

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
FINDINGS AND ORDER REGARDING THE DFL HOUSE CAUCUS
AND THE UPPER SIOUX COMMUNITY**

Facts Used In These Findings

On January 12, 2006, Joseph Marble, Minnesotans for Responsible Government, filed a complaint against the DFL House Caucus and a complaint against the Upper Sioux Community with the Campaign Finance and Public Disclosure Board (“the Board”) alleging violations of Minnesota Statutes, Chapter 10A.

In both complaints, Mr. Marble alleged that the DFL House Caucus accepted a contribution in the amount of \$2,500 from the Upper Sioux Community in 2004 without the disclosure required by Minnesota Statutes, section 10A.27, subdivision 13. The Upper Sioux Community is an association that is not registered under the provisions of Chapter 10A. Minnesota Statutes, section 10A.27, subdivision 13, provides that an unregistered association may not contribute more than \$100 to a political committee, political fund, principal campaign committee, or political party unit unless the contribution is accompanied by a written statement that provides disclosure consistent with the disclosure and reporting required of associations which are registered under Chapter 10A. An unregistered association that fails to provide the required disclosure at the time a contribution of over \$100 is made is subject to a civil penalty of up to \$1,000. A political party that accepts a contribution of over \$100 from an unregistered association without the required disclosure is subject to a civil penalty of up to four times the amount of the contribution.

Mr. Marble also alleged that the Upper Sioux Community violated Minnesota Statutes, section 10A.14, subdivision 1, which requires that the treasurer of an association must register with the Board as a political committee, political fund, political party unit or principal campaign committee no later than 14 days after making a contribution in excess of \$100. An individual who fails to register with the Board after receiving notice from the Board of the need to register is subject to a late filing fee of up to \$100 and a civil penalty of up to \$1,000.

By letter dated January 13, 2006, the Board notified the DFL House Caucus of the complaint and afforded the committee an opportunity to respond. Alan Weinblatt, legal counsel for the DFL House Caucus, responded on January 20, 2006, and stated that “The Campaign Finance and Public Disclosure Board records should show that it has received a copy of the written statement given by the contributor...I have reviewed the statement received by my client from the contributor and believe that it complies with the standards set forth in the Board’s Advisory Opinion #290.”

By letter dated January 13, 2006, the Board notified Helen Blue-Redner at the Upper Sioux Board of Trustees of the complaint and afforded the association an opportunity to respond. Leif Rasmussen, legal counsel for the Upper Sioux Community, responded on February 2, 2006, and stated that “The Upper Sioux Community did contribute \$2,500 to the House DFL Caucus... Advisory Opinion #290 states that an Indian tribe that does not have a registered political action committee may make contributions to political committees and political funds as long as: 1) Contributions are not made to more than three separate political committees or political funds in one year and; 2) Each contribution is accompanied by disclosure as more fully described in this opinion. The contribution to the House DFL Caucus was the only one made in 2004 by the Upper Sioux Community. The attached disclosure state accompanied the contribution, as required by Advisory Opinion 290.” With his response Mr. Rasmussen provided a copy of the disclosure statement provided by the Upper Sioux Community to the DFL House Caucus.

Board records contain a copy of a cover letter dated December 7, 2004, from Karen James (Upper Sioux Community) to the DFL House Caucus that accompanies the disclosure statement provided with the \$2,500 contribution. The disclosure statement provided by the Upper Sioux Community to the DFL House Caucus contains the informational items specified in Advisory Opinion 290.

The matter was considered by the Board in executive sessions on February 24, 2006. The Board's decision was based upon the complaints, the responses and Board records.

Relevant Statutes, Advisory Opinion and Court Decision

1. **Minnesota Statutes, section 10A.14, subdivision 1. Registration.** First registration. The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.
2. **Minnesota Statutes, section 10A.27, subdivision 13. Unregistered association limit; statement; penalty.** (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.
 - (b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:
 - (1) fails to provide a written statement as required by this subdivision; or
 - (2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.
 - (c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.
3. **Advisory Opinion 290.** On June 26, 1998, the Board issued Advisory Opinion 290. This advisory opinion specified the disclosure obligations of an Indian tribe that gave contributions to committees registered under Chapter 10A and set the conditions under which an Indian tribe would need to register with the Board. In the advisory opinion, the Board recognized that Indian tribes often operate numerous businesses and programs from which they derive financial resources. Requiring an Indian tribe to itemize and disclose each receipt and expense in excess of \$100, as is required of committees registered under Chapter 10A, would require detailed financial transactions of each business or program operated by the Indian tribe. The Board determined that disclosure of this type of information, which may be

confidential and sensitive, would not assist the public in understanding the source of funding for the contribution. Such disclosure would not help the public in making decisions regarding the nomination or election of candidates or votes on ballot questions. Additionally, the Board determined that disclosure of all receipts or expenses in excess of \$100 would likely have the effect of preventing Indian tribes from making any contributions and participating in the Minnesota political process.

