

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

FINDINGS IN THE MATTER OF THE COMPLAINT AGAINST
THE PHILLIP STERNER FOR HOUSE ELECTION COMMITTEE**

Summary of the Facts

On September 19, 2008, Robert Dove filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) regarding the Phillip Sterner for House Election Committee (“the Sterner Committee”). In the complaint Mr. Dove states that the Sterner Committee failed to disclose on the pre-primary Report of Receipts and Expenditures the rental costs for a campaign office located in downtown Rosemount. In support of the allegation Mr. Dove provided the address of the campaign office and print-outs of screens from the Sterner Committee’s web site announcing an open house for the campaign office on July 20, 2008, and the hours that the office would be open.

Pursuant to Minnesota Statutes, Section 10A.20, subdivision 3(g), the principal campaign committee must report any campaign expenditure made by the committee and must itemize the expenditure if the aggregate total of the expenditure exceeds \$100. Itemization includes the name of the vendor of the goods or service, the vendor’s address, and the purpose of the expenditure. Subdivision 3(i) of this statute further provides that a committee must also disclose any creditor (unpaid bill) of the committee. This requirement is explained further in Minnesota Rules 4503.1800, subpart 2, which provides that the reporting requirement for unpaid bills includes the date on which the committee incurred the obligation.

In reviewing the complaint Board staff verified that that the pre-primary Report of Receipts and Expenditures, which covers the period of January 1 through August 18, 2008, did not appear to disclose rent for a campaign office. Additionally, staff noted that the Sterner Committee’s report did not appear to disclose any itemized expenditures for furnishings, business machines, or utilities that might be expected as auxiliary costs to operating a campaign office. Further, the Sterner Committee’s report did not appear to contain itemized expenditures for the cost of the Committee’s web site.

The Board notified Phillip Sterner, candidate, and Lori Nagel, treasurer for the Sterner Committee, of the complaint on September 19, 2008. In addition to providing a general response to the complaint Mr. Sterner and Ms. Nagel were asked to provide specific information on the Committee’s expenditures for web site hosting and the costs related to running a campaign office.

In a letter dated October 7, 2008, Ms. Nagel responded to the complaint. In her response Ms. Nagel states that, “Our campaign inadvertently overlooked listing an unpaid campaign expenditure...and an in-kind contribution from the candidate.” With the response Ms. Nagel provided a copy of the lease for the campaign office space between Dakota Central Realty Ltd. and the Sterner Committee, an addendum to the lease which stipulates conditions for using the office space, and a floor plan of the campaign office space. Ms. Nagel also provided a copy of an invoice received from 3iX, Inc., in the amount of \$20.95 for hosting the committee web site and the registering the Sterner Committee’s domain name.

On October 8, 2008, Ms. Nagel filed an amendment to the Sterner Committee's pre-primary Report of Receipts and Expenditures. The amended report itemized a unpaid campaign expenditure to Dakota Central Realty incurred on June 15, 2008, in the amount of \$600 for office rent for the period July 1 to November 8, 2008. The amended report also discloses an in-kind donation of \$20.95 for internet access and web hosting from Phillip Sterner to the Committee.

After reviewing Ms. Nagel's response and the amended report Board staff determined that the office space in question was approximately 15ft X 31ft in size and that the lease provided use of the space for 130 days at the cost of \$600 payable at the end of the lease. Additionally, staff could not identify in the lease or on the amended report expenditures for utilities or other expenses related to operating a campaign office. On October 9, 2008, Board staff sent a second letter to Mr. Sterner and Ms. Nagel requesting information on the process used to determine the \$600 lease price with Dakota Central Realty Ltd. and requesting information on any other costs the committee may have incurred while running a campaign office.

On October 17, 2008, the Board received a letter from Alan Weinblatt, Weinblatt & Gaylord PLC, which stated that he was providing legal counsel for the Sterner Committee, and which requested additional time to research and provide a response to the October 9, 2008, Board correspondence. At the Board meeting of October 21, 2008, the Board voted to lay the matter over to the next scheduled meeting on December 2, 2008, in order to provide Mr. Weinblatt adequate time to prepare his response.

On October 28, 2008, the Sterner Committee filed the pre-general election Report of Receipts and Expenditures. The report discloses an additional payment to Dakota Central Realty Ltd. in the amount of \$72 for "utilities" at the office space.

By letter dated November 26, 2008, Mr. Weinblatt provided information on the nature of the space rented by the Sterner Committee. Mr. Weinblatt stated, "The leased property used by the Committee had been vacant for several years ...The Sterner Campaign agreed to take the property in an "as is" condition without improvements or even clean up. ...the Committee did not have exclusive use of the space. The landlord was permitted to "leave his stuff" including personal items in the leased premises. ...The leased premises did not have any phones, computers or electronic equipment and had only marginally useable chairs. Rubbish removal was not included in the rental."

In reference to the conditions of the lease and the manner in which the lease was negotiated Mr. Weinblatt states: "The lease price was based on arms length negotiations was only a short term rental for only a portion of one floor. ...The campaign had orally agreed with the landlord to move immediately if he found a long-term tenant. The rental price was consistent with similar properties in the town. There were several vacant buildings. ...My client has no reason to believe that the agreed upon rental price was anything other than fair rental value..."

