STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

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May 27, 2016
Nokomis Room
Centennial Office Building

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MINUTES

The meeting was called to order by Chair Sande.

Members present: Flynn, Oliver, Rosen, Sande

Others present: Goldsmith, Sigurdson, Fisher, Pope, staff; Hartshorn, counsel

MINUTES (April 5, 2016)

After discussion, the following motion was made:

Member Flynn's motion:	To approve the April 5, 2016, minutes as drafted.
Vote on motion:	Unanimously passed.

CHAIR'S REPORT

Chair Sande told members that because the Minnesota Senate failed to confirm the appointments of Members Leppik and Greenman before it adjourned sine die, those appointments had lapsed. Chair Sande said that the vacancies would have to go through the open appointment process again and that it would be at least August before the Board would again have a full complement of members.

Board meeting schedule

The next Board meeting is scheduled for July 5, 2016.

Board meeting start times

Chair Sande said that he would postpone the discussion of the start time for Board meetings until the Board once again had a full complement of members.

EXECUTIVE DIRECTOR TOPICS

Office operations

Mr. Goldsmith told members that since the last meeting, staff had been busy with routine matters. Mr. Goldsmith said that staff was working on the fiscal year 2017 budget and that there was enough money in that budget to continue current levels of work and to finish the website project.

Website project

Mr. Goldsmith told members that the website project was moving ahead and probably would be rolled out to the user group for testing around June 15. Mr. Goldsmith said that the estimated target date for releasing the new website to the public was mid-July. Mr. Goldsmith said that the usability of the current website had been very highly rated in a recent study and that the challenge was to update the site without diminishing that feature.

Open action items (receivables, audio/video streaming, investigation initiation criteria)

Mr. Goldsmith told members that these items were placeholders and that these issues would be discussed later in the summer after the website had been launched.

Rulemaking petition

Mr. Goldsmith told members that the Board had received a petition for rulemaking from former member George Beck but that Mr. Beck had withdrawn his petition temporarily. Mr. Goldsmith said that Mr. Beck planned to resubmit the petition after the Board had a full complement of members.

ENFORCEMENT REPORT

A. Discussion items

1. Request to waive late filing fees and to receive a one-time cash balance adjustment – Local 28 Political Fund

Mr. Fisher told members that this fund had registered with the Board on 10/15/1974 and had been working for some time to resolve a large balance discrepancy that resulted, in part, from years of misreporting and mathematical errors. Mr. Fisher said that the fund had replaced its long-time treasurer and had started filing reports using the Board's software, which should reduce the number of mathematical errors on the fund's future reports.

Mr. Fisher stated that the fund had reported a cash balance of $8,923.68 on 1/1/2010. Its bank balance, at that time, was $2,255.09, which indicated that the discrepancy had occurred prior to 2010. Mr. Fisher said that the fund therefore was requesting a one-time cash balance adjustment of $6,668.59 as of 1/1/2010.

Mr. Fisher said that the fund also was requesting a waiver of the late filing fees that had accrued under its previous treasurer totaling $1,450 ($450 on the 2014 pre-primary-election report and $1,000 on the

2014 pre-general-election report). The fund's previous treasurer told Board staff that he had experienced a mental block and could not bring himself to complete Board reports in a timely fashion.

Mr. Fisher said that staff recommended, and the fund agreed, that the requests should be conditioned upon the fund completing amended reports for 2010-2014 that included missing or misreported transactions during that period of time. Mr. Fisher said that these reports should be completed within the next 30 days and that the balance adjustment combined with the amended reports would provide an accurate reporting of the fund's finances from 2010 on.

After discussion, no motion was made to waive the late fees. The following motion was made:

Member Flynn's motion:	To grant the Local 28 Political Fund's request for a one-time cash balance adjustment.
Vote on motion:	Unanimously passed.

2. Request to reconsider waiver of $200 late filing fee on year-end report due 2/1/2016 – Hubbard County RPM

Mr. Fisher told members that at the 3/1/2016 meeting, the Board considered a waiver request from the Hubbard County RPM. The waiver was summarized as follows:

> Treasurer moved out of state and the party unit did not update its treasurer information. The Board mailed out the filing bulletin to the treasurer at the registered address on 12/28/2015.

Mr. Fisher said that the party unit was asking the Board to reconsider the waiver request because the organization was never mailed notice regarding the filing. The notice was instead mailed to the party unit's registered treasurer who had moved out of state in the spring of 2015. Mr. Fisher said that the party unit's registration with the Board was never updated to reflect this fact. Mr. Fisher said that the party unit had received no previous waivers and had a reported cash balance of $2,057 as of 12/31/2015.

After discussion, no motion was made.

3. Request to terminate registration – St. Paul Ward 4 DFL political committee

Mr. Fisher told members that this committee was asking the Board to terminate its registration as of 12/31/2014. Mr. Fisher said that the committee was active only in local races and planned to spend no funds on state campaigns in the future. The committee's last reported cash balance was $3,575 as of 12/31/2014.

After discussion, the following motion was made:

Member Rosen's motion:	To grant the St. Paul Ward 4 DFL's request to terminate its registration.
Vote on motion:	Unanimously passed.

4. Request for balance adjustment – 64A House District RPM

Mr. Fisher told members that in 2013, the party unit's treasurer had passed away. The treasurer's wife, who registered as the party unit's deputy treasurer in early 2014, was unable to access the bank account but filled out the party unit's 2013 year-end report to the best of her knowledge. This report stated a cash balance of $372.76 as of 12/31/2013. The party unit was inactive in 2014.

Mr. Fisher said that in early 2015, the currently registered treasurer, who was trying to wrap up the party unit's affairs, located the only other individual who had access to the bank account. The bank account's balance as of January 2015 was $643.90. The party unit contributed its remaining funds to the Republican Party of Minnesota in early 2016 and submitted its termination report to the Board.

Mr. Fisher said that the party unit was asking for a balance adjustment of $271.14 as of 12/31/2013 (adjusting the balance from $372.76 to $643.90) so that it could terminate with its currently filed reports.

