

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

.....
**January 9, 2018
Room 220
Minnesota Judicial Center**
.....

MINUTES

The meeting was called to order by Chair Flynn.

Members present: Flynn, Haugen (arrived during executive director's report), Leppik, Moilanen, Rosen, Swanson

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

MINUTES (December 14, 2017)

After discussion, the following motion was made:

Member Moilanen's motion: To approve the December 14, 2017, minutes as drafted.

Vote on motion: Unanimously passed (Haugen absent).

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Wednesday, February 7, 2018.

EXECUTIVE DIRECTOR REPORT

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 January was a busy month for staff because reports were due in all three programs overseen by the Board. Mr. Sigurdson also said that candidate filing had opened for the special elections being held in House District 23B and Senate District 54. Mr. Sigurdson finally stated that the Board had received twenty five applications from qualified applicants for the vacant assistant executive director position and that the hiring process for this position was moving forward.

REPORT ON 2016 RECONCILIATION

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson explained the history of the reconciliation process and the issues that had arisen with this process in 2013. Mr. Sigurdson told members that the reconciliation for

2016 was essentially complete and that 99.94% of the reported transactions between registered committees reconciled.

ENFORCEMENT REPORT

A. Discussion items

1. Balance adjustment request – Joe McDonald for State Rep

Ms. Pope told members that the Joe McDonald for State Rep committee was the principal campaign committee of Rep. Joe McDonald. In 2017, Board staff had notified the McDonald committee that there was a discrepancy between the beginning cash balance on its 2016 report and the ending cash balance on its 2015 year-end report. Ms. Pope said that the committee's treasurer had explained that the discrepancy arose before she became treasurer at the end of 2014. The treasurer had stated that despite the previous treasurer's poor recordkeeping, she had been able to find and correct a large error in 2010 but had not been able to locate the source of the remaining \$587.56 discrepancy. Ms. Pope stated that the treasurer had told staff that the committee's 2015 and 2016 transactions were all accounted for on the committee's reports. Ms. Pope said that the treasurer had filed an amended 2015 report showing the committee's actual beginning and ending cash balances for that year. Ms. Pope stated that the committee was asking the Board to adjust its year-end balance for 2014 from \$6,149.69 to \$6,737.25 to match its actual cash balance at the beginning of 2015. Ms. Pope told members that the committee had registered with the Board on June 9, 2010, and had not received any other balance adjustments.

After discussion, the following motion was made:

Member Rosen's motion: To grant the Joe McDonald for State Rep's request to adjust its 2014 year-end balance from \$6,149.69 to \$6,737.25.

Vote on motion: Unanimously passed.

2. Balance adjustment request – Ryan Winkler Volunteer Committee

Ms. Pope told members that the Ryan Winkler Volunteer Committee was the house campaign committee of former Rep. Ryan Winkler. The committee had reported that its 2016 year-end balance was \$963.58. Ms. Pope said that the committee had stated that its actual bank balance at the end of 2016 was \$190.37, which was a discrepancy of \$773.21. Ms. Pope stated that the committee had examined its records and determined that the bulk of the discrepancy occurred before 2007. The committee could not find the exact source of the discrepancy because bank records for 2006 were no longer available. Ms. Pope said that the committee was asking to adjust its year-end 2016 balance to \$190.37. The committee then planned to file its 2017 report and terminate its registration. Ms. Pope told members that the committee registered with the Board on February 17, 2006, and had not received any other balance adjustments.

After discussion, the following motion was made:

Member Rosen's motion: To grant the Ryan Winkler Volunteer Committee's request to adjust its 2016 year-end balance from \$963.58 to \$190.37.

Vote on motion: Unanimously passed.

3. Reconsideration of waiver request – SEIU Local 26 Political Fund

Ms. Pope told members that SEIU Local 26 was a political fund and therefore was not required to file reports for periods with no activity. The fund's only receipts are transfers from its parent association. Ms. Pope said that in June 2017 as part of an effort to correct balance discrepancy issues, the fund had filed a 2016 year-end report showing all of the transfers as unitemized contributions. Because the transfers exceeded the itemization threshold, staff told the fund to amend its report to itemize the transfers. Ms. Pope stated that the amended report showed that based on the timing of the transactions, the fund should have filed a 24-hour notice report before the 2016 primary, a 10-day pre-general-election report, and a year-end report. The fund accrued the maximum \$1,000 late filing fee for all three reports. Ms. Pope said that at the November meeting, the Board made no motion on the fund's waiver request. Ms. Pope noted that the Board had consistently reduced a 24-hour notice late fee from \$1,000 to \$250 in other matters.

