

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

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May 5, 2015

Room 220

Minnesota Judicial Center

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MINUTES

The meeting was called to order by Chair Beck.

Members present: Beck, Flynn, Oliver, Rosen, Sande

Others present: Goldsmith, Sigurdson, Fisher, Pope, staff; Hartshorn, counsel

MINUTES (April 14, 2015)

After discussion, the following motion was made:

Member Oliver's motion: To approve the April 14, 2015, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for June 2, 2015.

New member confirmation hearings

Mr. Goldsmith reported that Members Flynn, Rosen, and Sande had been confirmed by both bodies of the legislature. Mr. Goldsmith said that he expected the sixth Board member to be appointed soon.

EXECUTIVE DIRECTOR TOPICS

Detailed review of Board budget

Mr. Goldsmith told members that staff was watching the budget closely to ensure that there would be \$150,000 left to carry forward to the next biennium as proposed in both the House and Senate budget bills. Mr Goldsmith indicated that because of the amount of time spent on legislative matters, the detailed budget document would not be ready until the June meeting.

Website redevelopment

Mr. Goldsmith told members that most of the work necessary to redevelop the Board's website was invisible to the public. Mr. Goldsmith stated that the purchase and configuration of the hardware necessary to support the new website is nearly complete. The second piece of the project, the database redesign, is finished. Mr. Goldsmith then reported that an outside contractor had just started the third part of the project; developing pages for the new website. Mr. Goldsmith also said that the first online training modules for political committee treasurers would be finished by June 30th.

Mr. Goldsmith next discussed the history of MN.IT's involvement in the project. Mr. Goldsmith said that staff initially thought that the Board's new website would launch on MN.IT's new Tridion system and that MN.IT would actually build most of the site. Mr. Goldsmith said that staff no longer recommended launching on the new Tridion system because at this time it is still in development and completely untested. Only one agency has attempted to implement a site on the new system and it is experiencing difficulties. Mr. Goldsmith also reported that as discussions with MN.IT continued, it became clear that MN.IT would not actually build the Board's site but would only provide the platform.

Because the Board is a small agency and because of the importance of implementing the new website within the limited time available, Mr. Goldsmith and Mr. Sigurdson concluded that it should not be an early adopter of new and untested technology. Rather, Mr. Goldsmith told members, development of the new website would continue and the current system of hosting would be maintained. Under the current system, MN.IT hosts static web pages on its system and the Board hosts data-driven pages on its system.

Mr. Goldsmith addressed member's questions and the Board concurred with the Executive Director's approach.

Legislative session update

Mr. Goldsmith reported that the Board's technical bill was still on the floor in both the Senate and the House. The disclosure bill was not moving in either body. Mr. Goldsmith told members that a proposal to repeal the public subsidy program was included in the House finance and tax bills.

Mr. Goldsmith also told members that although the proposal allowing the Board to carry forward \$150,000 from this biennium was in the House and Senate finance bills, the House finance bill proposed a 10.7% cut to the Board's base budget. Mr. Goldsmith said that this cut of approximately \$107,000 would negatively affect all of the Board's operations in some way. Mr. Goldsmith presented a draft letter that Board members could adopt addressed to the co-chairs of the conference committee on Senate File 888. The letter described the effect of the 10.7% cut on the Board. Mr. Goldsmith also told members that because the letter was not included in the materials sent to them seven days before the meeting, the Board would have to agree by majority consent to vote on the matter.

After discussion, the following motions were made:

Member Rosen's motion: To waive the seven-day notice requirement and take up the matter of the letter to the conference committee co-chairs.

Vote on motion: Unanimously passed.

Member Sande's motion: To adopt the letter to the conference committee co-chairs as drafted.

Vote on motion: Unanimously passed.

Policy review and adoption – Requests to reclassify disclosure on economic interest statements as security information

Ms. Pope presented members with a memorandum on this matter that is attached to and made a part of these minutes. Ms. Pope stated that the current policy for determining whether public data was security information that should be reclassified as private data did not comply with the Data Practices Act. Ms. Pope said that the revised policy was in compliance with the statute and described the process to be used for handling these requests.

After discussion, the following motion was made:

Member Rosen's motion: To adopt the revised security information policy as drafted.

Vote on motion: Unanimously passed.

