

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

**Findings and Order in the Matter of the Complaint of Common Cause Minnesota
regarding the Republican Party of Minnesota and others**

On January 4, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (CCM) signed by Mike Dean, its Executive Director, regarding the Republican Party of Minnesota (RPM). Although not specifically identified as respondents, the complaint also made allegations that, if true, could result in statutory violations by Mr. David Sturrock, RPM treasurer, Count Them All Properly, Inc., a Minnesota corporation (CTAP), Mr. Dan Puhl, incorporator of CTAP, Mr. Tony Sutton, former RPM Chairman, and others.

The complaint was accepted for investigation by the Board's Executive Director under delegated authority. A notice of the Board's investigation was sent to the RPM, Mr. Sturrock, and Mr. Sutton on January 6, 2012. A similar notice was sent to Mr. Puhl on January 19. Notices to other individuals who were involved in the matters under investigation were sent as their identities became known.

The complaint arises out of the 2010 gubernatorial election recount and its financing and out of revelations made by the RPM in 2012 that it has unpaid obligations that had not previously been reported to its executive committee or to federal and state disclosure authorities.

The Complaint and the RPM responses

The complaint included four allegations, which are listed below in the order that they will be considered in these findings:

Allegation 1. Failure of the treasurer to maintain proper records

The complaint alleges that RPM treasurer David Sturrock failed to maintain financial records as required by Minnesota Statutes 10A.025, subdivision 3. CCM requests that the Board recommend criminal prosecution of Mr. Sturrock for this alleged failure.

The allegation of failure to maintain proper records was not listed in the complaint as a separate allegation, but was included in the section alleging false certification of a report. As a result, the RPM did not specifically respond to this allegation.

Allegation 2. Failure of treasurer to approve all expenditures

The complaint alleges that the RPM failed to receive written authorization from the treasurer of the committee for expenditures related to the 2010 gubernatorial election recount and for other expenditures.

The RPM argues that because no money had been actually been paid toward attorneys' fees for the recount, no expenditure has occurred. The RPM also argues that any obligation or expenditure for recount attorneys' fees is an obligation of CTAP and not of the RPM.

The RPM also asserts that even if it is liable for recount costs, they are not "expenditures" under Chapter 10A and, thus, do not require treasurer approval. For this proposition, the RPM points out that the definition of expenditure is limited to a purchase or payment made "for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or

defeating a ballot question." Because the Board has stated that recount costs do not influence an election, the RPM argues that they are not "expenditures" and, thus, do not require treasurer approval.

Allegation 3. Certifying as true a statement containing false information or omitting required information

The complaint alleges that The RPM filed numerous false statements with the Board by omitting from its reports of receipts and expenditures numerous expenditures for the legal fees and copying costs associated with the recount and for omitting other unpaid obligations.

The RPM asserts that it did not file false reports. It claims that because it had no duty to disclose recount costs, leaving those costs off of the report did not constitute a knowing omission of required information. The RPM did not specifically address its failure to report non-recount obligations. However, in other parts of its response, it argues that an expenditure does not occur until an actual payment is made.

Allegation 4. Circumvention of the disclosure requirements of Chapter 10A

The complaint alleges that the RPM funneled contributions through Count Them All Properly, Inc. to avoid disclosure of contributions and possibly receive illegal corporate contributions that a party is forbidden from receiving.

The RPM asserts that circumvention requires an act, the redirection of contributions, and a purpose: the avoidance of Chapter 10A requirements, usually those relating to limits or disclosure. The RPM contends that there could be no circumvention by the RPM because there were no applicable Chapter 10A requirements to circumvent.

5. Additional potential violations investigated

When the Board accepts a complaint it may exercise its statutory investigatory authority to expand the scope of the investigation to include violations that may arise from the matter under investigation even if the specific violations are not mentioned by the complainant.

In this matter, the Board included in the scope of its investigation other violations that may have resulted from the operation of CTAP and from the financial relationship between the RPM and CTAP.

6. Matters not investigated

The Board recognizes that there have been media reports that amendments to CTAP's corporate documents were filed with the Office of the Secretary of State naming as corporate CEO persons who deny any involvement with CTAP. During the course of the investigation it became clear that those filings would not be relevant to the Board's investigation. Thus, these filings do not fall under the Board's jurisdiction and they were not investigated.

The Board also recognizes that this matter raises questions about the accuracy of the RPM's reports in general and about the relation between the RPM state party unit and its federally registered committee. These matters will be resolved through further Board action.

The Investigation

Through its attorney Richard Morgan the RPM responded on February 10, 2012, to the complaint generally and to a series of Board requests for information.

During the course of the investigation, the Board issued multiple requests for documents and took multiple depositions.

During the Course of the investigation, documents were provided by:

- The RPM on behalf of itself and its former treasurer, David Sturrock
- Dan Puhl, original incorporator of CTAP
- CTAP, the corporation through its CEO
- Mary Igo, CEO of CTAP
- Tony Trimble, attorney
- Eric Magnuson, attorney
- Michael Toner, attorney
- Robert Cummins, donor to CTAP
- (Tony Sutton denied having any documents responsive to the Board's request)

During the course of the investigation, depositions of the following individuals were taken:

- Bron Scherer, current treasurer of the RPM
- David Sturrock, former treasurer of the RPM
- Ron Huettl, finance director of the RPM
- Tony Sutton, former chair of the RPM
- Tom Emmer, 2010 gubernatorial candidate
- Dan Puhl, incorporator of CTAP
- Mary Igo, CEO and board member of CTAP
- Tom Datwyler, secretary and board member of CTAP
- Fred Meyer, board member of CTAP
- Robert Cummins, contributor to CTAP
- Tony Trimble, attorney
- Eric Magnuson, attorney
- Michael Toner, attorney

The Board considered the matter first at its meeting of February 14, 2012. Staff briefed the Board on the allegations of the complaint and the Board laid the matter over until its next meeting. Subsequently the Board considered the matter at each of its monthly meetings and at its special meeting held on May 18, 2012. At each meeting staff updated the Board on the status of the investigation and the evidence that had been developed. The Board discussed the matter and provided feedback to staff.

The Board considered the matter for the final time at its meeting of July 13, 2012, and issued these findings and order. These findings and order are based on the complaint, the responses of the RPM and others, the testimony and other evidence obtained through the Board's investigation, and the Board's own records.

The RPM Recount attorneys' fees

A question central to most of the allegations of the complaint is that of the RPM's financial liability for the costs of attorney's fees incurred during the 2010 gubernatorial recount. Therefore, the Board addresses that question first. In connection with this issue, the Board

questioned each of the three principal attorneys involved in the recount, the key RPM officials and employees, and the incorporator and board members of CTAP.

The gubernatorial election was held on November 2, 2010. A few weeks prior to that, RPM chair Tony Sutton had contacted attorney Michael Toner of the Bryan Cave law firm in Washington D.C. and requested that he be available in the event of a recount. Mr. Toner agreed to do so. According to Mr. Toner, his firm's services for the recount were performed at Mr. Sutton's request under a letter of engagement that already existed between the Bryan Cave law firm and the RPM.

Mr. Tony Trimble, principal of the law firm of Trimble and Associates, had been the general counsel for the RPM for many years. He testified that he and his firm began providing services to the RPM for the recount immediately after the election. His firm's services were provided under a longstanding attorney-client relationship established between his firm and the RPM.

Mr. Eric Magnuson, an attorney with the Minneapolis law firm of Briggs and Morgan, was contacted by Mr. Sutton almost immediately after the election because the legal team wanted someone with litigation experience. He prepared a letter of engagement between his law firm and the RPM and sent it electronically to Mr. Sutton on November 4. Although Mr. Sutton never signed the engagement letter, he indicated his agreement to its terms in an email on November 6, 2010, and Mr. Magnuson and his firm began work for the RPM under the terms of the agreement shortly thereafter.

