

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

.....
**October 5, 2016
Nokomis Room
Centennial Office Building**

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MINUTES

The meeting was called to order by Chair Rosen.

Members present: Flynn, Greenman, Leppik, Oliver, Rosen

Others present: Sigurdson, Goldsmith (left after website demonstration), Fisher, Pope, staff; Hartshorn, counsel

MINUTES (September 7, 2016)

After discussion, the following motion was made:

Member Leppik's motion: To approve the September 7, 2016, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Thursday, November 10, 2016. The December Board meeting is scheduled for 10 a.m. on Monday, December 5, 2016.

EXECUTIVE DIRECTOR TOPICS

Demonstration of website redevelopment

Mr. Goldsmith attended this portion of the meeting to demonstrate the new website. Mr. Goldsmith told members that the new website's beta release was scheduled for October 10th. Mr. Goldsmith said that the new site has a different style than the current website and creates a new visual identity for the Board. The structure of the new website is based on the user's identity and the MyCFB feature will allow users to customize their homepages. Mr. Goldsmith stated that all program staff will be able to update the content on the new site, which will make the site more responsive and free the Board's IT staff for work on other projects.

Special election in house district 32B

Mr. Sigurdson presented members with a memorandum on this topic that is attached to and made a part of these minutes. Mr. Sigurdson said that because this matter had not been placed on the agenda at least seven days before the meeting, a majority of the members would have to consent to vote on the matter.

Mr. Sigurdson then told members that the governor had called a special election in house district 32B under Minnesota Statutes section 204B.13, subdivision 2, which is a new statute that governs vacancies in nomination that occur shortly before a general election. Mr. Sigurdson said that this was the first special election called under section 204B.13, subdivision 2. Unlike a typical special election, special elections called under section 204B.13, subdivision 2, do not have filing periods. Mr. Sigurdson said that this was a problem because under Chapter 10A the timing of several actions necessary to qualify for public subsidy payments in a special election are triggered by the close of the filing period for the special election. Mr. Sigurdson said that staff had reviewed section 204B.13, subdivision 2, and had determined that the deadline for filing the nomination certificate was the date most analogous to the close of a filing period. Staff then used the deadline for filing the nomination certificate to calculate the due dates for the actions necessary to qualify for public subsidy payments. Mr. Sigurdson asked the Board to ratify staff's actions and the established filing dates.

After discussion, the following motions were made:

Member Greenman's motion: To consider the matter of the filing dates for public subsidy payments for the special election in house district 32B.

Vote on motion: Unanimously passed.

Member Flynn's motion: To adopt the following resolution:

RESOLVED, that the Board adopts the following filing dates for all candidates in the special election in house district 32B:

Constructive close of the filing period:	November 15, 2016 (seven days after general election)
Public subsidy agreement due:	November 16, 2016 (one day after close of filing period)
Contributions raised/affidavit due:	November 21, 2016 (five days after close of filing period)
Economic interest statement due:	November 29, 2016 (14 days after close of filing period)

Vote on motion: Unanimously passed.

Appointment of new member

Mr. Sigurdson told members that 12 people had applied for the opening on the Board and that the governor expected to appoint a new Board member by the November meeting.

Governor's budget

Mr. Sigurdson told members that he was working on the governor's proposed budget for the Board. The governor was recommending that the Board receive the same amount that it received in the last biennium. Mr. Sigurdson said that this amount would be enough to fund the current staff level and operations of the Board unless there was a significant cost of living adjustment included in the state employee contracts for the upcoming biennium. Mr. Sigurdson said that he would monitor this situation and alert the Board if action became necessary.

POTENTIAL ADMINISTRATIVE RULE TOPICS AND PROCEDURE FOR ADOPTION

Mr. Sigurdson and Ms. Pope presented members with a memorandum on this matter that is attached to and made a part of these minutes. Ms. Pope reviewed the rule development process and said that staff recommended appointing a rule subcommittee to develop the rule language. Ms. Pope also briefly discussed the procedures for adopting rules and told members that a regular rulemaking would take approximately 12 to 14 months to complete.

