

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

**Findings and Order in the Matter of the Complaint
Of Bruce Kaskubar regarding the Rochester Citizens Coalition Committee**

Evidence Used in These Findings

The Complaint

On November 9, 2010, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Bruce Kaskubar, Chair of the Olmsted County Republican Party. The complaint alleges that radio and newspaper advertisements prepared and paid for by the Rochester Citizens Coalition Committee (Rochester Coalition) in support of Representative Kim Norton are not independent expenditures, as stated in the disclaimer provided on the advertisements.

The allegation is based on the fact that Robert Cline is named in Board records as both the chair of the (Kimberly) Norton for Minnesota House Campaign Committee (Norton Committee) and as treasurer of the Rochester Coalition. The Norton Committee and the Rochester Coalition are both registered with the Board. Because Mr. Cline is named as an officer in both committees the Mr. Kaskubar contends that the Norton Committee would know in advance about the advertisement in question.

An independent expenditure is an expenditure expressly advocating the election or defeat of a candidate that is made "without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or candidate's principal campaign committee or agent." (Minnesota Statutes, section 10A.01, subdivision 18) Independent expenditures require a high wall of separation from the candidate and the candidate's committee because independent expenditures are not considered contributions to the affected candidate. If the expenditure is not independent, it is an "approved expenditure", which is an in-kind contribution to the candidate that counts toward the contribution limit of the donor. An in-kind contribution of campaign literature would also result in a corresponding in-kind expenditure which would count toward the candidate's campaign spending limits.

So that independent expenditures may be easily identified by the public Minnesota Statutes, section 10A.17, subdivision 4, provides that an independent expenditure must be identified with a disclaimer that contains a statement that the material is an independent expenditure and that the material was not approved by the candidate. A person who falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Additionally, Mr. Kaskubar references Minnesota Statutes, section 10A.17, subdivision 2, in the complaint. This statute provides that a political committee may not make an approved expenditure of more than \$20 on behalf of a candidate without written permission from the treasurer of the principal campaign committee of the candidate. The complaint does not claim that written permission was not provided, but points out that approval was required if the advertisement is not an independent expenditure. A person who fails to obtain written permission for an approved expenditure is subject to a civil penalty imposed by the board of up to \$1,000.

With his complaint Mr. Kaskubar provided a photocopy of the advertisement in question that was printed in the Rochester Post Bulletin on November 1, 2010, and information on the officers of the

Rochester Coalition and the Norton Committee gathered from the Board's website. No information on radio advertisements were provided with the complaint.

Response from Representative Norton

Although the Representative Norton was not specifically named in the complaint, the allegation, if true, could result in contribution and spending limits violations for the Norton Committee. For that reason, the Board notified Representative Norton of the complaint by letter on November 16, 2010, and asked her a series of questions about the activities of Mr. Cline as chair of her campaign committee. Representative Norton responded to the complaint by letter dated November 21, 2010.

In response to a question asking if she was aware that Mr. Cline was associated with the Rochester Coalition Representative Norton responded, "No, I was not aware of any involvement Mr. Cline had with the Rochester Citizens Coalition until after the ad and allegations were made public,..." Representative Norton further provided that she had no conversations with Mr. Cline about the plans of the Rochester Coalition to make independent expenditures, and that to her knowledge Mr. Cline did not tell any member of the Norton Committee of the independent expenditures planned by the Rochester Coalition.

Representative Norton provided that as Chair of her campaign committee Mr. Cline was very involved with the daily operations of the campaign. Representative Norton stated, "Mr. Cline has acted as chair of the Norton for Minnesota House Campaign Committee for the past 6-7 years. His responsibilities include calling, planning and often hosting our committee meeting and the activities of the campaign committee. He developed and managed the campaign plan and budget. He worked with the campaign's treasurers to make certain we were filing appropriate paperwork and working within our budget. He oversaw the development of campaign literature and other marketing materials."

Response from Robert Cline

The Board notified Mr. Cline of the complaint by letter on November 15, 2010, and asked him a series of questions about his duties as treasurer of the Rochester Coalition. Mr. Cline responded by letter dated November 29, 2010.

