

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

**Findings, Conclusions, and Order in the Matter of the Complaint by the Minnesota
Democratic Farmer Labor Party against the Republican Party of Minnesota**

Background

On January 27, 2014, the Campaign Finance and Public Disclosure Board (Board) received a complaint from Corey Day, Executive Director of the Minnesota Democratic Farmer Labor Party (DFL), regarding the Republican Party of Minnesota (RPM). The complaint alleges two reporting violations by the RPM related to the disclosure of independent expenditures made during the 2012 election. In describing the first alleged violation Mr. Day states:

The Republican Party sent at least 22 different mailings to voters either attacking DFL candidates for the Minnesota Senate or supporting Republican candidates. Each and every mailing included the disclaimer that “This is an independent expenditure not approved by any candidate or candidate’s committee. Paid for by the Republican Party of Minnesota. 525 Park St, Suite 250, St. Paul, MN 55103.” However, the Republican Party’s 2012 Year-End Report failed to disclose a single independent expenditure against a DFL candidate and identified only six independent expenditures supporting Republican candidates.

In explaining the second alleged reporting violation Mr. Day states:

In addition, even when the Republican Party of Minnesota reported its independent expenditure activity, it concealed more than a hundred thousand dollars of expenses related to those independent expenditures. When reporting its independent expenditures affecting Minnesota House races and supporting six Republican candidates for the Senate, the Republican Party reported only expenses for “Printing and Photocopying – Political Mail.” The Republican Party did not report any of the expenses involved in distributing the mailings to Minnesota even though the expenses are an integral part of the independent expenditures.

Instead, it appears that the costs of distributing the mailings may have been reported as general expenditures. The Republican Party’s 2012 Year-End Report includes \$157,172.56 of general expenditures for postage with the United States Postal Service. Of these postage-related expenditures, \$144,100 do not correlate with other mailings reported as general expenditures and, instead, appear to relate to the independent expenditures. ...By falsely classifying its postage expenses as general expenditures, the Republican Party concealed \$144,100 of its independent electioneering activities in violation of Minnesota Statutes, Chapter 10A.

In support of the allegations, the DFL supplied copies of 22 different pieces of independent expenditure campaign literature sent during the 2012 election either in support of RPM Senate

candidates or in opposition to DFL Senate candidates as well as copies of the relevant year-end reports. On February 6, 2014, the RPM was notified of the complaint and provided the opportunity to respond.

Staff's review of the complaint and supporting documentation confirmed that each piece of campaign literature listed the RPM as the association that paid for the piece, and that the RPM's year-end Report of Receipts and Expenditures did not appear to disclose expenditures that corresponded to the campaign literature. However, a search of all independent expenditures made by Republican Party units found that the 2012 year-end Report of Receipts and Expenditures filed by the Senate Victory Fund (SVF) did seem to disclose independent expenditures that corresponded to the literature provided with the complaint. The SVF is a Republican party unit formed for the Republican senate caucus. In addition, the SVF also reported eight contributions to the RPM in excess of \$10,000, each of which was then matched dollar-for-dollar to a nearly contemporaneous general expenditure by the RPM for "postage" or "postage for political mailing."

Based on this examination of records the Board notified the RPM and the SVF on February 18, 2014, that the investigation was being expanded to include the SVF and the content of the campaign disclaimer provided on the literature, and asked for documentation of the postage costs to mail the literature.

On Friday, March 14, 2014, Board staff met with Bron Scherer, treasurer of the RPM; Lucas Nesse, staff for the SVF; Reid LeBeau II, legal counsel for the SVF; and Mike Campbell, staff for the SVF. The purpose of the meeting was to review the specifics of the complaint and to establish what information would be needed by the Board to complete the investigation of the complaint.