Report on granted requests to reclassify disclosure on economic interest statements as security information

Mr. Goldsmith prepared a memorandum for members regarding this matter that is attached to and made a part of these minutes. Ms. Pope reported that the executive director had granted two requests to reclassify data on economic interest statements as security information. Both requests were from judges who wanted to reclassify the addresses of real properties they owned as security information.

ENFORCEMENT REPORT

Discussion items

A. Consent Items

1. Confirmation of administrative termination of lobbyist Kim Scott – Nature Conservancy.

Mr. Fisher reported that this lobbyist no longer was employed by and no longer represented the principal. The principal had been unable to obtain a lobbyist termination statement from Ms. Scott and asked that her registration be terminated with an effective date of April 14, 2015.

2. Confirmation of committee termination with a cash balance discrepancy – Citizens for Marsha Swails.

Mr. Fisher told members that this committee had submitted a termination report with a negative ending cash balance of \$51.25. The treasurer had been unsuccessful in trying to discover the reason for the discrepancy. The committee registered with the Board on March 24, 2005.

After discussion, the following motion was made:

Member Flynn’s motion: To approve both consent items.

Vote on motion: Unanimously passed.

B. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
MN Assn of Career & Technical Educators	\$175 LFF	\$0	3/16/15 Principal's Report	Notices were sent to individual's previous employer. Individual has since updated address information with the Board.	Sande	To waive the late fee.	Unanimous
Iron Rock Capital Partners	\$400 LFF	\$0	3/16/15 Principal's Report	Iron Rock discontinued business operations in September 2014. Individual never received forwarded mail notice for filing. Individual states that she filed the report one day after receiving notice.	Sande	To waive the late fee.	Unanimous
Isanti Area Joint Operating Fire District	\$50 LFF	\$0	3/16/15 Principal's Report	Principal did not believe it had to file a report as no money was exchanged for lobbying in 2014. Principal states it did not receive a call back from Board staff for two days to confirm that it needed to file report. Lobbyist terminated as of 5/31/14.	Rosen	To waive the late fee.	Unanimous

New Americans	\$400 LFF	\$0	9/23/14 Pre-general Report	Committee has low funds. Treasurer filed reports in July and October on time. All three reports were no-change statements.	Sande	To reduce the late fee to \$100.	Unanimous
Noor for House	\$625 LFF	\$0	2/2/15 Year-end Report	Candidate had a communication breakdown with the treasurer.	No motion		
HerbAn Farma	\$175 LFF	\$0	3/16/15 Principal's Report	Principal believed its lobbyist would handle filing of reports. Principal received notice regarding filing. Lobbyist terminated as of 12/31/14.	No motion		
Sprint Corp.	\$300 LFF	\$0	3/16/15 Principal's Report	Principal believed its lobbyist would file report and vice versa. Principal does not recall receiving Board staff's courtesy call on the reporting deadline. Board records indicate that Sprint has had one late filing in the past on 2012 report; report was one day late - \$5 LFF was paid.	No motion		

Informational Items

A. Payment of a late filing fee for 2014 Year-end Report of Receipts and Expenditures:

50A House District RPM, \$25
Compete Minnesota, \$250

Office to Elect David Boyd, \$50
Neighbors for Farheen Hakeem, \$50
Elect Laura Palmer, \$25

B. Payment of a late filing fee for an amended 2014 Pre-primary Report of Receipts and Expenditures:

Sharon Shimek for House B, \$600

C. Payment of a late filing fee for 2012 Year-end Report of Receipts and Expenditures:

Volunteers for Dorian Eder, \$25

D. Payment of late filing fees for Lobbyist Disbursement Reports:

Joseph Lally, Delta Dental, \$55 for reports due January 17, 2012, June 16, 2014, and January 15, 2015