In response to a question about how the Rochester Coalition determined which candidates the committee would support with independent expenditures Mr. Cline answered, "I do not know what process was used by the Rochester Citizens Coalition to determine which candidates would be supported or opposed during the 2010 election. My role in the organization is to review year-end financial reports, thus providing a check and balance for the organization's chair and deputy chair. I had no other role in the organization."

In response to a question concerning his duties as treasurer when the Rochester Coalition budgeted for independent expenditures or made arrangements for independent expenditures Mr. Cline answered, "I had no role in the ...decision making process and did not participate in any budgeting for independent expenditures. I had nothing to do with making arrangements for any advertising or payments for advertising for any independent expenditure."

In response to a question about the cost of the advertisements in question Mr. Cline provided, "I do not have access to any record of independent expenditures during 2010 for the Rochester Citizens Coalition. I do not know what independent expenditures were made."

In a general response to the complaint Mr. Cline states, "I had no involvement in the selection of possible candidates for whom independent expenditures would have been made by the Rochester Citizens Coalition. I made no direct or indirect statements or efforts on behalf of the Kim Norton for Minnesota House Committee to the Rochester Citizens Coalition. I had no contact with the Chair or Deputy Treasurer of the Rochester Citizens Coalition during the 2010 election period regarding any independent expenditure."

Response from Shelia Kiscaden on behalf of the Rochester Citizens Coalition.

As chair of the Rochester Coalition, Sheila Kiscaden responded to the complaint by letter dated November 24, 2010. In explaining Mr. Cline's duties as treasurer Ms. Kiscaden states, "As Chair, I can affirm that Bob Cline had no knowledge or involvement with our independent expenditures in the 2010 election cycle. Mr. Cline does serve as the treasurer for the Coalition, but the Deputy Treasurer, Richard Kiscaden, has been delegated the responsibilities for approval of expenditures, processing contributions, and completing the required filings for the Campaign Finance and Public Disclosure Board. In his role as Treasurer, Bob Cline provides independent oversight, particularly with an annual review of the PAC activities."

Ms. Kiscaden explained the limited role Mr. Cline performed as treasurer when she stated, "Given that we knew that Mr. Cline would be involved with the Norton campaign this election there was no communication with Bob Cline at all regarding PAC activities in the 2010 election cycle. We created a distinct line between our PAC's activities and Mr. Cline's involvement in the Norton campaign. Bob Cline had no involvement of any kind in the decision-making process, in determining the available budget, in making arrangements for the expenditure, in issuing payments, or in filing reports to the Campaign Finance and Public Disclosure Board."

Ms. Kiscaden also pointed out, and Board records confirm, that all four of the pre-election Reports of Receipts and Expenditures filed by the Rochester Coalition were signed by the deputy treasurer, Richard Kiscaden.

By e-mails on December 1, 2010, Ms. Kiscaden provided that the advertisement provided with the complaint ran in the Rochester Post Bulletin on October 29, and November 1, 2010, at a cost of \$6,888.37. Ms. Kiscaden also provided that the radio advertisements purchased by the Rochester Citizens Coalition were in support of Senator Ann Lynch, not Representative Norton.

Board Analysis of Allegations

Spending in the independent expenditure category must be truly independent of the candidate and the candidate's principal campaign committee. It does not require active approval of the expenditure by a candidate, a member of the candidate's committee or an agent of the candidate's committee to defeat the categorization. Even implied consent, which can result from action or inaction, could change the character of an expenditure from "independent" to "approved". With this high degree of separation as the standard the Board examined the statements and actions of Mr. Cline, the Norton Committee, and the Rochester Coalition.

The complaint correctly recognized that Board records list Mr. Cline as an officer for both the Norton Committee and the Rochester Coalition. The complaint then reaches the reasonable conclusion that as treasurer of the Rochester Coalition Mr. Cline would know of all financial transactions of that committee. This knowledge would then nullify the ability of the Rochester Coalition to make independent expenditures on behalf of the Norton Committee. However, based on the statements provided to the Board in response to the investigation, the evidence is that Mr.