Mr. Sigurdson then briefly reviewed some of the rulemaking topics that could be pursued. Members discussed the matter and asked staff to divide the list of proposed topics into noncontroversial and potentially controversial changes and to present those lists at the next meeting.

ENFORCEMENT REPORT

A. Discussion Items

1. Request for balance adjustment – Dan Hall Volunteer Committee - \$564.23 less in bank than reported

Mr. Fisher told members that the Dan Hall Volunteer Committee was asking to adjust its 2014 ending cash balance from \$14,200.10 to \$13,635.87. This was a discrepancy of \$564.23. Mr. Fisher said that the discrepancy could not be located at this time and that it predated the current treasurer who had worked diligently to amend recent reports to accurately reflect the committee's finances. Mr. Fisher said that the committee had registered with the Board on June 18, 2009.

After discussion, the following motion was made:

Member Leppik's motion:	To grant the Dan Hall Volunteer Committee's balance adjustment request.
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Vote on motion:	Unanimously passed.
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2. Request for reconsideration of waiver request and/or payment plan – DFL Hunting and Fishing Caucus

Mr. Fisher told members that this committee had accrued a \$200 late filing fee on its 2016 pre-primary-election report due on 7/25/2016. At its September 7, 2016, meeting, the Board passed a motion to reduce the late fee to \$142 on a waiver request that was summarized as follows:

Treasurer's employment status changed four days before report was due.

Mr. Fisher said that the committee had reported a cash balance of \$142 on its pre-primary-election report but that bank charges of \$5 per month had reduced the balance since that time. Mr. Fisher said that the account had, at the time of the treasurer's most recent email, \$132 remaining and should, at the time of the meeting, have \$127 remaining. Mr. Fisher said that the treasurer was asking that the Board reduce the fee to \$100 and/or approve a payment plan for the committee of \$20/month.

After discussion, the following motion was made:

Member Flynn's motion: To approve a payment plan of \$20 per month for the DFL Hunting and Fishing Caucus.

Vote on motion: Unanimously passed.

B. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & 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>
Friends of MN School Bus Operators	\$1,000 LFF	8/8/2016 24 hr.	Treasurer was out of the office in August due to a death in the family.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Minn Young DFL	\$200 LFF	7/25/2016 Pre-primary	Treasurer experienced issue with missing file that caused him to be unable to view reports. Treasurer also entered name for certification in different form than registered in software.	Member Rosen	To waive the late filing fee.	Passed unanimously.
United Steelworkers District 11	\$200 LFF	7/25/2016 Pre-primary	Attempt to upload report made prior to deadline. Pop-up box indicating that report was successfully uploaded was shown, but in the background, status indicated it had failed. Problem is believed to involve a firewall issue.	Member Leppik	To waive the late filing fee.	Passed unanimously.
Small Business MN PAC	\$200 LFF	7/25/2016 Pre-primary	Report was 4 days late, not 1 day late as request states. Former treasurer was apparently dealing with death in family and estate issues. New treasurer has registered to replace former treasurer. No income or expenditures since 2012.	No motion		
Coalition of MN Businesses	\$550 LFF	7/25/2016 Pre-primary	Attempt to upload report was made on deadline, but download of information was conducted instead of upload.	Member Greenman	To reduce the late filing fee to \$200.	Passed unanimously.
7th Senate District DFL	\$425 LFF	2/1/2016 YE Report	Former treasurer states that she believed the report had been filed on time. Report was not received by the Board until 2/25/2016. The software is not at issue as the party unit filed paper reports at that time.	No motion		

UFCW Council 6	\$400 LFF	8/1/2016 24 hour	Treasurer requests waiver due to receipts being normal monthly income reported consistently. In phone conversation with treasurer, it appeared she was unaware of 24 hour notice period.	No motion		
UAW Minn State CAP Council PF	\$1,000 LFF; \$625 LFF	4/14/2016 1st quarter; 6/14/2016 2nd quarter	Deputy treasurer simply forgot to file the reports. Fund had no expenditures during reporting periods and only income was allocation from UAW. Deputy treasurer has now registered as treasurer so that he can receive Board notices, as he is responsible for filing reports.	No motion		
Minn Farm Bureau PAC	\$500 LFF	7/25/2016 Pre-primary	Treasurer states that turnover in administrative assistants led to report falling through cracks. However, individual has been registered as treasurer of the organization since 6/2012. Treasurer also states that organization had no activity since 2/2015.	No motion		