In his deposition, Mr. Sutton, states that the lawyers knew that they were working for some as yet non-existent entity that would pay them. For example, Mr. Sutton testified that he verbally informed Tony Trimble that his work on the recount was "separate from his party work." He says: "I remember telling him at the time that this recount was separate from the party stuff, especially once you guys brought out the advisory opinion saying that a recount fund could be set up."

Mr. Sutton's recollection and understanding of the events concerning his retention of counsel to assist with the recount was contradicted by each of the attorneys that he hired. All three lawyers testified that they understood they were working for the RPM. Mr. Sutton alone suggests that the lawyers understood that they would be or were working for an independent entity. In fact, after CTAP was formed, the law firm of Trimble and Associates had Mr. Sutton sign a guaranty agreement confirming that the RPM was responsible for its fees.

The Board notes that on November 4, 2010, it released a staff advice memo regarding recount activities. That memo explained that an independent association could be formed to conduct recount activities and that payment for those activities would not trigger a registration and reporting requirement under Chapter 10A. It also explained that a party unit could conduct those activities and provided advice on fundraising and reporting for party units conducting recounts.

Mr. Sutton did not undertake to form an association independent from the RPM to conduct the recount. Rather, he proceeded to hire attorneys and conduct the recount through the party itself. The staff advice memo of November 4, on which Mr. Sutton purportedly relied specifically says that if a recount is conducted by a party unit, all of the costs are reportable. It also cautions against a party unit accepting corporate contributions or contributions from associations not registered with the Board to support its recount activities.

Based on all of the evidence developed in this investigation, the Board concludes that at the time the attorneys began their work on the recount and throughout the duration of that work, they were working under agreements with the RPM that made the RPM liable for their fees.

The recount and the associated legal work ended on December 8, 2010, after the RPM received an adverse court ruling and Tom Emmer, the RPM gubernatorial candidate, conceded the election. Over the course of the work, and thereafter, the attorneys regularly invoiced the RPM for services provided. According to invoices that the attorneys provided to CTAP, the total amounts due for recount services were as follows:

Trimble and Associates	\$212,247.50
Briggs and Morgan	221,052.60
Bryan Cave:	\$163,101.32
Total:	\$596,401.42

Consideration of the possible violations

1. Violation of the requirement that the treasurer maintain specified records

Minnesota Statutes section 10A.025, subdivision 3, provides:

Record keeping; penalty. A person required to file a report or statement 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 statements or of changes or corrections to them. A person who knowingly violates this subdivision is guilty of a misdemeanor.

CCM alleges that treasurer David Sturrock failed to maintain statutorily required records. This allegation is based primarily on the fact that the RPM disclosed in 2011 that it had omitted significant unpaid bills from its previously filed reports. CCM quotes Mr. Sturrock's letter of resignation as treasurer of the RPM. Mr. Sturrock was commenting on the recount costs and on an internal review that disclosed previously unreported unpaid bills. Mr. Sturrock said:

If future secretary-treasurers are to be meaningful assets to the Republican Party they will need to be informed more fully and consulted more frequently than has been the case over the past few administrations. In particular they need to know when the party is entering into major financial commitments. For example, I was neither consulted nor informed about the attorney's (sic) regarding the 2010 recount costs. Also, the unreported obligations identified by the current financial review were not known to me."

CCM asks that the Board find that Mr. Sturrock violated the recordkeeping requirement and recommend criminal prosecution to the Ramsey County Attorney. There is no civil penalty available in statute for a failure to maintain required records.

The evidence developed in this investigation supports Mr. Sturrock's statement that he was uninformed about the costs of the recount. However, the evidence also shows that the RPM

received regular invoices from the attorneys working on the recount. Mr. Sturrock's professed lack of knowledge of these records does not support a finding that the records did not exist, or that the RPM was not in possession of the records.

Mr. Sturrock also testified that he received accounts payable reports on at least a weekly basis. The Board has obtained many of those reports and they disclose at least some of the expenditures that apparently were not reported to the RPM executive committee or included on Board reports. For example, the last accounts payable report before the close of the 2010 filing period, dated December 21, 2010, itemized a total of \$595,992.92 in unpaid obligations, including some obligations that Mr. Sturrock professed to be unaware of.

While the statute requires the treasurer to maintain the required records, it does not require the treasurer personally to collect, index, and store those records. It is sufficient if the association as a whole meets the recordkeeping requirement.

Although the RPM had many invoices, bank statements, and other records, the statute requires more than a conglomeration of paper from which a financial picture might be recreated. The efforts of the RPM to clarify its financial picture were explained by current treasurer Bron Scherer in his deposition. The amount of work that went into that effort, in itself, suggests that the statutory records maintenance requirement was not being met.

Minnesota Statutes, section 10A.025, subdivision 3, requires that the records must include

vouchers, canceled checks, bills, invoices, worksheets, and receipts

and that the records must

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.

Finally, those records must

[be kept] 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 statements or of changes or corrections to them.

The requirement to maintain worksheets necessary to explain the data on a report, or data that was left off of a report, is important. Worksheets are particularly important for an association that is registered both as a state party unit and a federal political committee. Without adequate work papers, determination of how and why expenditures were divided between state and federal reports will be next to impossible.

During the course of this investigation, the Board requested and received various records from the RPM, including accounts payable aging reports and invoices. However, the RPM is not able to produce records or worksheets that would allow the Board to reconcile amounts from the payables aging reports to the federal and state reports of unpaid obligations. As a result, the Board is not confident that even the RPM's amended reports are accurate.

Dan Puhl, who in 2010 provided compliance and data entry services for the RPM and whose company, Cardinal FEC Compliance, prepared the federal and state reports said in a follow-up

conference call after his deposition that there was a period in 2010 where the RPM's records were so confused that it was not possible to determine the status of some vendors.

In another follow-up conference call, Mr. Huettl, who has been finance director of the RPM since April of 2010, could not explain why some amounts shown on the payables report and later determined by the RPM to be obligations for state activity services were not on the state report. With respect to invoices from Rapit printing, Mr. Huettl speculated the invoices were left off of the report because they could not be reconciled and, thus, were in question. Appropriate recordkeeping would have allowed the RPM to reconcile invoices to services provided.

During 2010, the RPM apparently had most of the required invoices, receipts and payment records. However, the records were in disarray and the RPM did not have sufficient worksheets or other records to explain the relationship between its internal financial reports and the reports filed with the Board.

The ultimate responsibility for maintaining records rests with the treasurer. However, in the case of the RPM the treasurer believed that this responsibility was delegated to others. Mr. Sutton, however, denies responsibility for recordkeeping and Mr. Huettl acknowledged in his follow up interview that he was "not qualified" to prepare state reports. Referring to the RPM's recordkeeping in a follow-up interview, he stated: "It was a mess." Mr. Huettl, himself, appears to have been overwhelmed by his new responsibilities as finance director; responsibilities that he undertook without significant training and while he retained all of the responsibilities of his previous full-time position with the RPM.

The Board concludes that in 2010 the RPM failed to maintain records, including worksheets, that would 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 treasurer sets the tone for interaction between the party unit's professional staff and the elected party officers. In this matter, it appears that Mr. Sturrock maintained a hands-off approach demanding nothing from his staff other than what they chose to provide. Although Mr. Sturrock complained in his letter of resignation that he was not being fully informed, it was incumbent on him to establish the parameters of his own involvement. He failed to do so, resulting in inadequate disclosure of RPM financial activities and in the lack of records to explain the data on the reports.

Mr. Sturrock's failure to require sufficient financial recordkeeping and the failure of the party chair and finance director on their own to develop and maintain those records results in a violation of Minnesota Statutes section 10A.025, subdivision 3.