In reply to the Board's request for information on costs associated with operating a campaign office Mr. Weinblatt provides: "The space did not include any fax machines, computers, etc. The few items of furniture were very used and of *di minimus* value. Utilities were paid by the Committee separately in the amount shown on the Committee's latest report. The committee was responsible for the utilities, and it did not purchase any furniture."

On December 1, 2008, Mr. Dove supplemented his original complaint with a statement that: "The Sterner Campaign has filed a total cost of \$672 for this time period. This is \$168 per

month. The value is very low for rental and presumably electricity and phone. I think the value should be much higher in a downtown office building.” Mr. Dove did not provide any evidence to substantiate his statement.

This matter was considered by the Board in executive session on October 21, and December 2, 2008, and January 8, 2009. The Board’s decision was based upon the evidence provided in the complaint, and correspondence from Ms. Nagel, Alan Weinblatt, and Board records.

Board Analysis

In his complaint Mr. Dove correctly identified an error in the pre-primary Report of Receipts and Expenditures as originally filed by the Sterner Committee. The cost of the lease for office space should have been reported as an unpaid obligation of the Sterner Committee. When the Sterner Committee became aware of the error it provided an amended report to correct the omission. Changes and corrections to previously filed reports are not penalized under Chapter 10A as long as the amendments are filed promptly after the treasurer becomes aware of an error.

After the Sterner Committee disclosed the cost of the office space lease and utilities Mr. Dove then questioned in the supplement to his complaint if the costs reflected fair market value. The Board inquiry in response to the initial complaint also requested information to verify that the Sterner Committee did not receive preferential treatment while negotiating the cost of the lease. The response provided by Mr. Weinblatt states definitely that the lease was agreed upon “by arms length negotiations”. This position is supported by a list of factors indicating that the office space was in less than ideal condition or location and therefore available at the price paid by the Sterner Committee. Having no evidence to the contrary the Board accepts that the lease represented fair market value for the use of the office space.

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

Findings Concerning Probable Cause

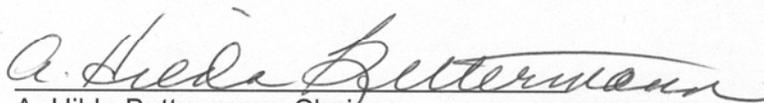
1. There is probable cause to believe that the Phillip Sterner for House Election Committee failed to disclose campaign expenditures related to office space and web site hosting on the pre-primary election Report of Receipts and Expenditures filed with the Board on August 26, 2008.
2. There is no probable cause to believe that the reporting violation continues to exist.
3. There is no probable cause to believe that this violation was intentional or done with the intent to circumvent the requirements of Minnesota Statutes, Chapter 10A.
4. There is no probable cause to believe that the cost of the lease for the Sterner Committee Campaign Office was less than fair market value.

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

ORDER

1. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: January 8, 2009



A. Hilda Bettermann, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes and Rules

Minnesota Statutes, Section 10A.20 CAMPAIGN REPORTS

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Subd. 3. **Contents of report.** (a) The report must disclose the amount of liquid assets on hand at the beginning of the reporting period.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in-kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in-kind. A donation in-kind is considered consumed in the reporting period in which it is received. The names of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

(c) The report must disclose the sum of contributions to the reporting entity during the reporting period.

(d) The report must disclose each loan made or received by the reporting entity within the year in aggregate in excess of \$100, continuously reported until repaid or forgiven, together with the name, address, occupation, and principal place of business, if any, of the lender and any endorser and the date and amount of the loan. If a loan made to the principal campaign committee of a candidate is forgiven or is repaid by an entity other than that principal campaign committee, it must be reported as a contribution for the year in which the loan was made.

(e) The report must disclose each receipt over \$100 during the reporting period not otherwise listed under paragraphs (b) to (d).

(f) The report must disclose the sum of all receipts of the reporting entity during the reporting period.

(g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

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

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in-kind for the year in which the advance of credit was made.

(j) The report must disclose the name and address of each political committee, political fund, principal campaign committee, or party unit to which contributions have been made that aggregate in excess of \$100 within the year and the amount and date of each contribution.

(k) The report must disclose the sum of all contributions made by the reporting entity during the reporting period.

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

(m) The report must disclose the sum of all noncampaign disbursements made within the year by or on behalf of the reporting entity.

(n) The report must disclose the name and address of a nonprofit corporation that provides administrative assistance to a political committee or political fund as authorized by section 211B.15, subdivision 17, the type of administrative assistance provided, and the aggregate fair market value of each type of assistance provided to the political committee or political fund during the reporting period.

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4503.1800 REPORTING REQUIREMENTS.

Subpart 1. **Contributions.** Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees and funds to promote or defeat a ballot question must itemize contributions that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the contribution was received, the individual or association that provided the contribution, and the address of the contributor. Additionally, the itemization for a donation in-kind must provide a description of the item or service received. Contributions that are less than the itemization amount must be reported as an aggregate total.

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