E. Payment of a late filing fee for an Original Statement of Economic Interest:

Maleah Otterson, MN State Colleges and Universities, \$30

F. Payment of a late filing fee for March 16, 2015, Annual Report of Lobbyist Principal:

AdvanceEd, \$25
Advocating Change Together, \$325
All Terrain Vehicle Association of MN, \$50
Blue and White Taxi, \$375
Consumer Data Industry, \$25
Fish Guys, \$25
Gopher State One Call, \$175
Greater Minneapolis Building Owners, \$175
Kaplan Professional Schools, \$100
linq3, \$25
Lutsen Mountains, \$225
Mental Health Association of MN, \$25
Minneapolis Firefighters Fraternal Association, \$75
MN Laboratory License Coalition, \$25
MN Warehouse Association, \$25
MN Wine and Spirits Wholesale Association, \$275
Natl Association of Industrial and Office Properties, \$25
Outdoor Advertising Association of MN, \$200
Police Officers Alliance of MN, \$25
Prinsco Inc., \$25
Recombinetics Inc., \$25
Salvation Army, \$75
UnLoan Corp LLC, \$175
Waste Management of MN, \$25

G. Payment of a civil penalty for an excess contribution from a political committee/fund:

Isaacson (Jason) for Minnesota, \$12.50 (second payment)
Citizens to Elect Dan Schoen, \$25

H. Payment of a civil penalty for misuse of committee funds:

Timothy Manthey for Senate, \$450.77 (first payment)

I. Payment of a civil penalty for a prohibited contribution to a state candidate:

Julie Rosen for State Senate, \$17

J. Payment of a civil penalty for exceeding the special source aggregate contribution limit:

Melisa Franzen for Senate, \$18.75

DISCUSSION AND GUIDANCE ON PRIMA FACIE DETERMINATIONS

Mr. Goldsmith presented members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Goldsmith reviewed the statutory and rule provisions governing prima facie and probable cause determinations. Members then generally discussed the questions

listed in the memorandum. Mr. Goldsmith told the Board that staff would develop a recap of the Board's discussion and present it at the next meeting.

LEGAL COUNSEL'S REPORT

Mr. Goldsmith told members that Benjamin Kruse had provided the requested reports and was working with staff to reconcile the information on those reports. Mr. Hartshorn said that the Kruse matter would be removed from the legal report provided to members for the next meeting. The legal report is attached to and made a part of these minutes.

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 Chair had nothing to report into regular session

OTHER BUSINESS

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



Gary Goldsmith
Executive Director

Attachments:

Memorandum regarding requests to reclassify disclosure on economic interest statements as security information

Proposed revised security information policy

Current security information policy

Report on granted requests to reclassify disclosure on economic interest statements as security information

Memorandum on discussion and guidance on prima facie determinations

Legal report

Minnesota

Campaign Finance and Public Disclosure Board



Date: April 28, 2015
To: Board Members
From: Jodi Pope
Subject: Revisions to Board policy on requests to reclassify public data as security information

Minnesota Statutes section 13.37, subdivision 1, paragraph (a), allows an agency to reclassify public data as private data if the identified data is security information.

"Security information" means government data the disclosure of which the responsible authority determines would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury. "Security information" includes checking account numbers, crime prevention block maps and lists of volunteers who participate in community crime prevention programs and their home and mailing addresses, telephone numbers, e-mail or other digital addresses, Internet communication services accounts information or similar accounts information, and global positioning system locations.

Id.

The Board's current policy regarding requests to reclassify public data as security information was adopted in 1998. The policy refers to only some of the criteria listed in Minnesota Statutes section 13.37, subdivision 1, paragraph (a). Specifically, the policy attempts to limit the definition of security information to "government data, the disclosure of which would be likely to substantially jeopardize the security of . . . individuals against . . . trespass or physical injury." The policy also does not incorporate a 2012 amendment to Minnesota Statutes section 13.37, subdivision 1, paragraph (a), that assigned the security information determination to the agency's responsible authority.

The revisions proposed for the Board's policy on security information requests would replace the limited definition of "security information" with the statutory definition of this term that already applies to this determination. The revised policy also would make it clear that the reclassification request must be directed to the Board's responsible authority, the executive director. The revised policy, however, would require the Board to be consulted prior to the issuance of the final decision in cases where the executive director preliminarily determines that the identified data is not security information.

Attachments

Proposed policy on security information
Current policy on security information

Policy on Requests to Reclassify Public Data as Security Information

Minnesota Statutes section 13.37, subdivision 1, paragraph (a), provides:

"Security information" means government data the disclosure of which the responsible authority determines would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury. "Security information" includes checking account numbers, crime prevention block maps and lists of volunteers who participate in community crime prevention programs and their home and mailing addresses, telephone numbers, e-mail or other digital addresses, Internet communication services accounts information or similar accounts information, and global positioning system locations.