After discussion, no motion was made.

4. Request to refer matter to the Attorney General's Office – Brown (Chilah) for Senate

Ms. Pope told members that the Brown (Chilah) for Senate committee was the principal campaign committee of Chilah Brown. Ms. Pope said that Ms. Brown and her treasurer Michelle Berger had failed to file the committee's 2016 year-end report of receipts and expenditures. The committee last reported a cash balance of \$3,556.18 and received \$7,757 in public subsidy funds. Ms. Pope stated that the committee had accrued \$1,000 in late fees and \$1,000 in civil penalties for the year-end report. The committee also had an unpaid \$50 late fee for the 2016 pre-general-election report. Ms. Pope said that staff was asking the Board to refer the matter to the Attorney General's Office to seek an order compelling the filing of the report and a judgment for the accrued late filing fees and civil penalties.

After discussion, the following motion was made:

Member Leppik's motion: To refer the Brown (Chilah) for Senate committee to the Attorney General's Office.

Vote on motion: Unanimously passed.

5. Request to refer matter to the Attorney General’s Office – Duluth DFL

Ms. Pope told members that the Duluth DFL was a party unit that had failed to file its 2016 year-end report. On its pre-general-election report, the party unit reported a cash balance of \$6,957.09. Ms. Pope said that the Duluth DFL had accrued the maximum \$1,000 in late fees and \$1,000 in civil penalties for the year-end report. Ms. Pope said that staff was asking the Board to refer the matter to the Attorney General’s Office to seek an order compelling the filing of the report and a judgment for the accrued late filing fees and civil penalties.

Member Leppik’s motion: To refer the Duluth DFL party unit to the Attorney General’s Office.

Vote on motion: Unanimously passed.

B. Waiver request

<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>
Kirsten Johnson (candidate)	\$100 LFF, \$1,000 CP	6/14/2016 Candidate EIS	Candidate was required to file economic interest statement because she filed to be on the ballot for state senate. Candidate’s employer then decided that running for office would be a conflict of interest. This decision was made after the last day that candidate could withdraw her name from the ballot but before she had spent any money. Candidate then immediately ended campaign activity. Candidate called Board in response to request for report and was told that she did not have to file campaign finance reports if she had not spent any money. Candidate believed that this direction also applied to EIS. Candidate was referred to attorney general’s office and submitted EIS after receiving complaint.	Member Rosen	To waive the late filing fee and civil penalty.	Passed unanimously.

Informational Items

A. Payment of a late filing fee for amended 2016 year-end report of receipts and expenditures

Neighbors for Ilhan Omar, \$150

B. Payment of a late filing fee for amended 2016 year-end report of receipts and expenditures

Citizens for Jane Montemayor, \$201.25 (Revenue Recapture)

C. Payment of a late filing fee for failure to file 2016 pre-primary-election report of receipts and expenditures

Lawrence Patwin (candidate did not register committee) \$83.72 from Revenue Recapture

D. Payment of a late filing fee for the June 15, 2017, lobbyist disbursement report

Sarah Janecek, Caribou MSP, \$225
Eric Reichwald, Down in the Valley, \$375
Matt Jeschke, Kennecott Eagle Minerals, \$50
Elizabeth King, Geronimo Energy, \$525

E. Payment of a late filing fee for a statement of economic interest for a public official

David Berglund, Cook County SWCD, \$200 (2016 and 2017)

F. Payment of a late filing fee and civil penalty for a statement of economic interest for a local candidate

Lisa Bender, City Council of Minneapolis, \$100 late fee, \$600 civil penalty

G. Payment of a late filing fee for March 15, 2016, annual report of lobbyist principal

Tavern League of Minn, \$25

H. Payment of a civil penalty for false certification

Branden Petersen, October, \$280; November, \$280; December, \$280

I. Payment of a civil penalty for excess special source contributions

Jim Nash for Minnesota, \$250

J. Payment of a civil penalty for acceptance of an earmarked contribution

Goodhue County RPM, \$1,000

ADVISORY OPINION REQUEST

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 the requester had agreed to make the matter public and that the request concerned the effect of the gift prohibition on the provision of books and informational materials to legislative and executive branch officials. Mr. Sigurdson told members that the draft opinion determined that the materials could be provided to the officials, but that they must be reported as permissible gifts on the requester's lobbyist disbursement reports.