After discussion, the following motion was made:

Member Rosen's motion:	To grant the 64A House District RPM's request for a balance adjustment.
Vote on motion:	Unanimously passed.

5. Staff request to administratively termination registration – New Americans

Mr. Fisher told members that this committee had not been active since 2012 and had not been functioning since 2013 because no individual could gain access to the committee's bank account. The committee currently has no treasurer or chair. The committee reported a cash balance of $383.83 as of 12/31/2014 and, on a no change statement for 2015, a cash balance of $183 as of 12/31/2015.

After discussion, the following motion was made:

Member Flynn's motion:	To grant the request to administratively terminate the registration of the New Americans.
Vote on motion:	Unanimously passed.

6. Staff request to rescind waiver – Paul Perovich for Senate

Mr. Fisher told members that at its meeting of April 5, 2016, the Board granted a waiver of a $400 late filing fee that the committee had accrued in filing its 2015 year-end report. Mr. Fisher said that staff had intended to pull this waiver during the meeting because staff currently was working with the committee on other matters. Mr. Fisher said that if the waiver was rescinded now, it would be presented to the Board again when the other matters were resolved.

After discussion, members decided to postpone this matter until after executive session.

7. Staff request to refer economic interest statement non-filers to the attorney general's office

Mr. Fisher told members that the following individuals had yet to file economic interest statements due on 1/25/2016:

Larry Stelmach:	Shingle Creek Watershed Mgmt Commission West Mississippi Watershed Mgmt Commission
Jeffrey Joseph Johnson:	Shingle Creek Watershed Mgmt Commission
Dave Berglund:	Cook SWCD
Jeffrey Hoffman:	Yellow Medicine River WD

Mr. Fisher said that staff was asking the Board to refer these matters to the attorney general's office to compel the filing of the statements and to collect the accrued late filing fees and civil penalties.

After discussion, the following motion was made:

Member Flynn's motion:	To refer the listed individuals to the attorney general's office for action to compel the filing of their economic interest statements and to collect the accrued late filing fees and civil penalties.
Vote on motion:	Unanimously passed.

8. Request for extension of payment plan – Timothy Manthey

Mr. Fisher told members that at the March 17, 2014, Board meeting, Timothy Manthey had proposed a payment plan for a civil penalty of $3,250.77 that was assessed at an earlier meeting. Mr. Fisher said that Mr. Manthey largely had complied with that payment plan, which was set to conclude with a final balloon payment of $800 on April 15, 2016. Mr. Fisher said that due to financial issues, Mr. Manthey was asking to be permitted to pay $100 per month towards the remaining balance of $650.

After discussion, the following motion was made:

Member Oliver's motion:	To grant Timothy Manthey's request to modify the payment plan for his civil penalty.
Vote on motion:	Unanimously passed.

B. Reconciliation balance adjustment requests

1. Ratification of balance adjustment – Friends for Jim Carlson

Ms. Pope told members that on February 8, 2016, the executive director had granted the request of Friends for Jim Carlson to adjust its ending cash balance from $39,698.67 to $39,741.95. This was a discrepancy of $43.28 and the committee had submitted a bank statement to verify the amount in its account at the end of 2015.

Ms. Pope said that during the reconciliation, staff had discovered that the beginning cash balance on the committee's 2015 report did not match the ending cash balance on its 2014 report. The committee had filed an amendment to its 2014 report that had changed its ending cash balance for that year. The committee, however, had never adjusted its 2015 beginning cash balance to reflect the amendment to the 2014 year-end balance.

Ms. Pope stated that to resolve the reconciliation issue, the committee had corrected its 2015 beginning cash balance. This had increased the committee's reported ending cash balance to $39,948.67, which was $206.72 higher than its bank balance.

Ms. Pope said that due to the executive director's previous decision, the committee already had changed its 2015 year-end cash balance to match its bank balance. But because the amount of the actual adjustment was over $200, the executive director was asking the Board to ratify that adjustment.

After discussion, the following motion was made:

Member Sande's motion:	To ratify the balance adjustment granted to the Friends of Jim Carlson committee.
Vote on motion:	Unanimously passed.

2. Request for balance adjustment – Committee to Elect John Hoffman

Ms. Pope told members that the Committee to Elect John Hoffman was asking to adjust its 2015 ending cash balance from $61,745.01 to $62,380.84. This was a discrepancy of $635.83. Ms. Pope said that the treasurer had told staff that the committee's 2015 transactions were all disclosed on its report and that the treasurer had searched the records from prior years and could not find the reason for the discrepancy. The treasurer also said that the committee had changed treasurers since its inception which had made it more difficult to identify the discrepancy. The committee had registered with the Board on November 28, 2011.

After discussion, the following motion was made:

Member Rosen's motion:	To grant the Committee to Elect John Hoffman's request for a balance adjustment.
Vote on motion:	Unanimously passed.

3. Request for balance adjustment – Halverson (Laurie) for House

Ms. Pope told members that the Halverson (Laurie) for House committee was asking to adjust its 2015 ending cash balance from $16,631.67 to $17,793.66. This was a discrepancy of $1,161.99. Ms. Pope said that although the reconciliation worksheet had asked requesting committees to submit an explanation along with the worksheet, the Halverson committee had not provided any information with its request. The committee registered with the Board on August 15, 2011.

After discussion, the following motion was made:

Member Flynn's motion:	To grant the Halverson (Laurie) for House's request for a balance adjustment.
Vote on motion:	Unanimously passed.

