeding, the Executive Director must notify the Board Chair and Vice Chair of the receipt of the application and must schedule a special meeting of the Board to rule on the request for a confidential proceeding; not for the purpose of ruling on the exemption itself.
- (c) A special meeting called pursuant to section 9(b) of these procedures will not be open to the public and public notice of the meeting will not be given. The meeting must be held within 20 days after receipt of the application unless the applicant agrees to a longer time. The applicant may be asked to provide testimony directed to the need for a confidential proceeding.
- (d) The Board will decide whether to grant the applicant's request for a confidential proceeding. The form of motion that will be considered is a motion to grant the applicant's request for a confidential proceeding. The vote of four Board members is required for the motion to be adopted. If the motion is not adopted, the request for a confidential proceeding is not granted.
- (e) If the motion to permit a confidential proceeding is not adopted, the applicant may withdraw the application in which case the application will remain not public data and no public order will be issued.
- (f) In lieu of withdrawing the application, the applicant may request that the application be considered as an application for exemption in an anonymous proceeding. If such a request is made, the application will be considered under the procedures established in this document for anonymous proceedings.
- (g) If the applicant elects to proceed in an anonymous proceeding, consideration of the application shall take place at a regular or special meeting of the Board not more than 30 days after the date of the original application, unless the applicant agrees to a longer time.
- (h) An applicant who withdraws an application pursuant to part (e) of this section is not precluded from filing a subsequent application.

10. Conduct of confidential proceeding

- (a) After the Board has approved an applicant's request for a confidential proceeding, the Board will consider the merits of the application for exemption at a special meeting of the Board not open to the public and for which public notice will not be given.
- (b) In the event that the next scheduled meeting is more than 30 days after receipt of the application, the Board will schedule a special meeting for the purpose of considering the application. A special meeting for the purpose of conducting a confidential proceeding may occur immediately after the meeting at which the Board considers the request for a confidential proceeding under section 9 of these procedures.

- (c) No testimony will be taken during the meeting at which the Board considers the merits of the application for exemption.

11. Motion and vote on order for exemption

- (a) An application for an exemption from the contribution itemization requirement is a request to be exempted from otherwise applicable statutory requirements. Unless the exemption is granted, the statutory requirements apply. The proper motion for Board consideration is either a motion to grant the exemption or a motion to deny the exemption. A motion to grant an exemption is adopted if it obtains the required four votes. If a motion to grant the exemption fails, the exemption is denied even if a motion to specifically deny the exemption does not obtain four votes. If the exemption is not granted, the statutory itemization requirement applies.
- (b) Following its consideration of the matter, the Board will issue a written order granting or denying the application. The order must include the reasons for the Board's action.

12. Publication of order and notice to interested persons

The Board's order will be published in the next available issue of the State Register. Notice will be given to all persons who have signed up on the Board's subscription email list for persons interested in Board actions.

13. Filing of objections

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

Any interested party may file an objection to a Board order granting or denying an application for exemption. An objection must be filed in writing and signed by the person making the objection. The objection must include the objector's name, address, and contact information and must state the grounds for the objection.

14. Procedure upon objection to order by interested person

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

- (a) In the event of an objection by an interested person to an order for exemption, the Board will initiate a contested case hearing before the Office of Administrative Hearings.
- (b) Prior to the commencement of the contested case hearing, the Board will reconsider its decision and order based on the objection. The objecting individual may submit any affidavits, memoranda, or other materials that bear on the matter under review.

15. Contested case hearing

(This section is under development. The procedures set forth in this section are preliminary and subject to further development or change.)

- (a) A contested case hearing conducted by the Office of Administrative Hearings will be in the form of a *de novo* proceeding and will result in Findings of Fact and a Recommended Order by the Administrative Law Judge.
- (b) Review by the Administrative Law Judge of a Board decision to grant or deny an applicant's request to proceed anonymously or to proceed in a confidential proceeding will be reviewed only under an abuse of discretion standard.
- (c) In the case of an applicant proceeding anonymously or in a confidential proceeding, a protective order shall be issued by the Administrative Law Judge to preserve the anonymity of the applicant.

16. Reporting contributions for which an itemization exemption has been granted.

- (a) If an exemption from the itemization requirement is granted, the recipient of contributions from the individual possessing the exemption is not required to obtain the individual's true name and address or employment information.
- (b) Contributions should be reported in the form "Anonymous Donor [Assumed Name] under Order Granting Exemption dated [Date of Order]."
- (c) If an exemption is granted for a contribution previously made, the contribution must be reported with the information described in part (b) of this section on the next report filed by the recipient or on an amended report for the same period.

Comparison Grid
(For informational purposes only)

Type of proceeding	Anonymous	Confidential
Use pseudonym	Yes	Yes
Board approval to proceed in this format	Optional with Board	Required
Hearing on approval to proceed in this format	If held, not public	Not public
Hearing on application for exemption	Public	Not public
Order granting or denying exemption	Public	Public but will not include identifying information

Minnesota Statutes

10A.20 Campaign Reports

Subd. 8. Exemption from disclosure. The board must exempt a member of or contributor to an association or any other individual, from the requirements of this section if the member, contributor, or other individual demonstrates by clear and convincing evidence that disclosure would expose the member or contributor to economic reprisals, loss of employment, or threat of physical coercion. An association may seek an exemption for all of its members or contributors if it demonstrates by clear and convincing evidence that a substantial number of its members or contributors would suffer a restrictive effect on their freedom of association if members were required to seek exemptions individually.

Subd. 9. [Repealed, 1978 c 463 s 109]

Subd. 10. Exemption procedure. An individual or association seeking an exemption under subdivision 8 must submit a written application for exemption to the board. The board, without hearing, must grant or deny the exemption within 30 days after receiving the application and must issue a written order stating the reasons for its action. The board must publish its order in the State Register and give notice to all parties known to the board to have an interest in the matter. If the board receives a written objection to its action from any party within 20 days after publication of its order and notification of interested parties, the board must hold a contested case hearing on the matter. Upon the filing of a timely objection from the applicant, an order denying an exemption is suspended pending the outcome of the contested case. If no timely objection is received, the exemption continues in effect until a written objection is filed with the board in a succeeding election year. The board by rule must establish a procedure so that an individual seeking an exemption may proceed anonymously if the individual would be exposed to the reprisals listed in subdivision 8 if the individual's identity were to be revealed for the purposes of a hearing.

Minnesota Rules

4525.0900 Initiating a contested case

Subpart 1. **Initiation by application.** Any person requesting an exemption under Minnesota Statutes, section 10A.20, subdivisions 8 and 10, or any other person whose rights, privileges, and duties the board is authorized by law to determine after a hearing, may initiate a contested case by making application. Except in anonymous proceedings, an application shall contain: the name and address of the applicant; a statement of the nature of the determination requested including the statutory sections on which the applicant wishes a determination made and the reasons for the request; the names and addresses of all persons known to the applicant who will be directly affected by such determination; and the signature of the applicant.

Subp. 2. **Initiation by board order.** Where authorized by law, the board may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

4525.1000 Initiating anonymous proceedings

Subpart 1. **Authority.** Any person making application for an exemption from campaign reporting requirements under Minnesota Statutes, section 10A.20, subdivisions 8 and 10 may proceed anonymously if the board determines that identification of the person for the purpose of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion.