After discussion, the following motion was made:

Member Rosen's motion: To approve the advisory opinion as drafted.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn had nothing to add to the provided report.

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 matter into regular session:

Findings, conclusions, and order in the matter of the complaint of Wojtalewicz regarding Tim Miller, Citizens for Tim Miller, Southern Minn Beet Sugar Cooperative PAC, and Renville County RPM

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

Respectfully submitted,

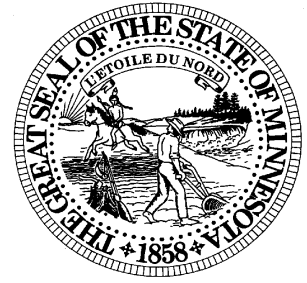


Jeff Sigurdson
Executive Director

- Attachments:
Memorandum regarding executive director report
Memorandum regarding 2016 reconciliation
Memorandum regarding advisory opinion request 445
Draft Advisory Opinion 445
Legal report

Minnesota

Campaign Finance and Public Disclosure Board



Date: January 2, 2018

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations December 2017

Year-end Reports

December is always one of the busiest times of the year for Board staff as it prepares for end of the year reporting in all three major program areas; campaign finance, lobbying, and economic interest. For all three programs staff sends a first class letter to the individual responsible for filing the report. As the reporting deadline approaches reminder e-mails are sent to those who have not yet filed, and reminder phone calls are made to non-filers near the reporting deadline.

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2017, is due on January 16, 2018. Staff sent reporting notifications to 809 lobbyists who will file about 2,076 reports. The Board provides a voluntary online filing system for lobbyist disbursement reports; usually around 98% of the reports will be filed through the online filing system. Marcia Waller and Jon Peterson are the lead staff for this report.

Campaign Finance Program. The year-end report of receipts and expenditures for 2017 is due on January 31, 2018. Reports are due from 618 candidates, 318 political party units, 342 political committees and funds, and 46 independent expenditure committees and funds. Over 90% of the reports will be filed electronically, but a significant amount of reports will require staff data entry. Joyce Larson, Jon Peterson, and Gary Bauer are the lead staff for this report.

Economic Interest Program. The annual certification by public officials for 2017 is due on January 29, 2018. There will be 2,924 annual certifications due, plus another 25 original economic interest statements filed by public officials recently appointed to their positions. Staff expects that over 90% of annual certifications will be done through the online filing system. Jodi Pope and Jon Peterson are primarily responsible for this reporting project, with lots of hands on training for Kevin Lochner as he will be taking over the administration of the EIS program from Ms. Pope during 2018.

Personnel

The position of assistant executive director was posted on November 20, and closed on December 20, 2017. A total of 23 applicants applied directly through the state employment website. The Board's HR representative did the first review of the applicants and determined that fifteen meet the minimum qualifications for the position. I am in the process of reviewing the applications forwarded from HR and intend to conduct interviews in January.

Campaign Finance and Public Disclosure Board



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

DATE: November 22, 2017

TO: Board Members

FROM: Jeff Sigurdson
Executive Director

TELEPHONE: 651-539-1189

SUBJECT: 2016 - Yearly Update on Reconciliation of Contributions between Registered Committees

Background

In the fall of 2013, the Star Tribune published an article describing problems found in the database of contributions to state candidates, political party units, and political committees and funds provided to the paper by the Campaign Finance and Public Disclosure Board. In particular the Star Tribune found that it could not reconcile over \$20 million dollars in contributions reported between registered committees during the years 2000 to 2012. Staff confirmed that the problems identified in the article existed, and during the remainder of 2013, all of 2014, and the first quarter of 2015, worked to reduce the number of contributions between registered entities that did not reconcile.

At the August 2015 Board meeting staff reported to the Board on the progress made in reconciling contributions, and reported on nine steps implemented by the executive director to minimize unreconciled contributions in future reporting years. The Board directed staff to stop the active reconciliation of contributions made prior to 2014, and to report annually to the Board regarding the reconciliation of contributions for the prior reporting year. This memo provides the status of the reconciliation of contributions between registered entities reported in 2016.

Reconciliation of 2016

The 2016 year-end reports of receipts and expenditures were due on January 31, 2017. The reports were processed using procedures designed to limit the number of unreconciled contributions caused by data entry errors. These procedures include double checking the data entry of paper reports and requiring treasurers to submit complete amended reports if warranted. In Table 1 the 2016 reconciliation numbers are highlighted in grey, the years 2010 – 2015 are provided for comparison.