C. Waiver requests

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver	Board Member's Motion	Motion	Vote on Motion
Marian Brown	$100 LFF	2/8/2016 EIS	Official was experiencing health issues and Dakota SWCD is in process of replacing her.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Renewable Energy Group, Inc.	$125 LFF	3/15/2016 Principal Report	Individual responsible for filing report was dealing with family health emergency. (The waiver has not been provided with the Board's materials due to the personal information in it).	Member Flynn	To waive the late filing fee.	Passed unanimously.
Dennis Zimbrick	$100 LFF	2/8/2016 EIS	Official appeared to have saved information in EIS online filing system but not certified the information, which is required to submit the statement. With staff help, information was later certified and submitted.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Colleen Timmer	$100 LFF; $100 CP	2/8/2016 EIS	Notice was sent to official's old address. Official did not complete annual statement without the notice because financial information was unchanged and she was unaware of new law requiring statement.	Member Flynn	To waive the late filing fee.	Passed unanimously.
Jennifer Coates	$100 LFF	2/22/2016 EIS	Official left position on 12/21/2015. Notice was sent to official's old address. When official was forwarded the notice in March the filing was completed.	Member Flynn	To waive the late filing fee.	Passed unanimously.
Taxpayers League of MN	$250 LFF	3/15/2016 Principal Report	Lobbyist mistakenly submitted an amended lobbyist report on March 12, as opposed to the required principal's report.	Member Oliver	To waive the late filing fee.	Passed unanimously.
Natl Assn of Industrial and Office Properties	$75 LFF	3/15/2016 Principal Report	Association mistakenly submitted an amended lobbyist report on March 15, as opposed to the required principal's report.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Our Lady of Lourdes Catholic Church	$125 LFF	3/15/2016 Principal Report	New director of operations started with association on March 1 and was unaware of notice and deadline.	No motion		
Glenn Hahn	$100 LFF; $100 CP	2/22/2016 EIS	Official stated that he had trouble using the web link provided in the filing notice. Official eventually filled out a paper EIS.	No motion		
Izaak Walton League of America – Minnesota Division	$100 LFF	3/15/2016 Principal Report	Association mistakenly believed that only required filings were lobbyist reports.	No motion		
Nancy Paddleford	$100 LFF	2/22/2016 EIS	Official was no longer holding position when she received notice, had not submitted an annual update last year, and was unaware of new law requiring her to update the statement.	No motion		

Robert Brekke, Jr.	$100 LFF; $200 CP	2/8/2016 EIS	Filing notice was sent to official on 12/29/2015. Official left for Texas on 1/1/2016 and returned on 3/24/2016. Statement filed on 3/31/2016	No motion		

Informational Items

A. Payment of a late filing fee for 2015 year-end report of receipts and expenditures:

Volunteers for Dorian Eder, $250
Chris Eaton for Senate, $100
Isaacson (Jason) for Minnesota, $25
Koenen (Lyle) for Senate, $425
Crow Wing RPM, $25
Minn Electrical Industry Political Action Committee, $25
VOICES of Conservative Women, $100
Women's Victory Fund, $100

B. Payment of a late filing fee for special election end-cycle report of receipts and expenditures:

Skraba (Roger) for House, $225

C. Payment of a late filing fee for 2016 1ST quarter report of receipts and expenditures:

Grand Portage PAC, $100
OutFront Minn Action, $50

D. Payment of a late filing fee for annual economic interest statement:

Jonathan Arnold, Medical Services Review Board, $100
Tony Croatt, Lac qui Parle SWCD, $100
Robert Duban, Rice SWCD, $20
Edwina Garcia, Richfield-Bloomington WMO, $5
Weston Kooistra, Metropolitan Council, $100
David Moulds, Polk West SWCD, $100
Emmanuel Munson-Regala, Health Department, $5
Duane Ness, North Cannon River WMO, $100
R.T. Rybak, Destination Medical Center Corp, $100
Louis Smith, Clean Water Council, $10

E. Payment of a late filing fee for the 2012 annual report of lobbyist principal:

MN Public Interest Research Group, $10

F. Payment of a late filing fee for the 2013 annual report of lobbyist principal:

EatStreet Social, $25

G. Payment of a late filing fee and civil penalty for the 2014 annual report of lobbyist principal:

MN Public Interest Research Group, $1,000 LF, $1,000 CP

H. Payment of a late filing fee for the 2015 annual report of lobbyist principal:

Alliance for a Better Minnesota, $25
Anderson Corporation, $75
Big Lake Area Sanitary, $25
Blue and White Taxi, $50
CHS Inc., $25
DriversEd.com, $75
Fire Marshal's Assn of MN, $100
Hennepin County Sheriff's Office, $75
Laurentian Energy Authority LLC, $75
Live Nation LLC, $200
Lower Sioux Community, $75
MN Beer Activists, $100
MN Center for Environmental Advocacy, $25
MN Energy Resources Corp, $25
MN Second Change Coalition, $75
MN Trucking Assn, $50
Minneapolis Auto Auction, $50
Minneapolis Federation of Teachers Local 59, $25
Natl Association of Social Workers, $275
UltiMed Inc., $100
Windustry, $75

I. Payment of a late filing fee for January 15, 2016, lobbyist disbursement report:

Jeffrey Ziarko, Enhanced Capital Partners, $450

J. Payment of a civil penalty for misuse of committee funds:

Tim Manthey, $250 payment

K. Payment of a civil penalty for accepting a contribution from a local candidate:

Jason Isaacson for Minnesota, $250

L. Payment of a civil penalty for reporting violations in multiple years:

Satveer Chaudhary for Senate, $1,500

M. Deposit to the General Fund, State Elections Campaign Fund:

Jason Isaacson for Minnesota, $1,000 (forwarding contribution he couldn't keep)
Saint Paul Area Chamber of Commerce PAC, $757.73 (anonymous, couldn't determine source)

ENFORCEMENT OF ORDER – Evan Rapp

Mr. Goldsmith presented members with a memorandum in this matter that is attached to and made a part of these minutes. Mr. Goldsmith reminded members that Mr. Rapp owed money to the state because the Board had determined that Mr. Rapp had converted committee funds to personal use. Mr. Rapp, however, had moved to California. Mr. Goldsmith told members that staff reluctantly was recommending that no legal action be taken against Mr. Rapp due to the high cost of obtaining even a default judgement and the small likelihood of any actual monetary recovery. Mr. Goldsmith said that staff was recommending that the matter be forwarded to the state's collection agency so that if Mr. Rapp ever had any refunds due to him in this state, that money could be recaptured to repay a portion of his debt.