Security information regarding individuals is classified as private data. Minn. Stat. § 13.37, subd. 2 (a).

An individual may request that public information about the individual filed with the Campaign Finance and Public Disclosure Board be considered security information and reclassified as private data. The request must be made to the Executive Director as the responsible authority for the Board. Upon receipt of a reclassification request, the Executive Director must temporarily reclassify the identified data as private data and must permanently classify the request itself, and any supporting documents, as security information.

The Executive Director then must determine whether the data identified in the request is security information. If the Executive Director determines that the identified data is security information, the executive director must issue the final decision in the matter and must report that decision to the Board in the regular session of the Board's next regularly scheduled meeting or as soon thereafter as practical.

If the Executive Director preliminarily determines that the identified data is not security information, the temporary classification of the data must be maintained and the matter must be presented to the Board in the executive session of the Board's next regularly scheduled meeting or as soon thereafter as practical. The Executive Director may not make a final determination until after the Board has considered the matter as required above. The temporary reclassification of the identified data as private data expires when the Executive Director issues the final decision.

After the final decision is issued, any data determined to be security information, including the request and the decision regarding the request, must be permanently reclassified as private data. The security information must be retained on the original filing but redacted from any public copies of that filing. The decision that the identified data is security information is permanent. If the subject record is eventually transferred to the State Archives, the redacted filing will be transferred, and the original filing will be destroyed, in accordance with the Board's record retention schedule and the provisions in Minnesota Statutes section 138.17, subdivision 7, regarding the destruction of private data.

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

Policy on Security Information

“Security information means government data, the disclosure of which would be likely to substantially jeopardize the security of . . . individuals . . . against . . . trespass or physical injury.” Minn. Stat. § 13.37, subd. 1(a).

Security information regarding individuals is classified as private data by the Minnesota Government Data Practices Act (Minn. Stat. Chapter 13).

An individual may request that public information about the individual filed with the Campaign Finance and Public Disclosure Board be considered security information and re-classified as private data. When such a request includes information which supports a belief that public data about the individual in Board files may substantially jeopardize the security of the individual against trespass or physical injury, the Executive Director shall temporarily classify that data as private and remove it from the Board's public files.

The matter shall be brought to the Board in executive session at its next regularly scheduled meeting. The Board will determine whether all or a portion of the filed data is security information. Any portion of the filed data which is security information shall be permanently edited from the copy of the filing kept in the Board's public records. The original filing shall be retained in Board records and classified as private data. Both the request and the Board's action shall be classified as security information and shall be private data under the Data Practices Act.

When the individual is no longer required to file with the Board the edited data shall be retained according to the agency records retention contract. The original documents will be destroyed in accordance with Minnesota Statutes Chapter 138.

Minnesota

Campaign Finance and Public Disclosure Board



Date: April 28, 2015
To: Board Members
From: Gary Goldsmith
Subject: Report on requests for reclassification of public data as security information

Under Minnesota Statutes section 13.37, subdivision 1, paragraph (a), and the Board's policy on security information requests, an individual may ask that public information about the individual filed with the Board be considered security information and re-classified as private data.

"Security information" means government data the disclosure of which the responsible authority determines would be likely to substantially jeopardize the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.

Minn. Stat. § 13.37, subd. 1 (a).

The Board has received two requests from judges required to file economic interest statements to reclassify the location of real properties that they own as security information. Unless otherwise directed by the Board, the executive director plans to grant both requests under the revised policy anticipated to be adopted during the regular session of the May meeting.

Request One

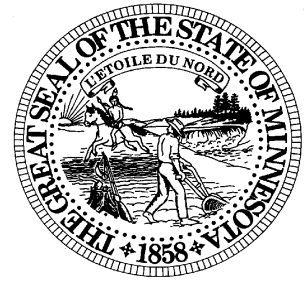
In the first request, the judge owns two parcels of real estate separated by a 150-foot lot owned by someone else. The first parcel is the judge's homestead. The second parcel contains a house and another building. The judge uses the non-homesteaded land and the buildings there as an extension of the judge's home. The judge stores personal vehicles, tools, and recreation items on the non-homesteaded land and regularly goes back and forth between the two properties. The judge also owns a parcel of vacant land in the immediate vicinity of the judge's home. The judge asks to reclassify the addresses of the additional parcels as security information.

