

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

.....  
**January 3, 2019  
St Croix Room  
Centennial Office Building**  
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**MINUTES**

The meeting was called to order by Chair Leppik.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (by telephone), Swanson

Others present: Sigurdson, Engelhardt, Olson, staff; Hartshorn, counsel

**MINUTES** (December 5, 2018)

After discussion, the following motion was made:

Member Swanson's motion:                    To approve the December 5, 2018, minutes as drafted.

Vote on motion:                                A roll call vote was taken. All members voted in the affirmative.

**CHAIR'S REPORT**

**A. Meeting schedule**

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, February 6, 2019.

**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 reports were due in January for all three programs overseen by the Board. Mr. Sigurdson also said that staff had processed the December public subsidy payments to candidates for the 2018 election. Mr. Sigurdson stated that the Board had received a letter from George Beck on behalf of Minnesota Citizens for Clean Elections, which is attached to and made a part of these minutes. Mr. Sigurdson said that the letter asked the Board to consider a legislative proposal requiring disclosure of donors to non-profit entities when those entities contribute to independent expenditure committees in Minnesota. Mr. Sigurdson and members then discussed the current underlying disclosure requirements for contributors to independent expenditure committees and funds in Minnesota.

## **REVIEW OF FEES AND CIVIL PENALTIES FOR LATE REPORTS**

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 memorandum was prompted by a member's request to review the late fee and civil penalty statutes for potential legislative changes and by the increasing number of waiver requests being submitted to the Board. Mr. Sigurdson reviewed the current statutory provisions regarding late fees and civil penalties. Mr. Sigurdson also reviewed the applicable Board policies and told members that they had the authority to modify those policies. Mr. Sigurdson specifically discussed the policies that delay the imposition of a civil penalty until the maximum late fee has been accrued, that impose the civil penalty in \$100 increments over a 10-week period, and that delay referral to the attorney general's office until the maximum late fee and civil penalty have been reached. Mr. Sigurdson also reviewed the chart in the memorandum that showed the amount of late fees and civil penalties collected versus the amount waived. Mr. Sigurdson said that at the next meeting, staff would present an analysis of waiver requests by program.

## **LEGISLATIVE PROPOSALS**

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson first reviewed the technical provisions related to the economic interest program. Members suggested that the monetary threshold for reporting honoraria be increased from \$50. Members then discussed the policy provisions related to the economic interest program and expressed concerns about the proposed language for the government contract proposal and the spousal/beneficial interest proposal. Members directed staff to work on alternative language for these proposals to bring to the next meeting.

After the discussion, the following motions were made:

- |                          |  |
|--------------------------|--|
| Member Flynn's motion:   | To go forward with the proposal to establish a two-tiered disclosure system as described on pages 4-5 of the legislative memorandum without paragraph (5) concerning government contracts. |
| Vote on motion:          | A roll call vote was taken. Motion passed (5 ayes, Member Moilanen voted nay).   |
| Member Swanson's motion: | To go forward with the technical proposals for the economic interest program as described on pages 1-4 of the legislative memorandum.  |
| Vote on motion:          | A roll call vote was taken. All members voted in the affirmative.  |

**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 had nothing to report into regular session at that time.

**LEGISLATIVE PROPOSALS CONTINUED**

Mr. Sigurdson resumed consideration of this matter by reviewing the technical proposals for the campaign finance program that were related to the affidavit of contributions deadline and the list of allowed multicandidate expenditures.

After discussion, the following motion was made:

Member Swanson's motion: To go forward with the technical proposals for the campaign finance program as described on page 7 of the legislative memorandum.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Mr. Sigurdson then reviewed the technical proposal that would eliminate the disclosure requirement for shared expenditures between federal and state committees of the same party.

After discussion, the following motion was made:

Member Flynn's motion: To go forward with the technical proposal for the campaign finance program as described on page 8 of the legislative memorandum.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Mr. Sigurdson next discussed a technical proposal that would provide an alternative way for unregistered associations to provide the underlying disclosure required when they contribute more than \$200. This proposal was printed on blue paper. Mr. Sigurdson said that many unregistered associations are committees that are registered in another state or with the Federal Election Commission (FEC). Mr. Sigurdson said that the underlying disclosure documents provided by these associations often are the reports that they file with the other state or the FEC and that these reports can be quite large. Mr. Sigurdson said that the technical amendment would allow these associations to provide a link to the government website that displays their reports instead of providing copies of those paper reports.

After discussion, the following motion was made:

Member Swanson's motion: To go forward with the technical proposal for the campaign finance program as described in the addendum to the legislative memorandum printed on blue paper.

Vote on motion: A roll call vote was taken. Motion passed (5 ayes, Rosen abstained.)

Mr. Sigurdson then reviewed the virtual currency policy proposal for the campaign finance program.

After discussion, the following motion was made:

Member Moilanen's motion: To go forward with the virtual currency policy proposal for the campaign finance program as described on page 9 of the legislative memorandum.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Mr. Sigurdson finally reviewed the policy proposal to amend the definition of expressly advocating to include communications that are the functional equivalent of express advocacy. Mr. Sigurdson reviewed the current statutory definition of expressly advocating and the types of communications that were not covered by that definition. Mr. Sigurdson then reviewed the three language options presented in the memorandum. Members discussed several issues related to the proposal and asked staff to continue working on draft language for the next meeting.

## **ENFORCEMENT REPORT**

### **A. Discussion item**

#### **1. Balance adjustment request – Clay County DFL**

Mr. Olson told members that the Clay County DFL had reported an ending cash balance in 2016 of \$446.78, but that its bank statements had reflected a balance at that time of \$1,009.64, a difference of \$562.86. It was not clear when the balance discrepancy had started or what had caused it.

Mr. Olson stated that in approximately April 2016, Anna Darby had replaced Roxanne Bjerk as the Clay County DFL's treasurer according to a registration amendment form filed with the Board. However, it appeared that Ms. Bjerk had continued filing the party unit's reports through the 2016 year-end report. Ms. Darby died in September 2017 and the chair, Julian Dahlquist, filed the party unit's 2017 year-end report. Mr. Olson said that Ms. Bjerk reportedly had provided Ms. Darby with electronic financial records. Those files, however, were never recovered after Ms. Darby's death. The party unit switched banks in late 2016, and its former bank refused to provide any information even to those whose names were listed on the account.

Mr. Olson said that Paul Harris became the treasurer in early 2018 and shortly thereafter contacted staff to report that he was unable to reconcile the balances in previously filed reports with the party unit's bank statements. Mr. Olson said that Mr. Harris had contacted Ms. Bjerk and Mr. Dahlquist, but that the only information he had learned that could help explain the ending cash balance discrepancy from 2016 was that it was not Ms. Bjerk's practice to try to reconcile her figures with the party unit's bank account balance. The party unit's 2017 year-end report contained many errors, but Mr. Harris filed an amended report correcting those errors. Mr. Olson said that all that remained unresolved was the balance discrepancy carried over from 2016. Mr. Olson stated that Mr. Harris thereby was asking the Board to adjust the party unit's 2016 ending cash balance from \$446.78 to \$1,009.64.

After discussion, the following motion was made:

Member Swanson's motion: To approve the balance adjustment requested by the Clay County DFL.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

**B. Waiver requests**

<u>Name of Candidate or Committee</u>	<u>Late Fee &amp; 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>
Richard Reeves	\$100 LFF \$1,000 CP	2017 EIS	Official retired from DEED in April 2017. DEED did not forward any notices to official and did not supply any contact information to Board. Official promptly filed EIS after notice was sent to his home address.	Member Swanson	To waive the late filing fee and civil penalty	A roll call vote was taken. All members voted in the affirmative.
St Louis County DFL (St Louis-06) (20893)	\$100 LFF	2018 pre-general	Treasurer's computer stopped working 9/28. After consulting local repair shop, she shipped computer to Florida for repair. She expected to receive it back in time to file reports by deadline and was diligent in tracking its return. However, it did not arrive until 10/31, at which point she filed reports for each party unit the same day.	Member Swanson	To waive the late filing fees for each party unit	A roll call vote was taken. All members voted in the affirmative.
6 <sup>th</sup> Sen District DFL	\$100 LFF					
East Central MN Area Labor Council COPE (30626)	\$1,000 LFF	24-hour notice	\$1,601 was allocated from supporting association to political fund 8/1/2018. Treasurer didn't realize amount and timing triggered 24-hour notice requirement until September report was filed 9/24/2018. None of the money was spent until well after primary election. Board typically reduces 24-hour notice late fees for first-time violations to \$250.	Member Flynn	To reduce the late fee to \$250	A roll call vote was taken. All members voted in the affirmative.

Sibley County RPM (20310)	\$750 LFF	2018 pre-general	Treasurer previously received assistance from coworker in faxing paper report and intended to do so again. She wasn't in office on due date, so treasurer instead took pictures of report with phone and attempted to email them to Board. He didn't realize email failed (apparently due to file size of attached pictures) until he received letter from us Nov. 16.	Member Moilanen	To reduce the late filing fee to \$150	A roll call vote was taken. Motion passed (5 ayes, Member Haugen voted nay).
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**C. Informational Items**

**1. Payment of late filing fee for July 30, 2018, report of receipts and expenditures**

4<sup>TH</sup> Senate District DFL, \$200  
 MAIV PAC, \$200  
 Michael Ford, \$50  
 Minneapolis Downtown Council PAC, \$50

**2. Payment of civil penalty for July 30, 2018, report of receipts and expenditures**

MAIV PAC, \$50

**3. Payment for civil penalty for accepting a corporation contribution**

66<sup>th</sup> Senate District DFL, \$25

**4. Payment for late filing fee for 6/15/17 lobbyist disbursement report**

Mark Anfinson, \$325

**5. Payment for late filing fee for October 29, 2018, report of receipts and expenditures**

Democratic Midterm Victory Fund, \$150  
 Lyon County DFL, \$50

**6. Payment for late filing fee of 24-hour notice pre-primary 2018**

Messerli & Kramer PAC, \$250  
 North Central States Regional Council Carpenters PAC \$1000

**7. Payment for late filing fee for September 25, 2018, report of receipts and expenditures**

MN Muskie & Pike Alliance Legislative Fund, \$50

**8. Payment for late filing fee for 2016 pre-primary report of receipts and expenditures**

Edwin Hahn, \$113.72

**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 directed members to the new descriptions in the case status column.