Subp. 2. **Application.** Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain:

A name by which the person wishes to be known for the purposes of the proceeding;

The name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service of legal process may be made;

A statement of the facts which lead the applicant to believe that identification of the applicant for purposes of the hearing would result in exposure to economic reprisals, loss of employment, or threat of physical coercion;

The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous;

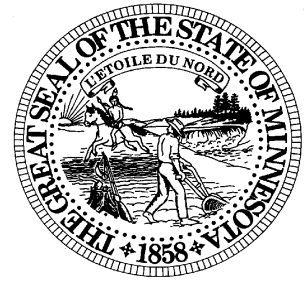
A statement of the facts which lead the applicant to believe that exposure to economic reprisal, loss of employment, or threat of physical coercion would result from the applicant's compliance with the reporting and disclosure requirements of Minnesota Statutes, section 10A.20; and

The signature of the applicant in the name by which the person wishes to be known during the proceedings or the signature of the person designated to appear for the applicant.

Subp. 3. **Determination.** Upon receipt of an application for initiation of anonymous proceedings, the board may require the applicant or the person designated to appear for the applicant to appear before a closed meeting of the board with appropriate precautions taken to preserve the anonymity of the applicant from persons other than the board and its employees. The purpose of the appearance is to enable the board to decide whether an anonymous proceeding is required.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: April 24, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Advisory Opinion 425

The Board received this request from a representative of a local labor union on March 19, 2012. Because it was not received in time to be considered at the April Board meeting, the matter was laid over in April for consideration at the May meeting.

This request is nonpublic data. As a result, Board members are not permitted to identify the requester during the public discussion of this opinion. Staff has prepared a generic version of the opinion that will be made public. The only change is that each reference to the name of the requester in the nonpublic version has been changed to refer to "the Union". I am not including a copy of the public version of the materials in the printable packet. If you want that version, you will find it in the linked agenda materials.

In many respects, this request is similar to the requests resulting in advisory opinions 6 and 406. Both of those opinions recognized a type of fund into which an individual could put money for later use in making contributions to candidates. Because the individual owner of the money remained independent from the operator of the fund and from other individual participants, the Board recognized that the fund did not constitute a political committee or a political fund under Chapter 10A. This analysis is explained in more detail in the draft opinion.

The only difference in this opinion is that the requester represents a labor union rather than a corporation. The analysis supporting this and previous similar opinions is not based on the type of association managing the fund. Thus, staff believes that the fact that this opinion relates to a non-corporate association would not support a result different than that reached in Advisory Opinions 6 and 406.

I am attaching copies of Advisory Opinions 6 and 406 for your information because it is the latest and most comprehensive previous Board analysis of the subject.

Please call me if you have questions or comments.

Attachments:

Draft nonpublic response to this request, designated as advisory opinion 425

Draft generic public version of response to this request

(Available in linked materials; not included in printable materials.)

Request letter for advisory opinion (nonpublic data)

Advisory Opinion 6 (public, but also obsolete and of no legal effect)

Advisory Opinion 406 (public)

State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA**
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Creation and operation of a conduit fund by a union

ADVISORY OPINION 425

SUMMARY

A “conduit fund” organized and administered by a union, but otherwise in accordance with the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16, is not a political committee or political fund under Minnesota Statutes Chapter 10A, and is not required to register with the Board. A union may contract with an individual for the administration of its sponsored conduit fund.

FACTS

As the representative of the a Minnesota local trade union (the Union), you ask the Campaign Finance and Public Disclosure Board for an advisory opinion based on the following facts:

1. The Union is organized as the local branch of an international union.
2. The Union is aware of the right of corporations to establish conduit funds as recognized under Minnesota Statutes section 211B.15, subdivision 16.
3. The Union wishes to form a fund that would comply with all of the express and implied provisions of Minnesota Statutes section 211B.15, subdivision 16.
4. It is the desire of the Union that the fund it establishes as a result of this request not be a political committee or political fund that would be required to register and report under Minnesota Statutes Chapter 10A.
5. The Union may wish to contract with an outside individual to perform the administrative functions associated with the conduit fund including soliciting the Union's members, receiving and recording member deposits, and making transfers to candidates at the direction of the contributing members.

Issue One

Is a fund established by a union rather than by a corporation, but otherwise operating under the terms of Minnesota Statutes section 211B.15, subdivision 16, and the Board's Advisory Opinions 6 and 406 a political committee or a political fund that is required to register and report under Minnesota Statutes Chapter 10A?

Opinion

The question of corporation-sponsored employee contribution programs was first addressed by the Board in Advisory Opinion 6 in 1974. At that time, Minn. Stat. § 211B.15, subd. 16, had not been enacted, but the concept of a conduit fund existed in federal law. In Advisory Opinion 6, the Board concluded that a corporation may establish a nonpartisan conduit plan to solicit voluntary contributions from employees if the individual employee making the contribution retains sole control over the disposition of the employee's accumulated funds.

The Board's opinion did not establish the authority of corporations to create employee conduit funds. Rather, the central conclusion of the opinion was that under the proposed terms of operation, these newly recognized conduit funds would not constitute political committees or political funds that would be required to register and report under Chapter 10A. Years after the adoption of Advisory Opinion 6, the legislature enacted the concept of the corporate conduit fund into law as Minn. Stat. § 211B.15, subd. 16.

The Board more recently addressed the same question, again at the request of a corporation, in Advisory Opinion 406. There, the Board reaffirmed that a properly formed and managed employee contribution fund would not constitute a political committee or fund under Chapter 10A and, thus, would not be required to register with or report to the Board.

Because the 1974 advisory opinion was requested by a corporation, the resulting opinion was limited to corporate conduit funds. Similarly, because the subsequent legislation codified the earlier advisory opinion, it was also limited in scope to corporate conduit funds. The present request asks the Board to revisit the 1974 question from the perspective of a local labor union.

The request asks, in essence, whether there is some set of policies and procedures by which the union could establish a member contribution fund similar to the conduit funds recognized in Advisory Opinion 6 and 406 and in Minn. Stat. § 211B.15, subd. 16, so that the member contribution fund would not constitute a political committee or political fund under Chapter 10A.

The previous advisory opinions as well as the corporate conduit fund statute all identify the most important characteristics required for a contribution fund to be excluded from the definitions of political committee and political fund. These characteristics are (1) the fund is nonpartisan; (2) any contribution into the fund comes from an individual who is solely responsible for the decision to contribute to the fund; (3) any contribution from the fund to a candidate must be at the sole direction of the individual whose money will be used to make the candidate contribution; and (4) the individual contributor to the fund remains the owner of the money the individual placed in the fund.

The Board's previous opinions that a corporate conduit fund is not covered by the registration and reporting requirements of Chapter 10A were based on the criteria under which the fund would operate. A political committee is a group of two or more people operating in concert. A conduit fund consists of individuals acting individually, each making their own decisions about their political contribution activities. Thus, a conduit fund is not a political committee. A political

fund is an accumulation of an association's money that is used for specified political purposes. A conduit fund consists of money that belongs to the individual participants. The association sponsoring the conduit fund has no ownership or control over each individual's deposits into the conduit fund. Thus, a conduit fund is not a political fund.