In order to provide relevant disclosure on the source or funding used by an Indian tribe to make a contribution, Advisory Opinion 290 specified fifteen informational items that should be included in the disclosure statement provided by an Indian tribe when it made a contribution. Advisory Opinion 290 directs staff to take no action to obtain additional disclosure from an Indian tribe that provides a disclosure statement with its contributions that is consistent with the advisory opinion.

Advisory Opinion 290 further provides that an Indian tribe does not need to register as a political committee with the Board unless it makes approved expenditures or independent expenditures or contributes to more than three political committees in a calendar year.

4. **Court Decision.** In *Shakopee Mdewakanton Sioux (Dakota) Community, et al., v. Minnesota Campaign Finance and Public Disclosure Board*, 586 N.W.2d 406 (Minn. App. 1998), the Minnesota Court of Appeals reviewed an order of the Ramsey County District Court denying plaintiff Indian tribe's motion for a temporary injunction. The tribe sought to enjoin enforcement of Advisory Opinion 290 on grounds that Minn. Stat. § 10A.20 is unconstitutional; that the Board violated the provisions of Chapter 10A by acting in excess of its authority; that the Opinion was illegally being given retroactive effect; and that the Board violated the Administrative Procedures Act in issuing the Opinion. Although the Court of Appeals was ruling only on the denial of temporary injunctive relief, and not on the merits of the case, the Court was called upon to evaluate the tribe's likelihood of success on the merits as part of its review of the trial court's order. The Court of Appeals found that it was unlikely that any of the tribe's arguments would prevail. After the Court of Appeals ruling, the tribe agreed to provide the disclosures required by the opinion. Although the case did not go to trial on the merits, we look to the Court of Appeals opinion as a strong indication of the validity of the limited disclosures required of Indian tribes under Advisory Opinion 290.

Based on the above Statement of the Facts and Relevant Statutes and Advisory Opinions, the Board makes the following:

Findings of Probable Cause

1. There is evidence that the DFL House Caucus received a disclosure statement at the same time it accepted a \$2,500 contribution from the Upper Sioux Community in 2004. The Board finds there is no probable cause to believe that the DFL House Caucus violated Minnesota Statutes, section 10A.27, subdivision 13.
2. There is evidence that the Upper Sioux Community provided a disclosure statement to the DFL House Caucus that is consistent with the requirements of Advisory Opinion 290 when it provided the DFL House Caucus with a \$2,500 contribution in 2004. The Board finds there is no probable cause to believe that the Upper Sioux Community violated Minnesota Statutes, section 10A.27, subdivision 13.
3. There is no evidence and therefore no probable cause to believe that the Upper Sioux Community contributed to more than three political committees, funds, or party units in 2004. There is no evidence and therefore no probable cause to believe that the Upper Sioux Community has made

3. There is no evidence and therefore no probable cause to believe that the Upper Sioux Community contributed to more than three political committees, funds, or party units in 2004. There is no evidence and therefore no probable cause to believe that the Upper Sioux Community has made approved expenditures or independent expenditures as defined in Chapter 10A. The Board finds there is no probable cause to believe that the Upper Sioux Community violated Minnesota Statutes, section 10A.14, subdivision 1, when it did not register a political committee with the Board within 14 days of making a contribution of over \$100 to the DFL House Caucus in 2004.

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

Order

1. The allegation that the DFL House Caucus violated Minnesota Statutes, section 10A.27, subdivision 13, is dismissed in its entirety.
2. The allegation that the Upper Sioux Community violated Minnesota Statutes, section 10A.27, subdivision 13, is dismissed in its entirety.
3. The allegation that the Upper Sioux Community violated Minnesota Statutes, section 10A.14, subdivision 1, is dismissed in its entirety.
4. The Board's investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 11. Board staff is directed to forward copies of these Findings to Mr. Marble, the DFL House Caucus, and the Upper Sioux Community.

Dated: _____

2/27/06



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board