By letter dated March 24, 2014, Bron Scherer responded to the complaint for the RPM. Also on March 24, 2014, the RPM filed an amended 2012 year-end Report of Receipts and Expenditures. In response to the allegation that 22 pieces of independent expenditure campaign literature were not disclosed by the RPM Mr. Scherer states:

...the Senate Victory Fund ("Victory Fund") designed, developed, and paid for these independent expenditure mailings, and the Victory fund reported these expenditures on its 2012 year-end report. DFL's confusion likely arises from the fact that the Victory Fund used RPM's bulk mail permit to disseminate the mailings and therefore also used RPM's disclaimer. RPM appreciates that the Victory Fund's use of the party's disclaimer – a practice that the DFL and the DFL Senate Caucus Party Unit have also used – created a potential for confusion. In any event, we have prepared the appropriate amendment to the 2012 year-end report to reflect that RPM incurred postage charges as a result of the Victory Fund's use of the party's bulk mail permit and that the Victory Fund subsequently reimbursed the party for these charges.

In further response to the complaint Mr. Scherer states:

The second allegation in the DFL's Complaint is that RPM supposedly failed to report the postage component of the independent expenditures reported in the Party's 2012 year-end report. This is untrue. The postage charges were fully reported.

RPM's vendor for these expenditures was Majority Strategies, and Majority Strategies' invoices included postage costs. While the Party's year-end report describes the payments to Majority Strategies as "For: Printing and Photocopying," this is a function of the limited drop-down descriptions available on the reporting form. In retrospect, the Party could have added the words "and Postage" in the available textbox, and it will plan to do so on future reports.

In his letter Mr. Scherer offered to provide invoices from Majority Strategies to confirm that postage was included in the amount reported. Staff requested sample invoices on March 25, 2014. On April 2, 2014, Mr. Scherer provided twelve invoices from Majority Strategies which confirmed that the cost of mailing independent expenditure campaign literature was line itemed on the invoice and included in the overall payment reported by the RPM.

By letter dated March 24, 2014, Senator David Hann, treasurer for the SVF, responded to the complaint. In acknowledgement of responsibility for the 22 pieces of campaign literature provided with the complaint Senator Hann states:

The independent expenditures complained of by the Minnesota DFL were developed and paid for the SVF. The SVF paid the vendor, P2B, directly for the production cost for these expenditures and previously reported these expenditures in its 2012 year-end report. The cost for postage of the various expenditures was initially incurred by the Republican Party of Minnesota ("RPM") and reimbursed by the SVF, in an effort to utilize the RPM's bulk mail rate. The amounts paid to the RPM by the SVF were included on the SVF's 2012 year-end report as "contributions" and totaled \$145,300. The SVF recognizes and admits that the payments to the RPM for the fair market value of postage should have been reported as a vendor expenditure and aggregated into the total cost of the independent expenditures.

To reflect this accurately and efficiently the SVF has added the cost of postage to the cost of production and aggregated the total amount per expenditure in the attached spreadsheet.

Senator Hann's letter and attached spreadsheet were submitted as an amendment to the SVF 2012 year-end Report of Receipts and Expenditures.

Board Analysis

Reporting of Independent Expenditures

The reporting requirements for independent expenditures are found in Minnesota Statutes section 10A.20, subdivision 3(h). This statute provides that the entire cost of preparing and distributing an independent expenditure must be reported by the entity that made the independent expenditure.

The DFL alleges that the independent expenditures made and reported by the RPM did not include the cost of mailing the literature. The invoices provided by the RPM show that this

assertion is incorrect, as the postage costs were included in the payments made and disclosed to the vendor Majority Strategies. The description of the independent expenditures made by the RPM should have indicated that the reported expenditure included postage. However, the Board acknowledges that the Campaign Finance Reporter Software drop down list of expenditures does not include a listing for both production and mailing costs. Instead, the software offers an open text explanation box to provide information about an expenditure not included on the drop down list. The RPM now understands that option in the software and will use it to provide complete disclosure going forward.

Although the DFL allegation that the RPM underreported independent expenditures by failing to include postage costs is not accurate, the allegation is true when applied to the SVF's disclosure of independent expenditures. As acknowledged by Senator Hann the reported independent expenditures did not include the cost of postage. Further, the payments to the RPM for the cost of mailing the independent expenditures prepared by the SVF were misreported as a contribution to the RPM, when the payments were in fact reimbursements to the RPM.