Request Two

In the second request, the judge owns lakeshore, a farm, and rental property in a city. The judge has security concerns because the judge spends a great deal of time at all three locations. The judge also is concerned about vandalism of the properties when the judge is not there. The judge has tried cases across the state, not just in the county where the judge is seated. The judge asks to reclassify the addresses of the three properties as security information.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: April 28, 2015

To: Board members

From: Gary Goldsmith, Executive Director

Telephone: 651-539-1190

Re: Board determinations leading to the investigation of a complaint

The prima facie determination

Pursuant to the recently amended section 10A.02, subdivision 11, when a complaint is filed with the Board, the Chair must make a prima facie determination of whether the complaint states a violation. The prima facie determination may be delegated by the Chair to another Board member or the Chair may decide that the entire Board should make the determination.

According to section 10A.01,

A prima facie determination is a determination that a complaint filed under section 10A.02, subdivision 11, is sufficient to allege a violation of this chapter or of those sections of chapter 211B listed in section 10A.02, subdivision 11.

If a prima facie determination is made that the complaint does not allege a violation, the complaint is dismissed without prejudice.

The probable cause determination

If the Chair or designee makes a determination that a complaint is sufficient to allege a violation, the matter then moves to the full Board for a probable cause determination. Both the complainant and the respondent are permitted to provide written and oral information to the Board on the subject.

Section 10A.02, subdivision 11, states:

If a determination is made that the complaint alleges a prima facie violation, the board shall, within 45 days of the prima facie determination, make findings and conclusions as to whether probable cause exists to believe the alleged violation that warrants a formal investigation has occurred.

Although the grammar of the above clause is imperfect, it was clear at the time the matter was being discussed in the legislature that the probable cause determination is to include both a determination as to whether there is probable cause to believe that a violation has occurred and a determination as to whether the matter should be investigated.

The legislature did not want the Board to have to investigate every matter simply because a complaint about an actual violation was filed. This concept was incorporated into the rules that the Board adopted to implement the process.

The rules state that once the prima facie determination is made, the Chair must schedule the matter for a probable cause determination. Rule 4525.0210 specifies what can happen as part of the probable cause determination:

Subp. 4. Action after probable cause not found. If the board finds that probable cause does not exist to believe that a violation has occurred, the board must order that the complaint be dismissed without prejudice. The order must be in writing and must indicate why probable cause does not exist to believe that a violation has occurred.. . .

Subp. 5. Action after probable cause found. If the board finds that probable cause exists to believe that a violation has occurred, the board then must determine whether the alleged violation warrants a formal investigation.

. . .

Subp. 6. Action if formal investigation not ordered. If the board finds that probable cause exists to believe that a violation has occurred, but does not order a formal investigation under subpart 5, the board must either dismiss the matter without prejudice or order a staff review under part 4525.0320.

In making the determination of whether to dismiss the complaint or order a staff review, the board must consider the type of possible violation, the magnitude of the violation if it is a financial violation, the extent of knowledge or intent of the violator, the availability of board resources, whether the violation has been remedied, and any other similar factor necessary to decide whether to proceed with a staff review.

Summary complaint/investigation decision process

- 1. Chair makes prima facie determination. Dismisses if no violation found.**
- 2. Board determines if complaint meets probable cause standard. Dismisses if it does not.**
- 3. Complaint meets probable cause standard. Board decides whether to have formal investigation. If so, Board directs Executive Director to conduct investigation.**
- 4. If formal investigation not warranted, Board either dismisses or orders an informal investigation in the form of a staff review.**

Questions that must be addressed in implementing these statutes

1. When is a complaint "sufficient to allege a violation" of a provision under the Board's jurisdiction? Is the Chair permitted to undertake *any* evaluation of the substance of the evidence offered in the complaint to support its allegations? In other words, can a complaint meet the prima facie determination threshold even if it is based purely on speculation?
2. If the facts are undisputed, but the complaint depends on a question of law not previously disposed of by the Board which, if decided one way, would result in a violation, is it appropriate to decide the question of law at the prima facie determination stage, or should that question be answered at the probable cause stage?