Informational Items

- A. Payment of a late filing fee for 2015 year-end report of receipts and expenditures**
 Grassroots for Michael Griffin, \$112.30 (revenue recapture)
- B. Payment of a late filing fee for June 14, 2016, report of receipts and expenditures**
 MPA Political Action Committee, \$50
- C. Payment of a late filing fee for July 25, 2016, report of receipts and expenditures**
 15B House District DFL, \$100
 Jon Applebaum for Representative, \$50
 Chilah Brown for Senate, \$50
 Laura Woods for House, \$200
 Iron Workers Local 512, \$50
 Larkin Hoffman Political Fund, \$50
 Lommen Nelson Political Action Committee, \$200
 Minneapolis Downtown Council PAC, \$500
- D. Payment of a late filing fee for June 15, 2016, lobbyist disbursement report**
 Jon Tollefson, MN Nurses Association, \$75
- E. Payment of a civil penalty for a contribution during the legislative session**
 Pipefitters Local 539, \$125
 Todd Podgorski for State Senate, \$125
- F. Deposit to the General Fund, State Elections Campaign Fund**
 Douglas County DFL, \$50 anonymous contribution

PRIMA FACIE DETERMINATIONS FINDING NO VIOLATION

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that since the last meeting, Chair Rosen had dismissed one complaint on the grounds that it did not state a prima facie violation.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn told members that he had nothing to add to the report that is attached to and made a part of these minutes.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair reported the following matters into regular session:

Probable cause determination in the matter of the complaint of Nancy Barsness regarding the Citizens for Jeff Backer Jr House Committee

Findings, conclusions, and order in the matter of the complaint of Erwin Rud regarding the Committee to Elect Mike Moore; Michael Moore; and Ed Lavelle

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



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding special election in house district 32B

Memorandum regarding potential administrative rules topics and procedures for adoption

Memorandum regarding prima facie determination finding no violation

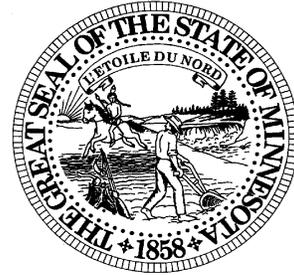
Legal report

Probable cause determination in the matter of the complaint of Nancy Barsness regarding the Citizens for Jeff Backer Jr House Committee

Findings, conclusions, and order in the matter of the complaint of Erwin Rud regarding the Committee to Elect Mike Moore; Michael Moore; and Ed Lavelle

Minnesota

Campaign Finance and Public Disclosure Board



Date: October 4, 2016

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Special election for house district 32B

On September 9, 2016, Governor Dayton issued a writ of special election for house district 32B. This will be the first special election held under section 204B.13. Board guidance is necessary in this matter to set the appropriate dates for public subsidy and other filings.

A special election cycle begins on the day that the writ is issued and ends 60 days after the special election is held. Minn. Stat. § 10A.01, subd. 16. The complication with this special election is that some filing dates are tied to the close of the period during which candidates may file for office. However, under section 204B.13, and because the vacancy occurred after the 79th day before the general election, the statutes provide that candidates whose names appeared on the general election ballot will also appear on the special election ballot – meaning that they will not have a new filing period for the office. In addition, the Republican Party, in nominating a replacement, has until seven days after the general election to file with the Secretary of State. This deadline is not a filing period as typically used to trigger the other filing deadlines.

Board staff recommends that the best way to fairly apply the statutes is to consider the end of the seven day time limit to nominate a replacement candidate to be the close of the filing period for the special election. This establishes a close parallel to more typical special election cycles, where other filings required of the candidate to qualify for a public subsidy payment are tied to the close of the filing period.