After discussion, the following motion was made:

Member Rosen's motion: To adopt the following resolution:

Resolved, that the Executive Director shall refer the debt owed by Mr. Evan Rapp pursuant to the Board's order of January 15, 2016, to the Minnesota Collections Enterprise and shall take no civil legal action unless further directed by the Board.

Vote on motion: Unanimously passed.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a report that is attached to and made a part of these minutes. Mr. Hartshorn told members that the judgement docketed in the Lehrke matter could be referred to the Minnesota Collections Enterprise for collection. Mr. Hartshorn and Mr. Goldsmith also told members that Northeast Social had accepted the proposed settlement agreement and that this matter therefore would be removed from future reports.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair reported the following matters into regular session:

Findings, conclusions, and order in the matter of the Joe Atkins for State Representative Committee

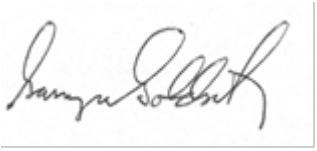
Findings, conclusions, and order in the matter of the Joe Hoppe Volunteer Committee

ENFORCEMENT REPORT

Staff request to rescind waiver – Paul Perovich for Senate

After discussion, no motion was made on this request.

There being no other business, the meeting was adjourned by the Chair.



Gary Goldsmith
Executive Director

Attachments:
Memorandum regarding enforcement of the Evan Rapp order
Legal report
Findings, conclusions, and order in the matter of the Joe Atkins for State Representative Committee
Findings, conclusions, and order in the matter of the Joe Hoppe Volunteer Committee

Minnesota

Campaign Finance and Public Disclosure Board

Date: May 20, 2016

To: Board

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Even Rapp matter

By a revised order issued on January 15, 2016, the Board found that Mr. Evan Rapp converted $928.50 in committee funds to personal use; an act that is prohibited by statute. The actual amount used for personal purposes was $1,278.50. However, the Board reduced the amount it ordered returned, in effect giving Mr. Rapp credit for personal contributions he had made to his own committee.

Mr. Rapp resides in California and, as a result, is not easily subject to the jurisdiction of Minnesota Courts. In previous discussions, the Board expressed interest in obtaining a judgment against Mr. Rapp and docketing it in California where he lives.

Staff has consulted with legal counsel and we conclude that we must reluctantly advise against taking legal action against Mr. Rapp at this time. This advice is based in part on the time the Office of the Attorney General would need to invest in the matter, the likely out-of-pocket costs to the Board, and the small likelihood of any actual recovery.

The Board would first need to obtain personal jurisdiction over Mr. Rapp, possibly by personally serving process on him in California. Even if a default judgment was eventually obtained, it is not likely that Mr. Rapp has any assets or income in Minnesota against which it could be enforced. Thus, the judgment would need to be transferred to California. Other than attorneys' fees, all costs would be the responsibility of the Board. Of course, if Mr. Rapp returns to Minnesota, the Board can take up the matter once again.

Staff recommends referring this matter to the Minnesota Collections Enterprise, which is Minnesota's collection agency, run by the Department of Revenue. Should Mr. Rapp ever have income in Minnesota or tax refunds or other money due from the state, it could be captured to satisfy part of this debt.

Since staff is attempting to put the Board more directly in control of its collections efforts, a resolution would be in order. Should the Board agree with staff's recommendation, the following resolution would be in order:

Resolved,

> That the Executive Director shall refer the debt owed by Mr. Evan Rapp pursuant to the Board's order of January 15, 2016, to the Minnesota Collections Enterprise and shall take no civil legal action unless further directed by the Board.

Revised: 5/20/16

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
May, 2016

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Derrick Lehrke	Derrick Lehrke for House	Principal Campaign Committee Amended 2014 Year-End Report of Receipts and Expenditures	$1,000	8/3/2015	9/ 21/2015 10/6/2015	3/31/16	5/9/16	Summary Judgment received April 6, 2016
	North East Social	2013 Lobbyist Principal Report 2014 Lobbyist Principal Report-Late filing	$1,000/$1,000 $475/$100	10/13/2015	12/31/2015			Personal service placed on hold by the Board
Evan Rapp	Evan Rapp Volunteer Committee	Fund reimbursement	$928.50/$928.50	10/13/2015				Placed on hold by the Board

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Derrick Lehrke	Derrick Lehrke for House	Late Filing Fee for late filing of the Principal Campaign Committee 2013 Year-End Report	$125					$125 received

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Findings, Conclusions, and Order in the Matter of the Joe Atkins for State Representative Committee

Background

The investigation of the Joe Atkins for State Representative Committee (the Committee) was initiated by the Campaign Finance and Public Disclosure Board on October 7, 2015, after a staff review of candidate committees that reported unusually high noncampaign disbursements during the years 2011 through 2014. The purpose of the investigation was to determine whether the Committee's use of the noncampaign disbursement categories provided in Chapter 10A was consistent with the scope of these categories and the requirements of Minnesota Statutes section 211B.12.

The Committee reported noncampaign disbursements totaling $108,133 during the years 2011 through 2014 that are broken down as follows: $21,424 in 2011, $32,401 in 2012, $22,226 in 2013, and $32,431 in 2014. Campaign committees are required to maintain records documenting the collection and use of committee funds for four years from the date a report is filed. The Board limited the investigation of the Committee's noncampaign disbursements to the years for which the Committee was required to have records.

The Committee was notified of the investigation by letter dated October 12, 2015. The initial general response on behalf of the Committee by its treasurer was received on October 19, 2015. The response stated that the Committee was under the impression it was reporting all noncampaign disbursements correctly, since it had not previously been notified by the Board of any questions or concerns about the Committee's reports.

Because the investigation required information on the circumstances surrounding specific noncampaign disbursements, all subsequent responses to Board requests for information were provided directly by Rep. Atkins. Rep. Atkins met with staff on two occasions to discuss the investigation, and fully cooperated with the investigation by providing written responses, spreadsheets, and other documentation of committee expenditures. Rep. Atkins also appeared before the Board to answer questions in executive session on April 5, 2016.