Considering the factors that exclude a conduit fund from the definitions of political committee and political fund, the Board finds no legal basis on which to distinguish for Chapter 10A purposes a corporate conduit fund from a similar fund established by a local union for its members. Thus, the Board concludes that a fund operated by a local union and meeting the requirements of a nonpartisan conduit fund, as further described below, is not a political committee or a political fund and is not required to register or report under Chapter 10A.

Based on the concepts established in Advisory Opinions 6 and 406 and recognized in Minn. Stat. § 211B.15, subd. 16, a union member contribution conduit fund may operate without becoming a Chapter 10A political committee or political fund if it complies with the following requirements.

1. All solicitations for contributions to the fund that are directed to union members by the local union must be in writing, must be informational and nonpartisan in nature, and must not be promotional for any particular candidate or group of candidates.
2. The solicitation must consist only of a general request to participate in the fund and must state that there is no minimum contribution and that a contribution or lack thereof will in no way impact the participant's union membership or status.
3. The solicitation must also state that the union member must direct the contribution to candidates of the member's choice, and that any response by the member shall remain confidential and shall not be directed to the member's supervisors or managers or to union leaders. This means that the individual who administers the fund may not be a local, state, or national leader of the union or a union steward.
4. The fund is established and operated by a single local union and only members of that local union are permitted to participate in the fund.
5. The fund must maintain members' contributions in a depository separate from any other depository.
6. Contributing members must direct the distribution to candidates of their contributions to the fund. The local union sponsor may not be involved directly or indirectly in the determination of the recipients of a member's contributions to the fund.
7. When contributions to candidates are made through the fund, the amount of each individual contribution as well as the name and address of the contributor must be provided to the recipient of the contribution.
8. Implicit in the concept of a conduit fund is the member's retention of control over the member's contributions to the fund. In order to fully implement this requirement, a member must be able to withdraw all of the member's contributions to the fund that have not previously been designated by the member for a specific candidate and have not been actually paid to that candidate. Any solicitation of transfers to the fund must include a statement of this right.

Issue Two

May a local union that has a conduit fund organized and administered under the terms of this opinion retain and pay with union funds an individual to handle some or all of the administrative aspects of the fund, including solicitation of the union's members, receiving and recording member deposits, receiving direction from members with regard to making contributions to candidates with the member's funds, and making the transfers to candidates at the direction of the contributing members?

Opinion

If a local union conduit fund meets the requirements set forth in this Opinion under Issue One, the fund's status with respect to Chapter 10A is not altered by the union's decision to pay an individual to administer the fund rather than undertaking that administration with union employees or volunteers. Even if administration of the fund is contracted to another entity, the union retains the responsibility for operation of the fund consistent with this Opinion.

Issued May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Statutory Citations

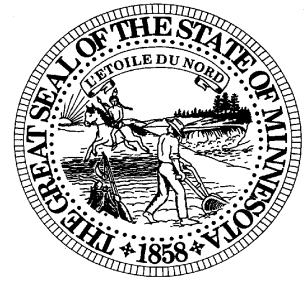
211B.15 CORPORATE POLITICAL CONTRIBUTIONS.

. . .

Subdivision 16. **Employee political fund solicitation.** Any solicitation of political contributions by an employee must be in writing, informational and nonpartisan in nature, and not promotional for any particular candidate or group of candidates. The solicitation must consist only of a general request on behalf of an independent political committee (conduit fund) and must state that there is no minimum contribution, that a contribution or lack thereof will in no way impact the employee's employment, that the employee must direct the contribution to candidates of the employee's choice, and that any response by the employee shall remain confidential and shall not be directed to the employee's supervisors or managers. Questions from an employee regarding a solicitation may be answered orally or in writing consistent with the above requirements. Nothing in this subdivision authorizes a corporate donation of an employee's time prohibited under subdivision 2.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: April 24, 2012

To: Board Members

From: Gary Goldsmith, Executive Director

Telephone: 651-296-1721

Re: Advisory Opinion 426

In December, 2011, and January, 2012, the Board issued a series of advisory opinions related to ballot question disclosure. The responses were based on the relevant provisions of Chapter 10A, as clarified by guidance issued by the Board.

Because technically an advisory opinion is binding on the Board only with respect to the requester, a new requester has submitted a request which duplicates some of the questions answered in Advisory Opinions 419 and 421.

This request is nonpublic data. As a result, Board members are not permitted to identify the requester during the public discussion of this opinion. Staff has prepared a generic version of the opinion that will be made public. The only change is that each reference to the name of the requester in the nonpublic version has been changed to refer to "the Requester". I am not including a copy of the public version of the materials in the printable packet. If you want that version, you will find it in the linked agenda materials.

Because the questions are the same, the responses in the attached draft were taken directly from the previous opinions. In some cases slight changes were made for grammatical purposes or for clarification. The substance of the answers has not changed.

Since most members participated in the development of the Board guidance on these issues and in the adoption of the previous opinions, I will not go over those discussions again.

I am attaching to this memo a document prepared by staff that lists each question in the new request. Following each new question is the text of the parallel question and answer from one of previous opinions.

After the text of the parallel question, I have reproduced the answer that was provided in the previous opinion. Members may use this to compare the previous answer to the current answer.

Please call me if you have questions or comments.

Attachments:

Draft nonpublic response to this request, designated as advisory opinion 426

Draft generic public version of response to this request

(Included in linked materials; not included in printable packet.)

Document comparing questions in new request to questions in previous requests

Request letter for advisory opinion

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

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA**
under Minn. Stat. § 10A.02, subd. 12(b)

RE: Disclosure related to ballot question committees

ADVISORY OPINION 426

SUMMARY

Minnesota Statutes Chapter 10A, provides for disclosure by associations that register political funds with the Board. This opinion describes the statutory requirements under various scenarios presented by the requester.

FACTS

As the representative of an association (the Requester), you ask for an advisory opinion based on the following facts:

1. The Requester is a social welfare, grassroots lobbying, and policy organization with qualified nonprofit corporation status under Internal Revenue Code section 501 (c)(4).
2. The Requester plans on establishing and registering a political fund in Minnesota for the purpose of supporting the constitutional amendment that will be on the November general election ballot and would, if enacted, place a definition of marriage in the Minnesota Constitution. The proposed amendment is referred to as "the Minnesota ballot question" in this opinion.
3. You are aware of previous Board advisory opinions on the subject of ballot question disclosure. However, because Minnesota statutes provide that an advisory opinion may be relied on only by the person making or covered by the request, you wish to confirm that your client may rely on principles articulated in previous opinions.

Based on the above statement of facts, you ask several questions about the disclosure required by Chapter 10A of Minnesota statutes as it applies to the Requester.

Introductory Statement

The issues raised in this request relate in part to the concept of a political fund and the association that supports it. It is important to understand that a political fund, as defined in Minn. Stat. § 10A.01, subd. 28, is simply an accumulation of money collected or expended for statutorily specified purposes. In the case of the requester, its political fund will consist of the

money collected or expended to promote or defeat a ballot question.

An association's political fund is not an entity separate from the association. Rather, it is an accumulation of money that is tracked and reported on using an accounting mechanism of the association's choosing. Thus references to a "transfer" or an "allocation" of money by an association to its political fund mean nothing more than the recording of an accounting record of the fact that an association's general treasury money has been used for purposes that, by statutory definition, make it a part of the association's political fund.