The statutes state that a public subsidy agreement must be submitted “not later than the day after the close of the filing period for the special election for which the candidate filed.” Minn. Stat. § 10A.322, subd. 1(d). Qualifying contributions must be raised and an affidavit of contributions must be submitted “within five days after the close of the filing period for the special election for which the candidate filed.” Minn. Stat. § 10A.323(b). In addition, a statement of economic interest is due from the candidate “within 14 days after filing an affidavit of candidacy or petition to appear on the ballot.” Minn. Stat. § 10A.09, subd. 1(3). However, the candidates who were already on the general election ballot will not file another affidavit of candidacy.

To remedy these issues, Board staff recommends that the Board issue a resolution adopting the following filing dates for all candidates to establish consistency and notify the relevant parties.

- Constructive close of the filing period: November 15, 2016 (seven days after general election)
- Public subsidy agreement due: November 16, 2016 (one day after close of filing period)
- Contributions raised/affidavit due: November 21, 2016 (five days after close of filing period)
- Economic interest statement due: November 29, 2016 (14 days after close of filing period)

Finally, for the Board’s and the public’s reference, public subsidy payments to qualified candidates will be as follows:

- DFL: \$4,105.82
- RPM: \$3,787.21

Campaign Finance *and* Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

DATE: September 28, 2016

TO: Board Members

FROM: Jeff Sigurdson
Executive Director

TELEPHONE: 651-539-1189

Jodi Pope
Management Analyst

651-539-1183

SUBJECT: **Review of administrative rule topics and procedure for adopting administrative rules.**

On June 13, 2016, former Board member George Beck submitted a petition for rulemaking to the Board. The petition asked that the Board adopt administrative rules to provide additional guidance on what constitutes an independent expenditure. The petition was supported by the League of Women Voters. At the August 2, 2016, meeting the Board considered the petition and declined to start immediate action on administrative rules based on the petition. However, the Board directed the executive director to review topics for potential rulemaking, including the topics listed in the petition, and bring those topics to the Board for discussion during calendar year 2016. This memo provides a list of possible rulemaking subject areas identified by staff.

This memo also reviews the approach recommended by staff to develop the content of new or modified administrative rules, and provides an approximate timeline for the rulemaking process if the Board decides to pursue administrative rulemaking.

Rule development

The process of adopting administrative rules provides an opportunity for the public, the legislature, and the governor to evaluate the proposed rules and provide input to improve the content.

To increase public involvement at the earliest stages of the development process and to ensure that the Board has the flexibility necessary to draft appropriate rules, staff recommends that the Board chair appoint a rule subcommittee. The subcommittee would develop recommended rule language and then present that language to the full Board for consideration and possible approval.

The Board used a subcommittee of three Board members to develop the 2014 exempt rules related to investigations. Staff recommends that the subcommittee for the current rulemaking use the same procedures as those used in 2014. The subcommittee meetings would be noticed and open to the public. Members of the public would have the opportunity to address the subcommittee in person and to submit written comments regarding the proposed rule language being considered at that meeting. After considering the written and oral comments received at a meeting the subcommittee members would direct staff on the changes to be made to the draft rules on each specific topic. A revised draft rule would then be prepared for review at the next meeting.

Rule timeline

Staff expects that the rule development by the subcommittee will take three to five months. The rule development stage is directly proportional to the number of topics the Board decides to address in the rules.

After the language of the initial draft of the proposed administrative rules has been agreed to by the full Board, a time period of one to two months would be needed to prepare the documents and get the approvals necessary to publish the notice of intent to adopt the rules. After the notice of intent to adopt is published, it will take an additional five to seven months before the rules would be effective. A chart showing the administrative rulemaking process is attached to this document.

If the Board decides to begin the administrative rulemaking process, the Board will need to authorize the executive director to publish a notice of a statutorily-required 60-day public comment period. A resolution authorizing a request for comments is attached to this memo. A sample request for comments that does not specify the topics that will be included in the rulemaking is also attached.