**OTHER BUSINESS**

There was no other business to report.

**EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and resumed the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the chair had the following to report into regular session:

Findings, conclusions, and order in the matter of the Land Stewardship Action Fund

Findings, conclusions, and order in the matter of the complaint of Michael Smith regarding the Perske (Joe) for Senate Committee

Findings, conclusions, and order in the matter of the staff review of the House Republican Campaign Committee (HRCC)

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

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

Executive director's report

Letter from Minnesota Citizens for Clean Elections

Memorandum regarding review of fees and penalties for late reports

Memorandum regarding legislative proposals

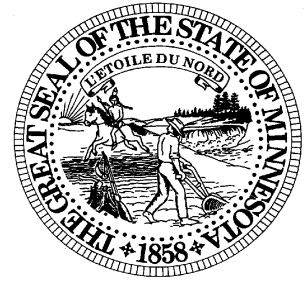
Findings, conclusions, and order in the matter of the Land Stewardship Action Fund

Findings, conclusions, and order in the matter of the complaint of Michael Smith regarding the Perske (Joe) for Senate Committee

Findings, conclusions, and order in the matter of the staff review of the House Republican Campaign Committee (HRCC)

Minnesota

# *Campaign Finance and Public Disclosure Board*



**Date:** December 26, 2018

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re:** Executive Director's Report

## **Year-end Reports**

All three major program areas; campaign finance, lobbying, and economic interest statements have year-end filing requirements in January. A brief update for each program follows:

**Lobbying Program.** Lobbyist disbursement reports covering the period of June 1 through December 31, 2018, are due on January 15, 2019. About 820 lobbyists will be filling one or more reports for their clients during the reporting period.

**Campaign Finance Program.** The year-end report of receipts and expenditures for 2018 is due on January 31, 2019. Reports are expected from 317 party units, 665 candidate committees, and 352 political committees and funds.

**Economic Interest Statement.** The annual certification by public officials for 2018 is due on January 28, 2019. Staff expects to receive 2,940 annual certifications. Additionally, 147 original economic interest statements from judges, county commissioners, and soil and water district commissioners elected for the first time in 2018 are due in January.

## **2018 Public Subsidy Payments**

On December 13th, staff processed a second public subsidy payment to 245 qualified candidates for the 2018 election. The December payment is much smaller than the payment made after the primary election as it is based on 2017 state tax returns processed by the Dept of Revenue after the primary payment in August. In total, the Board issued \$2,257,005 in public subsidy payments to candidates during 2018. A report showing the public subsidy payment made to each candidate by legislative district is attached for your reference.

## **Correspondence**

The Board received the attached letter from George Beck on behalf of Minnesota Citizens for Clean Elections. The letter asks that the Board consider a legislative proposal requiring disclosure of donors to non-profits if the non-profit contributes to an independent expenditure committee in Minnesota.

## **Attachments**

2018 Public Subsidy Payments

Letter from George Beck, Minnesota Citizens for Clean Elections





Dear Campaign Finance and Public Disclosure Board:

Some 80% of Minnesotans, including a majority of Republicans, oppose the use of dark money or undisclosed contributions in our Minnesota elections. And yet it persists. Dark money prevents us from knowing who is supporting candidates, an important factor in making a wise choice. Nor can we tell if officeholders are favoring contributors over constituents. And secret contributions supporting so called "issue ads" in Minnesota permit last minute attack ads in our elections that shield anonymous donors.

This is a request that the Board support 2019 legislation that amends the definition of expressly advocating to include issue ads that are clearly are intended to affect an election.

This is also a request that the Board look into whether or not 501c3 and 501c4 non-profits, who are allowed to hide their donors, are registering in Minnesota as are law requires and whether legislation is needed to clearly indicate that they must disclose contributions over \$5000 or \$10,000, as is required in New York and California.

We believe that these are urgent matters impacting our democracy that are within the Board's statutory authority to advise the legislature of abuses of our campaign finance system.

Thank you for your consideration.

George Beck  
Chair  
Minnesota Citizens for Clean Elections



# MINNESOTA CAMPAIGN FINANCE BOARD

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**Date:** January 2, 2019

**To:** Board Members

**From:** Jeff Sigurdson  
Executive Director

**Subject: Review of late filing fees and civil penalties for late disclosure reports.**

To motivate the timely filing of various disclosure reports and statements Chapter 10A provides a series of late fees for missing a filing deadline. In addition, the Board may impose a civil penalty for reports that are very late. Late fees do not accrue on weekends or state holidays. The late fees vary in amount by program, and by report type within the campaign finance program. By program the late fees and civil penalty that may be imposed are as follows.

## Campaign Finance

During a non-election year the only report required of any committee, fund, or party unit is the year-end report. The late fee for a year-end report is \$25 per day, which begins to accrue the day after the report was due. The maximum late fee for a single campaign finance report is \$1,000.

During an election year a candidate that appears on the general election ballot will file 3 reports; a year-end and a pre-primary and pre-general report. Failure to file the pre-primary and pre-general report by the due date results in a late fee of \$50 a day, which starts the first day after the report is due. The maximum late fee is again \$1,000 per report.

During an election year all party units, political committees and political funds also file the pre-primary and pre-general reports subject to a \$50 per day late fee for filing after the deadline. In addition, all political committees and funds and the state central committees and legislative caucuses of political parties file three additional reports. These three additional reports are subject to a late fee of \$25 per day. The maximum late fee is again \$1,000 per report.

The campaign finance program also requires the filing of a 24-hour notice of a large contribution if the committee received a contribution in excess of a given amount shortly before the primary or general election. Failure to provide a report of the large contribution within 24 hours of receipt results in a late filing fee of \$50 per day, to a maximum of \$1,000. The 24-hour notice does not apply to political party units.

If any of reports referenced above is not filed within 10 business days of the due date, the Board must send a certified letter that notifies the filer that the Board may impose a civil penalty of up

to \$1,000 in addition to the late fee which is already being assessed. The Board may impose the civil penalty if the report is not filed within 7 days after the certified notice was mailed.

### Economic Interest Statement

An original statement of economic interest is due within 60 days of accepting employment as a public or local official, unless the public official position requires the advice and consent of the Senate, in which case the statement is due within 14 days of taking office. An original statement is also required from all state constitutional, legislative candidates and candidates for an elective office except county commissioner in a metropolitan governmental unit, within 14 days of filing for office. An original statement is required from a judicial candidate or from a candidate for county commissioner within 60 days after assuming office. Failure to file an original statement by the due date results in a \$5 per day late fee, to a maximum of \$100. However, the late filing of an economic interest statement has a grace period of ten business days before the late fee begins to accrue.

Each year a public official must also file an annual statement by the last Monday in January. The late fee is again \$5 per business day, beginning on the eleventh day after the statement was due.

If either an original statement or the annual statement is not filed within 10 business days of the deadline, the Board must send a certified letter warning the official or candidate that the Board may impose a civil penalty of up to \$1,000. The Board may impose the civil penalty if the report is not filed within 7 days after the certified notice was mailed.

### Lobbyist Program

A lobbyist registered as the reporting or designated lobbyist for an association must file two disbursement reports a year. The reports are due on January 15, and June 15. In March of each year an association represented by lobbyists in Minnesota must file the principal report. The late fee for a lobbyist disbursement report or a lobbyist principal report is \$25 per day, to a maximum of \$1,000 per report. The late fee starts to accrue the day after the report deadline. Similar to the campaign finance and economic interest programs the Board must send a certified letter to the lobbyist or principal if the report is not filed within 10 days of the deadline to notify the filer that the Board may impose a civil penalty of up to \$1,000 if the report is not filed within 7 days after the certified notice was sent.

### Other Late Fees

Chapter 10A also provides late fees for failing to register a political committee or submit a lobbyist registration within specified timelines. For both the lobbying and campaign finance program failure to register with the Board in a time manner is punishable by a late fee of \$25 per day to a maximum of \$1,000, and a \$1,000 civil penalty.

There are also penalties for failing to timely submit underlying disclosure with contributions of over \$200 from unregistered associations, or with contributions or over \$5,000 to independent expenditure committees and funds. The failure to file these statements in a timely manner is rarely apparent to the Board as the filing is with the recipient of the contribution, and the deadline varies by when the contribution is received. Typically, the Board only becomes aware of a late filing through an investigation, and findings or conciliation agreements are used to resolve the violation.

## Current Board Policies

The Board has discretion both in applying the civil penalty for failure to timely file a report, and when to refer a matter to the Attorney General for court action to secure a report and or late fees and civil penalties. In 2003, the Board adopted a policy of applying the civil penalty in weekly increments of \$100, rather than applying the full \$1,000 maximum as a starting point. This policy also provides that the Board will start to apply the civil penalty only after the maximum late filing fee has accrued. For example, a late filing fee of \$25 per day for a year-end campaign finance report will reach the \$1,000 maximum in 40 business days, or approximately 2 months, after the due date. The civil penalty is then applied at \$100 a week for 10 weeks before the maximum civil penalty of \$1,000 is reached. A year-end report will be at least 18 weeks late before it comes before the Board for referral to the Office of the Attorney General to compel filing. Given that the Board only meets once a month the actual time frame may be 22 weeks, with additional time needed for the Attorney General to take action.

The pre-primary and pre-general reports have a late fee of \$50 a day, and therefore reach the \$1,000 maximum in only 20 business days. The civil penalty is still imposed at \$100 a week only after the maximum late fee is reached. Failure to file a pre-election report is not brought to the Board for referral to the Attorney General for at least 14 weeks after the due date of the report.

In adopting this policy, the Board members in 2003 thought that it would be fair to increase the civil penalty based on the tardiness of the report, and that fewer waiver requests may result if the civil penalty was not always applied immediately at the maximum amount. The Board could change this policy to apply the civil penalty over a shorter period, or could apply the full civil penalty seven days after mailing a certified letter of notification to the late filer regardless of whether or not the maximum late fee has accrued.