Statutory Authority and Related Administrative Rules

Minnesota Statutes section 211B.12 provides that money collected by campaign committees may be used for specific political purposes, or for purposes consistent with the noncampaign disbursements defined in Chapter 10A. In addition, Minnesota Statutes section 211B.12 limits the use of campaign committee funds with a general prohibition that states, "Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use."

The expenses incurred by a candidate's committee are generally categorized as either campaign expenditures made to influence the nomination or election of the candidate, or as noncampaign disbursements, which are a separate category of spending identified in statute. Noncampaign disbursements do not count against the campaign expenditure limit that applies if the candidate voluntarily signed the public subsidy agreement. There are 22 noncampaign disbursements recognized in Minnesota Statutes section 10A.02, subdivision 26. This statute

provides in part, "The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision."

The Board is also authorized to recognize additional noncampaign disbursements through administrative rule or advisory opinion. In Minnesota Rules 4503.0900 the Board has recognized six additional noncampaign disbursements that are applicable to all candidates.

Noncampaign disbursements must be itemized on a candidate's campaign finance report if the amount purchased from a vendor over a calendar year exceeds $200. Itemized noncampaign disbursements must include sufficient information to both identify the goods or services purchased, and to justify the noncampaign disbursement category claimed for the purchase.[1]

Many of the noncampaign disbursements provided in statute are specific as to what items may be included in the category, and therefore it is a straightforward matter to determine if a purchase qualifies. However, some of the categories are broadly stated, and campaign committees have asked for clarification regarding these categories in advisory opinion requests to the Board.

Advisory opinions are issued as guidance and are a safe harbor only to the requestor of the opinion. While advisory opinions provide information on the Board's interpretation of statutory requirements to other committees with similar questions, the opinions are not binding on those committees. If the Board believes that the guidance stated in an advisory opinion should be applicable to more than the requestor the Board must adopt an administrative rule to achieve that end. The process of adopting administrative rules provides an opportunity for the public, the legislature, the Office of Administrative Hearings, and the Governor to evaluate the proposed rules and provide input to improve the content.

This limitation on advisory opinions is specifically noted because in some cases the Committee reported purchases for noncampaign disbursements that were not consistent with the guidance provided by the Board in advisory opinions for similar expenditures. While the Board concludes that the Committee's use of certain noncampaign disbursement categories is not permitted by statute, it acknowledges that the Committee was not bound by the advisory opinions and that the Board has not adopted administrative rules to make those opinions binding. Therefore, although the Board finds the use of certain noncampaign disbursements to be impermissible under the applicable statutes, it will not impose a civil penalty for those uses nor will it require amendments to the committee's reports in those cases.

Given the previous lack of clear guidance on the scope of some noncampaign disbursement categories, the Board will develop and distribute bulletins and training materials on noncampaign disbursements. Additional guidance in statute or the adoption of additional administrative rules by the Board may be needed to provide consistent enforcement of some categories.

Noncampaign Disbursements Reported by the Committee

Many noncampaign disbursements reported by the Committee were consistent with the clear language of the statute or administrative rule used to categorize the purchase. Others were consistent with broader interpretations expressed in advisory opinions issued by the Board. These disbursements were excluded from further review early in the investigation. For example, Rep. Atkins used the Committee's funds to attend National Conference of State

[1] See Minnesota Statutes section 10A.20, subdivision 3(m), and Minnesota Rules 4503.0900, subpart 3.

Legislatures meetings, and reported the costs as a type of noncampaign disbursement. This is consistent with the Board's longstanding recognition that the cost of attending conferences at which subjects before the legislature are discussed may be paid for with committee funds and reported as a noncampaign disbursement.[2]

The Committee's use of other noncampaign disbursement categories was not as clear. As part of the investigation the following noncampaign disbursements categories were reviewed. The wording and identifying number of the noncampaign disbursement provided in Minnesota Statutes section 10A.02, subdivision 26, is provided in bold.

(8) Payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties

During 2011 through 2014 the Committee reimbursed Rep. Atkins $3,109 for meals or beverages consumed at a meeting or reception directly related to legislative duties. At multiple occasions when meals were purchased using this category the Committee paid for the meal consumed by Rep. Atkins and the cost of meals for other individuals who were at the meeting.

In a finding issued in 2006 the Board concluded that this noncampaign disbursement was available only for the meal consumed by the legislator because only the legislator had "legislative duties." Therefore, this category could not be extended to cover the cost of meals bought for other individuals.[3] However, although the finding was published at the time it was issued, the Board did not subsequently publish guidance on the subject or include it in Board training. Rep. Atkins, therefore, will not be required to reimburse the Committee for the meals purchased for other individuals. Additionally, because of a lack of clear guidance on the subject, Rep. Atkins will not be asked to amend the Committee's reports to separate out his meals from the meals for others.

The investigation also suggested that some of the subject meals were not at receptions or meetings as that word might be used in a more formal sense, but represented payment for lunches or dinners with staff or colleagues where legislative work was discussed. Campaign funds are contributions made to a committee, often by individual citizens, to assist in getting the candidate elected. For that reason, the Board concludes that statutes permitting the use of committee funds for purposes not related to getting elected should be applied narrowly. The Board further concludes that the noncampaign disbursement category for food and beverages at a reception or meeting related to legislative duties is limited to organized receptions or meetings and is not available for lunches or dinners with staff or colleagues, even if business is discussed at these meals.[4] However, because this application of the statute is newly announced in these findings, it will not be given retroactive application.

(10) Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

The Committee reported unusually large expenditures for two types of purchases, cell phone plans and mileage reimbursement, which were categorized as costs of serving in office.

Cellphone Plan - During 2011 – 2014 the Committee paid $14,070 for cellphone plan charges. The plan provided five lines, one for Rep. Atkins and four lines for his family members. The

[2] See Advisory Opinions 277 and 391 (issue 5).
[3] Complaint Against the People for (Gregory) Davids Committee, August 15, 2006
[4] See Advisory Opinion 354 discussing the payment of food and beverages for legislative staff under other noncampaign disbursement categories.

