

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

**Findings and Order in the Matter of Contributions to the DFL House Caucus
from Burke & Thomas, PLLP**

Summary of the Facts

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100. A party unit has 60 days to return a contribution after which time the contribution is considered to be accepted. Minn. Stat. 10A.15, subd. 3.

Minnesota Statutes section 10A.01, subdivision 6, defines an association as "a group of two or more persons, who are not all members of an immediate family, acting in concert." An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes section 10A.27, subdivision 13 (b). Failure to provide the appropriate disclosure with a contribution of more than \$100 is punishable by civil penalty of up to \$1,000.

On the 2012 pre-general-election Report of Receipts and Expenditures filed with the Board, the DFL House Caucus disclosed receipt of a contribution on September 11, 2012, in the amount of \$300 from Burke & Thomas, PLLP. Burke & Thomas is a law firm organized as a partnership under Minnesota Statutes chapter 322. Burke & Thomas is not registered with the Board. As an unregistered association, Burke & Thomas was required to provide the appropriate disclosure with its contribution to the DFL House Caucus. No disclosure statement was provided with the contribution.

In a letter dated December 21, 2012, David Zoll, attorney for the DFL House Caucus, stated that the party unit "was working with the contributor to collect the additional information relating to the \$300 contribution to determine what additional disclosures, if any, would be required pursuant to Minnesota Statutes, Section 10A.27, subd. 13." In a subsequent letter dated February 19, 2013, Mr. Zoll stated, "The DFL House Caucus did not obtain the necessary information prior to the deadline for filing its 2012 year-end report. Accordingly, because it could not confirm that all necessary disclosures were provided, the DFL House Caucus refunded the contribution on January 22, 2013."

In response to Board notice of the potential violation, John Burke, a partner in Burke & Thomas, stated that the firm did not believe that it was an association under Minnesota law. Mr. Burke further stated that it was the firm's "understanding that partnerships, like individuals, are able to make political contributions within the limitation of the law" and that the firm had made its contribution in good faith. Mr. Burke concluded by stating, "If we are mistaken in our understanding of these requirements we will make arrangement to have the contribution returned."

This matter was considered by the Board in executive session on May 7, 2013. The Board's decision is based on the correspondence and information received from David Zoll and John Burke and on Board records.

Board Analysis

An association that is not registered with the Board may not make a contribution over \$100 to a party unit, and a party unit may not accept such a contribution, unless the contribution is accompanied by the disclosure statement required by Minnesota Statutes section 10A.27, subdivision 13. Minnesota Statutes section 10A.01, subdivision 6, defines an association as "a group of two or more persons, who are not all members of an immediate family, acting in concert."

In the present case, Burke & Thomas states that it is not an association under Chapter 10A because it is organized as a partnership. Before 1999, the term "association" was defined as a "business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert." In 1999, the legislature eliminated the list of specific types of business organizations in the definition of association but retained the broad definition of this term. 1999 Minn. Laws, ch. 220, § 1. The legislative history of the amendment shows that Minnesota was recognizing many new types of business entities at this time and the legislature was afraid that the specific list of entities in the definition of association would not keep pace with these changes. The legislature therefore created a broad definition of association to ensure that this term would include all types of business entities.

Under the current definition, Burke & Thomas is an association because it is "a group of two or more persons, who are not all members of an immediate family, acting in concert." As an unregistered association, Burke & Thomas was required to provide a disclosure statement with its \$300 contribution to the DFL House Caucus and the DFL House Caucus was required to obtain this statement before accepting the contribution. Because the disclosure statement was not provided or obtained, both Burke & Thomas and the DFL House Caucus violated Minnesota Statutes section 10A.27, subdivision 13.

Based on the information outlined in the above Summary of the Facts, the Board Analysis, and Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that the DFL House Caucus violated Minnesota Statutes section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that Burke & Thomas, PLLP, violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 to the DFL House Caucus without providing the required disclosure with the contribution.
3. There is no probable cause to believe that the violations by the DFL House Caucus or Burke & Thomas, PLLP, were intentional or were done with the intent to circumvent the provisions of Chapter 10A.

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

ORDER

1. The Board imposes a civil penalty of \$200, one times the amount by which the contribution exceeded \$100, on the DFL House Caucus for accepting a contribution from an unregistered association without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The DFL House Caucus is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
3. The DFL House Caucus is directed to forward to the Board a copy of the check used to return the excess contribution to Burke & Thomas, PLLP, within thirty days of receipt of this order.
4. The Board imposes a civil penalty of \$200, one times the amount that the contribution exceeded \$100, on Burke & Thomas, PLLP, for making a contribution in excess of \$100 without providing the disclosure required by Minnesota Statutes section 10A.27, subdivision 13 (b).
5. Burke & Thomas, PLLP, is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
6. If the DFL House Caucus or Burke & Thomas, PLLP, does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes section 10A.34.
7. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon receipt of the copy of the check used to return the excess contribution and payment of the civil penalties imposed herein, this matter is concluded.

Dated: May 7, 2013

/s/ Andrew M. Luger
Andrew M. Luger, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes section 10A.01, subdivision 6. Association. “Association” means a group of two or more persons, who are not all members of an immediate family, acting in concert.

Minnesota Statutes section 10A.27, subdivision 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 \$100 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. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(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 \$100 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 \$100.