Of note Minnesota Statutes section 10A.20, subdivision 15, provides "A candidate whose opponent does not timely file the report due 15 days before the primary, the report due ten days before the general election, or the notice required under section 10A.25, subdivision 10, may petition the district court for immediate equitable relief to enforce the filing." To my knowledge this provision has never been used, and is not an option for reports other than a principal campaign committee.

The authority for the Board to refer matters to the Office of the Attorney General is found in Minnesota Statutes section 10A.34, which provides in part:

Subdivision 1. Personal liability. A person charged with a duty under this chapter is personally liable for the penalty for failing to discharge it.

Subd. 1a. Recovering fees and penalties. The board may bring an action in the district court in Ramsey County to recover a fee, late filing fee, or penalty imposed under this chapter. Money recovered must be deposited in the general fund of the state.

Subd. 2. Injunction. The board or a county attorney may seek an injunction in the district court to enforce this chapter.

The Board's policy to wait until the full late fee and civil penalty has accrued before referring a matter to the Attorney General could be modified or waived if the Board felt that a significant disclosure report was being withheld until after an election had occurred.

## Waiver Requests – Collection of Late Fees

The Board is required to consider a waiver or reduction of late fees and civil penalties for good cause. To reduce the number of late reports, and therefore the number of waiver requests, staff sends reminder notices by mail, email, and at the deadline calls treasurers who have not yet filed. Nonetheless, as Board members are well aware, there are always a large number of waiver requests after a major filing deadline.

In my view, the Board has been very responsive to waiver requests. The chart below shows the total amount of late fees collected for each of the last four fiscal years, and the amount of late fees waived by the Board over the same period.

<b>Fiscal Year</b>	<b>Late Fees Collected</b>	<b>Late Fees Waived</b>
2015	\$29,963	\$11,200
2016	\$17,482	\$9,482
2017	\$43,930	\$33,548
2018	\$33,816	\$20,120
<b>Total</b>	<b>\$125,191</b>	<b>\$74,350</b>

In total, the Board waived 59% of the late fees accrued for the filing of late reports or statements during the four-year period. Staff is currently developing an analysis of waiver requests by program and the basis for requesting the waiver, which will be available next month.

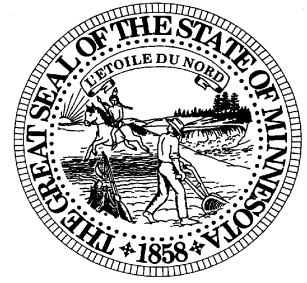
### Conclusions

This review of late filing fees was initially under taken to determine if there is a need to recommend a legislative change in the application of late filing fees or civil penalties. At this point, I recommend no changes to statutory provisions on late fees. Instead, I encourage the Board to consider changes to its procedures for applying civil penalties and referring matters to the Attorney General.

As shown in the chart above the Board waives a significant portion of late fees accumulated for late reports. At the next Board meeting I intent to provide information that the Board may use to determine if procedural changes are needed in the consideration of waiver requests.

Minnesota

# *Campaign Finance and Public Disclosure Board*



**Date:** December 27, 2018

**To:** Board Members

**From:** Jeff Sigurdson, Executive Director

**Telephone:** 651-539-1189

**Re: Possible Legislative Recommendations**

The Board initially reviewed a list of subject areas for possible legislative recommendations at the November 7, 2018, meeting. The Board directed staff to develop specific statutory language for technical and policy changes to the economic interest statement, campaign finance, and lobbying programs.

Additionally, Board members requested staff look at two other areas: 1) whether late filing fees are sufficient to deter the late filing of reports; and 2) to review the probable cause determination used when the Board decides whether to investigate a complaint filed with the Board. Staff is still developing information on these two areas. A separate memo providing information on late filing fees will be provided at the January meeting.

This memo provides draft statutory language for the majority of the areas discussed in November, with the exception that the specific language for the lobbying program is still in development. In the draft language underlined text is new language in a statute, ~~strikeout~~ identifies deleted language in a statute.

## **Economic interest statement program - Technical**

- **Ensure that Minnesota State Colleges and Universities trustees and its chancellor continue to file EIS statements.** MNSCU trustees and chancellor are currently filing EIS statements as public officials. However, it appears that a 2002 change in the definition of public official inadvertently excluded the MNSCU trustees and chancellor from the requirement to file the EIS statement, and from the gift prohibition. In other words, their disclosure is being provided voluntarily. Given that the MNSCU Board makes decisions regarding the expenditure of millions of dollars in public funds it would be advisable to make the EIS disclosure required.

### **10A.01 DEFINITIONS**

\* \* \* \*

Subd. 35. **Public official.** "Public official" means any:

(1) member of the legislature;

\* \* \* \*

(28) member of the Greater Minnesota Regional Parks and Trails Commission; ~~or~~

(29) member of the Destination Medical Center Corporation established in section 469.41; or

(30) chancellor or member of the board of trustees of the Minnesota State Colleges and Universities.

- **Eliminate requirement that local governments provide a notice of appointment for local officials to the Board.** Minnesota Statutes section 10A.09, subdivision 2, requires local governments to notify the Board whenever they hire or accept an affidavit of candidacy from a local official who is required to file a statement of economic interest with that local entity. The notice must include the name of the local official and the date of the employment or filing. The Board, however, never uses this information because local officials do not file with the Board. Therefore, most local governments do not bother to file the notice.

### **10A.09 STATEMENTS OF ECONOMIC INTEREST**

\* \* \* \*

Subd. 2. **Notice to board.** The secretary of state or the appropriate county auditor, upon receiving an affidavit of candidacy or petition to appear on the ballot from an individual required by this section to file a statement of economic interest, and any official who nominates or employs a public ~~or local~~ official required by this section to file a statement of economic interest, must notify the board of the name of the individual required to file a statement and the date of the affidavit, petition, or nomination.

- **Enterprise Minnesota, Inc. contribution statement.** Minnesota Statutes section 116O.03, subdivision 9, and section 116O.04, subdivision 3, require members of the Enterprise Minnesota, Inc. Board of Directors and its president to file statements with the Campaign Finance Board showing contributions to any public official, political committee or fund, or political party unit. These statements must cover the four years prior to the person's appointment and must be updated annually. The information on these statements, however, is already reported by the recipients to the Campaign Finance Board or, for county commissioners, to the county auditor. This disclosure therefore is repetitive and not helpful to the public. Staff is also not sure why this disclosure is required only of members of the Enterprise Minnesota, Inc. Board of Directors and its president.

### **116O.03 CORPORATION; BOARD OF DIRECTORS; POWERS.**

~~**Subd. 9. Contributions to public officials; disclosure.** Each director shall file a statement with the Campaign Finance and Public Disclosure Board disclosing the nature, amount, date, and recipient of any contribution made to a public official, political committee, political fund, or political party, as defined in chapter 10A, that:~~

~~(1) was made within the four years preceding appointment to the Enterprise Minnesota, Inc. board; and~~

~~(2) was subject to the reporting requirements of chapter 10A.~~

~~The statement must be updated annually during the director's term to reflect contributions made to public officials during the appointed director's tenure.~~

## 1160.04 CORPORATE PERSONNEL.

~~Subd. 3. Contributions to public officials; disclosure.~~ The president shall file a statement with the Campaign Finance and Public Disclosure Board disclosing the nature, amount, date, and recipient of any contribution made to a public official which:

~~(1) was made within the four years preceding employment with the Enterprise Minnesota, Inc. board; and~~

~~(2) was subject to the reporting requirements of chapter 10A.~~

~~The statement must be updated annually during the president's employment to reflect contributions made to public officials during the president's tenure.~~

- **Clarify economic interest statement reporting periods.** Minnesota Statutes section 10A.09, subdivision 6 clearly spells out the reporting period for an annual statement. There is no such language defining the reporting period for an original statement. This creates confusion among filers and, in some cases, inconsistent disclosure between public officials. Additionally, EIS forms are divided into five disclosure schedules, none of which have the same reporting period for an original statement. A standardization of the reporting period requirement would simplify completing the statement.

## 10A.09 STATEMENTS OF ECONOMIC INTEREST

Subd. 5b. Original statement; reporting period. (a) An original statement of economic interest required under subdivision 1, clause (1), must cover the calendar month before the month in which the individual accepted employment as a public official or a local official in a metropolitan governmental unit.

(b) An original statement of economic interest required under subdivision 1, clause (2), must cover the calendar month before the month in which the individual assumed office.

(c) An original statement of economic interest required under subdivision 1, clause (3), must cover the calendar month before the month in which the candidate filed the affidavit of candidacy.

Subd. 6. **Annual statement.** (a) Each individual who is required to file a statement of economic interest must also file an annual statement by the last Monday in January of each year that the individual remains in office. The annual statement must cover the period through December 31 of the year prior to the year when the statement is due. The annual statement must include the amount of each honorarium in excess of \$50 received since the previous statement and the name and address of the source of the honorarium. The board must maintain each annual statement of economic interest submitted by an officeholder in the same file with the statement submitted as a candidate.

~~(b) For the purpose of annual statements of economic interest to be filed, "compensation in any month" includes compensation and honoraria received in any month between the end of the period covered in the preceding statement of economic interest and the end of the current period.~~



(c) An individual must file the annual statement of economic interest required by this subdivision to cover the period for which the individual served as a public official even though at the time the statement was filed, the individual is no longer holding that office as a public official.

~~(d) For the purpose of an annual statement of economic interest, the individual shall disclose any real property owned at any time between the end of the period covered by the preceding statement of economic interest and through the last day of the month preceding the current filing or the last day of employment, if the individual is no longer a public official.~~

## **Economic interest statement program - Policy**

- **Establish a two-tiered disclosure system.** Disclosure required for soil and water conservation district supervisors, members of watershed districts and watershed management organizations, and perhaps some other public officials with very limited authority would not include all financial investments. A higher level of disclosure would remain for other public officials.

### **10A.09 STATEMENTS OF ECONOMIC INTEREST**

Subd. 5a. Form; exception for certain officials. (a) This subdivision applies to the following individuals:

(1) a supervisor of a soil and water conservation district;

(2) a manager of a watershed district; and

(3) a member of a watershed management organization as defined under section 103B.205, subdivision 13.