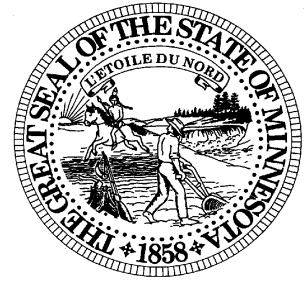
Table 1

Year	Total Itemized Transfers	Amount Initially Not Reconciled	Percentage Initially Reconciled	Current Amount Not Reconciled	Percentage Currently Reconciled
2010	\$25,459,972	\$4,791,084	81.18%	\$31,968	99.87%
2011	\$4,087,836	\$500,960	87.75%	\$5,870	99.86%
2012	\$32,772,360	\$4,326,600	86.80%	\$19,614	99.94%
2013	\$4,506,703	\$417,657	90.73%	\$8,167	99.82%
2014	\$24,647,813	\$1,955,927	92.06%	\$30,561	99.88%
2015	\$5,125,778	\$530,272	89.65%	\$1,430	99.97%
2016	\$32,920,683	\$5,621,789	83.02%	\$20,858	99.94%
Totals	\$129,521,145	\$18,144,289	85.99%	\$118,468	99.91%

The reconciliation process takes considerable staff time to complete. The initial mailing to committees with a reconciliation issue was in April, with 485 committees contacted for reporting at least one contribution to or from another registered committee that failed to reconcile. In almost all cases, amendments were secured from the donor, the recipient, or both to resolve the discrepancy. Staff is still working with eight committees to resolve contributions made in 2016 that do not reconcile.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: January 2, 2018

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 445 – The gift of informational material to legislative and executive branch public officials.

The request for this advisory opinion was received on December 6, 2017. On December 12, 2017, the Institute for Justice provided written consent to make the request public information. The Board laid over the opinion request at the December 14, 2017, meeting.

The Institute for Justice is a lobbyist principal represented by a registered lobbyist. In support of its lobbying efforts the Institute for Justice wishes to give two publications to legislators and public officials in the executive branch. The request concerns the potential application of two exceptions to the general prohibition on gifts to public officials found in Minnesota Statutes section 10A.071.

The draft opinion compares the publications to the exceptions in the gift prohibition provided for informational material with a resale value of five dollars or less, and for services to assist a public official in the performance of official duties. The draft opinion concludes that the publications may be provided to public officials, but must be reported as permissible gifts on the lobbyist disbursement report.

Members should feel free to contact me with any questions or suggested changes prior to the Board meeting.

Attachments:

Advisory Opinion Request – Institute for Justice
Draft Advisory Opinion 445

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

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

Issued to: Paul Sherman
Institute for Justice
901 N Glebe Road
Suite 900
Arlington, VA 22203

RE: Gift of publications to public officials

ADVISORY OPINION 445

SUMMARY

Informational material provided by a principal to public officials may qualify for the exception in the gift prohibition for services to assist an official in the performance of official duties if the principal or the principal's lobbyist had a significant role in the creation, development, or production of the information.

FACTS

As senior attorney for the Institute for Justice (the Institute) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts.

1. A lobbyist registered in Minnesota represents the Institute. The Institute is a principal as defined in Minnesota Statutes section 10A.01, subdivision 33.
2. Institute employees write books and reports on public-policy issues. The Institute would like to use two of these publications to support an upcoming lobbying effort in Minnesota. The publications are intended to help public officials better understand issues of concern to the Institute. Therefore, the Institute would like to give the two publications to public officials, which includes all members of the Minnesota legislature, and to public officials serving in the executive branch.
3. One of the publications is entitled *License to Work* (2nd Edition), and is a report on occupational licensing laws in all 50 states. The report is available as a free PDF download on the Institute's website. The Institute estimates that the cost to print and bind the report is approximately six to ten dollars.
4. The other publication is entitled *Bottlenecks: Gaming the Government for Power and Private Profit* (*Bottlenecks*). This publication is described on the Institute's website, but it is not available for free download. A link is provided to the publisher where the book may be purchased new for \$27.99. The Institute

may purchase the book with an author's discount that lowers the price to less than \$17.00. The current chairperson and founding general counsel for the Institute for Justice, and the director of strategic research at the Institute for Justice, are the co-authors of *Bottleneckers*.