Throughout this opinion, the terms "general treasury money" or "general treasury funds" mean money that the association collects from dues, membership fees, or donations for its general purposes. These terms exclude "contributions" as that term is defined in Chapter 10A, which, in the present context, is money received by an association for the specific purpose of promoting or defeating a ballot question.

Question One

If The Requester were to make expenditures in excess of \$100 from its general treasury funds in support of the Minnesota ballot question, would The Requester then be required to publicly report all donors who contributed over \$100 regardless of the fact that their support is not or was not designated for the Minnesota ballot question?

Opinion

This question relates to the use of general treasury funds, which, as noted above, consist of both voluntary donations to the association and money that the association characterizes as membership dues or fees. By definition, general treasury funds do not arise from "contributions" as that word is defined in Chapter 10A. This section of this opinion does not apply to money raised by The Requester that would constitute Chapter 10A contributions.

Receipts of general treasury funds are not subject to the reporting requirement applicable to contributions, which requires itemization of any contribution of more than \$100. However, under Minn. Stat. § 10A.27, subd. 15, if The Requester uses \$5,000 or more of its general treasury money for expenditures to promote or defeat a ballot question, it must file a statement of underlying sources with its political fund report.

A statement of underlying sources may result in itemization of donors, but at a \$1,000-or-more threshold rather than at the more-than-\$100 threshold applicable to contributions.

Question Two

Practically, what must The Requester do when it transfers funds from its general treasury to its political fund? Is the record of the allocation of donors of less than \$1,000 maintained solely by The Requester or is it to be provided or reported to the Board? If it is not reported to the Board at the time of the transfer, are there circumstances when the Board would seek to obtain the allocation ledger? If the ledger must be provided to the Board, is there any protection for the disclosure of underlying source(s) of donors of less than \$1,000?

Opinion

In 2010, the legislature recognized independent expenditure political committees or funds as vehicles for making independent expenditures and other expenditures that do not constitute contributions to candidates or party units. In its recent guidance, the Board recognized that this

new legislation was broad enough to also apply to an association that made only ballot question expenditures. This recognition allows ballot question political committees or funds the option of reporting under the new independent expenditure political committee or fund disclosure statutes rather than under the disclosure statutes that existed prior to 2010.

Prior to 2010, Minn. Stat. § 10A.12, subd. 5, allowed an association to account for general treasury funds through a political fund account that it established and reported through. Under that section, the association was required to report to the Board with its political fund report the name of any individual whose donations to the association constituted more than \$100 in aggregate of the money that the association accounted for through its political fund.

Under the independent expenditure political fund disclosure requirements, no underlying source disclosure is required until the association has allocated \$5,000 or more in a year to its political fund account. Once allocations of \$5,000 or more have been made by an association, underlying source disclosure is required, which may or may not result in the disclosure of itemized sources.

Minnesota Statutes section 10A.27, subdivision 15, under which ballot question political funds may operate, provides that an association may allocate its transfer to a political committee or fund registered with the Board either by identifying from its donors those specific donors to whom it wants to allocate the transfer or by pro-rating the transfer over all of its donors. After applying either method, if the amount of the transfer allocated to an individual source is \$1,000 or more, the name and address of that source must be itemized on a statement of underlying sources.

If The Requester uses general treasury funds to promote or defeat a ballot question, it must prepare a statement of underlying sources and file it with the Board along with its next regular Report of Receipts and Expenditures.

The underlying calculations resulting in the allocation, including information related to the choice of allocation method, is retained with the donor association and not filed with the Board.

In the event of a Board investigation related to the activities of an association to promote a ballot question in Minnesota, it is possible that records of the calculation of the allocation could be requested by the Board. However, it is the Board's intention that in such a case, the association providing the records would substitute numbers for the actual names and addresses of the general treasury donors whose donations were part of the allocation. This would prevent the identification of donors whose names are not required to be itemized under § 10A.27, subd. 15.

Question Three

If The Requester wishes to contribute to a registered ballot question political committee, must those contributions be made from The Requester's political fund, or can The Requester contribute to a ballot question political committee directly from its general treasury funds? Do the reporting and disclosure requirements change based on the source of the contribution?

Opinion

Because The Requester will have registered a ballot question political fund with the Board, it may make contributions to registered ballot question political committees by allocating general treasury funds to its own political fund and then making a contribution to the recipient ballot question political committee that will be reported through The Requester's political fund account.

In the alternative, The Requester may make contributions to a registered ballot question political

committee directly using its general treasury funds. In either case, the underlying source disclosure requirements of Minn. Stat. § 10A.27, subd. 15, apply. In the case of the allocation to The Requester's own political fund account, The Requester would create an underlying source disclosure statement and file it with its next political fund account report. In the case of a direct contribution from general treasury funds to a registered ballot question political committee, The Requester would create an underlying source disclosure statement and provide it to the recipient ballot question political committee for filing with the recipient's next report.

If the Requester donates directly to a registered ballot question political committee, the recipient political committee will report the contribution received from the Requester, along with any required underlying source disclosure. The Requester Political Fund will have no reporting obligation with respect to the transaction.

If the Requester donates to a ballot question political committee by first allocating general treasury funds to the Requester political fund, then the Requester political fund will report the allocation to it of The Requester general treasury funds, along with any required underlying source disclosure. The Requester political fund will also report the contribution to the recipient ballot question political committee. The recipient political committee will report the receipt of a contribution from the Requester political fund, but would not receive or report any underlying source disclosure because the contribution would be coming from an association that has a political fund registered with and reporting to the Board.

Question Four

If The Requester writes in its regular publications such as its newsletter, or on its website, or in other educational materials regarding the importance of the Minnesota ballot question, may The Requester pay such costs as part of its normal program budget or must those costs all be paid by the political fund?

Opinion

The question is not whether these costs may be paid from one account or another. As has been explained in other sections of this Opinion, money becomes a part of an association's political fund when it is *used* to promote or defeat a ballot question. So whether the money is in one budget or another or one depository or another is not relevant.

The board assumes that the intent of the question is to ask whether the costs of the subject communications must be reported on the association's political fund report. Although the question provides little detail, it appears that the subject communications are for the purpose of promoting a ballot question. Thus, the costs of the communications are ballot question expenditures and must be reported on The Requester's political fund report.

Question Five

If, in a solicitation, The Requester references the Minnesota ballot question as one of the projects in which it is involved, are all resulting contributions to The Requester over \$100 subject to reporting to the Board by virtue of such references, even if not solicited specifically for the purpose and if each solicitation clearly stipulates that no contributions may be designated or earmarked for any purpose?

Opinion

The word "contributions" is specifically defined in Chapter 10A, and limits on its application have been provided in Board guidance. The Board interprets the question as referring to "donations"

to The Requester rather than to "contributions" as the word is defined in Chapter 10A. This is not to say, of course, that donations to The Requester may not also be contributions under Chapter 10A. This is, in fact, the issue raised by the question.

On October 14, 2011, the Board adopted the following Statement of Guidance regarding the application of the Chapter 10A definition of "contribution":

1. Money designated for ballot question expenditure purposes

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

2. Money given in response to a solicitation including an express request

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

3. Money given in response to a solicitation that is the functional equivalent of an express request.

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

Limitation

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

From the facts provided in your statement of the issue, it is clear that parts 1 and 2 of the definition of "contribution" do not apply to the transactions about which you inquire.