Section 10A.025, subdivision 3, subjects a person in violation to prosecution for a misdemeanor. Although the Board believes that a violation occurred and that Mr. Sturrock, Mr. Huettl, Mr. Sutton, and Mr. Puhl all bear some responsibility, it does not believe that they "knowingly" violated the statute, which is the threshold for misdemeanor prosecution. Therefore, the Board will not specifically urge criminal prosecution in this matter.

2. Violation of the requirement that the treasurer approve expenditures

Minnesota Statutes section 10A.17 provides as follows:

Authorization. A political committee, political fund, principal campaign committee, or party unit may not expend money unless the expenditure is

authorized by the treasurer or deputy treasurer of that committee, fund, or party unit.

CCM asserts that "The RPM failed to receive written authorization from the treasurer of the committee." More specifically, the complaint alleges that "RPM treasurer, David Sturrock, did not approve the expenditure of \$450,000 in legal fees to Trimble and Associates according to his public statements."

CCM states that it believes there are many more instances of expenditures made without treasurer approval "based on the large number of expenditures that failed to be reported on the Report of Receipts and Expenditures" and urges the Board to impose a penalty of \$1,000 for each violation.

CCM is incorrect in both its assertion of what the statute requires and what penalty it permits. The applicable subdivision of §10A.17, quoted above, does not require written authorization; it merely requires that expenditures be authorized. Subdivision 5 of §10A.17 includes the penalty provisions. Penalties are provided only for violations of specified subdivisions, not including subdivision 1, which is the only provision applicable to CCM's allegations.

The fact a statutory requirement does not carry a penalty for its violation does not make the requirement unimportant. It simply means that the Board's most effective way of ensuring compliance is through education and training, which has long been an important part of the Board's compliance activities.

In its response, the RPM urges the Board to conclude that because the costs of the recount did not support activities to influence the nomination or election of candidates, they are not "expenditures" under Chapter 10A and, thus, not subject to treasurer authorization. The Board does not agree with this contention. The reasoning behind this conclusion is considered in more depth in the next section of these findings.

As noted, nothing in the statute requires the treasurer's *written* authorization for an expenditure. Likewise, nothing in the statutes requires the treasurer to actually sign each check issued by the party unit. The delegation of authority to sign checks is a matter of financial control to be determined by the individual association. In fact, because an expenditure occurs when the obligation is incurred, authorization for the expenditure will often occur long before the check paying the expenditure is signed. (See Minnesota Rules part 4503.1800, subpart 2)

Treasurer authorization of expenditures is a means of financial control. It is required to ensure that unauthorized individuals are not committing the party unit's resources and that the party unit as a whole is aware of where it is spending money.

In smaller committees, the role of the treasurer will be much more direct and usually often results in the treasurer approving individual expenditures. This more direct approach is a best practice and is recommended by the Board for all but the largest committees. However, in a state party unit operating with a volunteer treasurer supported by paid professional staff, treasurer authorization of expenditures will often be less direct. In such cases, spending authority may be granted to the professional staff or to the chair. This delegation may be accomplished through appropriate financial policies, procedures, and controls, including the party unit's budget approval process.

Bron Scherer, current treasurer of the RPM, when asked about the spending authorization issue stated:

[W]hat I look for is a properly designed budget that everybody has signed off on and that the executive committee has signed off on, the state central committee has signed off on. And in a perfect world, where we're generating funds and the business is cash flowing, if you will, you know, to me, if the budget has been approved, those department heads, political, communication, IT, they're responsible for spending those budget amounts and approving those authorizations, if you will, to spend, the invoices that come in, and then the finance people approving as well.

Key points in Mr. Scherer's approach include (1) a budget that has been officially adopted, which includes approval by the treasurer as a member of the executive committee and (2) cash flow consistent with budget predictions. Mr. Scherer believes that if those two elements exist, party unit executives should be able to spend within their budgets, subject to ongoing monitoring.

Mr. Scherer also testified that he has put into place financial controls and a review committee that will establish a framework for internal controls and procedures related to the handling of financial transactions, including the incurring of financial obligations by authorized staff.

Finally, Mr. Scherer indicated that the finance director should report directly to the treasurer, not to the chair or the executive director of the party unit. This ensures direct communication and accountability. This reporting structure was not in place in 2010 or in 2011 before Mr. Scherer became treasurer. Mr. Scherer elaborates on the topic of financial controls and the treasurer's responsibility in his deposition, which is a part of the record of this investigation.

The Board concludes that the requirement for treasurer authorization of expenditures is not the same as a requirement that the treasurer approve each individual expenditure. The authorization process for most committees will result in treasurer involvement with each expenditure. However, a large committee with professional staff may implement a less direct treasurer authorization protocol.

For large associations, an acceptable method of treasurer authorization could be embodied in a set of set of budgets, policies, procedures, monitoring protocols, and other financial controls that insure treasurer oversight and protect against unauthorized spending. It appears that Mr. Scherer is putting such a system in place for the RPM going forward.

David Sturrock testified that he became RPM treasurer on June 29, 2009, and served through January 19, 2012. During 2009 and 2010, the RPM had in place a minimal set of budgets, reports, policies, and procedures to ensure treasurer authorization of expenditures. Mr. Sturrock testified that he received and reviewed reports on a weekly basis. In 2009, the RPM processes for spending money were not as formal as the Board would recommend for an association of the RPM's size. However, they were minimally sufficient to support a conclusion that the requirement for treasurer authorization of expenditures was met.

However by the end of 2010, whatever financial controls had been in place had deteriorated. In November of 2010 the party embarked on a gubernatorial recount not envisioned by the central committee when it adopted the party's budget. The chair undertook to enter into agreements with attorneys and county auditors which, according to the testimony, was within the scope of his authority. However, in this endeavor, the chair did not involve the treasurer.

Additionally, if there had previously been treasurer control of regular spending, it was gone. Mr.

Sutton personally took over control of spending late in 2010. He testified that he became much more active in the party's day-to-day finances. When asked what he meant by that, he testified:

It means I was very greatly concerned about cash flow and needing to know. I was frustrated a little bit because I had raised a ton of money and it wasn't enough to cover things. So finally I went 'I just need to know what's happening and nobody else can approve an expense unless I approve it'. Because before, I think what had been happening is people were approving things and doing things. And it's kind of like you think your bank balance is x and then your spouse takes out a couple hundred bucks and doesn't tell you and then you bounce a check. It's a very similar thing where I think that's what was occurring, so I said nothing can occur going forward until I sign off on it.

While regular spending appeared to be out of control, not even the most rudimentary budgets, approvals, or controls were in place for the costs undertaken by the RPM for the 2010 recount.

The Board concludes that in 2010, both regular and recount expenditures were made without sufficient financial controls to constitute treasurer authorization. As noted, no penalty is available under Chapter 10A for this violation.

The Board will continue to monitor Mr. Scherer's efforts to establish a structure for expenditure authorization that will meet statutory requirements. The Board also urges Mr. Scherer and the RPM to use their influence with their party operating units to implement financial controls and procedures related to spending party unit money.

3. Certifying as true a statement with the knowledge that the statement contains false information or omits required information

CCM alleges that the RPM filed numerous false statements by omitting from its reports of receipts and expenditures numerous expenditures for the legal fees and copying costs associated with the recount and other unpaid bills. CCM also alleges that the RPM failed to disclose transactions with CTAP.

Minnesota Statutes section 10A.025, subdivision 2, provides that:

Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

The RPM does not dispute that one unpaid obligation was omitted from its 2009 year-end Report of Receipts and Expenditures and that multiple unpaid obligations were omitted from its 2010 year-end Report of Receipts and Expenditures. Both reports have been amended to include omitted unpaid obligations. As noted later in these findings, Board staff will continue to work with the RPM to ensure that its reports from 2009 through 2011 are accurate.