Committee paid for the entire plan in 2011 and 2012 on the basis that Rep. Atkins had not asked for reimbursement for the cost of large amounts of printing done to benefit the Committee on his personal printer. In 2013 and 2014 Rep. Atkins personally paid $39.96 a month towards the cell phone plan, which was the cost of having four lines added to the basic plan.

The Board concludes that both approaches resulted in an impermissible personal benefit to Rep. Atkins. Not paying any portion of the phone plan in 2011 and 2012 based on expenditures by Rep. Atkins that were not submitted for reimbursement is problematic on several levels. That is particularly the case when the value of the printing was based on rough estimates of the number of copies made on the personal printer which may or may not have been sufficient to cover the cost of the phone plan.

Starting in 2013 Rep. Atkins did pay for the extra lines added for family members. However, paying for only the cost to add additional lines to the plan did not consider the value of the data, text, and phone calls provided to family members as part of the cost of the basic plan. In 2013 and 2014 the cost of additional data use over the basic plan was also paid for by the Committee without considering which phone lines were creating the data overage.

The best practice for committees with respect to cell phone plans and use is to have a separate account for the candidate's phone. However, if a legislator uses committee funds to pay for a family cell phone plan, then the amount the committee pays must reflect only the use attributable to the legislator.

To avoid a conversion of committee funds to personal use a campaign committee may either (1) track the data, text, and phone calls used each month by each phone on the plan to determine the portion of the plan cost that should be allocated to the legislators phone for that month and then add that amount to the line cost for the legislator's phone, or (2) use a pro-rata division of the entire monthly bill (the total cost divided by the number of phones on the plan). The latter approach, although not as precise as the former, is sufficient to ensure that no significant personal benefit is being paid for with campaign funds, and the pro-rata approach has the benefit of being easy to calculate for a treasurer.

Rep. Atkins agreed to use option 2 above to reimburse the Committee 80% of the cellphone plan costs for 2011 through 2014, which amounts to $11,256.28.

Although Committee expenditures in 2015 are not a part of this investigation, the Committee should also examine the payments made for the cellphone plan in 2015 to insure they comply with one of the two calculations provided above. If a payment for the cellphone plan from Rep. Atkins to the Committee is required it should be reported on the Committee's 2016 report.

Mileage to Capitol - During 2011 through 2014 the Committee reimbursed Rep. Atkins $10,616 for mileage categorized as a cost of serving in office. Rep. Atkins provided the Board with a copy of the mileage log used as documentation for reimbursements. A significant portion of the mileage claimed is permitted by statute; typically the travel by Rep. Atkins is to a location to give a presentation or appear on a panel because he is a legislator. Rep. Atkins was also reimbursed by the Committee for the mileage from his home to the Capitol, from his home to his business office if he met there with constituents on a legislative issue, and from his business office to the Capitol.

Board advisory opinions on the costs of serving in office have been consistent in informing committees that this category does not apply broadly to any and all expenses that may relate to

being a legislator[5]. Rather, the Board has recognized that this category is appropriate only for expenditures that would not have been incurred if the individual was not specifically a legislator.

The mileage reimbursements reported by the Committee would extend this category to include the cost of driving to work at the Capitol, or to a private office if legislative work is conducted at the office. The noncampaign disbursement category for costs of serving in office specifically states that the costs are "other than for personal uses." The Board concludes that the cost of getting to work is a personal expense for almost every employed person; not a cost unique to serving in the legislature.

Because the Board has not previously addressed the specific question of costs of commuting to work, Rep. Atkins did not have specific guidance on the subject. Thus, although the Board concludes that costs of commuting to work are not a permitted expense, it will not require the Committee to amend its reports to segregate out such costs nor will it require Rep. Atkins to reimburse the committee for these costs.

(6) Services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;

The noncampaign disbursement category for constituent services is often used for sessional wrap-ups which inform constituents about the issues before the legislature and often highlight legislation introduced or supported by the legislator. The category may also be used for idea solicitations or surveys that are sent to constituents of the legislator. A constituent services piece may not advocate for the re-election of the legislator or solicit campaign contributions.

The constituent services category is unique in that there is a timing component that requires the material to be distributed before the legislative session adjourns sine die in order to fully qualify as a noncampaign disbursement. The cost of a constituent service provided during the 60 days after adjournment sine die[6] is allocated 50% noncampaign disbursement and 50% campaign expenditure. Starting 61 days after adjournment sine die the entire cost of the purchase is a campaign expenditure.

During the investigation the Board reviewed the following noncampaign disbursements for constituent services reported by the Committee.

Cost of Hosting a Website – The Committee's method of reporting the cost of hosting a website for Rep. Atkins varied over the four years of reports examined by the Board. In 2011 and 2012 the cost was reported as a campaign expenditure. In 2013 the cost for the site was reported as a campaign expenditure and a noncampaign disbursement in equal amounts. In 2014 the cost was reported totally as a noncampaign disbursement. An examination of the website showed that the content included information consistent with a constituent service sessional wrap-up or idea survey. However, the website also contained an online method of donating to the campaign committee.

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[5] See also, Matter of the Complaint of Steve Timmer regarding Ernest Leidiger and Steve Nielsen, May 1, 2012, disallowing payment of a speeding ticket as a cost of serving in office.

[6] The Board notes that the allocation requirement applies after adjournment sine die only in an election year in which the candidate's office is on the ballot.

After reviewing the content of the website and the timing requirements for services to a constituent Rep. Atkins has agreed that the Committee will amend the year-end reports of receipts and expenditures for 2013 and 2014 to show the entire cost of hosting the website as a campaign expenditure.

Sessional Wrap-Up - As stated above, the cost of surveys, legislative updates, and similar communications are considered constituent services if circulated prior to adjournment sine die, and partially so for 60 days after. The timing of when material is circulated to constituents is critical, as material that is printed during the legislative session but not distributed until more than sixty days after adjournment sine die is counted as campaign material regardless of the content of the material.