Possible rulemaking topics

1. **Clarifying conduct, actions, or relationships that prevent an expenditure from being an independent expenditure.** In his petition Mr. Beck asked that the Board adopt rules setting out what constitutes “cooperation,” “implied consent,” or action “in concert with” between candidates and committees that make independent expenditures. There are a number of other areas where administrative rules could be used to provide additional guidance on independent expenditures. The rule subcommittee could also consider rules on the following topics:
 - Republication. Making a video advertisement, radio advertisement, or other high resolution video of the candidate available on a candidate’s website may be considered as a form of cooperation with committees that rebroadcast or republish the advertisements on the candidate’s behalf or create advertisements from the video.
 - Fundraising. Advisory Opinion 412 provides that candidate committee funds may not be contributed to an independent expenditure committee or fund when the candidate has signed a public subsidy agreement, and Advisory Opinion 437 provides that if a candidate fundraises for an independent expenditure committee, and the independent expenditure committee subsequently makes expenditures to benefit the candidate, then the expenditures are not independent but rather approved expenditures (a type of in-kind contribution) for the candidate. If the Board believes that the guidance stated in an advisory opinion should be further clarified and made applicable to more than the requestor, the Board must adopt an administrative rule to achieve that end.
 - Common Consultants. Advisory Opinion 400 provides that a consultant may provide services to both a candidate and an independent expenditure committee that makes independent expenditures to benefit that same candidate if sufficient firewalls are placed between the staff working on the two accounts. An administrative rule could clarify the separation needed to avoid defeating the independence of expenditures created by a consulting firm that also provides services to the subject of the independent expenditures.
 - Former Staff. Some states provide that if a former senior staff member on the officeholder’s administrative staff or campaign committee leaves to run a political

committee, then expenditures by that committee to benefit the officeholder are not independent. Typically there is a time limit of one year on rules regulating former staff.

- Agent of the candidate. Advisory Opinions 296 and 338 provide guidance on what actions make an individual an agent of the candidate. The issues raised in these advisory opinions could be reviewed for potential adoption as administrative rules.
- Actions that do not prevent expenditures from being independent. Conversely, a rule could be drafted to provide that some actions do not constitute cooperation with the candidate, and therefore do not compromise independent expenditures. For example, participating in an interview or completing a questionnaire on issues, a prior endorsement, attending an event held by the candidate's committee, or providing pictures of the candidate for download on the candidate's website are types of actions that could be excluded from the type of cooperation that impacts the independence of expenditures. Advisory Opinion 410 covers nineteen separate questions on communications that may affect the independence of subsequent expenditures. At least some of the guidance in the advisory opinion would be appropriate for broader application through administrative rules.

2. Clarifying disclaimer requirements and exemptions for independent expenditure and attribution disclaimers. Both Chapters 10A and 211B regulate disclaimers on campaign material. The statutes contain terms which would benefit from clarification by administrative rule. For example the disclaimer must be "conspicuous" and "prominent," but those terms are not defined.

3. Revisions to investigation and audit rules to conform to statutory changes and experience. The administrative rules provide that the individual who is the subject of the complaint may submit a written response before the Board chair issues a prima facie determination. This right was removed from statute in 2015. There are also corrections that would be beneficial to the process provided for staff reviews that are resolved by findings.

4. Noncampaign disbursements. Some of the noncampaign disbursement categories provided in statute are broadly stated, and campaign committees have asked for clarification regarding these categories in advisory opinion requests. The recently issued Advisory Opinion 442 on office space falls into this category. In addition the Board may recognize a new noncampaign disbursement category in an advisory opinion, as occurred in Advisory Opinions 415 and 424. All three opinions should be enacted into administrative rule.

In addition the findings issued to the Atkins and Hoppe campaign committees recognized the need for additional administrative rules on noncampaign disbursements so that the Board may provide consistent enforcement of some categories. Areas to be considered include:

- Reimbursement for mileage. Guidance on the type of automobile reimbursements to the incumbent that may be paid with campaign committee funds.
- Travel. The Board has long recognized travel costs to attend a conference closely related to legislative duties as a noncampaign disbursement that may be paid with committee funds. Additional guidance may be appropriate for travel unrelated to a conference.
- Meals. Guidance on the purchase of meals for legislative staff or constituents.