If the question of law is to be decided at the probable cause stage, the Chair would need

to determine that the complaint states a prima facie violation so that the full Board can decide the question of law. On the other hand, if the question of law can be resolved at the prima facie determination stage, should the Chair always refer to the Board prima facie determinations in which a previously undecided question of law is determinative?

3. If the factual allegations of a complaint are not based on any personal knowledge of the complainant, but solely on submitted materials, should the Chair consider all of the materials when making the prima facie determination, or should the Chair consider only the complainant's characterization of those materials in the complaint?
4. How does the probable cause determination differ from the prima facie determination? This question is particularly relevant if some evaluation of the weight of the allegations is to be undertaken at the prima facie determination stage.
5. Can evidence outside the complaint be raised by the respondent during the prima facie determination stage, or is the respondent limited to arguing interpretations of the evidence and application of the law? (Under current law, the respondent may submit information at the prima facie determination stage, the complainant may not since the complainant's position is stated by the complaint itself. Under proposed legislative changes, neither party would be permitted to submit information at the prima facie determination stage.)
6. What should the Chair do with respect to the prima facie determination if the complaint relates to a matter that is already the subject of a Board-initiated action? Such an action could be a preliminary staff inquiry (not a form of investigation) or a staff review (an informal investigation).
7. Many violations are discovered during the Board's computer-assisted compliance testing processes, which are undertaken following each reporting period. Additionally, many violations are disclosed as a result of the Board's reconciliation process. However, these processes take time and it would be easy for a complainant to file a complaint about one of these types of matters, even though the matter will be resolved by the Board in the ordinary course of its compliance efforts. Should the fact that the matter will be examined by the Board in the ordinary course of its operations affect the prima facie determination?
8. Is an error in making an entry onto a campaign finance report a violation that should survive the prima facie determination?
9. What happens if a complaint is filed based on a reported transaction that has already been fixed through an amended report filed prior to the filing of the complaint?
10. What happens if a complaint is filed on a matter that has already been disposed of by the Board through its own informal or formal action?

Examination of the process using actual examples

Complaint of RPM vs Dayton and the DFL

Facts not in dispute – legal issues raised

(For another example, see Carson regarding Fisher – no disclaimer on signs)

Allegations: Use by the DFL of a segment of a video clip that was published online by the Dayton committee constituted cooperation, thus defeating the independence of the DFL expenditure that used the clip. Failure of the Dayton committee to object to the use of the clip after the ads began running defeated the independence of the expenditure.

Response: Use of public media does not constitute cooperation. A candidate is not permitted to communicate with publisher about independent expenditures, so objecting is not only not required, but is prohibited.

Facts: Undisputed. The DFL used part of a video clip publicly posted to the internet by the committee.

Legal issues: Complainant argues that (1) use of clip by itself constitutes cooperation and (2) failure of committee to object to use after the fact constitutes ratification resulting in committee approval.

Status of the law before the complaint: The Board had permitted use of public materials (photos and print) in independent expenditures without finding cooperation or approval, but had not specifically stated that such use does not constitute cooperation. The Board had suggested in a previous matter (DFL complaint regarding Pawlenty and the RPM) that a committee's failure to object to use of material might constitute ratification of the actions of its agent in cooperating with the independent spender, thus resulting in a finding of approval.

Prima facie determination: The Chair made a determination that the complaint was sufficient to allege a violation because the facts were not in dispute and if the complainant's theories of law were accepted, there could be a violation.

Probable cause determination: No factual issues. The Board resolved the legal questions in favor of the respondent and dismissed the complaint.

Complaint of Timmer regarding the RPM and Michelle MacDonald

Facts obtained solely from source materials provided as part of the complaint

Allegations: The RPM engaged in economic reprisals or threatened economic reprisals or physical coercion of Michelle MacDonald because of her political activity in running for Supreme Court as a RPM endorsed candidate.

Response: No prohibited conduct occurred.

Facts: Not in dispute. The complaint included links to video of the actual conduct that the complainant alleged constituted the physical coercion as well as links to documents that the complainant alleged constituted economic coercion or threats of loss of employment. Complainant acknowledged in the complaint that he had no personal knowledge of the matter.

Prima facie determination: Because the complaint stated that the complainant had no knowledge of the events, the Chair looked beyond the complainant's characterization of the events. The Chair considered the attachments to the complaint – original video and original documents – to constitute the allegations of the complaint. The video made it clear that there was no physical coercion. The other documents did not mention employment or threaten loss of employment. Neither did the documents contain anything that the Chair believed could reasonably be construed to be threats of economic reprisal, giving every benefit of interpretation to the complainant.