In response to this investigation the Committee reviewed constituent service publications paid for and distributed during the four years under review. The Committee self-identified to the Board a payment of $7,751.50 for the printing of what was intended to be a sessional wrap-up and survey. However, upon examining Committee records it was determined that the material was not distributed until after more than 60 days past adjournment sine die, which resulted in the expenditure for printing being a campaign expenditure.

The Board requested and received examples of printed materials distributed by the Committee. The content of two letters to constituents contained solicitations for contributions to the Committee, and were therefore campaign literature. After reviewing the reporting categories and the purpose of the literature Rep. Atkins has decided to view all of the material produced on his home printer as campaign literature[7]. Rep. Atkins will amend the reports for 2011 – 2014 to add the literature printed on his home printer as an in-kind contribution from him to his committee and to report the in-kind expenditure of the printing done as campaign expenditures.

(7) Payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities

During the years 2011 through 2014 the Committee categorized a total of $6,457.03 in purchases of food and beverages as noncampaign disbursements because the items were provided to volunteers while campaigning. In some cases, however, the food and beverages were provided to volunteers who were distributing literature that had been identified as a constituent service.

Volunteers distributing constituent service publications are by definition not campaigning for the legislator; rather, they are performing constituent services. Consequently, the Committee's use of this category of noncampaign disbursement was questioned by the Board. However, as discussed in the previous section, the Committee is now reporting the material distributed by the volunteers as campaign literature. Based on this reporting change the Board concludes that the Committee's use of this noncampaign disbursement category for literature distributed for Rep. Atkins within his district was consistent with the statutory scope of the noncampaign disbursement.

In 2012 and 2014 the Committee also classified as noncampaign disbursements $2,077 for the cost of providing transportation and food to volunteers who were door knocking and doing literature drops for other legislative candidates in their districts. Rep. Atkins viewed the

[7] The Board recognizes that some printed communications may be properly categorized as either a campaign expenditure or a noncampaign disbursement, at the committee's option. This is true in the case of informational updates and newsletters such as those re-categorized by Rep. Atkins.

canvassing for other candidates as part of his duties as DFL House Caucus Finance Chair to see personally how the election in key districts was going. Rep Atkins also campaigned for the other candidates at the events, and brought volunteers with him to support the effort.

A volunteer's time is not a contribution to any candidate. But the costs of transporting the volunteers to the other legislative districts, and the cost of providing food and beverages to the volunteers while they were campaigning for other candidates, were in-kind contributions to those candidates. As provided in Minnesota Statutes section 10A.27, subdivision 9, a candidate's campaign committee may only make a contribution to another state candidate when the contributing committee terminates within twelve months of the contribution.

Rep. Atkins has agreed to personally reimburse the Committee $2,077 for the transportation and food costs. The reimbursement will, in effect, turn the contribution from the Committee to the other candidates into a personal contribution from Rep. Atkins.

Minnesota Statutes section 10A.27, subdivision 9, also prohibits a candidate's committee from accepting in-kind contributions from another state level committee without receiving a written confirmation from the contributing committee that it intends to terminate within twelve months. There is no civil penalty prescribed for a candidate's committee that accepts a contribution from another candidate's committee that does not terminate. The nature of the transportation and food in-kind contributions provided by the Committee makes it possible that the recipient candidate committees were not aware of the contributions, or did not realize that the food and transportation were from the Committee rather that from Rep. Atkins directly. In view of these facts and of the fact that Rep. Atkins has reimbursed his Committee for these costs, making them his own personal costs, the Board declines to extend the investigation of this issue to include the candidate committees that benefited from the transportation and food provided to volunteers.

Other Issues Identified by the Investigation

The Board's investigation of the noncampaign disbursements reported by the Committee required Rep. Atkins to review many expenditures reported by the Committee. During the course of this review Rep. Atkins self-identified two meals that were paid for by the Committee in error. Additionally, the review of disbursements determined that in 2011 the Committee contributed $158.30 to a charity, which exceeded the $100 limit on charitable contributions provided in Minnesota Statues section 211B.12. To rectify these errors Rep. Atkins will reimburse the Committee the price of the meals and the amount that the contribution to the charity exceeded the limit.

To resolve the issues raised in this investigation, Rep. Atkins decided to personally reimburse the Committee $13,660.88. Rep. Atkins has provided the Board with a copy of a check dated March 29, 2016, written on his personal account that was used to make the reimbursement.

Campaign Expenditure Limit Violation

As detailed above, a number of purchases that the Committee reported as noncampaign disbursements will be re-categorized and reported as campaign expenditures. In addition, the home printing done by Rep. Atkins will be added to the reports as additional campaign expenditures. Rep. Atkins signed the public subsidy agreement for the years 2011 through 2014. The Committee spent close to the expenditure limit in 2011, 2012, and during the 2013 – 2014 election cycle.

After filing amended reports that classify some of the previously reported noncampaign disbursements as campaign expenditures and that include the previously unreported campaign expenditures, the Committee will exceed the campaign expenditure limit for 2011 by $469.24, for 2012 by $296.28, and for the 2013 – 2014 election cycle by $9,767.12. In total the Committee exceeded the applicable contribution limits by $10,532.64. The Committee has not previously exceeded the campaign expenditure limit.

Based on its investigation, the Board makes the following:

Findings of Fact

1. The Joe Atkins for State Representative Committee is the principal campaign committee of Rep. Joe Atkins.

2. During the years 2011 through 2014 the Committee paid $14,070 for a cellphone plan that provided service to Rep. Atkins and other individuals. A pro-rata allocation of the total cellphone plan costs across all lines on the plan limits the amount that may be paid for with Committee funds to $2,814.07.

3. During the years 2011 through 2014 the Committee's reports of receipts and expenditures did not report home printing done by Rep. Atkins on behalf of the Committee as an in-kind contribution or as an in-kind campaign expenditure by the Committee.

4. During the years 2011 through 2014 the Committee's reports of receipts and expenditures included as noncampaign disbursements for costs of serving in office the cost of travel to and from the candidate's places of employment.