The RPM does, however, deny that the costs of the 2010 recount should have been included on its report. It makes this denial on the basis of the Chapter 10A definition of "expenditure" as

money spent "to influence the nomination or election of a candidate" and on the basis of the Board's guidance that recount costs do not influence the election since that election is already over.

The RPM misconstrues the Board's advice and, as a result, misunderstands its reporting obligation. The Board's conclusion that recount costs are not costs to influence the nomination or election of a candidate was made in the context of determining whether an association that engaged in no activity other than conducting a recount was required to register as a political committee. The Board concluded that such an association would not be required to register. However, that conclusion has no bearing on the disclosure obligations of a party unit which, by definition, exists to influence the nomination or election of candidates. All financial activity of party units is subject to disclosure.

In fact, the staff advice on which the RPM purportedly relies, issued on November 4, 2010, specifically considered the possibility of a party unit conducting a recount. In that section, the Board informed readers that when a party unit conducts a recount, "[t]he costs [of recount activities] would be reported as general expenditures of the party unit since they are neither independent expenditures nor expenditures to affect the candidate's election."

There is no question that the reports filed by the RPM in 2009 and 2010 omitted required information which included both recount expenditures and other unpaid obligations. However, the omission of transactions from a report does not in itself prove a false certification claim.

The Board has considered the false certification statute previously and has recognized that use of the words "knowing" and "knowingly" imply that the standard for finding that an individual knowingly filed a false or incomplete report requires more than establishing that a report was inaccurate. In the present matter, the standard requires that the report omit required information, which it did, and additionally, that Mr. Sturrock knew that the report omitted required information when he signed it.

In the two previous sections of these findings, the Board has observed that the RPM's records were in disarray and its spending was essentially not under anyone's control. However, the Board specifically examined what Mr. Sturrock knew when he signed the reports, with particular attention being given to the 2010 report, which contained multiple omissions.

The RPM used three separate systems for its financial recordkeeping and reporting. It used QuickBooks for its general recordkeeping. The accounts payable and budget versus actual expenditures reports came out of this system. In 2009 the RPM state reports were filed by filling out paper forms using a manual system. In 2010 the RPM's state reports were filed using the Board's Campaign Finance Reporter software. However, no direct link between the QuickBooks system and the Campaign Finance Reporter existed, so the process still involved manually entering in those transactions that the party wanted to include on its state report. The party used a third separate system for its federal reports. This system also required manual entry of those transactions that the party wanted to include on its federal reports. The use of multiple systems meant that the fact that an item was included on a QuickBooks payables report did not ensure that it would be included on the proper state or federal report.

The testimony was consistent with regard to the fact that Mr. Sturrock did not know about the recount legal costs. The Board observes that, because of media coverage, even the casual observer would recognize that a recount was going on in November and December of 2010 and that the RPM was involved. However, the RPM had no budget for the recount and the Board had issued advice that an association separate from a party unit could conduct a recount. Mr.

Sutton's position, which will be examined in detail in the next section, was that the recount costs were not RPM obligations. None of the costs were entered into the party's accounting systems, so none were shown on the periodic reports Mr. Sturrock received.

However, other unpaid obligations were also left off of the 2009 and 2010 reports. The evidence is conflicting and inconclusive about these omissions.

Mr. Sturrock testified that the RPM staff prepared monthly budget versus actual expenditures reports which he presented to the RPM executive committee and that Mr. Huettl answered any questions he had about the reports. He also received on a weekly or more frequent basis reports of accounts payable.

Mr. Sturrock testified that during 2010 he did not know that the party unit had obligations that he was unaware of. He testified about what he learned late in 2011:

A. Mr. Huettl advised me very shortly after Mr. Sutton's resignation that there were bills, invoices, not entered into the system which were not known to me. He described them in general terms. And that, then, directly led to the process of bringing in Mr. Veckich and undertaking the internal review.

Q. Okay. What was your reaction to finding out from your – from Mr. Huettl informing you of that?

A. Surprise, disappointment, concern for the party.

Q. When Mr. Huettl provided you with that explanation or that information, I should say, did he provide any explanation as to why that information was not provided on the report?

A. He made one reference, that he was under direction not to share that information with me.

Q. Did he indicate who gave him that direction?

A. Mr. Sutton.

The Board requested and received from the RPM the payables reports referred to by Mr. Sturrock. In particular, the Board obtained the reports surrounding December 31, 2010, because these reports included the obligations that should have been on the state and federal year-end reports. At least some of the unpaid bills which the RPM later disclosed and of which Mr. Sturrock referred in his resignation letter were, in fact, included on the reports. However, it is not clear that Mr. Sturrock understood either that unpaid state obligations should be on the RPM reports filed with the Board or that these obligations were not, in fact on the reports.

Mr. Sturrock described the process for preparation of the reports filed with the Board. He said that Mr. Huettl provided the information about day-to-day handling of receipts and expenditures to the compliance company for entry into the accounting system. The compliance company prepared drafts of the reports from that information. Mr. Sturrock reviewed those reports, had any questions answered by Mr. Huettl, and signed the reports.

With regard to handling invoices received by the RPM in 2010, Mr. Huettl testified:

And then once it was approved, it came to me, and then I would determine whether it was -- using state and federal guidelines and statutes and, when necessary, consulting our compliance company, whether it was a state expense or a federal obligation, state obligation or federal obligation. And then I would pass it on to our compliance company for processing.

Mr. Huettl testified that late in 2010, Mr. Sutton took over the process of deciding which invoices would go into the compliance system and, thus, be paid:

And around October, November, as I had testified earlier, all the invoices were coming to me. At that point he [referring to Mr. Sutton] asked -- or he decided that all the invoices would now go directly to him and that he would decide when they would go to our compliance company for processing and when things would be paid. And he was deciding that already, when things would get paid. Because he and I would work together on what bills, you know, needed to be paid, so, you know, the phones wouldn't get cuff off and that kind of thing. But after the fall of 2010, he was handling all the invoices.

A significant problem with the RPM's approach to reporting is disclosed by the following exchange during Mr. Huettl's deposition:

Q. In 2010 when an invoice was given to the compliance company, was it at that point always approved for payment or were invoices given to them that were not approved for payment?

A. No, they were all approved. Whether they were -- But we didn't know -- There wasn't an order of when to pay them yet, but they were all approved to be eventually paid, yes.

In other words, if the RPM had received an invoice but it was not yet approved to be paid, it never went into the accounting system and, thus, was never shown on a report. This practice would result in a violation of the requirement that all unpaid obligations be included on periodic reports. However, this practice does not explain why some unpaid invoices that were in the RPM accounting system were, nevertheless, not on the subject reports.

Mr. Huettl also testified about the reason that certain unpaid bills were not included in the RPM recordkeeping systems:

A, In the case of Strothers, Chairman Sutton had met privately with the Strothers people periodically about their invoices. I did not receive those. I wasn't allowed to give those to the compliance company. And occasionally after the meetings with Strothers, Chairman Sutton would ask me to issue them a check or have cardinals issue them a check for partial payment on the money that was owed them.

By Mr. Morgan: What's Cardinals?

A. I'm sorry, Cardinals compliance is our compliance company.

By Mr. Goldsmith: I'm going to try and quote you; but if I get it wrong, we can read it back. I think you said you were not allowed to give the Strothers invoices to the compliance company?

A. That is correct.

Q. And that was on Mr. Sutton's order?

A. That is correct.

Q. So you knew that there were a number of invoices from Strother Communications for polling that were not being handed over to the compliance company?

A. That is correct.

Q. And as a result of that, they weren't on the reports that that company did?

A. That is correct.

Mr. Morgan: What company?

Mr. Goldsmith: The compliance company, Cardinals [referring to Cardinals FEC Compliance, Mr. Puhl's company].