With respect to the application of the definition of "contribution" in part 3 of the guidance, requirements A and B are met. That is, the question has already been placed on the ballot by the legislature and, according to the premise of the question, the solicitation will identify the subject of the ballot question.

However, part C of the definition requires that the solicitation be "susceptible to no reasonable interpretation other than that money given as a result of the solicitation *will be used* to promote or defeat the subject ballot question." (Emphasis added.)

Without specific text or specific web pages to examine, the Board's evaluation of the fact situation must be, as is the question itself, somewhat hypothetical. However, the Board has made it clear that when determining whether money given is a "contribution" its guidance is to be applied in favor of excluding transfers where the requirements of the definition are not clearly met.

Under the question presented, the solicitation suggests that money raised could be used for any of a range of the association's various projects and activities. While donors may assume that some or even all of their donation will be used to promote or defeat a ballot question, and the association may actually end up using it for that purpose, disclosure requirements are not based on assumptions.

The Board concludes that the hypothetical solicitation is subject to interpretations other than that any donations resulting from it *will*, in fact, be used to promote or defeat a ballot question. Thus, funds received as a result of the hypothetical solicitation presented in the question would not be "contributions" under Chapter 10A. While the donors may be subject to underlying source disclosure as discussed in other sections of this opinion, the donations are not reportable as "contributions," which must be itemized when they are more than \$100.

Issued May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.01 DEFINITIONS

...

Subd 18b. **Independent expenditure political fund.** "Independent expenditure political fund" means a political fund that makes only independent expenditures and disbursements permitted under section 10A.121, subdivision 1.

...

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.12 POLITICAL FUNDS.

...

Subd. 5. **Dues or membership fees.** An association may, if not prohibited by other law, deposit in its political fund money derived from dues or membership fees. Under section 10A.20, the treasurer of the fund must disclose the name of any member whose dues, membership fees, and contributions deposited in the political fund together exceed \$100 in a year.

10A.121 INDEPENDENT EXPENDITURE POLITICAL COMMITTEES AND INDEPENDENT EXPENDITURE POLITICAL FUNDS

Subdivision 1. **Permitted disbursement.** An independent expenditure political committee or an independent expenditure political fund, in addition to making independent expenditures, may:

- (1) pay costs associated with its fund-raising and general operations;
- (2) pay for communications that do not constitute contributions or approved expenditures; and
- (3) make contributions to other independent expenditure political committees or independent expenditure political funds.

10A.27 CONTRIBUTIONS

...

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 and Order in the Matter of the Complaint of Christopher Conner
Regarding House District 66A Republican Party of Minnesota; Elizabeth Paulson, chair;
and Andrew Noble, former treasurer.**

The Allegations in the Complaint

On February 15, 2012, Christopher Conner filed a complaint with the Campaign Finance and Public Disclosure Board regarding the actions of Elizabeth Paulson and Andrew Noble, the chair and former treasurer, respectively, of House District 66A Republican Party of Minnesota (HD 66A). HD 66A is a political party unit registered with the Board.

Ms. Paulson prepared the HD 66A 2011 year-end Report of Receipts and Expenditures. She checked the box marked “No change statement” and signed the report. The complaint alleges that HD 66A actually had receipts and expenditures in 2011, that Ms. Paulson and Mr. Noble knew about those transactions when the year-end report was filed, and that Ms. Paulson therefore falsely certified the year-end report as complete and accurate.

The Response to the Complaint

Ms. Paulson’s response to the complaint shows that she and Mr. Noble took office at the March 2011 convention. Other information in the record shows that Mr. Noble resigned as treasurer in December 2011.

In her response, Ms. Paulson states that in December 2011, a former officer of HD 66A sent an email to her suggesting that the party unit had received contributions at its March 2011 convention. In January 2012, Ms. Paulson sent an email to the current and former officers of HD 66A asking them for documentation of “any payments or deductions to the House District 66A account that you have not declared/been reimbursed for during fiscal year 2011.” Ms. Paulson states that she followed up this email with phone calls and voice mails but did not receive any responses to her requests. Ms. Paulson says that due to conflicts between party unit officers, no treasurer’s reports were presented to the executive committee from June through December 2011. Ms. Paulson also states that personality conflicts, illness, and scheduling conflicts prevented the executive officers from meeting in January 2012 to discuss HD 66A finances.

Ms. Paulson further states that in January 2012, she looked through the box of HD 66A financial documents that she had received from the former treasurer in June 2011. She did not find any HD 66A bank statements for 2011 in the box or any other evidence of financial activity during that year. Ms. Paulson also looked at the check register she had received from Mr. Noble and did not see any financial activity for the months since she had taken office. Ms. Paulson states

that, based on these efforts, she concluded that HD 66A had had no financial activity since she took office in March 2011.

Therefore, to prepare 2011 year-end report for HD 66A, Ms. Paulson found the treasurer's report that had been presented at the March 2011 convention. She saw that the ending cash balance on that report, \$531.61, matched the ending cash balance on the 2010 year-end Report of Receipts and Expenditures that had been filed with the Board. Based on this report and her knowledge that there had been no financial activity during her tenure as chair, Ms. Paulson then entered the ending cash balance of \$531.61 from the 2010 report on to the 2011 year-end report, checked the box marked "No change statement," and signed the report. She filed the report with the Board on January 31, 2012.

Ms. Paulson states that when she received notice of the complaint from the Board in February 2012, she activated online banking for herself as chair of HD 66A and obtained copies of the party unit's 2011 bank statements from the bank. Those statements revealed that HD 66A actually had received \$97 in contributions at the March 2011 convention and had spent \$59.70 on food for that meeting. Ms. Paulson then filed an amended year-end report that included these transactions. The former treasurer later confirmed that there were no paper bank statements for 2011 in the box of documents that he gave to Ms. Paulson because the party unit had received only online statements for that year.

Ms. Paulson states that she did her best to prepare an accurate year-end report for HD 66A and that based on the information that she had in her possession when she prepared the report, she believed that there were no changes to the cash balance in HD 66A's bank account in 2011.

Board Analysis

The Board has the authority to investigate all reports filed with it under Minnesota Statutes, Chapter 10A. When the Board accepts a complaint, it exercises that authority to investigate all possible violations of Chapter 10A that might arise from the conduct alleged in the complaint or from the reports under review regardless of whether the complainant clearly and specifically raised those violations in the complaint.

Here, the facts alleged in the complaint raise two issues. The first is whether the HD 66A 2011 year-end report included all the financial transactions that the party unit made during that year. The second is whether Ms. Paulson signed the year-end report knowing that it was false or that it omitted required information. The complaint also raises issues related to party unit operation and control. These issues are not under the Board's jurisdiction and were not investigated.

The purpose of Minnesota Statutes, chapter 10A, is to promote accurate disclosure of political party unit financial transactions so that the public can know how the party unit is raising and spending money. To further this goal, Minnesota Statutes section 10A.20, subdivision 3, requires a political party unit to disclose on its campaign finance reports the sum of all contributions made to the party unit and the sum of all expenditures made by the party unit.