(b) Notwithstanding subdivision 5, paragraph (a), an individual listed in subdivision 5a, paragraph (a), must provide only the information listed below on a statement of economic interest:

(1) the individual's name, address, occupation, and principal place of business;

(2) a listing of any association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer, or employee;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of

the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;

(5) a listing of the name of any state department or agency listed in section 15.01 or 15.06, or any political subdivision, with which the individual, or the individual's employer, has a contract

(c) If an individual listed in subdivision 5a, paragraph (a), also holds a public official position that is not listed in subdivision 5a, paragraph (a), the individual must file a statement of economic interest that includes the information specified in subdivision 5, paragraph (a).

- **New disclosure.** Require public officials to disclose direct or indirect interest in government contracts.

#### **10A.09 STATEMENTS OF ECONOMIC INTEREST**

##### **Subd. 5. Form; general requirements.**

\* \* \* \*

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual at any time during the reporting period; and

(9) a listing of the name of any state department or agency listed in section 15.01 or 15.06, or any political subdivision, with which the individual, or the individual's employer, has a contract.

- **Disclosure for spouse.** Increase disclosure on the EIS to include the occupation and investments of the public official's spouse. As drafted, the language below does not require the public official to identify which investments are held by the spouse.

#### **10A.09 STATEMENTS OF ECONOMIC INTEREST**

\* \* \* \*

**Subd. 5. Form; general requirements.** (a) A statement of economic interest required by this section must be on a form prescribed by the board. Except as provided in subdivision 5a, the individual filing must provide the following information:

(1) the individual's name, address, occupation, and principal place of business;

(2) a listing of the name of each associated business and the nature of that association;

(3) a listing of all real property within the state, excluding homestead property, in which the individual, or the individual's spouse, holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the

interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;

(4) a listing of all real property within the state in which a partnership of which the individual, or the individual's spouse, is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest;

(6) a listing of the principal business or professional activity category of each business from which the individual, or the individual's spouse, receives more than \$250 in any month during the reporting period as an employee, if the individual, or the individual's spouse, has an ownership interest of 25 percent or more in the business;

(7) a listing of each principal business or professional activity category from which the individual, or the individual's spouse, received compensation of more than \$2,500 in the past 12 months as an independent contractor; and

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual, or the individual's spouse, at any time during the reporting period; and

(9) a listing of the name of any state department or agency listed in section 15.01 or 15.06, or any political subdivision, with which the individual, the individual's spouse, the individual's employer, or the employer of the individual's spouse has a contract.

(b) The business or professional categories for purposes of paragraph (a), clauses (6) and (7), must be the general topic headings used by the federal Internal Revenue Service for purposes of reporting self-employment income on Schedule C. This paragraph does not require an individual to report any specific code number from that schedule. Any additional principal business or professional activity category may only be adopted if the category is enacted by law.

(c) The listings required in paragraph (a), clauses (2) through (9), must not identify whether the individual or the individual's spouse is associated with or owns the listed item. For the purpose of an original statement of economic interest, "compensation in any month" includes only compensation received in the calendar month immediately preceding the date of appointment as a public official or filing as a candidate.

\* \* \* \*

## Campaign Finance Program - Technical

- **Affidavit of contribution deadline.** Minnesota Statutes section 10A.323, provides that the affidavit of contributions required to qualify for a public subsidy payment must be submitted “by the deadline for reporting of receipts and expenditures before a primary under section 10A.20, subdivision 4”. The cross reference to section 10A.20, subdivision 4, is incorrect as the deadline for submitting the pre-primary report is set in section 10A.20, subdivision 2.

### **10A.323 AFFIDAVIT OF CONTRIBUTIONS.**

\* \* \*

(3) submit the affidavit required by this section to the board in writing by the deadline for reporting of receipts and expenditures before a primary under section 10A.20, ~~subdivision 4~~ subdivision 2.

- **Update multicandidate political party expenditures.** Minnesota Statutes, section 10A.275, provides five specific way that a political party may spend money that does not constitute a contribution to a candidate. The list includes funds spent for a phone bank as long as the call includes the name of three or more individuals who will appear on the ballot. This provision could be updated to include direct text message service, direct voice mail services, and e-mails that meet the same standard.

### **10A.275 MULTICANDIDATE POLITICAL PARTY EXPENDITURES.**

Subdivision 1. **Exceptions.** Notwithstanding other provisions of this chapter, the following expenditures by a party unit, or two or more party units acting together, with at least one party unit being either: the state committee or the party organization within a congressional district, county, or legislative district, are not considered contributions to or expenditures on behalf of a candidate for the purposes of section 10A.25 or 10A.27 and must not be allocated to candidates under section 10A.20, subdivision 3, paragraph ~~(g)~~(h):

- (1) expenditures on behalf of candidates of that party generally without referring to any of them specifically in a published, posted, or broadcast advertisement;
- (2) expenditures for the preparation, display, mailing, or other distribution of an official party sample ballot listing the names of three or more individuals whose names are to appear on the ballot;
- (3) expenditures for a telephone ~~conversation call~~, voice mail, text message, multimedia message, internet chat message, or e-mail when the communication includes the names of three or more individuals whose names are to appear on the ballot;
- (4) expenditures for a political party fund-raising effort on behalf of three or more candidates; or
- (5) expenditures for party committee staff services that benefit three or more candidates.

- **Eliminate disclosure requirement for shared expenditures between federal and state committee of same political party.** An unregistered association, including the federal committee of a state political party unit, is required to provide disclosure when the federal committee pays for a shared expenditure. For example, if the federal committee for the RPM and the state committee for the RPM share office space or staff costs, federal law requires that the federal committee pay for the costs. This creates a contribution to the state RPM from an “unregistered committee”, that triggers significant disclosure requirements to little or no practical effect. The unique relationship between national and state party units is already recognized in Minnesota Statutes, section 10A.27, subdivision 13, (d), which exempts a national political party from providing the disclosure statement required of unregistered associations when the national party makes a contribution to the state central committee of the same party.

## 10A.27 CONTRIBUTION LIMITS.

\* \* \* \*

Subd. 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$200 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board.

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

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

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

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$200 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$200.

(d) This subdivision does not apply:

(1) when a national political party contributes money to its state committee;

(2) when the federal committee of a major or minor political party registered with the Board gives an in kind contribution to its state central committee, or a party organization within a house of the state legislature or

(3) to purchases by candidates for federal office of tickets to events or space rental at events held by party units in this state (i) if the geographical area represented by the

party unit includes any part of the geographical area of the office that the federal candidate is seeking and (ii) the purchase price is not more than that paid by other attendees or renters of similar spaces.

## Campaign Finance – Policy

- **Provide regulation of contributions made with bitcoins, and other virtual currency.** During 2018 staff received calls from campaign committees asking for guidance on accepting and reporting contributions made with bitcoins and other virtual currencies. Chapter 10A does not provide any guidance on the subject, other than to view the virtual currency as something of value.

### 10.01 DEFINITIONS

\* \* \* \*

Subd. 37. **Virtual currency.** (a) “Virtual currency” means an intangible representation of value in units that can only be transmitted electronically and function as a medium of exchange, units of account, or a store of value.

(b) Virtual currency includes cryptocurrencies. Virtual currency does not include currencies issued by a government.

### 10A.15 CONTRIBUTIONS

\* \* \* \*

Subd. 8. **Virtual currency contributions.** (a) A principal campaign committee, political committee, political fund, or party unit may accept a donation in kind in the form of virtual currency. The value of donated virtual currency is its fair market value at the time it is donated. The recipient of a virtual currency contribution must sell the virtual currency in exchange for United States currency within five business days after receipt.

(b) Any increase in the value of donated virtual currency after its donation, but before its conversion to United States currency, must be reported as a receipt that is not a contribution pursuant to section 10A.20, subdivision 3. Any decrease in the value of donated virtual currency after its donation, but before its conversion to United States currency, must be reported as an expenditure pursuant to section 10A.20, subdivision 3.

(c) A principal campaign committee, political committee, political fund, or party unit may not purchase goods or services with virtual currency.

- **Express Advocacy – Functional Equivalent.** Currently a communication that does not use the eight words of express advocacy (vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat, and reject) does not fall under the definition of independent expenditure. The words of express advocacy were recognized in a footnote in the Buckley v. Valeo Supreme Court decision in 1976. In subsequent cases, (McConnell v. Federal Election Commission in 2003 and Federal Election Commission v. Wisconsin Right to Life, Inc in 2007) the Supreme Court has adopted a functional equivalent of express advocacy standard that recognizes that communications can easily convey support for or opposition to a candidate while avoiding use of the “magic words.” Staff developed multiple versions of draft language for members to consider.

### 10A.01 DEFINITIONS

\* \* \* \*

(This version has been previously offered by the Board.)

Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

(1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or

(2.) that a communication, when taken as a whole and with limited reference to external events, including the proximity to the election, is not susceptible to any other interpretation by a reasonable person other than that as advocating the election or defeat of a one or more clearly identified candidates.

(Version 2)

Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

(1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or

(2.) that a communication when taken as a whole is susceptible of no reasonable interpretation other than as advocating for the election or defeat of one or more clearly identified candidates.

(Version 3)

Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

(1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or

(2.) that a communication clearly identifies a candidate and advocates for specific action rather than simply giving information.

## Economic interest statement program - Policy

### Beneficial interest language options

#### 10A.01 DEFINITIONS

\* \* \* \*

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity

(a) from which the individual receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer or employee, or

(b) whose securities the individual holds, or has a beneficial interest in, worth more than \$10,000 at fair market value; or

(c) in which the individual has a beneficial interest.

A beneficial interest is the right to the use and benefit of the asset due to a contract, arrangement, understanding, or relationship.



- **Provide alternative way to paper report of underlying disclosure for contributions of over \$200 from unregistered associations.** An unregistered association, including the federal political committees and political committees registered in another state, are required to provide a disclosure statement when a contribution of over \$200 is made to a committee registered with the Board. Under current statute the disclosure statement must be a written document. The disclosure statements are usually in the form of a report filed with the federal election commission or with an agency similar to the Board in another state. The statements, in particular from federal committees, may exceed a thousand pages in length.