5. *Bottleneckers* is also available for purchase used at various internet sites. A search by Board staff found used copies of the book readily available for around \$13.70. The Institute states that at one time a used copy of the book was available for \$2.06. The review by Board staff was not able to replicate that price point.
6. Your review of the gift prohibition in Minnesota Statutes section 10A.071 leads you to believe that *License to Work* qualifies for the exception provided for informational material with a resale value of \$5 or less, but you would like the Board to confirm that conclusion. You are not sure if *Bottleneckers* may be provided to the public officials.

ISSUE ONE

May the Institute provide *License to Work* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION ONE

Minnesota Statutes section 10A.071, generally prohibits a principal or lobbyist from giving a gift to a public official. There are however, a number of exceptions to the prohibition provided in the statute. In specific, subdivision 3 (6) exempts "informational material with a resale value of \$5 or less."

The *License to Work* report is available as a free download to anyone on the Institute's website. In Advisory Opinion 317, the Board approved of giving a book to public officials that was also available free to the public. Consistent with the prior opinion, informational material, such as *License to Work*, that is available for free distribution to the public on a website may also be given to public officials under the exception for informational material.¹

Lobbyists must report gifts made by their principal if the value of the gift is five dollars or more.² Providing public officials with the website link to the publication does not exceed the five-dollar threshold, and does not need to be reported as a gift.

The Institute may decide to print and bind *License to Work* for distribution to public officials at a cost of six to ten dollars per copy. If that occurs, the publication will still qualify for the exception for informational material with a resale value of five dollars or less. However, the cost of preparing a bound copy of the report will result in a gift that

¹ When Advisory Opinion 317 was issued in 1999, Minnesota Statutes section 10A.071, subdivision 3 (6), provided an exception for "informational material of unexceptional value." The exception was modified to replace "unexceptional value" with the standard of "resale value of \$5 or less" in 2012.

² Minnesota Statutes section 10A.04, subdivision 4 (c).

must be reported on the first lobbyist disbursement report following distribution of the publication.

ISSUE TWO

May the Institute provide *Bottleneckers* to public officials without violating the gift prohibition in Minnesota Statutes section 10A.071?

OPINION TWO

The exception to the gift prohibition for material with a resale value of less than five dollars does not apply to *Bottleneckers* because the resale value for the book is consistently over the five-dollar limit. However, another exception is potentially applicable.

In Minnesota Statutes section 10A.071, subdivision 3 (2), an exception is made for

services to assist an official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents.

In prior advisory opinions the Board has found that providing informational materials may qualify as a service to assist an official in the performance of official duties if the material provides information and communication in connection with legislation.³ In Advisory Opinion 396, the Board limited the application of this exception to informational materials where “the lobbyist or principal have a significant role in the creation, development, or production of the information.”

The book *Bottleneckers* provides information on upcoming legislation, and was authored by the chairperson and director of strategic research for the Institute. In view of these facts, providing the publication to public officials qualifies as a service to assist an official in the performance of official duties, and is not a prohibited gift.

The value of the book exceeds the five-dollar threshold for the reporting of gifts, and must be reported by the Institute’s lobbyist on the applicable report of lobbyist disbursements.

The Board notes that *License to Work* also appears to qualify for this exception. However, in most situations the application of a set resale value will be easier to apply than an evaluation of the material for its service to an official in the performance of official duties. The Board therefore evaluated *License to Work* under the resale value criteria.

Issued: January 9, 2018

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

³ See Advisory Opinions 156, 204, and 246.

DRAFT

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
January, 2018

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
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	12/30/16 8/18/17			Matter settled; drafting voluntary dismissal documents
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Personal Service Requested 12/29
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal service unsuccessful Hold by Board
Kirsten Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17	5/26/17			Hold by Board

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

FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE COMPLAINT OF BRIAN WOJTALEWICZ REGARDING TIM MILLER, CITIZENS FOR TIM MILLER, SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE PAC, AND RENVILLE COUNTY REPUBLICAN PARTY OF MINNESOTA

1. Background

On October 10, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Brian Wojtalewicz regarding Tim Miller, Citizens for Tim Miller (the Miller committee), the Southern Minnesota Beet Sugar Cooperative PAC (SMBSC PAC), and the Renville County Republican Party of Minnesota (Renville RPM). The Miller committee is the principal campaign committee of Tim Miller for the seat in the house of representatives for district 17A. SMBSC PAC is a political fund registered with the Board and affiliated with the Southern Minnesota Beet Sugar Cooperative. Renville RPM is a party unit registered with the Board.

The complaint describes a contribution of \$5,000 that Renville RPM reported receiving from SMBSC PAC on July 18, 2016, and a contribution of \$4,500 that Renville RPM reported making to the Miller committee on the same day.