Mr. Morgan: All right.

By Mr. Goldsmith:

Q. Did you make anyone aware of your knowledge of these unpaid invoices other than Mr. Sutton, who already was aware?

A. I did not.

Q. So when you prepared Mr. Sturrock for his periodic presentations to the executive committee, you did not inform him that there were unpaid bills?

A. I did not inform him that there were unpaid bills, not at that time.

Q. So you were aware that he was presenting as accurate an inaccurate report?

A. I was aware of that, yes.

Q. Now, you said you didn't inform him at that time. I presume that means you meant -- means that you informed him at some later time?

A. After Chairman Sutton had resigned.

Q. Why didn't you tell him about that when you were preparing for the meetings in which he was going to present the financial condition of the organization?

A. Although Chairman Sutton never told me directly not to tell him, it was my understanding that I shouldn't tell him or anyone else.

In his deposition Mr. Sutton was informed of Mr. Huettl's testimony and was read the final question and answer quoted above. He testified in response:

A. That's just not true. I never said anything like that by his own statement. I don't want to throw staff under the bus. In 2011 I would go to Ron and say, "Oh, look, we've paid off Rapit Printing." And he'd say, "Oh, well, I have a couple invoices on my desk." You know, I was not at the party every day managing every single invoice that came in, okay. I'm not going to be made out to be the scapegoat for that; for other people trying to save their jobs.

Mr. Sutton was asked about Mr. Huettl's testimony that he was not permitted to give the Strothers invoices to the compliance company on Mr. Sutton's order. He testified as follows:

Q. Just to be specific one more time I asked Mr. Huettl again, I said, "I think you said that you were not allowed to give the Strothers invoices to the compliance company?" Answer, "That is correct." Question, "And that was on Mr. Sutton's order?" Answer, "That is correct." So that is an untrue statement.

A. No, that's not true. He's saying that he had the invoices and that he didn't turn them over?

Q. He's saying that you had them and wouldn't give them to him to turn over and he wasn't to turn them over.

A. No.

Mr. Huettl was asked about his responsibility for and review of the 2010 reports filed with the Board and testified as follows:

Q. During 2010 did you have any responsibility for the Campaign Finance reports that were filed with the Board?

A. No.

Q. Did you have any responsibility for the Campaign Finance reports that were filed with the FEC?

A. No. As finance director they were presented to me for my review, but I did not approve them. In 2010 I was learning, you know, the ropes of the job, basically, so I wasn't qualified enough to know what the reports should look like. That's why we have a compliance company. But it's not my responsibility, though, to approve the reports.

Q. You reviewed the state reports as well as the federal reports?

A. In 2010 I don't remember if I saw those reports or not. I honestly can't tell you. It wasn't until 2011 that I got more involved in looking at the reports.

Mr. Sutton was also asked about his responsibility for preparation of Board reports and testified as follows:

Q. Did you ever have any role in preparing Mr. Sturrock for signing of the campaign finance reports?

A. No, none.

Q. Whose role was that?

A. Dan Puhl, Ron Huettl.

In other testimony, Mr. Sutton indicated that during 2009 and 2010 he served as a volunteer chair for the party while also running his own business. He stated that he was "basically full-time on my own business and nearly full-time on fundraising [for the party]." As a result, he indicated that he left the day to day operations of the party unit to the staff although during the second half of 2010 he more closely monitored the party unit's financial condition.

Mr. Puhl also testified on the subject of preparation of the Board reports, as follows:

Q. Does your company work with the Republican Party of Minnesota on preparing its reports that are filed with the Campaign Finance and Public Disclosure Board?

A. We're a federal reporting company. When we have state parties as clients, as a courtesy we will, you know, in the case of Minnesota we'll load up the information into the database, but we don't provide any assurance. We don't provide any assurance on our federal reports either. We put these reports together.

As for the Minnesota one, basically we did that. We did data input into the database, with the information they provided us, and then provided it to their decision-makers for approval and filing, things of that nature.

In further testimony:

A. We don't go back and say, gee, is this everything, it's not an accounting firm that we have.

Q. Sure.

A. We just – We do recordkeeping and reporting for these organizations. If we get the records, if we have the documents, then, you know, we will put those into the system. In the case of the Republican Party of Minnesota, we didn't get the mail.

To summarize, in 2010 the RPM had a finance director, who was recently promoted from telemarketing and who testified that he knew next to nothing about Campaign Finance Board reports and professed that it was not his job to review the reports in preparation for the treasurer's signing them. The RPM had a chair who was busy with fundraising and his own business and believed that the finance director and the party unit's compliance company were responsible for preparation of the reports. The RPM had a compliance company that disavows any responsibility for campaign finance reports other than to put data into a system and print out

the reports. And finally, the RPM had a treasurer who placed all of his reliance on these three individuals. Given that situation, it is no surprise that the RPM reports were inaccurate.

In spite of this completely unacceptable situation, the evidence, when considered in light of the limiting statutory language, does not support a finding that when Mr. Sturrock certified the 2009 and 2010 reports filed with the Board he actually knew that they omitted transactions that should have been included. A violation occurs only if the person who certifies the report "*knows* that it contains false information or *knowingly* omits required information." (Emphasis added.)

The Board recognizes that Mr. Sturrock *could have* figured out that the reports he signed should have included unpaid bills that were not there. He had the payables reports showing at least some of the unpaid bills, although those reports did not split obligations between federal and state activities so it was not clear which, if any, of the obligations should be on the state report. The 2010 year-end federal report listed more than \$485,000 in unpaid obligations. Although this was more than \$100,000 less than shown on the RPM's December 21, 2010 payables report, the difference would not necessarily have been so obvious that Mr. Sturrock would recognize that not all payables were disclosed between the state and federal reports. In his deposition, Mr. Sturrock testified that he mostly looked at the summary pages of the state reports. In his follow-up interview, Mr. Huettl stated that Mr. Sturrock "didn't look at anything, really."

Even though the Board concludes that Mr. Sturrock *should have* known that the reports were inaccurate, it could not find him to be in violation of §10A.025, subdivision 2, because the statute requires a finding that he *did know*.

Mr. Huettl's testimony is that there was an intentional withholding of information from the treasurer and the executive committee by Mr. Sutton, with Mr. Huettl's participation. It may be that this conduct resulted in required information being omitted from RPM reports. However, even if this conduct did occur, it is not grounds for a finding of false certification of a report. The false certification statute applies only to the person who actually signs the report in question. Thus, regardless of the knowledge of Mr. Sutton, Mr. Huettl, or Mr. Puhl, the Board cannot find them in violation because they did not sign the reports.

The Board, however, finds Mr. Huettl's testimony that he was instructed by Mr. Sutton to withhold certain information from Mr. Sturrock, to be of great concern. Under oath, Mr. Huettl explained that the RPM Chair ordered him to keep certain expenses from the RPM treasurer. The Board understands that Mr. Sutton challenges Mr. Huettl's testimony as being inaccurate. However, the Board has found that significant expenditures were not included on the RPM's 2010 reports. While Mr. Sutton cannot be charged by this Board with *causing* the filing of an inaccurate report (because no such violation exists under Chapter 10A), the Board is compelled to point out that Mr. Sutton's conduct, if accurately portrayed by Mr. Huettl, goes to the heart of the campaign disclosure system. That the Chair of one of Minnesota's major political parties would order information withheld from the party's treasurer not only damages the party itself, but undermines citizens' confidence in Minnesota's system of campaign finance disclosure as a whole.

It is a weakness of Chapter 10A that it does not include any provisions related to the obligations of association staff or officers supplying information that will be relied on by a treasurer in filing reports with the Board. The Board also notes the weakness of §10A.025, subdivision 2, in that it reaches only intentional false certification. As a result, it sets no standard of care for a treasurer and, as in the present matter, provides no penalty for a person who files reports with little or no regard for their accuracy.