In most cases the federal report or report from another state is available online at a governmental website. The proposed change would allow the unregistered association to provide either a written statement or the web address where the statement may be viewed at a governmental website. The same disclosure will be provided with the contribution, but the amount of paper being mailed and filed will be reduced.

#### 10A.27 CONTRIBUTION LIMITS.

\* \* \* \*

Subd. 13. **Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$200 from an association not registered under this chapter unless the contribution is accompanied by a ~~written~~ statement that meets the disclosure and reporting period requirements imposed by section 10A.20. The statement may be a written statement or a government web address where the disclosure report for the unregistered association may be viewed. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the written statement or web address with the report that discloses the contribution to the board.

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

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

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

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$200 from an unregistered association without the required ~~written~~ disclosure statement is subject to a civil penalty up to four times the amount in excess of \$200.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD  
January 2019**

**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
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures  Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP  \$50 LF	3/6/18	8/10/18			
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			Staff attempting to locate
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			
Bryan Klabunde	Klabunde for MN House	Unfiled 2017 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	9/4/18	11/2/18			Meeting with staff
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Staff attempting to arrange fee payment



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

**FINDINGS, CONCLUSIONS, AND ORDER**

IN THE MATTER OF THE LAND STEWARDSHIP ACTION FUND

The Land Stewardship Action Fund (LSAF) registered with the Campaign Finance and Public Disclosure Board as an independent expenditure political fund in September 2018. In late September and early October of 2018 the LSAF filed 24-hour notices disclosing three large contributions totaling \$29,000. On October 1, 2018, the LSAF filed its September 2018 report of receipts and expenditures disclosing over \$150,000 in contributions and over \$40,000 in expenditures. The LSAF amended that report 11 days later without explanation to reflect zero contributions and zero expenditures. The LSAF's pre-general report, filed on October 26, 2018, also disclosed zero contributions and zero expenditures. The pre-general report discloses all financial activity during the period from January 1, 2018, through October 22, 2018, and should have included the contributions the LSAF reported in the 24-hour notices.

While inquiring into the discrepancy between the periodic reports and the 24-hour notices, Board staff discovered that the LSAF had published six political advertisements on Facebook. The advertisements expressly advocated for the election or defeat of a clearly identified candidate, but lacked the required disclaimer for independent expenditures. Board staff noted that the cost of the six advertisements was not accounted for within the LSAF's 2018 pre-general report, despite the advertisements being published prior to the end of the reporting period covered by that report. On November 13, 2018, the executive director opened a staff review into the financial reports filed by the committee, and the lack of a campaign disclaimer on the Facebook advertisements.

On November 20, 2018, Amelia Shoptaugh, Operations and HR Manager for the LSAF, responded to the Board inquiry and explained that when submitting the 24-hour notices and the original September report of receipts and expenditures, the LSAF mistakenly disclosed the contributions and expenditures of its supporting association, as opposed to solely reporting those attributable to the political fund. The LSAF did not report the cost of the six Facebook advertisements in question on the pre-general report because it was not aware that it had been billed for the advertisements during the reporting period. The LSAF also mistakenly thought that it only needed to report expenditures after they were paid. After discussions with Board staff, the LSAF filed an amended 2018 pre-general report disclosing that it paid \$250 during the reporting period, and incurred an additional \$70.85 in charges that remained unpaid as of the end of the reporting period, for the advertisements in question.

Ms. Shoptaugh also conceded that the six advertisements identified by Board staff lacked the required disclaimer for independent expenditures. The advertisements in question were the first advertisements ever run by the fund, and the LSAF's staff believed that the disclaimer language added automatically by Facebook to political advertisements was sufficient. The disclaimer language added by Facebook states "Paid for by Land Stewardship Action Fund." The LSAF also provided a copy of an email from its legal counsel dated October 25, 2018, that instructed staff to add the disclaimer language from Minnesota Statutes section 211B.04 for independent expenditures to any advertisements constituting express advocacy. The LSAF states that independent expenditure advertisements published on Facebook after that date by the LSAF contained the required disclaimer.

On December 5, 2018, Ms. Shoptaugh further provided that the cost to publish the six advertisements in question on Facebook was \$350. This amount includes some charges incurred after the end of the reporting period covered by the pre-general report. The LSAF stated that Facebook's metrics show that the six advertisements were presented to a total of 16,691 unique users.

### **Analysis**

Minnesota Statutes section 10A.20, subdivision 3, requires reports of receipts and expenditures to include expenditures made during the reporting period, including any advance of credit incurred by the entity filing the report. Minnesota Statutes section 10A.20, subdivision 9, defines campaign expenditures to include advances of credit. Minnesota Statutes section 10A.01, subdivision 3, defines advance of credit to mean "any money owed for goods provided or services rendered." The initial pre-general report filed by the LSAF did not disclose the unpaid cost of the Facebook advertisements nor the \$250 that was paid for those advertisements during the reporting period.

When a fund becomes aware of an error or omission in a report previously filed with the Board, Minnesota Statutes section 10A.025, subdivision 4, requires the fund to file an amended report within 10 days of becoming aware of the inaccuracy. Submission of an amended report that accurately corrects the error or omission resolves a violation of the reporting requirements in Minnesota Statutes section 10A.20. The amended pre-general report filed on December 7, 2018, corrected the omissions of the initial pre-general report.

Minnesota Statutes section 211B.04 requires written independent expenditure advertisements to include a disclaimer stating "This is an independent expenditure prepared and paid for by ..... (name of entity participating in the expenditure), ..... (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it." An independent expenditure is defined by Minnesota Statutes section 10A.01, subdivision 18, to be "an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent." The six Facebook advertisements expressly advocated for the election of a clearly identified candidate. The advertisements therefore were independent expenditures that required a disclaimer in the form established by Minnesota Statutes section 211B.04, subdivision 2.

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

### **Findings of Fact**

1. The Land Stewardship Action Fund prepared and disseminated six independent expenditure advertisements that expressly advocated for the election of a clearly identified candidate.
2. Costs incurred for the advertisements during the reporting period were not included on the Land Stewardship Action Fund's 2018 pre-general report filed October 26, 2018.
3. The six Facebook advertisements did not include the required disclaimer for independent expenditures.

4. The six Facebook advertisements were collectively disseminated to approximately 16,691 Facebook users.
5. The total cost of the advertisements was \$350.
6. The Land Stewardship Action Fund amended its 2018 pre-general report December 7, 2018, to include the costs incurred for the advertisements during the reporting period.
7. The Land Stewardship Action Fund added the required disclaimer to subsequent Facebook advertisements after notification of the requirement in late October of 2018.
8. The Land Stewardship Action Fund promptly amended its 2018 pre-general report upon becoming aware of the reporting error.

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

#### **Conclusions of Law**

1. The six Facebook advertisements prepared and disseminated by the Land Stewardship Action Fund were independent expenditures under Minnesota Statutes section 10A.01, subdivision 18.
2. The Land Stewardship Action Fund violated Minnesota Statutes section 10A.20, subdivision 3, when it failed to disclose on its 2018 pre-general report the unpaid obligation as well as the \$250 it paid during the reporting period for the six Facebook advertisements. However, that error was remedied by the filing of an amended 2018 pre-general report on December 7, 2018.
3. The Land Stewardship Action Fund violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared and disseminated the six Facebook advertisements without the required disclaimer for independent expenditures.

**Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:**

#### **Order**

1. A civil penalty in the amount of \$200 is assessed against the Land Stewardship Action Fund for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Land Stewardship Action Fund 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 Land Stewardship Action Fund 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/ Margaret Leppik

Margaret Leppik, Chair  
Campaign Finance and Public Disclosure Board

Date: January 3, 2019

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

**FINDINGS, CONCLUSIONS, AND ORDER**

IN THE MATTER OF THE COMPLAINT OF MICHAEL SMITH REGARDING THE PERSKE (JOE) FOR SENATE COMMITTEE

**Allegations of the complaint**

On October 18, 2018, the Campaign Finance and Public Disclosure Board received a complaint submitted by counsel for Michael Smith regarding the Perske (Joe) for Senate committee, and JR Broadcasting, LLC. Perske (Joe) for Senate is the principal campaign committee of Joe Perske, a candidate for the special election in Minnesota Senate District 13. JR Broadcasting, LLC owns AM 950 Radio, which produces a program called “Democrat of the Day”.

The complaint alleged the following violations:

1. the Perske committee used signs that did not include the required campaign disclaimer in violation of Minnesota Statutes section 211B.04, subdivision 1;
2. the Perske committee accepted an in-kind contribution of campaign signs from Joe Perske’s 2014 congressional campaign committee that had a value exceeding the \$1,000 maximum contribution limit for the office of state senate in violation of Minnesota Statutes section 10A.27, subdivision 1;
3. the Perske committee accepted the campaign signs from an unregistered association (the Perske congressional committee) without the disclosure statement required for contributions of over \$200 by Minnesota Statutes section 10A.27, subdivision 13; and
4. the Perske committee accepted a corporate contribution from JR Broadcasting, LLC when Mr. Perske participated in the radio program “Democrat of the Day”. Correspondingly, the complaint alleges that JR Broadcasting made a corporate contribution to the Perske committee through the same radio program. Corporate contributions to the principal campaign committee of a candidate are prohibited by Minnesota Statutes section 211B.15, subdivision 2.

**Prima Facie Determination**

On October 26, 2018, the Board chair issued a prima facie determination. The determination found that the allegation that the Perske committee accepted a contribution with a value of over \$200 from an unregistered association without the required disclosure statement was mere speculation. The chair reached this conclusion because the required disclosure statement is forwarded to the Board with the committee’s next report of receipts and expenditures filed after the contribution is accepted. The first report of receipts and expenditures for the special election in Senate District 13 was not due until October 30, 2018.



The chair also found that the complaint did not state a prima facie violation of the corporate contribution prohibition in Minnesota Statutes section 211B.15, because that statute also provides an exception which excludes from the prohibition any “publication or broadcasting of news items or editorial comments by the news media.” The complaint contained no allegation that AM 950 is not part of the news media, and the complaint contained no allegation that the radio broadcast segment in question did not consist of news items or editorial comments.