Based on the financial status of Renville RPM in July and on the reported dates of the SMBSC PAC and Miller committee transactions, the complaint claims that “the timing and sequence of these transactions make the illegal ‘wash’ quite transparent.” The complaint also alleges that the contribution by SMBSC PAC was earmarked for the Miller committee in violation of Minnesota Statutes section 10A.16. Based on the claim that SMBSC PAC “washed” the contribution by passing it through Renville RPM, the complaint argues that the effect of the transactions is that “SMBSC has contributed \$5,000 to the Tim Miller committee. This is \$4,000 above the legal limit of \$1,000.”

The Board chair found that the complaint was sufficient to state a prima facie violation and the Board made a probable cause determination at its meeting on November 10, 2016. Both Renville RPM and SMBSC PAC provided responses to the Board for consideration at the probable cause stage. Attorney R. Reid LeBeau, representing Tim Miller and the Miller committee appeared and addressed the Board at the meeting.

In the probable cause determination, the Board concluded that probable cause existed to believe that Tim Miller, Citizens for Tim Miller, and the Renville County RPM violated the earmarking prohibition of Minnesota Statutes section 10A.16 and the circumvention prohibition of Minnesota Statutes section 10A.29. Further, the Board found that there was probable cause to believe that SMBSC PAC engaged in circumvention. Because a contribution passed through a third party in violation of the prohibition on circumvention may be attributed to the original source of the money, the Board also found that there was probable cause to believe that Citizens for Tim Miller and the SMBSC PAC exceeded the limit on contributions from a political committee or fund to a candidate’s principal campaign committee.

2. The investigation

Notice of the probable cause determination and the investigation was provided to the parties through their respective attorneys. The Board requested that the parties make witnesses available for sworn interviews and that the parties and the witnesses produce documents relating to the matters under investigation. During the course of the investigation, the Board conducted sworn interviews with Chris Long, chair of SMBSC PAC, Tim Miller, and Gregg Kulberg, chair of Renville RPM.

In response to the Board's requests for documents, the parties provided copies of email communications, mobile telephone bills, and bank records. The Board exercised its subpoena powers to obtain additional telephone records from the mobile service provider for Gregg Kulberg.

3. Applicable statutes

Earmarking

Minnesota Statutes 10A.16 prohibits the acceptance of earmarked contributions. The statute provides:

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is subject to a civil penalty imposed by the board of up to \$3,000.

The statutory language makes it clear that the prohibition is on the *solicitation or acceptance* of an earmarked contribution. Thus, an earmarking violation may be found against the solicitor or recipient of a contribution, but not against the donor. In terms of this investigation, the earmarking prohibition would not apply to the initial contribution made by the SMBSC PAC, but could apply to the Renville Party RPM for accepting the contribution if it was made with express or implied conditions that the funds be used for a subsequent donation to a candidate.

Circumvention

Minnesota Statutes section 10A.29 prohibits circumvention of the provisions of Chapter 10A. That section provides:

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Unlike earmarking, a circumvention violation is not limited in its application to recipients of contributions. Any participant in circumvention or an attempt to circumvent may incur a violation of section 10A.29. Circumvention requires a “redirection” or re-donation of the contribution from the original recipient on to the ultimate beneficiary.

Contribution limits

Minnesota Statutes section 10A.27, subdivision 1, provides that a candidate for the house of representatives may not accept more than \$1,000 in contributions from a political fund during a two-year election segment and that the political fund may not make contributions in excess of that amount.

4. The evidence

The SMBSC PAC acknowledges that it wanted to assist Rep. Miller’s campaign financially beyond the \$1,000 that it could directly contribute. It initially planned to conduct a fundraising event where cooperative members could make their own personal contributions to the Miller committee. However, there was concern about getting enough members to attend a fundraiser to make it successful for the candidate. Mr. Long contacted Rep. Miller to talk about the problems with holding a fundraiser. There is inconsistent testimony as to whether it was Rep. Miller or Mr. Long who suggested that as an alternative to the fundraiser the SMBSC PAC contribute to the Renville County RPM. Mr. Long testified that Rep. Miller suggested that in lieu of a fundraiser a contribution to the Renville RPM would also benefit him, but Rep. Miller denied making this suggestion.