4. Circumvention of the disclosure requirements of Chapter 10A

The complaint alleges that the RPM funneled contributions through Count Them All Properly, Inc. to avoid disclosure of contributions and possibly receive illegal corporate contributions that a political party is forbidden from receiving.

The circumvention prohibition, found in Minnesota Statutes section 10A.29, is as follows:

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

In the matter of the Complaint of the RPM regarding the (Margaret) Kelliher for Governor committee, the Board examined the meaning of "circumvention". The Board provided the following analysis which it still finds valid today:

There are no court cases that provide legal definitions of the word "circumvention" in the specific context in which it is used in Chapter 10A. However, statutes are to be construed using the common meaning of their words if possible. Generally, to circumvent something means to get around or avoid it. Circumvention generally includes a strategy or plan. See, e.g., Oxford English Dictionary, Second Edition "to evade or find a way around (a difficulty, obstacle, etc.)"; Merriam-Webster Dictionary: "to manage to get around, especially by ingenuity or stratagem".

Minnesota Statutes, Section 10A.29 not only requires circumvention before it is applicable, but it also specifies the strategy: "redirecting a contribution through . . . another . . . association". With respect to the RPM and CTAP, the provisions of Minnesota Statutes Chapter 10A that might be circumvented by redirecting a contribution are the Chapter 10A disclosure requirements and the prohibition on contributions in excess of \$100 from associations not registered with the Board.

Violation of the statute requires an act: the redirection of contributions and a purpose: the avoidance of Chapter 10A requirements. Without both the act and the purpose, or intent, there will be no violation.

In order to determine whether the requisite redirection and intent exist, the Board investigated the circumstances surrounding CTAP and its operations as well as the background leading to its formation.

The formation of Count Them All Properly, Inc.

As noted above, the RPM itself took no action related to the formation of a separate association to conduct the recount. Rather, the RPM undertook the recount effort in its own name, engaging attorneys and incurring obligations to county auditors in the process.

With regard to the formation of a separate entity, Mr. Sutton testified as follows:

A. . . . [O]nce the advisory opinion came out Toner gave us a memo on how a recount fund could be set up, his recommendations based on the advisory

opinion. Then Dan Puhl unbeknownst to me walks into my office, I don't remember if it was the next day but it was shortly thereafter, saying I've set up a recount fund. Okay, great, perfect. You know, it's at that point I said, look, there's a recount fund and these aren't our bills, these are the recount fund's bills.

Q. I'm making some notes here because this is the very first time anybody has indicated that there was a memo from Toner or anyone else regarding setting up a recount fund.

A. It was an analysis of the advisory opinion, okay. And very clearly I remember sitting in my office, Toner is right over here with his assistant going over things. I don't remember who else was in the room. It might have been Trimble, maybe not. It might have been Huettl. And saying – I remember asking him can you take corporate, is it just individual. He said, well, it seems kind of hazy about corporate. It would be a safe harbor just to take individual funds. Okay, great, you know. So kind of know the parameters, fundraising parameters, of what we could do, and that's what happened.

Mr. Sutton testified that he did not have a copy of the memo.

The RPM itself denies the existence of such an analysis memo and is unable to produce a copy of any such document. Mr. Toner, likewise, testified that he did not prepare any written legal analysis concerning the structure or rules under which the recount should or could be conducted. He said that there may have been conversations about the subject of recount operations, but he was not certain. After Mr. Sutton's testimony was taken, Mr. Toner was again asked to review his records for any written analysis to which Mr. Sutton may have been referring. Mr. Toner produced a short memorandum that an associate attorney in his firm had prepared after the November 4 staff advice was released. Email messages provided by Mr. Toner indicate that he shared the memo with Mr. Trimble. In a subsequent email to the Board, Mr. Toner indicates that he does not believe he provided the memo to Mr. Sutton because it was a preliminary assessment by a junior attorney at the firm.

Mr. Sutton's recollection of the timing of events surrounding the Board advice and the formation of CTAP is not accurate. It was on November 4 that the Board, through its Executive Director, released a staff analysis of recount issues. That same day, Mr. Toner received a preliminary analysis from an attorney in his office. Mr. Sutton says that the next day or shortly thereafter, Mr. Puhl came into Mr. Sutton's office and announced that he had formed a corporation to pay for the recount. In fact, Mr. Puhl did not complete registration of the corporation CTAP until December 3, 2010.

According to his testimony, Mr. Puhl indicated that he was aware of Board publications regarding recount funds. He testified:

A. Well, it wasn't my idea. It was the Democrats' idea. And they apparently had asked the Campaign Finance Board for a ruling or an opinion about paying or recount-related bills, legal bills, and I followed that in the news.

And when the document came out, it was fairly widely distributed and I got a copy of it and kind of waited around. And the Democrats, you know, went about their business and started theirs and did what they needed to do. And

nobody was – You know, I didn't see anything for Emmer and the Republicans.

And I thought this is a good opportunity for me business-wise because I can have a new client for my bookkeeping, billing. And so I went ahead and started this corporation, because basically nobody else had and it was a business opportunity for me.

As noted, Count Them All Properly, Inc. was registered as a Minnesota corporation on December 3, 2010.

Mr. Puhl testified further about how he decided to undertake this registration and his purpose in doing so.

Q. As the decision was being made to actually go ahead and form a corporation, did you discuss that with Tony Sutton?

A. I did not. I did this entirely on my own. I decided to form a corporation, and I decided specifically to make it a taxable regular corporation because I wanted it absolutely separate from any campaign finance, anything. And that's why I chose that perhaps extreme form of organization. But it was a very specific decision on my part to make sure it never got involved in anything political at all.

Mr. Puhl further testified that he alone developed and filed the corporate documents to establish CTAP. He also stated that he had not informed anyone else of his intention to form this corporation and that upon announcing its formation others "were a bit surprised that I had done that, but . . . [end of answer]"

The Board notes that CTAP was formed only five days before Tom Emmer conceded the gubernatorial election. According to the testimony of Mr. Puhl and of the CEO and directors of CTAP, the corporation never engaged any attorney for recount purposes, never incurred any financial obligations to county auditors and never conducted any recount activity.

Mr. Puhl testified that CTAP was formed based on the Board's published advice. Presumably this would have been the staff advice of November 4, which was the only advice explaining the possibility of an independent association conducting a recount. Even so, Mr. Puhl misinterpreted the Board's advice, which provided guidance to an association that would conduct the recount, not to an association that would pay a party unit's bills after the party unit itself completed the recount.

Fundraising and payments by CTAP

CTAP received only one contribution, which was a donation from Robert Cummins in the amount of \$30,000, deposited by CTAP on February 8, 2011. The contribution resulted from Mr. Sutton's request to Mr. Cummins that he donate to the fund that had been set up to pay the costs of the recount.

Mr. Puhl and the other directors of CTAP testified that CTAP did no fundraising on its own behalf and that it received no money other than Mr. Cummins' contribution.

In March of 2011, Mr. Sutton, through the RPM finance director Mr. Huettl, asked the three law firms to re-issue their invoices in the name of CTAP. In each case, the firms did so and conveyed their invoices to Mr. Puhl. On April 16, 2011, CTAP made payments of \$9,000 each to the firms associated with Tony Trimble and Michael Toner. A similar payment was made to the firm associated with Eric Magnuson on May 20, 2011. No subsequent payments to the firms for costs related to the recount have been made by either CTAP or the RPM.

Analysis of the circumvention allegation.

Circumvention requires the redirection of a contribution through a third party for the benefit of a registered association other than that third party. In the present matter, Mr. Sutton and Mr. Puhl arranged to direct a contribution of \$30,000 from Robert Cummins to CTAP with the understanding that CTAP would use that contribution to retire RPM debt. These facts constitute redirection of a contribution by Mr. Sutton through a third party, CTAP, for the benefit of a registered association, the RPM.