However, the chair further determined that the complaint did state prima facie violations by the Perske committee of the campaign disclaimer and contribution limit statutes. Pursuant to Minnesota Statutes section 10A.022, subdivision 3, when the chair finds that the complaint alleges a prima facie violation, the Board must then hold a probable cause hearing to determine if probable cause exists to believe that the violations alleged in the complaint warrant a formal investigation.

### **Response from the Perske Committee**

The Perske committee provided information relevant to the complaint when it filed the pre-general report of receipts and expenditures on October 30, 2018. The report disclosed an in-kind contribution of \$1,510 dated June 29, 2018, from the candidate, Joe Perske, in the form of “Leftover Perske campaign signs from 2014 CD 6 election contest.” The report also discloses an in-kind campaign expenditure for use of the signs valued at the same amount.

By letter dated November 21, 2018, David Zoll, legal counsel for the Perske committee, responded to the complaint. The letter states that Mr. Perske took personal possession of the campaign signs when the congressional committee terminated after the 2014 election. Therefore, the signs were an in-kind contribution to the Perske committee, but the signs were a donation from the candidate, not by the congressional committee.

In regards to the lack of a disclaimer on some of the campaign signs, Mr. Zoll states that the Perske committee only cut the disclaimer off of the reused signs that were carried in parades and that there was no risk of confusion to voters as to who was responsible for those signs.

Mr. Zoll acknowledges that the Perske committee did initially distribute other reused campaign signs with an incorrect disclaimer. Mr. Zoll states, “[t]he Perske Committee printed stickers with the proper disclaimer immediately after becoming aware of the need to include the disclaimer on the signs and attempted to correct the signs immediately.” With his response, Mr. Zoll provided a picture of the sticker containing the correct disclaimer that was used to correct the campaign signs.

By email on November 27, 2018, Mr. Zoll responded to a Board request for additional information on the campaign signs. Mr. Zoll states that Mr. Perske donated approximately 445 signs to the committee, and that most of these signs were initially distributed without the correct disclaimer. The Perske committee ordered the stickers to update the signs when it learned of the complaint, and committee volunteers started to affix the corrective stickers on October 26, 2018. The Perske committee estimates that the corrective sticker had been applied to substantially all of the signs by November 2, 2018. In response to a Board question regarding the cost of correcting the signs, Mr. Zoll states that the stickers to update the disclaimer cost \$387.53. Before the reused signs were distributed the committee bought other stickers

that were used to change the office referenced on the signs from “Congress” to “MN Senate”. The cost of the “MN Senate” stickers was \$1,705.73.

### **Probable Cause Hearing**

The probable cause hearing was held in executive session at the December 5, 2018, Board meeting. Benjamin Pachito appeared before the Board on behalf of the complainant; David Zoll appeared before the Board on behalf of the Perske committee.

In considering the allegation that the Perske committee accepted the contribution of campaign signs from an unregistered association the Board determined that Mr. Perske’s 2014 congressional campaign committee, named Joe Perske for US Congress, filed a termination report with the Federal Election Commission (FEC) on November 27, 2014. The requested termination was granted by the FEC by letter dated December 3, 2014. Therefore, the signs could not have been contributed by the congressional committee because it had been terminated for 3½ years prior to the date of the contribution. Mr. Perske took possession of the campaign signs when the congressional committee shut down, and later made the decision to donate them to his senate committee. The Perske senate committee properly disclosed the in-kind contribution of the signs as a contribution from the candidate.

Because the signs were donated by the candidate, the \$1,000 contribution limit for unregistered associations does not apply. Mr. Perske signed the public subsidy agreement for the senate special election. Minnesota Statutes section 10A.27, subdivision 10, permits a senate committee to accept up to \$5,000 in contributions from the committee’s own candidate when the candidate has signed a public subsidy agreement. While the pre-general report of receipts and expenditures filed by the Perske committee acknowledges that the value of the signs exceeded \$1,000, there is no basis to believe that the value of the signs exceeded \$5,000 based on the number of signs donated to the committee, and the cost to the committee to modify the signs before they were used in the senate campaign.

Mr. Zoll, in his written response and his appearance before the Board, acknowledged that the Perske committee violated the disclaimer requirement by preparing and disseminating campaign signs that lacked the correct committee name and address as well as signs that did not contain any disclaimer.

On December 5, 2018, the Board made the determination that there was not probable cause to believe that the Perske committee accepted a contribution of over \$1,000 from an unregistered association and dismissed the allegation. The Board also found that there was probable cause to believe that the Perske committee violated the disclaimer requirement in Minnesota Statutes section 211B.04, subdivision 1. An investigation was ordered for the purpose of preparing these findings, conclusions, and order to resolve the matter.

### **Analysis of Violation**

Minnesota Statutes section 211B.04 requires a candidate’s campaign committee to include a disclaimer on any campaign material that it causes to be prepared or disseminated. The disclaimer must identify the committee as the entity responsible for preparing and paying for the campaign material, and must provide either a physical address where the committee may be contacted, or a website address that in turn contains the physical address where the committee may be contacted. The Board may impose a

civil penalty of up to \$3,000 for a violation of the disclaimer requirement pursuant to Minnesota Statutes section 10A.34, subdivision 4.

In this case, the Perske committee acknowledges that it violated Minnesota Statutes section 211B.04, subdivision 1, when it used campaign signs originally prepared for Mr. Perske's congressional campaign. The committee also states, and has documented, that it printed stickers containing the correct disclaimer and mobilized volunteers to correct the signs as soon as it became aware of the problem.

In determining an appropriate civil penalty for the violation, the Board found no reason to believe that the Perske committee reused the campaign signs without a correct disclaimer to either intentionally confuse voters, or deny responsibility for the signs. Indeed the Perske committee did go to the time and expense of modifying the signs for the office of senate. However, the requirement to have a disclaimer on campaign material is not new, and this was not the first political campaign for Mr. Perske. Further, the reused signs were used without the required disclaimer for the majority of the campaign before they were corrected in October and early November. The Board also notes that new campaign signs ordered by the Perske committee contained the correct disclaimer, which shows that members of the Perske committee were aware of the disclaimer requirement.

**Findings of fact:**

1. The Perske (Joe) for Senate committee used approximately 445 campaign signs that had either no disclaimer, or which contained a disclaimer that was not accurate for the committee.
2. The Perske (Joe) for Senate committee reported that the signs were donated to the committee on June 29, 2018, and that the in-kind value of the signs was \$1,510. The committee was responsible for, and had use of the signs, from that date onward.
3. During the period from October 26, 2018 to November 2, 2018, the Perske (Joe) for Senate committee corrected substantially all of the signs it had previously disseminated that lacked a proper disclaimer.

**Based on the foregoing findings of fact, the Board makes the following:**

**Conclusions of law**

1. The Perske (Joe) for Senate committee violated Minnesota Statutes section 211B.04, subdivision 1, when the committee used campaign signs that did not contain the required disclaimer.

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

**Order**

1. A civil penalty of \$500 is imposed against the Perske (Joe) for Senate committee for violation of the disclaimer provision in Minnesota Statutes section 211B.04, subdivision 1.

2. The Perske (Joe) for Senate committee is directed to forward payment to the Board, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. If the Perske (Joe) for Senate committee 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/ Margaret Leppik

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Margaret Leppik, Chair  
Campaign Finance and Public Disclosure Board

Date: January 3, 2019

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

**Findings, Conclusions, and Order in the Matter of the Staff Review of the House Republican Campaign Committee (HRCC)**

The House Republican Campaign Committee (HRCC) is a political party unit registered with the Campaign Finance and Public Disclosure Board. In November 2014, the HRCC asked to adjust the ending cash balance on its 2013 year-end report because it could not account for \$7,766.54 in deposits. If granted, this would have been the HRCC's second balance adjustment in two years. In 2012, the Board allowed the HRCC to reduce the ending cash balance on its 2010 year-end report to account for \$10,280.59 in expenditures for which it had no records.

Although the HRCC initially believed that the reconciliation issue was confined to 2013, it soon became clear that issues also existed for 2011 and 2012, and that the amount of the 2010 adjustment may have been incorrect. Board staff therefore began a preliminary inquiry into the matter in February of 2015. Because 2010 appeared to be the year where the HRCC's financial discrepancies had started, Board staff started with 2010 to verify that the balance adjustment granted for that year was correct. Board staff planned to reconcile forward from 2010.

The HRCC, however, did not promptly respond to Board requests for information for several reasons. First, although party units must retain financial records for four years, the HRCC did not have records on hand for all of its receipts and expenditures. The party unit therefore had to contact its financial institutions to obtain copies of those records. One of the financial institutions did not respond promptly to the party unit's requests for documentation.

In addition, since 2010, the HRCC has directly employed only one staff member. This staff member typically worked part-time during the legislative session and then moved to full-time for the rest of the year. In 2014, the HRCC hired a new person as its staff member. The terminal illness of the staff member's spouse in 2015 and 2016 also affected the progress of the inquiry.

By early 2016, Board staff had completed the 2010 reconciliation.<sup>1</sup> Because that inquiry had suggested that the HRCC had not been keeping adequate records of its financial transactions, the executive director elevated the matter to a staff review, which is a form of investigation, on January 14, 2016.

During the winter of 2016, the discrepancies for 2011 were resolved without a full audit and the focus of the staff review moved to the year 2012.<sup>2</sup> In June 2016, the HRCC engaged an outside accountant to prepare reconciliation worksheets for the staff review. For the reasons listed above, the accountant also had difficulty obtaining records and prompt responses from the HRCC.

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<sup>1</sup> The 2010 reconciliation showed that the original balance adjustment was nearly correct and that the HRCC's report balance needed to be reduced by an additional \$115.69.

<sup>2</sup> The 2011 reconciliation showed that the HRCC needed to 1) add a \$863 payment to the report; 2) subtract voided payments of \$732.52 and \$4,228.72; and 3) adjust the report balance by (\$752.20).