In the present case, the HD 66A 2011 year-end report did not include the sum of the contributions made to the party unit or the sum of the party unit's expenditures. Consequently, there is probable cause to find that HD 66A violated the campaign finance disclosure statutes.

A political party unit can remedy violations of the statutory reporting requirements by amending its report. Here, Ms. Paulson amended the HD 66A year-end report to include the contributions to and the expenditures made by the party unit in 2011. When a party unit remedies a reporting violation related to the omission of a contribution or an expenditure, the statutes do not provide for a civil penalty.

The next issue raised by the complaint is whether Ms. Paulson signed the HD 66A year-end report knowing that it was false or omitted required information. Minnesota Statutes section 10A.025, subdivision 2, states that anyone who signs and certifies a report as true knowing that it contains false information or who knowingly omits required information is subject to a civil penalty of up to \$3,000 and to possible criminal charges.

The standard for finding that an individual knowingly filed a false or incomplete report is higher than establishing that a report was inaccurate. To determine whether an individual knowingly filed a false or incomplete report, the Board first looks for evidence that the individual was aware of the transactions in question. Because the statute does not penalize constructive knowledge, evidence showing that the person should have known of the inaccuracy is not enough to establish a violation. Instead, the facts must show that the person had actual knowledge of the transactions in question and then certified the report knowing that it omitted or incorrectly stated those transactions.

Here, Ms. Paulson had some warning from a former party unit officer that contributions had been made to HD 66A at its March 2011 convention. In addition, if the party unit leadership had been functioning properly, Ms. Paulson would have had periodic financial statements and complete records from the former treasurers to guide her when she prepared the report. But instead, personal conflicts between the past and current party unit officers prevented the sharing of financial information between these groups. Thus, when Ms. Paulson prepared the 2011 year-end report, she believed that she had all of the relevant financial information for the year and that that information showed that there had been no change to the party unit's bank account in 2011. Because Ms. Paulson had no actual knowledge of the contributions to and expenditures made by HD 66A during 2011, there is no probable cause to find that she signed the party unit's year-end report knowing that it was false or that it omitted required information.

Although Mr. Noble was party unit treasurer during part of 2011, he did not sign or file any reports. Thus, none of the allegations of the complaint are applicable to him.

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

Findings Concerning Probable Cause

1. There is probable cause to believe that the House District 66A Republican Party of Minnesota 2011 year-end Report of Receipts and Expenditures was inaccurate because it did not include the contributions made to or the expenditures made by the party unit during the year. House District 66A RPM, however, amended its report to include all required transactions and no violation remains.
2. There is no probable cause to believe that when Elizabeth Paulson certified the House District 66A RPM 2011 year-end report, she did so knowing that it was false or that it omitted required information.

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

ORDER

The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.20, subd. 3. Contents of report. (c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

. . . .

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

Minn. Stat. § 10A.025, subd. 2. Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

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

Findings and Order in the Matter of Contributions to the 4th Congressional District Green Party of Minnesota Committee from the David Unowsky for Council Committee and the Bee Kevin Xiong Campaign Committee

Summary of the Facts

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board (the Board) may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100.

An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes section 10A.27, subdivision 13(b). Failure to provide the appropriate disclosure with a contribution of more than \$100 is punishable by civil penalty of up to \$1,000.

In the 2011 year-end Report of Receipts and Expenditures filed with the Board, the 4th Congressional District Green Party of Minnesota Committee (the 4th CD GPM) disclosed receipt of a contribution on July 13, 2011, in the amount of \$800 from the (David) Unowsky for City Council Committee, and a contribution on August 12, 2011, in the amount of \$250 from the Bee Kevin Xiong Campaign Committee. Both the Unowsky and the Xiong committees were registered with Ramsey County as the campaign committees for St. Paul City Council candidates. However, neither committee is registered with the Board. Therefore, they are unregistered associations that were required to provide the appropriate disclosure with any contribution in excess of \$100. No financial disclosure was provided with the contributions.

In response to a Board notification of the possible violation Gary Carlson, treasurer of the 4th CD GPM states, "We were under the impression that we were complying with the laws governing proper registration and disclosure when we accepted donations from [the two committees]. Prior to accepting these donations members of our party called the Ramsey County Election office and asked if it was appropriate to receive these donations and if there was a limit to the contributions. We learned that we could accept these donations and that they did not violate any rules on contribution size. We did not ask about state registration and there was no discussion about it in our conversation with the County. ...In good faith we thought that both campaigns had fully complied with the law by registering with Ramsey County and that we were fully complying with the law by accepting the donations without obtaining additional disclosure."

Mr. Carlson further states, "We take transparency and campaign finance rules very seriously and are already taking internal measures to prevent this and other mistakes from happening in the future."

On April 10, 2012, Board staff met with Mr. Carlson, Jim Ivey, and Roger Meyer, who are members of the 4th CD GPM. Mr. Meyer explained that the 4th CD GPM is registered in both Ramsey County and with the Board, and that all contributions and expenditures are made out of

one bank account. Mr. Meyer further explained that a primary purpose of the 4th CD GPM is to support Green Party candidates running for local office in Ramsey County.

In 2011, the 4th CD GPM asked for contributions from St. Paul city council candidates with the idea that the money collected would be used to print campaign pamphlets. The pamphlets that were printed listed the four Green Party candidates for St. Paul City Council equally, and candidates were included and provided brochures regardless of whether they contributed to the 4th CD GPM. Only the Bee Kevin Xiong Campaign Committee responded to the request for contributions with the donation of \$250.

On March 7, 2012, Bee Kevin Xiong came to the Board's office and stated to staff that the \$250 was for brochures, not a contribution. Mr. Xiong also provided a copy of his committee's report to Ramsey County in which the \$250 to the 4th CD GPM is listed as a purchase of campaign brochures.

David Unowsky provided a written response on March 7, 2012, to the Board's notification. Mr. Unowsky states, "I assumed, apparently incorrectly, that my filings with Ramsey County were all that was needed. ...When I decided in 2011 that I wasn't going to run for any office, I disbursed the remaining money, and filed the appropriate documents." The (David) Unowsky for City Council Committee terminated its registration with Ramsey County on September 11, 2011.

This matter was considered by the Board in executive session on May 1, 2012. The Board's decision is based on the correspondence and information received from Gary Carlson, Jim Ivey, Roger Meyer, Bee Kevin Xiong, and David Unowsky and on Board records.

Board Analysis

The decision by the 4th CD GPM to register with both Ramsey County and with the Board is appropriate for a committee that intends to be involved with both state and local level campaigns in Ramsey County. The 4th CD GPM may register and report under both regulatory authorities using only one bank account and one organizational structure as long as it reports all transactions to the Board and assumes the responsibility to operate under two separate and distinct reporting and compliance requirements. Where the provisions of Chapter 10A are more stringent than those of Ramsey County, the more stringent requirements must be followed. In this case two contributions which were permitted under Ramsey County regulations were prohibited under Chapter 10A without additional accompanying disclosure.

The Board has acknowledged on several occasions that it may be confusing for the officers of a committee registered in Ramsey County to view their committee as an "unregistered association" when a contribution is made to a committee registered under Chapter 10A. However, the registration, compliance, and reporting requirements for St. Paul City Council candidates are significantly different than the provisions of Chapter 10A. Without statutory authority, the Board must treat the political committee of candidate for local government as an unregistered association even when the committee files campaign reports with a county or municipality.