- Cellphone plans. Recognition of cellphones as a cost of serving in office or a campaign expenditure with limitations to prevent abuse.
 - Membership dues and fees for local organizations. In the Hoppe findings the Board concluded that membership fees to local organizations like a Rotary Club could be paid for with campaign funds, but should be classified as a campaign expenditure. For broad application this conclusion should be enacted into administrative rule.
- 5. Reporting.** Several campaign finance reporting issues could be addressed through administrative rulemaking. Areas to be considered include:
- Description of expenditure. The current administrative rule, 4503.1800, could provide better guidance on the level of detail required when disclosing expenditures.
 - Reimbursements. The reporting of reimbursements is confusing and would benefit from clarification by administrative rule.
 - Receipt date for contributions. Clarification of when a contribution is “received” if the contribution is processed through an electronic online contribution service or website or through a service such as PayPal. In general the current administrative rules were written before online contributions became prevalent and could be updated to reflect current technology.
- 6. Political funds.** The existing rule on depositories for political committees and funds should be modified to clarify that a political fund is required to establish a separate account only when the fund is accepting contributions from some source other than the general funds of the organization. A clarification on the commingling provision for political funds would also be appropriate.
- 7. Economic Interest Statement.** The administrative rules related to economic interest statements do not reflect the new statutory requirement for officials to certify their statements annually. Additionally, the definition of securities to be reported may be overbroad, and the annual certification required of individuals who ceased to be a public official during the preceding year could be clarified and simplified.
- 8. Conforming rules to statutory changes, and obsolete rules.** Administrative rules are based on statutory provisions. When a statute is changed any related administrative rules need to be updated to reflect that change. In some cases the statutory change is so significant that the administrative rule cannot be conformed to the change and becomes obsolete. Staff has identified about 20 rules that need to be updated through amendment, and another seven rules that should be repealed because they are obsolete.

Attachments

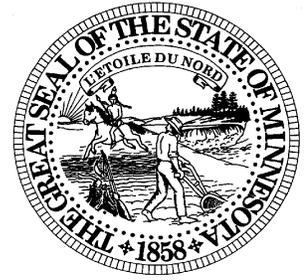
Resolution authorizing request for comments

Sample request for comments

Rulemaking progress chart

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 28, 2016

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Prima facie determinations finding no violation

Complaints filed with the Board are subject to a prima facie determination made by the Board chair in consultation with staff. If the Board chair determines that the complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If, however, the chair determines that the complaint does not state a prima facie violation, the chair must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following complaint was dismissed by the chair and the materials are provided here as an informational item to the other Board members. No further action of the Board is required.

Complaint of David Meisinger regarding Patrick Armon for City Council:

On September 19, 2016, the Board received a complaint from David Meisinger regarding the Patrick Armon for City Council campaign. The complaint alleged that the campaign did not include the required statutory disclaimer language on its lawn signs or in a Facebook post. Because the Board does not have the authority to investigate complaints involving local office candidates, the Board chair made a determination on September 20, 2016, that the complaint did not state a prima facie violation.

Attachments

Prima Facie Determination
Complaint

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
October, 2016**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Jeffrey Hoffman	Yellow Medicine River Water District	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				
Larry Stelmach	West Mississippi Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				
	West Mississippi Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
David Berglund	Cook Soil and Water Conservation District	Unfiled Economic Interest Statement due January 25, 2016 Untimely Filing of 2015 Economic Interest Statement Untimely Filing 2011 Economic Interest Statement	\$100 LF \$1,000 CP \$80 LF \$100 LF \$100 CP	7/7/16				
Jeffrey Johnson	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				

CLOSED FILES

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF NANCY BARSNESS REGARDING THE CITIZENS FOR JEFF BACKER JR
HOUSE COMMITTEE AND STATE REPRESENTATIVE JEFF BACKER

On August 9, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Nancy Barsness regarding the Citizens for Jeff Backer Jr House committee and State Representative Jeff Backer. The Citizens for Jeff Backer Jr House committee is the principal campaign committee of Jeff Backer for the seat in the House of Representatives for district 12A.

The complaint alleged that: (1) Rep. Backer distributed campaign literature that did not include the required disclaimer, in violation of Minnesota Statutes section 211B.04; and (2) The campaign literature was mailed using a postal permit paid for by the Minnesota House of Representatives. The committee did not report either an in-kind contribution from the Minnesota House of Representatives for the cost of the postage or an expenditure to the Minnesota House of Representatives to pay for the use of the postal permit. By failing to report the mailing cost for the campaign literature on its 2016 pre-primary-election Report of Receipts and Expenditures the Backer committee is in violation of the reporting requirements in Minnesota Statutes section 10A.20.