In October 2016, the accountant provided staff an initial 2012 reconciliation worksheet but that reconciliation was unacceptable for two reasons. First, it was based on aggregate contribution and expenditure amounts from reports that the HRCC had already acknowledged were incorrect. The reconciliation then compared those aggregate figures to aggregate bank balances that showed nothing about the individual transactions that had occurred in those accounts, including whether those transactions should have been reported in 2011, 2012, or 2013. The executive director instructed the HRCC to complete a reconciliation worksheet for 2012 based on actual bank records and to attribute the individual financial transactions to the correct reporting year.

The staff review stalled again in November 2016 when the HRCC's lone staff member filed for, ran in, and then won a February 14, 2017, special election for a seat in the Minnesota House of Representatives. The staff member immediately began serving full-time as a legislator, which again limited her availability to the HRCC and the staff review. The HRCC left the staff member's position vacant during this time.

In October 2017, the HRCC's accountant submitted reconciliation worksheets showing all of the HRCC's financial activities for the years 2012 through 2015 and was nearly finished with the 2016 reconciliation. During staff's review of these reconciliations, however, it became apparent that they included information from the financial accounts of the HRCC's federal political committee. Staff therefore directed the HRCC to prepare new reconciliation worksheets that did not include any federal account information.

The HRCC submitted new reconciliation worksheets for the years 2012 through 2016 in the summer of 2018. These reconciliations attributed individual financial transactions to the correct reporting year and did not include any federal committee information. The reconciliation worksheets showed that there were discrepancies in every year between the balances on the HRCC's reports and the reconciled balances in the HRCC's bank accounts. The reconciliations also showed that the HRCC had not correctly reported its receipts or expenditures in any of the subject years. The chart below summarizes the balance, receipt, and expenditure discrepancies between the HRCC's reports and its bank accounts for each year. The chart also includes 2017 although the HRCC did not provide the reconciliation for that year until the staff review was nearly finished. A more detailed summary of the discrepancies is attached to this order as Exhibit 1.

<b>Year</b>	<b>Beg Balance Discrepancy</b>	<b>Receipts Discrepancy</b>	<b>Expenditure Discrepancy</b>	<b>End Balance Discrepancy</b>
2012	(4,966.13)	(38,537.31)	(60,912.02)	17,408.58
2013	17,408.58	32,393.38	43,306.10	6,495.86
2014	29,991.06	(25,629.87)	1,847.00	2,514.19
2015	55,471.74	459.23	961.78	54,969.19
2016	54,969.19	(83,099.92)	(53,801.03)	25,670.30
2017	25,670.30	62,844.83	(25,784.55)	114,299.68

(number) means report showed that number less than the bank; number without () means report showed that number more than the bank

After the receipt and expenditure discrepancies for each year were identified, the HRCC reviewed its records to try to find a reason for those discrepancies other than that the transaction simply had not been reported. The chart below shows that except for 2012 and 2017, the HRCC was able to determine why the expenditures on a report did not match the expenditures in its bank account. The HRCC was not able to find explanations for the large receipt discrepancies in 2012, 2014, 2016, or 2017.

<b>Year</b>	<b>Receipt discrepancy</b>	<b>Explanation</b>	<b>Expenditure discrepancy</b>	<b>Explanation</b>
2012	(38,537.31)	None	(60,912.02)	None
2013	32,393.38	On-line contributions double reported	43,306.10	\$40,164.90 expense double reported
2014	(25,629.87)	None	1,847.00	None
2015	459.23	None	961.78	None
2016	(83,099.92)	None	(53,801.03)	\$50,000 expense omitted
2017	62,844.83	None	(25,784.55)	None

(number) means report showed that number less than the bank; number without () means report showed that number more than the bank

After the reconciliation worksheets for the years 2012 through 2016 were finished, the party unit's attorney, R. Reid LeBeau, gave a statement under oath to the Board on October 15, 2018. Mr. LeBeau provided the statement because he was the person most familiar with the HRCC's general operations from 2010 through the present. Mr. LeBeau stated that during his tenure, four different people had served as the HRCC's treasurer of record. Mr. LeBeau said that the HRCC staff member, not the treasurer, was responsible for the day-to-day financial operations of the party unit and initially prepared the reports that the treasurer would certify and file with the Board.

Mr. LeBeau stated that when the HRCC asked for the balance adjustment in 2014, it adopted procedures that were intended to address the recordkeeping issues that had led to the balance adjustment request. Those procedures primarily included recording contributions and expenditures more frequently. Mr. LeBeau stated that the HRCC believed that if the accounting and recordkeeping issues were resolved, the reports to the Board that relied on those records would be accurate. Mr. LeBeau said, however, that an entity "can have protocols and procedures all day long, but you have to have people that . . . diligently follow [those procedures]." Mr. LeBeau was not aware of any oversight measures that the HRCC had adopted to ensure that the new protocols were followed or that its reports of receipts and expenditures accurately reflected its financial transactions. Mr. LeBeau also said that from November 2016 through May 2017 when the staff member was running for and serving in the legislature, the HRCC's financial operations essentially were done by committee.

On November 28, 2018, the HRCC submitted written responses to questions that Mr. LeBeau had not been able to answer at his statement. The responses confirmed that the HRCC's financial activities were separate from the financial activities of the federal political committee. In its response, the HRCC also stated that it would take the following actions to ensure that in

the future, it kept the records required by Chapter 10A and filed accurate reports of its financial activities:

- 1) Maintain dedicated office staff to oversee its deposits and reports to the Board;
- 2) Require the office staff to attend annual Board and Federal Election Commission (FEC) reporting and compliance workshops for a period of five years and provide annual certifications of attendance to the Board;
- 3) For a minimum of five years, retain an outside auditing firm that has staff knowledgeable in Minnesota and federal campaign finance reporting to perform monthly reconciliations of all bank accounts and to be responsible for reporting to the Board and the FEC;
- 4) Provide, by and through its auditors, quarterly certifications to the Board for the next five years that it is maintaining necessary and adequate records;
- 5) Retain an accounting firm in 2019 to formally audit its books and procedures and make recommendations for corrective actions and provide the audit results to the Board; and
- 6) Retain an accounting firm to conduct two formal audits within a five-year period and provide the audit results to the Board.

### **Analysis**

To help ensure that the public knows where money collected for political purposes has come from and how that money has been spent, party units must disclose all of their financial transactions on reports that are filed with the Board. Minn. Stat. § 10A.20, subd. 3. Chapter 10A also requires party units to obtain and maintain internal records of their financial transactions. Minnesota Statutes section 10A.025, subdivision 3, specifically provides as follows:

A person required to file a report or statement or who has accepted record-keeping responsibility for the filer must maintain records on the matters required to be reported, including vouchers, canceled checks, bills, invoices, worksheets, and receipts, that will provide in sufficient detail the necessary information from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. The person must keep the records available for audit, inspection, or examination by the board or its authorized representatives for four years from the date of filing of the reports or statement or of changes or corrections to them.

See *also* Minn. Stat. § 10A.13 (requiring party units to keep accounts of all receipts and expenditures and obtain receipted bills for all expenditures over \$100). When a report filed with the Board does not accurately disclose all of a party unit's transactions, the party unit must promptly amend that report. Minn. Stat. § 10A.025, subd. 4.



The Board may impose a civil penalty of up to \$3,000 on a party unit that is affiliated with a person who knowingly violates the recordkeeping provisions. Minn. Stat. § 10A.025, subd. 3 (b). The Board also may impose a civil penalty of up to \$3,000 against a party unit affiliated with a person who signs and certifies to be true a report knowing that it contains false information or knowing that it omits required information. Minn. Stat. § 10A.025, subd. 2 (e). Finally, the Board may impose a civil penalty of up to \$3,000 against a party unit affiliated with a person who knowingly provides false or incomplete information to a treasurer with the intent that the treasurer will rely on that information in signing and certifying a report to be true. Minn. Stat. § 10A.025, subd. 2 (e).

The record here shows that the HRCC and its staff knew that the party unit was required to keep records of all its financial transactions. In its May 2, 2012, request for the \$10,280.59 balance adjustment for 2010, the HRCC justified its request, in part, on the party unit's knowledge of the applicable recordkeeping requirements in Chapter 10A. When the HRCC asked for a second balance adjustment in 2014 because it had no records for nearly \$8,000 in contributions received the previous year, the party unit explicitly stated that it had put new protocols in place to prevent future accounting and reporting errors. The adoption of those protocols shows that the HRCC knew of its recordkeeping obligations under Chapter 10A. Finally, after the preliminary inquiry began in November 2014 and Board staff began asking for financial information for each year, the HRCC certainly knew that it needed to obtain and retain records to support the transactions on its campaign finance reports.

Yet despite this knowledge, the HRCC and its staff failed to retain records "that provide in sufficient detail the necessary information from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness." Minn. Stat. § 10A.025, subd. 3. The staff review showed that the HRCC did not have records on hand to verify, explain, clarify, or check its reports for the years 2012 through 2017. Instead, the party unit had to expend considerable time and effort to obtain those records from its financial institutions. In addition, the HRCC did not have monthly, or even annual, reconciliation worksheets showing how the amounts on its reports reconciled with the amounts in its bank accounts. The record shows that the accountant hired by the HRCC had to create those reconciliations for the staff review. Even after the reconciliation worksheets were created, the HRCC was unable to find explanations, other than that a transaction simply had not been reported correctly, for the discrepancies between its reported receipts and its actual receipts for 2012, 2014, 2016, and 2017, or for the discrepancies between its reported and actual expenditures in 2012 and 2017.

The HRCC ultimately is responsible for the inadequate recordkeeping that occurred in this matter. Despite having from one to five million dollars in annual transactions, the HRCC employed only one part-time staff member for almost half of each year to oversee those transactions. In addition, nothing in the record indicates that the HRCC's staff members had any financial background or training. Although it is understandable, and commendable, that the HRCC gave its staff member flexibility during a family member's illness, the HRCC still had an obligation during that time to ensure that its recordkeeping complied with Chapter 10A. The HRCC further abdicated this responsibility when it failed to hire anyone to cover for the staff

member from November 2016 through May 2017 when she ran for and then served in the legislature. Because the HRCC was operating by committee during this time, it is not surprising that it failed to report \$136,900.95 in receipts and expenditures on its 2016 report. Finally, even when the HRCC had a staff member in place, the record shows that the party unit did not follow the oversight measures that it had attempted to put in place to ensure that its financial protocols were being followed.