As a result of review of the primary source attachments to the complaint, the Chair made a determination that the complaint did not meet the prima facie determination threshold and dismissed the complaint.

In this case, the complaint included allegations that, by themselves, might have been sufficient to make a determination that the complaint stated a violation. For example, the complainant stated that the RPM "frog-marched" Ms. MacDonald from its State Fair booth area. However, because the complainant also acknowledged in the complaint that he had no personal knowledge of the events and because the video, submitted as part of the complaint, showed that no person even touched Ms. MacDonald, the Chair did not give any weight to this allegation.

This determination may stand for the principle that when a complaint is supported by primary sources, the prima facie determination may consider those sources in addition to the complainant's own allegations in the complaint.

**Complaint of Carlson regarding Kent Committee
Transaction on report entered in a way that prevented the Board's software from
calculating correct balances.**

Allegations: 2014 year-end campaign finance report is inaccurate in that unpaid bills "disappear" from the report. This is a reporting violation and constitutes certifying a report as true when it includes false or incomplete information.

Response: The error resulted from incorrectly entering a payment to an unpaid bill on the 2013 report.

Facts: The only facts on which the complaint is based are the contents of the reports themselves. The complainant did not purport to have any information beyond the actual filings by the committee.

The committee incurred a bill to a printer in the amount of \$37,278.59 and reported this transaction on its 2013 report. On the same report, the committee reported a payment of \$31,500 on this same bill (see attached report pages). However, the committee entered the payment as text in a note with the original bill, not as a separate payment transaction. Because the payment was not entered as a separate financial transaction, the Campaign Finance Reporter software could not recognize it and did not include it when calculating the outstanding balance of unpaid bills or the committee's ending cash balance.

The error was corrected on the 2014 report with the result that it appeared to the complainant that the unpaid bill "disappeared" from the report. On the basis of the alleged missing unpaid bill, complainant asserted that the treasurer had certified a report as true with the knowledge that it omitted required information.

Prima facie determination: Section 10A.20 requires certain information to be included on a report. Failure to include a required transaction or piece of information is a violation of this section. However, in this matter no information was omitted from the report. The information was available to the reader of the report, though not recognizable to the software.

Section 10A.025, subdivision 4, provides the procedure for fixing errors on reports. It requires the treasurer to amend the report within 10 days after learning of the error.

Based on the fact that there was no omission from the report, but an error in how the transaction was entered, it was the Chair's determination that the entry of the payment to the printer in a form not recognizable by the software was not a violation, but an error subject to the amendment process. This determination also disposed of part of the false certification claim, namely the claim that the payment was not included on the report.

The Chair also addressed the question of whether certifying a report that significantly overstated the amount of outstanding unpaid bills and the amount of cash on hand constitutes a violation of the certification statute. As noted, the \$31,500 payment was disclosed on the report, but was not recognized by the software. As a result, the unpaid bills balance was overstated by \$31,500 and the cash on hand balance was understated by the same amount.

Section 10A.025, subdivision 2, states as follows:

(a) 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. . . .

(b) An individual shall not sign and certify to be true a report or statement knowing it contains false information or knowing it omits required information.

In the complaint, the complainant concentrated on the "missing" unpaid bill on the 2014 report. However in a subsequent communication with staff, he also noted the inaccurate balances on the 2013 report.

On the point of certification of a report with significantly inaccurate totals, all of which are automatically calculated by the Board's software, the Chair determined that the complaint, even expanded to include the inaccurate balances, did not state a prima facie violation.

In this matter, complainant made no allegation with regard to the certification other than the conclusory allegation that the treasurer certified a report with the knowledge that it was false or omitted required information.

The Chair determined in this case that because the transaction detail on the report was correct and the software calculated all of the summary totals, the complaint did not state a violation for knowingly certifying a false report. However, this example raises the question of what is required of a treasurer to avoid either a prima facie determination or a probable cause determination in a false certification complaint. That question will be the subject of a future Board meeting.

Attachments:

Complaint of Carson regarding Kent

Transaction summary page and expense page from Kent report

Prima facie determination in Carson regarding Kent