On August 23, 2016, the chair made a determination that the complaint and its attachments stated a prima facie allegation of a violation of the disclaimer and reporting requirements. On September 21, 2016, Rep. Backer submitted a response for consideration at this hearing.

Analysis

The subject literature is a 2016 legislative report that discusses the developments of the previous legislative session. The piece does not ask for campaign contributions, encourage constituents to vote for or oppose Rep. Backer or any other candidate, or mention the 2016 election in any manner. The Board has historically and consistently classified these types of legislative wrap-ups as constituent services because they serve to benefit constituents in the incumbent's district.

Minnesota Rules 4503.0950, Subpart 2, states that "constituent services provided by an incumbent as a part of the duties of serving in office and paid for with state funds designated for that use are not reportable under Minnesota Statutes, chapter 10A." Rep. Backer, in his response, states that the subject literature was prepared and disseminated on his behalf by the House Republican Caucus. On this point, complainant appears to agree. She states that the Office of Administrative Hearings, in a prior iteration of the complaint, "concluded that the Report was sent by US Mail with postage paid by the Minnesota House of Representatives." A copy of the envelope in which the report was received is provided as an attachment to the complaint. The postage is marked as "Presort Standard US Postage Paid Twin Cities, MN Permit No 171." Permit No 171 is the State of Minnesota's mailing permit.

Because the subject literature was "provided by an incumbent as part of the duties of serving in office and paid for with state funds designated for that use" it does not result in a reportable incident under Chapter 10A. Therefore, no probable cause exists to believe that the committee violated the reporting requirements of Minnesota Statutes section 10A.20.

In addition, because neither the committee nor Rep. Backer paid for, prepared, or disseminated the legislative report, which was prepared and disseminated by the House Republican Caucus, a disclaimer

stating that the material was prepared and paid for by Rep. Backer's committee or Rep. Backer, himself, would have been inappropriate. For that reason, there is no probable cause to believe that the committee or Rep. Backer violated the disclaimer requirement of Minnesota Statutes section 211B.04.

Order

There is no probable cause to believe that the Citizens for Jeff Backer Jr House committee or State Representative Jeff Backer violated the disclaimer and reporting requirements in Minnesota Statutes sections 10A.20 and 211B.04 to the extent that the House Republican Caucus disseminated to constituents 2016 legislative reports. The complaint is dismissed without prejudice.

/s/ Daniel N. Rosen_____

Date: October 5, 2016

Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

**State of Minnesota
Campaign Finance and Public Disclosure Board**

Findings, Conclusions, and Order in the Matter of the Complaint of Erwin Rud regarding the Committee to Elect Mike Moore; Michael Moore; and Ed Lavelle

On July 27, 2016, the Minnesota Campaign Finance and Public Disclosure Board received a complaint submitted by Erwin Rud regarding the Committee to Elect Mike Moore; candidate Michael Moore; and committee treasurer Ed Lavelle.

The complaint contained the following allegations: 1) the committee accepted office space and staff services from a corporation in violation of Minnesota Statutes section 211B.15; 2) the committee failed to report its expenditures on its pre-primary-report as required by section 10A.20; 3) the committee failed to include the required disclaimer on its campaign material in violation of section 211B.04; and 4) Mr. Moore and Mr. Lavelle, in their capacities as owner and editor, respectively, of a newspaper, charged higher rates for political advertising for some candidates in violation of Minnesota Statutes section 211B.05, subdivision 2.

The chair dismissed the advertising rate allegation at the prima facie determination stage because the Board does not have jurisdiction over violations of Minnesota Statutes section 211B.05, subdivision 2.

On September 7, 2016, the Board issued a probable cause determination in the matter. In that decision, the Board dismissed the corporate contribution allegations for lack of probable cause on the grounds that the office space was donated by an individual and the corporation charged the committee for the staff services. The Board found probable cause to believe that the reporting and disclaimer violations had occurred. The Board determined, however, that the reporting violations had been remedied by the filing of an amended report that included the missing contributions and expenditures and dismissed the reporting allegations. An investigation was ordered into the disclaimer allegations.