The record also contains copies of email communications between Mr. Long and the members of the SMBSC PAC board on the subject of cancelling the fundraiser for Rep. Miller and instead contributing to the Renville County RPM. In the emails a board member raised the concern that the Renville County RPM could use the suggested donation to support candidates running against Sen. Lyle Koenen and U.S. Congressman Collin Peterson; two DFL candidates that the SMBSC PAC supported. During the exchange of emails a board member also stated that the SMBSC PAC would not be able to require that any part of the contribution be directed to any specific candidate. After these concerns were raised Mr. Long called Mr. Kulberg, the chair of the Renville County RPM. Both Mr. Long and Mr. Kulberg testified that this was the first time they had ever communicated.

During the call Mr. Long informed Mr. Kulberg that the SMBSC PAC was considering making a contribution to the party unit, and he asked for a mailing address to which to send the contribution if it was approved by the SMBSC PAC board. Both Mr. Long and Mr. Kulberg testified that Mr. Long stated that the SMBSC PAC members appreciated and supported the work being done by Rep. Miller. During his testimony regarding the phone conversation Mr. Kulberg recalled that “[s]hortly after he mentioned Tim’s name, [Long] said, I understand, you know, about not being able to control the funds once we make the donation.” Mr. Long provided a similar description in his testimony regarding the phone conversation. Mr. Long said, “There was no suggestion that anything we gave to them should go to Representative Miller” and “it was our PAC’s understanding that once we gave the money to the Renville County

Republicans that they would do what they saw fit with it.” Immediately after completing the conversation with Mr. Kulberg, Mr. Long had another conversation with Rep. Miller.

Shortly after his conversation with Mr. Long ended Mr. Kulberg emailed Mr. Long the mailing address for Carlton Gustafson, the treasurer of the Renville County RPM. The email from Mr. Kulberg to Mr. Long, and a subsequent email from Mr. Kulberg to Mr. Gustafson alerting him of the possibility of a contribution from SMBSC PAC, both indicate that Mr. Kulberg was unsure that the SMBSC actually would make the contribution. Mr. Kulberg also included in his email to Mr. Gustafson questions regarding whether the party unit was allowed to accept contributions from a PAC, and, if so, what contribution limits would apply.

Mr. Long apparently found the conversations with Mr. Kulberg and Rep. Miller satisfactory as shortly after concluding the conversations he emailed SMBSC staff directions on issuing the contribution to Renville County RPM. Mr. Long then emailed SMBSC PAC board members on July 15, 2016, to inform them that he had made the donation to the Renville County RPM. In what appears to be an attempt to reassure member with concerns about the advisability of making the contribution Mr. Long stated in the email that “I had good conversations with [Renville County RPM] and others involved.”

The SMBSC PAC mailed a \$5,000 contribution to the Renville County RPM on July 15, 2016. The Renville County RPM received the contribution on July 18 and, on the same day, issued its own check to the Miller committee for \$4,500.

The timing of the contribution to the Renville County RPM and the subsequent contribution to Rep. Miller was an issue investigated by the Board. Mr. Long stated in his July 15, 2016, email to SMBSC PAC board members that “[i]n this instance we were under a little bit of a time consideration to get the most benefit and I had to make a decision once we had a good majority.” In explanation as to why there was a “time consideration to get the most benefit”, Mr. Long acknowledged that he wanted the contribution to the Renville County RPM to occur in time to be included on the party unit’s pre-primary report of receipts and expenditures. In response to a question on why that would help Rep. Miller, Mr. Long answered, “Well, he’s a republican, and the Republican Party would -- it would make him look good, as it has with many of the federal contributions we give. ...people have to raise certain amount of dollars for their party,...on the federal level, so I was assuming that this would make him look better in the eyes of the party.”

In a letter to the Board, Mr. Gustafson explained the quick turnaround between when the Renville County RPM received the SMBSC PAC contribution and when the party unit issued a contribution to the Miller committee . The letter stated, “At the July 12, 2016 [Renville County RPM] monthly board meeting, we were presented a chart showing that Miller’s opponent had 150% cash on hand as of December 31, 2015. Although no motion was passed, the notion was Miller could use more funds from RCRPM. The other Republican candidates examined were in better financial situation. Thus when the SMBSC contribution was received...the decision to send a big part of it to Miller was made.”

6. Discussion

The standard of proof used by the Board in determining if a civil violation of Chapter 10A occurred is the preponderance of the evidence standard. Under that standard, the Board must be convinced by the evidence, and the reasonable inferences that may be drawn from that evidence, that it is more likely that a particular fact exists than that it does not exist. If the evidence on a particular matter is equally balanced, any finding based on that evidence is not proven by a preponderance of the evidence. Each Board member evaluates the evidence provided through the course of an investigation and determines if there is sufficient grounds to find that the allegations in a complaint are true.