The inadequacy of the HRCC's recordkeeping led to the creation of inaccurate reports for the Board. As shown on Exhibit 1, none of the reports filed by the HRCC from 2012 through 2017 accurately reflected the party unit's actual receipts and expenditures. For example, in 2012, the HRCC failed to report \$38,537.31 in receipts and \$60,912.02 in expenditures. Although the unreported expenditures offset the unreported receipts so that the net effect on the HRCC's balance was a reduction of \$22,374.71, the total amount of transactions that were not reported in 2012 was \$99,449.33. In short, errors in reporting receipts are not balanced by errors in reporting expenditures. The chart below shows that 2015 was the only year in this time period when the HRCC's reports had total discrepancies that were less than \$25,000.

<b>Year</b>	<b>Receipt discrepancy</b>	<b>Expenditure discrepancy</b>	<b>Total discrepancy</b>	<b>Net discrepancy</b>
2012	(38,537.31)	(60,912.02)	99,449.33	22,374.71 in expenditures
2013	32,393.38	43,306.10	75,699.48	10,912.72 in expenditures
2014	(25,629.87)	1,847.00	27,476.87	23,782.87 in receipts
2015	459.23	961.78	1,421.01	502.55 in expenditures
2016	(83,099.92)	(53,801.03)	136,900.95	29,298.89 in receipts
2017	62,844.83	(25,784.55)	88,629.38	37,060.28 in receipts

(number) means that the report showed that number less than the reconciled bank account; number without () means report showed that number more than the bank

It is the HRCC's failure to accurately disclose its receipts and expenditures on reports filed after its balance adjustment request that most concerns the Board. In a typical balance adjustment request, the Board works with the reporting entity to resolve the discrepancy and does not impose penalties for subsequent years where the underlying transactions are correct but the same initial balance discrepancy is carried forward. In the present case, the HRCC asked in November 2014 to adjust its 2013 balance. Yet in subsequent years, the HRCC significantly compounded its balance discrepancy issue by inaccurately reporting its underlying receipts and expenditures in 2014, 2016, and 2017.

The HRCC has argued that the inaccurately reported transactions represent only a small percentage of its overall receipts and expenditures each year. When a party unit's aggregate transactions total in the millions of dollars, however, the party unit has the resources to hire the staff necessary to properly record and report those transactions. In addition, although the

discrepancies may be a small percentage of the HRCC's overall transactions, for every year except 2015, the actual dollar amounts of the inaccurately reported transactions total in the tens of thousands of dollars. In any event, the recordkeeping and reporting requirements in Chapter 10A do not contain a sliding scale for accuracy depending on the size of the account. Instead, Chapter 10A requires every party unit, regardless of size, to accurately record and then report all of its financial transactions.

Although the HRCC did not keep adequate records or file accurate reports for the years 2012 through 2017, nothing in the record suggests that the HRCC or its staff knowingly provided false or incomplete information to the party unit's treasurers or to the Board. Instead, HRCC staff prompted the party unit to make the second balance adjustment request when the reporting discrepancies were discovered in 2014. The HRCC hired an outside accountant to reconcile the discrepancies and provided all of its financial records to that accountant for her work. The HRCC then provided its financial records to Board staff so that the accountant's work could be verified. Finally, the HRCC was surprised by the extent of the discrepancies when they were compiled together into Exhibit 1. For these reasons, the record does not support a finding that HRCC staff knowingly provided false or incomplete information to a treasurer with the intent that the treasurer rely on that information in signing and certifying a report to be true. Nor does the record support a finding that any of the HRCC's treasurers signed and certified a report to be true knowing that it was false or omitted required information.

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

#### **Findings of fact**

1. The House Republican Campaign Committee (HRCC) and its staff knew that the party unit was required to keep records of its financial transactions sufficient to verify and explain the reports of receipts and expenditures that the party unit filed with the Board.
2. Despite this knowledge, the HRCC and its staff did not keep records sufficient to verify and explain its reports of receipts and expenditures for the years 2012 through 2017.
3. Because of the insufficient records, the reports that the HRCC filed for the years 2012 through 2017 do not accurately disclose all of the party unit's financial transactions. The discrepancies between the HRCC's reports and its bank accounts are detailed in Exhibit 1.
4. The HRCC has not been able to provide a reason, other than transactions simply being omitted or reported inaccurately, for the discrepancies between its reported receipts and its actual receipts in 2012, 2014, 2016, or 2017, or for the discrepancies between its reported and actual expenditures in 2012 and 2017.
5. The HRCC adopted financial protocols in November 2014 that were intended to resolve the party unit's recordkeeping and reporting issues but the HRCC did not ensure that those protocols were followed.

6. HRCC staff did not knowingly provide false or incomplete information to HRCC treasurers with the intent that the treasurers rely on that information in signing or certifying reports to be true.
7. No HRCC treasurer signed or certified a report to be true knowing that it was false or omitted required information.

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

#### **Conclusions of law**

1. The House Republican Campaign Committee (HRCC) violated Minnesota Statutes sections 10A.025, subdivision 3, and 10A.13, for the years 2012 through 2017 by failing to obtain and maintain records of its receipts and expenditures sufficient to verify and explain its reports of receipts and expenditures for those years.
2. The HRCC violated Minnesota Statutes section 10A.20, subdivision 3, for the years 2012 through 2017 by not filing reports that accurately disclosed all of its financial transactions.
3. The HRCC, its staff, and its treasurers did not violate the false information or false certification provisions in Minnesota Statutes section 10A.025, subdivision 2, paragraphs (b) and (c), for any reporting year that was part of this staff review.

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

#### **Order**

1. The House Republican Campaign Committee (HRCC) must file amended year-end reports for the years 2011 through 2017. The party unit must work with Board staff to determine how to accurately report receipts and expenditures for which detailed information is not available. The executive director is authorized to make one-time adjustments to the party unit's reported ending cash balances as necessary to reconcile a reported ending cash balance with the reconciled bank balance for each reporting year. All amended reports must be filed within 60 days of the date of this order.
2. A civil penalty in the amount of \$3,000 per year is assessed against the HRCC for inadequate recordkeeping in 2012, 2013, 2014, 2016, and 2017. No civil penalty is assessed for the year 2015 because the receipt and expenditure discrepancies for that year were less than \$2,000. The HRCC must pay the \$15,000 in assessed civil penalties within 30 days after the date of this order. The amount of the civil penalty is based on the following factors:

- a) the fact that the HRCC was aware of the need to obtain and retain records due to its 2012 balance adjustment request and then the pendency of this staff review, yet the HRCC failed to obtain or retain those records;
  - b) the large dollar amount of the total discrepancies in each of the years; and
  - c) the expense that the HRCC will incur to implement the corrective actions listed in paragraph 3 of this order.
3. The HRCC must implement the following corrective actions:
- a) The HRCC must maintain dedicated office staff to oversee its deposits and reports to the Board;
  - b) The HRCC must require the office staff to attend annual Board and Federal Election Commission (FEC) reporting and compliance workshops for a period of five years and must provide annual certifications of attendance to the Board;
  - c) For five years from the date of this order, the HRCC must retain an outside auditing firm that has staff knowledgeable in Minnesota and federal campaign finance reporting to perform monthly reconciliations of all bank accounts and to review reports to the Board;
  - d) The HRCC must retain an outside auditing firm that has staff knowledgeable in Minnesota campaign finance reporting to review the amended reports required in paragraph 1 of this order;
  - e) For five years from the date of this order, the HRCC, by and through its auditors, must provide quarterly certifications to the Board that the HRCC is maintaining necessary and adequate records;
  - f) The HRCC, in 2019, must retain an accounting firm to formally audit its books and procedures and make recommendations for corrective action and must provide the audit results to the Board by December 31, 2019; and
  - g) The HRCC must retain an accounting firm to conduct two formal audits within a five-year period and must provide the audit results to the Board.
4. The Board may waive any of the on-going requirements in paragraph 3 of this order before the conclusion of the five-year period.
5. If the HRCC 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.

6. 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/ Margaret Leppik            
Margaret Leppik, Chair  
Campaign Finance and Public Disclosure Board

Signed: January 3, 2019

**Exhibit 1 - HRCC discrepancy summary - (number) means report showed that number less than bank**

Year	2010	2011	2012	2013	2014	2015	2016	2017
Beginning balance	unknown	(115.69)	(4,966.13)	17,408.58	29,991.06	55,471.74	54,969.19	25,670.30
Receipts	(1,902.72)		(38,537.31)	32,393.38	(25,629.87)	459.23	(83,099.92)	62,844.83
Expenditures	8,773.76		(60,912.02)	43,306.10	1,847.00	961.78	(53,801.03)	(25,784.55)
Ending balance	(115.69)	(752.20)	17,408.58	6,495.86	2,514.19	54,969.19	25,670.30	114,299.68
Notes		Full reconciliation not completed because initial reconciled balance discrepancy was small			Beginning balance used on rpt was about \$23,000 too high	Add'l \$52,000 incorrectly added to beginning balance on rpt		
<b>Detail for each year</b>								
<b>2010</b>	<b>Report (Amend #4)</b>	<b>Bank</b>	<b>Difference</b>	<b>HRCC response</b>				
Beginning balance	449,782.00	unknown	0.00	No response for this year				
Receipts	1,372,451.89	1,374,354.61	(1,902.72)					
Expenditures	(1,631,452.98)	(1,622,679.22)	8,773.76					
Ending balance (after adjustment)	190,780.91	190,896.60	(115.69)					
<b>2011</b>	<b>Amend #1</b>	<b>Reconciliation using amend #1 &amp; bank numbers</b>	<b>Difference</b>	<b>Bank only</b>	<b>between reconciliation &amp; bank alone</b>	<b>HRCC response</b>		
Beginning balance	190,780.91	190,896.60	(115.69)		No response for this year			
Receipts	1,012,971.47	1,012,971.47						
Exp from report	(461,659.59)	(461,659.59)						
Exp made, not rpt		(863.00)						
Exp rpt, not made		4,961.24						
Total reconciled expenditures		(457,561.35)						
Ending cash	742,092.79	746,306.72	(4,213.93)	747,058.92	(752.20)			