Analysis

Minnesota Statutes section 211B.04 requires a candidate committee to prominently include a disclaimer with the committee's name and address on any campaign material that it causes to be prepared or disseminated. Campaign material is any material whose purpose is to influence voting at an election. Minn. Stat. § 211B.01, subd. 2. The Board may impose a civil penalty of up to \$3,000 for a violation of the disclaimer requirement. Minn. Stat. § 10A.34, subd. 4.

The Moore committee prepared four banners, 1,000 lawn signs, and 1,000 copies of a literature piece that was used as a handout and a mailer. The banners, lawn signs, and literature pieces were campaign material because their purpose was to influence voting at an election. The committee acknowledges that it should have included a disclaimer on the banners and the lawn signs.

The committee, however, argues that the literature piece fell into an exception for “personal letters . . . clearly being distributed by the candidate” and therefore was not required to have a disclaimer. The literature piece was not addressed to individual recipients. Instead, it was generically addressed to “Folks.” The piece also was printed using a landscape orientation and contained a color photo of the candidate. Logos for both the committee and the DFL party were printed in color on the piece. Finally, although the name “Mike” was printed near the end of the text, there was no signature on the piece. Taken as a whole, these details show that the literature piece was not a personal letter and that it therefore should have had a disclaimer.

By letter dated September 17, 2016, Mr. Moore provided additional information regarding the campaign material produced without the required disclaimer and the steps taken by the committee to correct the error. Mr. Moore states that the committee added a sticker with the proper disclaimer to the banners. Before the disclaimer sticker was added, one banner was displayed in the window of the committee’s campaign headquarters, one was displayed in the private home of a relative who lives outside the district, and the remaining two were used on a vehicle that was driven in one parade.

Mr. Moore maintains that only a few lawn signs were distributed without the disclaimer. The committee found all of the distributed signs and added a sticker with the proper disclaimer to them immediately after receiving the complaint. The committee also added a sticker with the proper disclaimer to the signs that were yet to be distributed so that all of the lawn signs now have a proper disclaimer.

Finally, Mr. Moore acknowledges that all 1,000 of the literature pieces were distributed without a disclaimer. Approximately 600 of the literature pieces were mailed and the remaining 400 pieces were used as handouts.

Based on the above analysis, the Board makes the following:

Findings of fact

1. The Committee to Elect Mike Moore caused four banners and 1,000 literature pieces to be prepared and disseminated without a disclaimer.
2. The Committee to Elect Mike Moore caused 1,000 lawn signs to be prepared and partially disseminated without a disclaimer.
3. The purpose of the banners, literature pieces, and lawn signs was to influence voting at an election.
4. The Committee to Elect Mike Moore has added a sticker with a proper disclaimer to the banners and lawn signs.

Based on the analysis and the findings of fact, the Board makes the following:

Conclusions of law

1. The banners, lawn signs, and literature pieces that the Committee to Elect Mike Moore caused to be prepared and disseminated were campaign materials that required a disclaimer. The Committee violated Minnesota Statutes section 211B.04 by causing these materials to be prepared and disseminated without the required disclaimer.
2. The Committee to Elect Mike Moore mitigated the harm caused by the violation of section 211B.04 by adding a proper disclaimer to the banners and the lawn signs as soon as it became aware of the problem.

Based on the analysis, findings of fact, and conclusions of law, the Board issues the following:

Order

1. A civil penalty in the amount of \$350 is assessed against the Committee to Elect Mike Moore for violating the disclaimer requirement in Minnesota Statutes section 211B.04. The amount of the civil penalty takes into account both the large number of literature pieces that were disseminated without the disclaimer and the committee's prompt efforts to mitigate the harm caused by the lack of a disclaimer on the other material.
2. The Committee to Elect Mike Moore is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If the Committee to Elect Mike Moore does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. 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.022, subdivision 5.

/s/ Daniel N. Rosen
Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: October 5, 2016