The question for the Board then becomes why the independent expenditures were not properly reported. Reports to the Board are certified by the treasurer as true and complete; a treasurer who deliberately omits information or provides false information on a report is subject to a civil penalty imposed by the Board of up to \$3,000 and is also subject to criminal prosecution for a gross misdemeanor. These penalties do not apply if the report is inaccurate because the treasurer inadvertently left information off of a report, or did not understand one or more of the reporting requirements of Chapter 10A.

Based on the responses to the complaint and the amendments filed by the RPM and the SVF, the Board concludes there is no basis to believe that the costs related to the independent expenditures were deliberately misreported. Instead, the record before the Board points to an attempt to report all of the associated costs that was foiled in part by an incomplete understanding of how to use the Campaign Finance Reporter software to report these transactions and in part by the SVF treasurer's misunderstanding of how to report the postage payments made to the RPM.

Further, as documented above, the costs related to the independent expenditures were reported on either the RPM's or the SVF's 2012 year-end report, albeit in an improperly labeled manner. Thus, there is no evidence that the RPM or the SVF intentionally attempted to hide or obscure the reporting of the independent expenditures made by either party unit.

Unintentional reporting errors that are corrected by amendments 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. In the present case, the RPM and SVF timely filed the amendments needed to correct the 2012 reporting errors explained above.

Campaign Literature Disclaimer

Minnesota Statutes section 211B.04 requires that an association provide on its campaign literature a statement indicating who prepared and paid for the literature. Independent expenditures are a form of campaign literature, therefore, independent expenditures must disclose the entity that prepared and paid for the material.

The disclaimer used on the 22 independent expenditure pieces provided with the complaint should have indicated that the communications were prepared and paid for by the SVF. Instead

the responsible party is identified as the RPM. This misinformation led the DFL to believe that the disclosure for these 22 pieces would be found on the RPM report, when in fact the disclosure was on the SVF report.

Despite this error the Board will make no finding with respect to this issue because at the time of the violation Minnesota Statutes section 211B.04 was not under the Board's jurisdiction. This conclusion is consistent with that taken for similar circumstances in the Board's December 17, 2013, findings regarding the DFL Senate Caucus Party Unit¹.

The Board understands the advantages of using a bulk mailing rate. However, the use of a bulk mailing rate is not sufficient grounds to inaccurately identify the responsible party in a disclaimer required by Minnesota Statutes section 211B.04.

Based on the above Review and Analysis and the relevant statutes, the Board makes the following:

Findings of Fact

1. The RPM's 2012 year-end Report of Receipts and Expenditures disclosed the total cost for each independent expenditure made by the party unit, although the report did not clearly indicate that the cost included postage.
2. The SVF's 2012 year-end Report of Receipts and Expenditures did not include postage in the total cost of each independent expenditure made by the SVF. The cost of postage was reported separately, and in error, as a contribution to the RPM, without explanation that the transfer was reimbursement for postage provided by the RPM.
3. The reporting errors of the RPM and the SVF were inadvertent and were not done to avoid disclosure of the independent expenditures identified in the complaint. Amended reports have been filed by both the RPM and SVF to correct the reporting errors.

Conclusions of Law

1. At the time the RPM and the SVF filed their 2012 year-end Reports of Receipts and Expenditures the reports were incomplete, resulting in a violation of the reporting requirements of Minnesota Statutes section 10A.20. The violations were corrected by amending the reports.
2. The omissions on the 2012 year-end reports were not knowingly made within the meaning of Minnesota Statutes section 10A.025, subdivision 2, and therefore no violation of that statute results.

¹ www.cfboard.state.mn.us/bdinfo/investigation/12_17_2013_DFL_Senate_Caucus_Findings.pdf , page 5.

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

Order

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.02, subdivision 11.

Dated: April 22, 2014

/s/ Deanna Wiener

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board