

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

**FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE COMPLAINT OF JAMES FLAHERTY
REGARDING THE DAVID BLY COMMITTEE 20B**

On August 15, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by James Flaherty regarding the David Bly Committee 20B. The David Bly Committee 20B is the principal campaign committee of David Bly for the seat in the house of representatives for district 20B.

The complaint alleged that Rep. Bly used his campaign committee's funds to prepare and publish a book authored by Rep. Bly. The complaint argued that the cost of producing the book was listed as a campaign expenditure on the committee's 2015 year-end Report of Receipts and Expenditures and that the book did not include the required disclaimer for campaign material, in violation of Minnesota Statutes section 211B.04. The complaint included a copy of the book as an attachment. A campaign disclaimer was not found in the copy of the book provided to the Board.

On August 29, 2016, the Board chair concluded that the complaint was sufficient to state a prima facie violation and ordered a probable cause hearing for the Board's meeting of October 5, 2016.

On September 19, 2016, the Board received Rep. Bly's response to the complaint. Rep. Bly explained that the campaign expenditure on his report was only for the purchase of books directly from the publisher. The publisher was not paid to prepare or publish the book. An invoice was provided documenting the purchase of 566 books for \$8,485. Rep. Bly stated that copies of the book were offered as a thank you to individuals who contributed at least \$20 to his campaign and were not distributed generally to constituents. Rep. Bly further stated that the books were not campaign material because they did not support or oppose any candidate for election and did not ask anyone to vote for any candidate. Therefore, he concluded that no disclaimer was required on the books.

Rep. Bly appeared before the Board in executive session at its meeting of October 5, 2016, and his comments were taken into consideration. At that same meeting the Board issued a probable cause determination in the matter, finding that probable cause existed to believe that the disclaimer violation had occurred and ordering an investigation.

Board staff met with Rep. Bly on October 13, 2016, to discuss the campaign disclaimer issue. On October 19, 2016, the Board received a letter from Rep. Bly providing information regarding the books and the steps taken by the committee to correct the disclaimer error. Rep. Bly stated that the committee had stopped giving out the books until the matter was resolved and had added a sticker with the disclaimer to the remaining 383 books that had not yet been distributed. He explained that, before the disclaimer sticker was added, 183 books had been distributed to campaign contributors. Rep. Bly reiterated that no disclaimer was initially provided on the books

because the campaign did not prepare or print them and they did not view the giving of the book to donors as influencing voters. Rep. Bly believed the book did not influence voters because it was only provided to campaign contributors, people who he states “were already convinced to vote for me.” Therefore, the committee did not believe a disclaimer was required.

Analysis

Minnesota Statutes section 211B.04 requires a candidate committee to prominently include a disclaimer with the committee’s name and address on any campaign material that it causes to be prepared or disseminated. Campaign material is any material whose purpose is to influence voting at an election. Minn. Stat. § 211B.01, subd. 2. The Board may impose a civil penalty of up to \$3,000 for a violation of the disclaimer requirement. Minn. Stat. § 10A.34, subd. 4.

The Bly committee purchased 566 books to be provided to individuals who contributed at least \$20 to the committee. The book was written by David Bly and laid out his various policy positions and beliefs on making the economy better. The committee reported the purchase of the books as a campaign expenditure. The only other permitted uses of a committee’s funds under section 211B.12 of the Minnesota Statutes are noncampaign disbursements, which must fit under one of the definitions provided by statute or rule, and limited charitable contributions. The book purchase does not meet the criteria necessary to be considered a noncampaign disbursement or a charitable contribution and therefore must be a campaign expenditure to be a permissible use of committee funds.

Campaign expenditures are defined by statute as “a purchase or payment . . . for the purpose of influencing the nomination or election of a candidate.” Minn. Stat. § 10A.01, subd. 9. The book details many of the candidate’s policy positions. Reading the book will influence the reader’s opinion of these policy positions and, because the author is a candidate, will influence whether the reader wishes to support those positions by electing the author.¹ Therefore, when the book is paid for and distributed by the committee, it is campaign material that requires the appropriate disclaimer.

The Board declines to adopt the reasoning of Rep. Bly that, because the campaign only gave books to donors, all recipients of the book were already convinced to vote for him, and therefore a disclaimer was not required. Minnesota Statutes section 211B.04 excludes some small items such as bumper stickers and buttons from the disclaimer requirement if including the disclaimer on those items would be impractical. The statute does not provide an exception to the disclaimer requirement based on the audience that receives the campaign material. The Board does acknowledge that because only contributors were provided the book it is reasonable to conclude that those contributors were already aware of the information provided in a campaign disclaimer: which committee was responsible for the material and how to contact the committee.

¹ This conclusion is consistent with the guidance provided by the Board in Advisory Opinion 298, in which the Board stated that distributing a book which provides the candidate’s policy positions is for the purpose of influencing the nomination or election of that candidate. <http://www.cfboard.state.mn.us/ao/AO298.pdf>

It should also be noted that books can be purchased directly from the publisher without making a contribution to the Bly committee. A disclaimer is not required on books sold by the publisher because the committee is not involved in the preparation or dissemination of those materials.

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

Findings of fact

1. The David Bly Committee 20B purchased and distributed 183 books to campaign donors without a campaign disclaimer.
2. The David Bly Committee 20B has added a sticker with a disclaimer to the 383 remaining books that have not yet been distributed.

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

Conclusions of law

1. The books that the David Bly Committee 20B paid for and caused to be distributed were campaign material.
2. The limited exceptions to the requirement to provide a disclaimer on campaign material found in Minnesota Statutes section 211B.04 do not apply to the books.
3. The David Bly Committee 20B violated Minnesota Statutes section 211B.04 by causing these materials to be prepared and disseminated without the required disclaimer.

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

Order

1. A civil penalty in the amount of \$250 is assessed against the David Bly Committee 20B for violating the disclaimer requirement in Minnesota Statutes section 211B.04. The amount of the civil penalty takes into account the number books that were disseminated without the disclaimer, the committee's prompt efforts to add a disclaimer to the remaining books, and the fact that contributors were likely to have been aware of who provided them with the item.
2. The David Bly Committee 20B is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.

3. If the David Bly Committee 20B does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

/s/ Daniel N. Rosen
Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: November 10, 2016