Cline is the treasurer of the Rochester Coalition in name only, and does not perform the actual duties of treasurer. Therefore, Mr. Cline did not authorize or issue payments for the advertisements in question, and was not aware of the financial activities of the Rochester Coalition. Further, Mr. Cline will not know of the financial activities of the Rochester Coalition until he performs an end of the year review.

The advertisements would still not be independent if Mr. Cline was involved in the decision to purchase the advertisement, or if the Rochester Coalition had informed him of the purchase of the advertisement prior to it appearing in the newspaper. Again, the statements of Mr. Cline and Ms. Kiscaden assert that neither of these events occurred. The Board is not aware of evidence to contradict the statements that the Rochester Coalition not only kept Mr. Cline out of the decision making process for independent expenditures, but that there was no communication with Mr. Cline about the Rochester Coalition's activities in 2010.

The Board concludes that because Mr. Cline did not perform the duties of treasurer for the Rochester Coalition, and because there was no communication between the Rochester Coalition and Mr. Cline, separation between the independent expenditures of the Rochester Coalition and the Norton Committee was maintained. Therefore, the advertisements challenged by Mr. Kaskubar are independent expenditures, and were properly identified as such by the disclaimer included in the advertisement.

Because the advertisements were independent expenditures the requirement for written authorization of an approved expenditure is no longer relevant.

The Board also concludes that it is inaccurate for the Rochester Coalition to list Mr. Cline as the treasurer of the committee. The treasurer of any committee registered with the Board undertakes significant and serious duties concerning the daily financial activity of the committee. Multiple statutes within Chapter 10A make the treasurer responsible for the appropriateness of contributions received, expenditures made, records kept, and ultimately of the disclosure reports provided to the Board for use by the public. The statements of Mr. Cline and Ms. Kiscaden make clear that all of these responsibilities are actually performed by the deputy treasurer.

While Minnesota Statutes, section 10A.11, subdivision 3, does authorize the appointment of a deputy treasurer to assist in the operation of the committee the statute also provides that the treasurer is still responsible for the accounts of the deputy treasurer. The Board understands that Mr. Cline will provide a year-end "independent oversight" of the financial activities of the committee. The Board acknowledges that an independent review of the committee's financial activity is a commendable safeguard. Nonetheless, it is not consistent with statutory requirements that the treasurer of the committee is so isolated from the daily operation of the committee that the treasurer is considered independent of the actions of the deputy treasurer.

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

Findings Concerning Probable Cause

1. There is no probable cause to believe that the advertisements placed by the Rochester Citizens Coalition in support of Representative Norton were not independent expenditures as defined by Minnesota Statutes, section 10A.01, subdivision 18.

2. There is probable cause to believe that Robert Cline does not perform the duties of treasurer for the Rochester Citizens Coalition as defined by Minnesota Statutes Chapter 10A.

Based on the above Findings, the Board issues the following:

Order

1. The Board orders the Rochester Citizens Coalition to amend its registration with the Board to identify the individual who performs the daily financial operations of the committee and who is responsible for the filing of reports with the Board as the treasurer of record. The amendment to the registration must occur within ten days of receipt of this order.
2. If the Rochester Citizens Coalition does not comply with the provisions of this order the 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.
3. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11, and upon the submission of an amended committee registration by the Rochester Citizens Coalition, the matter is concluded.

Dated: December 9, 2010

/s/ John Scanlon

John Scanlon, Vice Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minnesota Statutes, section 10A. 01, Subd. 18. Independent expenditure. "Independent expenditure" means an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate. An independent expenditure does not include the act of announcing a formal public endorsement of a candidate for public office, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure under this subdivision.

Minnesota Statutes, section 10A. 11, Subd. 3. Deputy treasurers. The treasurer of a political committee, principal campaign committee, or party unit may appoint as many deputy treasurers as necessary and is responsible for their accounts.

Minnesota Statutes, section 10A. 17, Subd. 2. Written authorization. An individual or association may not make an approved expenditure of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.