Mr. Xiong contends that the \$250 from his committee was not a contribution, but was rather a payment for campaign brochures printed by the 4th CD GPM. For the Board to accept this position there must be some relationship between the amount of money paid by the committee and the number of brochures printed for the committee. Information provided by the 4th CD GPM does not support such a relationship.

There is no evidence of a written, or verbal, agreement that the number of pamphlets printed would relate to the amount of money received from a candidate. Indeed, three of the four candidates who are included on the pamphlet did not pay the 4th CD GPM any amount. Without an agreement that establishes the item to be purchased and the price to be paid, the Board has no basis to classify the \$250 as a payment for campaign brochures.

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

Findings Concerning Probable Cause

1. There is probable cause to believe that the 4th Congressional District Green Party of Minnesota violated Minnesota Statutes, section 10A.27, subdivision 13, when it accepted contributions in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contributions.
2. There is probable cause to believe that the (David) Unowsky for Council Committee violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 to the 4th Congressional District Green Party of Minnesota without providing the required disclosure.
3. There is probable cause to believe that the Bee Kevin Xiong Campaign Committee violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 to the 4th Congressional District Green Party of Minnesota without providing the required disclosure.
4. There is no probable cause to believe that the violations by the 4th Congressional District Green Party of Minnesota, the (David) Unowsky for Council Committee or the Bee Kevin Xiong Campaign Committee were intentional, or were done with the intent to circumvent the provisions of Chapter 10A.

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

ORDER

1. The Board imposes a civil penalty of \$850, one times the amount by which the contributions exceeded \$100, on the 4th Congressional District Green Party of Minnesota for accepting and depositing contributions from two unregistered associations without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The 4th Congressional District Green Party of Minnesota is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
3. The 4th Congressional District Green Party of Minnesota is directed to refund \$150 to the Bee Kevin Xiong Campaign Committee and forward to the Board a copy of the check used to return the excess contribution within thirty days of receipt of this order.

4. The Board imposes a civil penalty of \$150, one times the amount that the contribution exceeded \$100, on the Bee Kevin Xiong Campaign Committee for making a contribution in excess of \$100 without providing the disclosure required by Minnesota Statutes section 10A.27, subdivision 13 (b).
5. The Bee Kevin Xiong Campaign Committee is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
6. In lieu of imposing a civil penalty against the (David) Unowsky for Council Committee, which no longer exists, the 4th Congressional District Green Party of Minnesota is directed to forward to the Board \$700, the amount of the contribution over \$100, by check or money order payable to the State of Minnesota within thirty days of receipt of this order for deposit into the state general fund.
7. If the 4th Congressional District Green Party of Minnesota or the Bee Xiong Campaign 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 Statutes, section 10A.34.
8. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon the return of the excess contributions and payment by the civil penalties imposed herein, this matter is concluded.

Dated: May 1, 2012

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes section 10A.27, subdivision 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

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

**Revised Findings and Order in the Matter of the Complaint of Steven Timmer Regarding
Representative Ernest Leidiger and Steven Nielsen**

Background

This matter was originally decided by the Board at its meeting of April 2, 2012. In the original findings, the Board concluded that a letter sent to the Board by Steven Nielsen, treasurer, constituted an amendment to the subject. The amendment would have reclassified as a campaign expenditure a speeding ticket that was improperly reported as a noncampaign disbursement. Subsequent to the publication of the findings, Mr. Nielsen notified the Board that it was not his intent that the letter constitute an amendment. Therefore, the report is still inaccurate in that it reports the cost of the speeding ticket as a noncampaign disbursement. These revised findings order Mr. Nielsen to amend the report to properly classify the payment of the speeding ticket.

The Allegations in the Complaint

On March 2, 2012, Steven Timmer filed a complaint and an amendment with the Campaign Finance and Public Disclosure Board. The complaint alleges that Representative Ernest Leidiger and Steven Nielsen, the treasurer of the Citizens for Leidiger committee, violated the provisions in Minnesota statutes and rules requiring principal campaign committee expenditures to be described correctly and fully on reports to the Board.

The complaint specifically cites a \$178 noncampaign disbursement listed on the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures. The year-end report states that this payment was made to Hennepin County for “[t]ransportation.” The \$178 payment, however, actually was made to pay the fine for a speeding ticket that Representative Leidiger received in March, 2011. The complaint maintains that a traffic ticket fine is not an allowable noncampaign disbursement. The complaint also argues that by labeling this payment as a transportation expense, Representative Leidiger and Mr. Nielsen violated the statutes and rules requiring noncampaign disbursements to be accurately described on reports to the Board.

The complaint claims that calling the fine a transportation expense was a “knowing attempt to deceive the Board, and by extension the public, by both Rep. Leidiger and Mr. Nielsen.” It is a violation of Minnesota Statutes, section 10A.025, subdivision 2, for a treasurer to sign and certify as true a report with the knowledge that the report contains false information or with the knowledge that the report omits required information. The Board investigated this aspect of the complaint as a potential violation of the prohibition on filing a report with the knowledge that it does not include all required information.

The Response to the Complaint

Mr. Nielsen signed the 2011 year-end Report of Receipts and Expenditures for the Citizens for Leidiger committee and certified that report as true. The instructions for the noncampaign disbursement schedule state that the report must include the "specific purpose of the disbursement." In an interview with staff, Mr. Nielsen acknowledged that when he certified the 2011 report, he was aware of this requirement.

In late February, various internet sites noted the transaction that is the subject of this investigation and indicated that the payment appeared to be for a speeding ticket. On March 2, 2012, just hours before the complaint in this matter was filed, Mr. Nielsen sent a letter to the Board. The Board concluded that this letter was an amendment to the year-end report that reclassified the speeding ticket payment as a noncampaign disbursement. Mr. Nielsen also submitted another letter in response to the complaint and gave a statement to Board staff. Copies of Mr. Nielsen's first letter and the response letter are attached to and made a part of these findings.

After the original findings in this matter were issued, Mr. Nielsen notified the Board that it was not his intent to amend the year-end report to reclassify that expense.

The responses to the complaint show that Representative Leidiger was on his way home from a late session of the legislature when he received a speeding ticket. Representative Leidiger therefore rationalized that the fine could be characterized as an expense for serving in public office, which is an allowed noncampaign disbursement. Although Mr. Nielsen did not initially agree with Representative Leidiger, Representative Leidiger ultimately persuaded Mr. Nielsen that this characterization was justified.

Representative Leidiger and Mr. Nielsen then discussed how to describe the payment on the year-end report. According to Mr. Nielsen's statement, Representative Leidiger did not want to call the payment a speeding ticket because he did not want to draw attention to the fact that he had paid this expense with campaign funds. Representative Leidiger eventually convinced Mr. Nielsen that they should use the word "transportation" to describe the payment on the year-end report.

Mr. Nielsen states that, in hindsight, it was poor judgment to call the expense "transportation." But Mr. Nielsen argues that the year-end report itself shows that there was no intent to deceive anyone because the report correctly identifies the payee as Hennepin County and lists the court's address. Mr. Nielsen also claims that because he and Representative Leidiger believed that the fine was a legitimate noncampaign disbursement under the law, they could not have had any intent to deceive. Finally, Mr. Nielsen points out that Representative Leidiger subsequently reimbursed the committee for the expense.