Following a discussion about the establishment of CTAP, Mr. Sutton testified specifically as to the reason he wanted the recount debt to be paid through an entity such as CTAP:

Q. Can you just tell me why you thought it would be beneficial to do the recount through some organization other than the party?

A. Well, one of the advantages Toner told me was it wouldn't have to be reported who gave the money. And I thought that that anonymity, you know, one of the appealing parts about it is it's anonymous, doesn't have to go on a finance report and that might appeal to potential contributors.

Q. That's about it?

A. That's about it. That's a big reason. Ever do political fundraising? That's a big reason.

Q. I never have. So there were some donors to whom that would be important or at least you thought so at the time?

A. Or some donors maybe if it's reportable they would give a certain amount of money; if it's not reportable they would give more money.

Mr. Sutton's testimony confirms the remaining requirement of circumvention on his part: that the redirection be for the purpose of avoiding a Chapter 10A requirement; in this case, disclosure. As a result, the Board finds that Mr. Sutton intentionally circumvented Chapter 10A by causing the Cummins' donation to be routed through CTAP.

The Board recognizes that during the 2010 election year Mr. Cummins donated \$425,000 directly to the RPM. Thus, there is no evidence that anonymity was required with respect to his contribution to CTAP. However, in this matter, the whole enterprise was viewed by Mr. Sutton as a mechanism for avoiding disclosure. Presumably Mr. Sutton anticipated contributions beyond that of Mr. Cummins. The fact that use of the mechanism may not have been necessary in the case of this particular transaction does not change the fact that Mr. Sutton's purpose in routing attorney fee payments through CTAP was avoidance of disclosure.

There is no evidence that Mr. Cummins understood the underlying relationships between CTAP and the RPM. All he understood was that he was being asked to help retire the recount debt. Thus, there is no basis on which to find that he was a participant in the circumvention.

Mr. Puhl's motive for the creation and use of CTAP was quite different than that of Mr. Sutton: he saw it as a business opportunity. Mr. Puhl's actions also suggest an element of desire to be the RPM's "white knight". He formed CTAP with little or no input from the party and then went to Tony Sutton's office to make the announcement that he has the solution to the recount debt problem. Mr. Puhl testified that "I tried to tell as many people as possible after I formed it [CTAP]" In further testimony he stated:

I just told, you know, basically everybody I knew and everybody I was working with that I had done this, that I formed this corporation, just like the Democrats had done. And, you know, we're going to gather the legal bills from the recount and we're going to, you know, provide some services to raise money to pay off the legal bills.

Mr. Puhl, not a lawyer himself, and without legal advice or consultation with Board, staff failed to recognize the difference between a corporation that would, itself, conduct the recount and a corporation that would collect money to pay RPM bills. Although Mr. Puhl mistakenly believed that CTAP would not be subject to Chapter 10A's disclosure requirements, avoidance of those requirements was not his purpose in forming and operating CTAP. Mr. Puhl and CTAP were used by Tony Sutton in his circumvention of Chapter 10A. However neither the corporation nor Mr. Puhl participated in this endeavor for the specific purpose of avoiding the Chapter 10A disclosure requirements. Thus, CTAP and Mr. Puhl, are not guilty of violating the circumvention prohibition.

4. Other violations.

Prohibited contributions under Minnesota Statutes section 10A.27, subdivision 13

The Board recognizes that Mr. Sutton and CTAP intended that CTAP would assume full liability for the attorney fees bills, presumably relieving the RPM from its financial obligations. However, none of the attorneys agreed to such an assumption or to a corresponding release of RPM liability. Therefore, the Board does not recognize any contribution resulting from this failed attempt to transfer the obligation for the legal fees. However, the Board's conclusion is different with respect to the attorney's fees that CTAP actually paid.

The Board has concluded that the attorneys' fees were obligations of the RPM. The payment by CTAP of \$9,000 to each of three law firms for a fees incurred by the RPM relieves the RPM of that financial obligation. As a result, the transaction constitutes a form of in-kind contribution from CTAP to the RPM.

CTAP is an association that it is not registered with the Board. Thus, each of its payments to the attorneys constitutes a contribution from an association not registered with the Board. Because CTAP did not provide disclosure with each contribution as required by Minnesota Statutes section 10A.27, subdivision 13, the contributions are prohibited to the extent that they are, in aggregate, more than \$100.

Section 10A.27, subdivision 13, provides for a civil penalty imposed on the recipient of up to four times the amount of a prohibited contribution from an unregistered association. That section

also provides for a civil penalty to be imposed on the donor of up to \$1,000 for each prohibited contribution.

In this matter, the RPM accepted \$27,000 in contributions from CTAP, \$26,900 of which was prohibited. CTAP made three prohibited contributions to the RPM.

In addition to the civil penalties imposed, the Board typically orders the recipient of a prohibited contribution to return the prohibited portion to the donor. In this matter, the Board recognizes that CTAP will be required to register as a political committee pursuant to the analysis in the following section and the Board's order. In that case, the RPM could return the prohibited contribution to CTAP which, in its new status as a political committee, could give it right back to the RPM. The Board does not typically issue orders that will have no practical result and, thus, will not order the RPM to return the entire prohibited contribution to CTAP.

The requirement that CTAP register and report as a political committee

CTAP was formed nearly at the end of the recount process and did no business whatsoever until the RPM had incurred all of the legal fee obligations that are the subject of these findings. CTAP did not conduct any recount activities or engage in any activity other than accepting one contribution, making three payments for RPM legal fees, and paying some miscellaneous costs of its operations.

The Board concluded above that the payments by CTAP for the RPM attorneys' fees constituted contributions to the RPM. As a result, the Board further concludes that the major purpose of CTAP was to raise money to make contributions to the RPM. This gives rise to the question of whether CTAP is, itself, a political committee.

A political committee is defined as:

An association whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question, other than a principal campaign committee or a political party unit.

On the basis of this definition, the Board concluded in a 2010 investigation that a corporation named State Fund for Economic Growth, LLC, (State Fund) was a political committee because its major purpose was to raise money to donate to independent expenditure political committees for the purpose of allowing the recipients to produce communications designed to influence the nomination or election of candidates.

From a legal standpoint, both State Fund and CTAP were formed and exist for the purpose of making contributions to another association registered with the Board. Likewise, the recipients of the contributions made by both State Fund and CTAP existed for the major purpose of influencing the election of candidates. The sole difference between State Fund and CTAP is that the contributions from State Fund were to pay for independent expenditures and the contributions from CTAP to the RPM were to pay recount costs.

The November 4 staff advice stands for the principle that if CTAP had itself conducted the recount and incurred the costs of doing so, it would not be required to register with or report to the Board. However, the staff advice does not provide guidance for the present situation in which a party unit incurred debt and an unrelated association has paid off part of that debt.

CTAP raised money to give to the RPM in the form of payments to vendors for RPM bills. If CTAP had simply given the money itself to the RPM, there would be no question that CTAP would be a political committee just as the Board found State Fund to be a political committee. Similarly, if CTAP's major purpose was to pay for the party unit's rent or staff, CTAP would thereby become a political committee because making those payments would constitute in-kind contributions to the party unit for the purpose of influencing the nomination or election of its candidates.

The question is whether the fact that CTAP paid specific vendors only for their services in the recount changes the nature of CTAP's contributions to the RPM so that it does not thereby become a political committee itself. Advisory Opinion 415, which concludes that contributions by one registered entity to another registered entity conducting a recount are to be reported by the donor as a noncampaign disbursement for recount expenses provides guidance.