The issues raised by the current complaint present serious questions, about which the Board undertook a thorough investigation. As with any investigation, the Board recognized that the complaint itself is not sufficient grounds on which to conclude that a violation occurred, and that any Board conclusion must be supported by evidence sufficient to meet the preponderance of the evidence standard.

For a violation to exist in the present matter under the earmarking or circumvention statutes, there must have been an express or implied condition or agreement between SMBSC PAC and Renville RPM that all or part of the SMBSC PAC contribution was to be directed to or specifically used for the benefit of the Miller committee. From the outset, the Board recognized that it was unlikely to find evidence of an express agreement between the SMBSC PAC and Renville County RPM. However, in any investigation of earmarking it is unlikely that an express agreement to violate the statutory prohibition will occur.

In recognition of this fact, the earmarking statute provides that a violation exists if there is an "implied" condition that the subject contribution or any part of it be directed to a particular candidate. Therefore, the Board's investigation examined documents and conducted interviews for evidence of an implied condition placed on the SMBSC PAC contribution. The Board also reviewed the conduct of the SMBSC PAC, Renville County RPM, and Rep. Miller for actions that indicated the existence of an implied condition.

The investigation produced evidence that both supported and rebutted the existence of an implied condition. For example, the conversation between Mr. Long and Mr. Kulberg in which Mr. Long expressed SMBSC PAC support for Rep. Miller, but also stated that he understood that if a contribution was made the Renville County RPM would do with it as it pleased, was in the Board's experience unusual. After the conversation Mr. Long authorized the contribution and reassured the SMBSC PAC board members about the advisability of this action. One might infer from this conduct that Mr. Long felt that there was an implied agreement that the SMBSC PAC contribution would be used to support Rep. Miller. It is of note however that this was the first conversation ever between two men who had never met, and that the conversation occurred by telephone without the benefit of body language or other nonverbal communication. Further, Mr. Long knew and, according to the testimony of both Mr. Long and Mr. Kulberg,

expressly stated, that he recognized that a donor was prohibited from controlling the use of a contribution given to the party unit. Additionally, at the end of the conversation Mr. Kulberg is clearly not sure if the contribution will even occur. Board members had to evaluate all of these facts when determining whether, applying the preponderance of the evidence standard, there was sufficient evidence to support a conclusion that Mr. Long placed an implied condition on the contribution.

The timing and amount of the contribution from SMBSC PAC to the Renville County RPM, and the subsequent contribution from the Renville County RPM to the Miller committee, again were unusual and of concern. Indeed the timing and similar contribution amounts formed the basis of the prima facie determination to accept the complaint, and were a significant factor in the probable cause determination authorizing a full investigation. During the investigation, however, Mr. Long, Mr. Kulberg, and Mr. Gustafson provided alternative explanations for the timing and amount of the contribution. Board members again were required to evaluate the plausibility of these explanations.

The Board considered and discussed this matter over a period of several meetings, was advised multiple times by Board staff, and heard arguments from legal counsel for the parties at multiple meetings. Board members studied all of the conflicting evidence, assessed the credibility of the witnesses, and drew reasonable inferences where supported by the evidence.

In order to find that one or more violations had occurred at least four Board members would have to conclude that a preponderance of the evidence established the existence of those violations.¹ Three Board members concluded that the evidence was sufficient to find that violations had occurred. Three other members concluded that the evidence did not establish any violations by the required standard of proof.² Because the concurring vote of four members could not be obtained for either conclusion, the Board cannot resolve this matter by finding either that violations did occur or that violations did not occur.

Based on the body of evidence before it, the Board makes the following:

Findings of fact

1. On July 15, 2016, SMBSC PAC mailed a \$5,000 contribution to the Renville RPM. The Renville RPM received the contribution on July 18 and on that same day issued its own check to the Miller committee for \$4,500.
2. Although reasonable inferences could be drawn from the facts in the record to support the conclusion that the contribution was given with the implied condition that it be

¹ Minnesota Statutes section 10A.02, subdivision 3, provides that “[t]he concurring vote of four members of the board is required to decide any matter before the board.”

² The Board believes it is important to note that the group of members who concluded that evidence was sufficient to find violations occurred, and the group of members who did not find sufficient evidence to find a violation(s), each included members from both major political parties.