Board Analysis

The Board has the authority to investigate all reports filed with it under Minnesota Statutes, Chapter 10A. When the Board accepts a complaint, it exercises that authority to investigate all possible violations of Chapter 10A that might arise from the conduct alleged in the complaint or from the reports under review regardless of whether the complainant clearly and specifically raised those violations in the complaint.

Here, the facts alleged in the complaint raise three issues. First, whether the fine for the speeding ticket was accurately and specifically described on the committee's year-end report; second, whether the transaction was properly categorized as a noncampaign disbursement; and, third, whether Mr. Nielsen signed the year-end report knowing that it omitted required information.

The purpose of Minnesota Statutes, Chapter 10A, is to promote accurate disclosure of a principal campaign committee's financial transactions so that the public can know how the committee is spending its funds. To further this goal, Minnesota Statutes, section 10A.20, subdivision 3, clauses (g) and (l), require a principal campaign committee to describe the purpose of every campaign expenditure and noncampaign disbursement in excess of \$100 on the reports of receipts and expenditures that it files with the Board. All spending done by a principal campaign committee must be classified as either a campaign expenditure or a noncampaign disbursement. Unless an item fits within the limited definition of a noncampaign disbursement, it must be reported as a campaign expenditure. Minnesota Rules, part 4503.0900, requires that the report include sufficient information to justify classifying a transaction as a noncampaign disbursement. Minnesota Rules, part 4503.1800, requires that expenditures include "a description of the service or item purchased."

The description of an expenditure must be accurate and must be specific enough to allow citizens to understand what was actually purchased with the money.

In the present case, the Citizens for Leidiger year-end report stated that the purpose of the \$178 expenditure was "transportation." This description violates the rule that transactions include a description of the service or item purchased. The committee did not purchase transportation or transportation services from Hennepin County. Reporting the transaction as being for "transportation" also violates the rule that for a noncampaign disbursement, the description must include sufficient information to justify the classification. In general, costs of transportation are not noncampaign disbursements.

Finally, the description is insufficient to meet the core disclosure purposes of Chapter 10A because citizens would not interpret the description "transportation" to include payment of a fine for a speeding ticket. Identifying the payee as Hennepin County did not help to clarify that the expense was a speeding ticket fine. As a result of this analysis, the Board concludes that the evidence supports a finding of probable cause that the Citizens for Leidiger year-end report did not sufficiently and accurately describe the purpose of the \$178 expenditure.

With regard to the second issue, Mr. Nielsen states that the committee "did some rationalizing" and concluded that the cost of the speeding ticket could be classified as a noncampaign disbursement for costs of serving in office because Representative Leidiger was on the way home from a late session when he got the ticket.

Minnesota Statutes, section 10A.01, subdivision 26, clause (10), provides that noncampaign disbursements include payments made by a principal campaign committee for the candidate's expenses for serving in public office. In its advisory opinions, the Board has clarified that these expenses are limited to the ordinary and reasonable costs associated with activities that are expected or required of a public official. See, e.g., Advisory Opinions 314, 411. A speeding ticket is not an activity expected or required of a public official. Payment of a candidate's fine for a speeding ticket therefore is not an expense for serving in public office and, thus, not a noncampaign disbursement. Consequently, there is probable cause to find that Citizens for Leidiger improperly reported the \$178 payment for the fine as a noncampaign disbursement.

A principal campaign committee can remedy violations of the statutory reporting requirements by amending its report within 14 days of receiving notice of the violation. Here, the fact that Representative Leidiger repaid the \$178 expenditure does not resolve the reporting violation because all committee spending must be reported as either a campaign expenditure or a noncampaign disbursement. To resolve the violation, Citizen's for Leidiger must amend its report to properly characterize the \$178 expenditure.

The final issue raised by the complaint is whether Mr. Nielsen signed the Citizens for Leidiger year-end report knowing that it omitted required information. Minnesota Statutes, section 10A.025, subdivision 2, states that anyone who signs and certifies a report as true knowing that it contains false information or who knowingly omits required information is subject to a civil penalty of up to \$3,000 and to possible criminal charges.

The standard for finding that an individual knowingly filed a false or incomplete report is higher than establishing that a report was inaccurate. To determine whether an individual knowingly filed a false or incomplete report, the Board first looks for evidence that the individual was aware of the transactions in question and, second, that the individual certified the report knowing that the report omitted or incorrectly stated the transactions.

Here, when Mr. Nielsen signed the 2011 year-end report, he knew that the \$178 payment was for a speeding ticket fine. He was also aware of the requirement that the report must include a specific statement of the purpose of a noncampaign disbursement transaction. With that knowledge, Mr. Nielsen nevertheless listed the transaction as being for "transportation." In fact, Mr. Nielsen acknowledges that he and Representative Leidiger discussed how to describe the transaction. In his amendment, Mr. Nielsen states that "[a]t the time it just did not seem right to call it a speeding ticket." In an interview with Board staff, Mr. Nielsen acknowledged that Representative Leidiger did not want to report the transaction as being for a speeding ticket fine because he did not want to point that fact out to the public. Although they debated the point, the

treasurer ultimately accepted the candidate's position resulting in the vague and inaccurate description on the year-end report.

Minnesota Rules, part 4503.0200, subpart 2, provides that the candidate is ultimately responsible for the principal campaign committee's compliance with Chapter 10A. Minnesota Statutes, section 10A.025, subdivision 2, however, provides false certification penalties only against the person who actually signed the committee report. Consequently, although Representative Leidiger made the decision here to characterize the fine as a transportation expense, the campaign finance laws provide no penalty for his acts.

In this matter, the treasurer, at the candidate's urging, intentionally omitted details and provided a camouflaged description of an expenditure so that the public would not easily recognize the actual purpose of the transaction. The facts mandate a finding that this course of conduct constitutes a violation of Minnesota Statutes, section 10A.025, subdivision 2.

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

Findings Concerning Probable Cause

1. There is probable cause to believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures did not accurately or specifically state the purpose of the \$178 payment to Hennepin County. However, a specific description was provided by the committee and no violation remains.
2. There is probable cause to believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures improperly reported the \$178 payment to Hennepin County as a noncampaign disbursement.
3. There is probable cause to believe that when Steven Nielsen certified the Citizens for Leidiger 2011 year-end report, he did so knowing that it omitted required information.

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

ORDER

1. Within 14 days, Citizens for Leidiger must amend its 2011 year-end Report of Receipts and Expenditures to properly classify the speeding ticket fine.
2. Within 30 days of the date of this order, Steven Nielsen must pay a civil penalty of \$300 for knowingly certifying as true a report that omitted required information by sending or delivering to the Board a check payable to the State of Minnesota.

Dated: May 1, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.20, subd. 3. Contents of 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.

. . . .

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

Minn. Stat. § 10A.025 Subd. 2. Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Minn. R. 9503.0900, subp. 3. Reporting purpose of noncampaign disbursements. Itemization of an expense which is classified as a noncampaign disbursement must include sufficient information to justify the classification.

Minn. R. 9503.1800, subp. 2. Expenditures and noncampaign disbursements. Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.

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