CTAP's major purpose was to raise money to relieve the RPM of certain financial obligations. In its November 4 staff advice, the Board concluded that the costs of a recount, if incurred by an association that exists solely to conduct the recount, are not for the purpose of influencing the election of a candidate. However, that decision was limited to the question of whether making recount expenditures would make an association a political committee. That is not the question presently before the Board. CTAP did not conduct the recount. It paid RPM bills. The present question is whether an association that exists solely to pay a party unit's debts, no matter the purpose for which the party unit incurred the debt, is a political committee under Chapter 10A.

The Board cannot ignore the fact that money is fungible. Chapter 10A recognizes this fact by treating contributions of goods and services the same as contributions of cash. Chapter 10A also recognizes that payments to vendors on behalf of candidates (called approved expenditures) are a form of contribution and are treated no differently than cash. Similarly, payment of an obligation on behalf of a party unit is a contribution to that party unit, which should be treated no differently than a cash contribution. Advisory Opinion 415's conclusion that contributions to an association conducting a recount are to be reported by the donor as noncampaign disbursements for recount costs follows from this principle.

The practical effect of CTAP's donation to the RPM in the form of payment of the RPM's recount bills is that the RPM is relieved of \$27,000 of debt. That means that \$27,000 of RPM money may now be used to influence the nomination or election of candidates. For that reason, the Board concludes that all money given to a party unit must be considered to be for the purpose of influencing the nomination or election of the party's candidates. Thus, CTAP became a political committee when it raised the \$30,000 it intended to use to satisfy RPM debt.

CTAP was required to register with as a political committee within 14 days of receiving the \$30,000 contribution from Mr. Cummins. Its failure to do so results in a late filing fee of \$100.

Technically, CTAP also failed to file periodic Reports of Receipts and Expenditures on the statutorily mandated schedule. Although the Board will require CTAP to file a 2011 year-end report, it declines to impose additional late filing fees for that failure.

5. Ongoing Reporting Obligations

The Board recognizes that while the findings it makes below conclude its investigation of the violations specifically raised by the complaint, they do not resolve the issues of inaccurate reports filed with the board, which are implicit in the complaint, or issues related to the allocation

by the RPM of expenditures between state and federal activities or the payment for state activities with federal committee funds.

In matters similar to this one, it has often been the Board's practice to work with an association to obtain accurate reports prior to issuing findings. At its meeting of June 5, 2012, the Board voted to decide the matters included in these findings in a separate investigation in order to avoid undue delay that could result from an extended examination of the financial activities and reporting of the RPM. Although these findings and order resolve the violations specifically alleged in the complaint and, thus, result in the close of the investigation of the complaint, these findings do not resolve the ongoing matters related to RPM financial activities and reporting. With respect to those matters, the Executive Director is to continue the Board's work pursuant to direction provided in executive session.

Findings concerning probable cause

Based on the complaint, the responses, and its investigation, the Board concludes that the following findings are supported by a preponderance of the evidence and support probable cause for the violations found:

1. During 2010 treasurer David Sturrock and the RPM failed to maintain records that would 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.
2. The failure to maintain statutorily sufficient records resulted from the indifference or ineffectiveness of the officers, staff, and contractors of the RPM, not from an intentional or "knowing" violation. Therefore, criminal sanctions are not available for this violation.
3. With respect to regular party unit expenditures made in 2010, treasurer David Sturrock and the RPM failed to maintain the minimal set of policies and procedures that would constitute treasurer authorization of those expenditures.
4. The RPM incurred in its own name obligations for legal fees associated with the 2010 gubernatorial election recount. The amount of legal fees incurred was:

Trimble and Associates	\$212,247.50
Briggs and Morgan	\$221,052.60
Bryan Cave:	\$163,101.32

5. Treasurer David Sturrock did not authorize the recount expenditure obligations as required by statute. The requirement for treasurer authorization of expenditures carries no statutory penalty. Treasurer authorization of expenditures is a means of financial control but is not required to make a party unit obligation valid.
6. The legal fees incurred by the RPM for the recount, to the extent that they are unpaid, remain the legal obligations of the RPM and are subject to reporting as unpaid expenditures either for legal fees or for recount costs as recognized in Advisory Opinion 415.
7. The recount legal fees and other unpaid obligations of the RPM were omitted from RPM's 2010 reports of receipts and expenditures. Unpaid obligations were also omitted from the RPM's 2009 report. When treasurer David Sturrock signed and certified these

reports he did so without the knowledge that they omitted required information

8. Tony Sutton, former chair of the RPM, violated Minnesota Statutes section 10A.29 when he redirected a contribution from Robert Cummins through CTAP for the benefit of the RPM in order to avoid disclosure. Although Mr. Sutton's actions in this regard were intentional and criminal sanctions are available, the Board leaves the decision as to whether a criminal investigation should be undertaken to the appropriate County Attorney.
9. Neither Mr. Cummins, Dan Puhl, or CTAP itself violated the circumvention prohibition because their purpose in forming and using CTAP to pay RPM bills was not the avoidance of disclosure.
10. To the extent that CTAP paid obligations of the RPM, those payments constituted in-kind contributions to the RPM.
11. CTAP made three \$9,000 payments for attorneys' fees, resulting in three contributions to the RPM. Because CTAP is not registered with the Board, these contributions are governed by Minnesota Statutes section 10A.27, subdivision 13, which prohibits such contributions to the extent that they exceed \$100 unless statutorily specified disclosure accompanies each contribution. No such disclosure was provided by CTAP to the RPM.
12. CTAP existed for the major purpose of making contributions to the RPM in the form of payments for recount costs that were RPM obligations.
13. An association that exists for the major purpose of making contributions to a party unit is a political committee and is required to register with and report to the Board.
14. CTAP has not registered with or reported to the Board.

Based on the above findings and analysis, the Board issues the following:

Order

1. A civil penalty of \$3,000 for the circumvention of Minnesota Statutes Chapter 10A is imposed on Tony Sutton, individually, and in his capacity as former chair of the RPM. Mr. Sutton, individually, and the RPM are jointly and severally liable for payment of this penalty. Payment must be made by issuing a check payable to the State of Minnesota and conveying that check to the Board within 30 days of the date of this order.
2. A civil penalty in the amount of \$26,900, is imposed on the Republican Party of Minnesota for the acceptance of \$27,000 in contributions from an association not registered with the Board in violation of Minnesota Statutes section 10A.27, subd. 13. Payment must be made by issuing a check payable to the State of Minnesota and conveying that check to the Board within 30 days of the date of this order.
3. A civil penalty of \$3,000 is imposed on CTAP for making three separate contributions to the RPM without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13. Payment must be made by issuing a check payable to the State of Minnesota and conveying that check to the Board within 30 days of the date of this order.

4. A late filing fee of \$100 is imposed on CTAP for failing to register with the Board as a political committee within 14 days of raising more than \$100 for the purpose of making contributions to the RPM. Payment of this late filing fee must be made by issuing a check payable to the State of Minnesota and conveying that check to the Board within 30 days of the date of this order.
5. CTAP must register with the Board as a political committee within 14 days of the issuance of this order.
6. CTAP must file a 2011 year-end report of receipts and expenditures within 30 days of the issuance of this order.
7. CTAP must file its next report of receipts and expenditures not later than July 30, 2012, and must thereafter continue to file reports until it terminates its registration with the Board.
8. The Executive Director is authorized to take whatever legal measures are required to ensure collection of the civil penalties and late filing fee imposed by this order.
9. The matter of the Complaint of Common Cause Minnesota Regarding the Republican Party of Minnesota and others is concluded. The Board's additional work with respect to the RPM's financial and reporting activities will continue. The files and records of the investigation are made public pursuant to Minnesota Statutes section 10A.02, subdivision 11.

Dated: July 13, 2012

/s/ Greg McCullough

Greg McCullough
Chair