5. During the years 2011 through 2014 the Committee's reports of receipts and expenditures included the cost of meals for persons other than the legislator under the noncampaign disbursement category for costs of food and beverages at meetings related to legislative duties.

6. During the years 2013 and 2014 the Committee's reports of receipts and expenditures incorrectly listed the costs of hosting the Committee's website in whole or in part as a noncampaign disbursement.

7. In 2013 the Committee incorrectly reported as a noncampaign disbursement $7,751.50 for printing of material that, because it was distributed more than 60 days after adjournment sine die of the 2014 legislative session, was campaign literature.

8. During the years 2012 and 2014 the Committee incorrectly reported $2,077 in transportation and food and beverages provided to volunteers canvassing for legislative candidates as noncampaign disbursements.

9. During the years 2013 and 2014 the Committee mistakenly reported two personal meals as noncampaign disbursements.

10. During 2011 the Committee contributed $158.30 to a single charity.

11. Rep. Atkins signed a public subsidy agreement for 2011, 2012, and the 2013-2014 election cycle. During 2011, 2012, and the 2013 – 2014 election cycle, the Committee spent a total of $10,532.64 in excess of the campaign expenditure limits applicable to candidates who

sign the public subsidy agreement. This is the Committee's first violation of the campaign expenditure limits.

Based on the Findings of Fact, the Board makes the following:

Conclusions of Law

1. The expenditures by the Joe Atkins for State Representative Committee for cellphone service resulted in an impermissible use of Committee funds under Minnesota Statutes section 10A.01, subdivision 26 (10), and Minnesota Statutes section 211B.12.

2. The Joe Atkins for State Representative Committee submitted reports of receipts and expenditures in the years 2011 through 2014 that did not meet the disclosure requirements of Minnesota Statutes section 10A.20, subdivision 3, because they failed to disclose all in-kind contributions received and all in-kind campaign expenditures made, incorrectly reported some campaign expenditures as noncampaign disbursements, and mistakenly listed two personal expenditures by Rep. Atkins as noncampaign disbursements.

3. The Joe Atkins for State Representative Committee improperly classified costs of travel to the candidate's places of employment as costs of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.

4. The Joe Atkins for State Representative Committee improperly classified the payment of meals for persons other than the candidate as costs of food and beverages at meetings related to legislative duties. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.

5. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 10A.27, subdivision 9, in 2012 and 2014 when it made in-kind contributions to other state candidates at a time when it did not intend to terminate its registration and did not, in fact, terminate its registration within twelve months.

6. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 211B.12 when it contributed over $100 to a single charity in 2011.

7. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 10A.28, subdivision 1, in 2011, 2012, and the 2013 – 2014 election cycle when the Committee's campaign expenditures exceeded the limit for candidates who signed a public subsidy agreement.

Based on the preceding Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. A civil penalty in the amount of $10,532.64 is assessed against the Joe Atkins for State Representative Committee for exceeding the campaign expenditure limit in 2011, 2012, and the 2013 – 2014 election cycle. This amount is one times the amount by which the Committee exceeded the spending limit.

2. The Joe Atkins for State Representative Committee 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. Rep. Atkins must and has personally reimbursed the Committee $13,660.88. This payment reimburses the Committee for the campaign funds that were used for purposes not permitted by statute, the campaign funds that were contributed to charity in excess of the statutory limit, the campaign funds that were used to pay for the two personal meals, and the campaign funds that were used to pay for contributions to other state candidates. Rep. Atkins has made the reimbursement required in this order. The Committee must provide documentation within 30 days of receipt of this order showing the deposit of the funds into the Committee's account.

4. The Joe Atkins for State Representative Committee is directed to submit amended year-end reports of receipts and expenditures for 2011 through 2014 to resolve the reporting errors and omissions identified in these findings. The amended reports must be submitted within 45 days of the date of this order.

5. If the Joe Atkins for State Representative Committee 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.

6. 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 (a).

Dated: May 27, 2016

Christian Sande, Chair
Campaign Finance and Public Disclosure Board

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

Findings, Conclusions, and Order in the Matter of the Joe Hoppe Volunteer Committee

Background

On June 17, 2014, Board staff notified the Joe Hoppe Volunteer Committee (the Committee) of an informal staff review of certain reimbursements made to Rep. Hoppe. On its 2013 year-end report of receipts and expenditures the Committee disclosed a $2,500 reimbursement to Rep. Hoppe for campaign expenditures without providing detail about what was purchased. The Committee also disclosed two reimbursements totaling $8,200 for noncampaign disbursements that were generally identified as payments for the costs of serving in office, but which did not describe the goods or services purchased.

Reimbursements to Rep. Hoppe reported in 2011 and 2012 were also reported without detail about the vendors or about the goods or services purchased. The 2011 and 2012 reports stated "see attached spreadsheets" or "see attached lists". These attachments presumably disclosed the items for which Rep. Hoppe was being reimbursed. However, the Board's records contained no evidence that any supporting spreadsheets had been submitted.

To resolve what appeared to be reporting deficiencies that might be resolved by amendment, the Committee's treasurer of record was instructed to amend the 2013 report to itemize any aggregate expenditures to vendors of more than $200 that were initially paid by Rep. Hoppe and then later reimbursed with Committee funds. The Committee was also directed to submit the spreadsheets and lists referenced in the 2011 and 2012 reports.

After no response was received, a second letter was sent to the Committee's treasurer of record on July 29, 2014, which reiterated the request for additional information. Again, no amended report or requested information was received.

On October 21, 2014, Rep. Hoppe was informed that because no response to the informal review had been provided, and no required amendments had been filed, staff would ask the Board at its upcoming November meeting to begin an audit and investigation of the Committee's financial activity for the reporting years 2011 through 2014. Rep. Hoppe was offered the opportunity to appear at the meeting and explain why an investigation was not necessary. Rep. Hoppe did not appear.

The Board authorized an investigation of the reimbursements made to Rep. Hoppe during the years 2011 through 2014, which totaled $34,532. By year the reimbursements were reported as follows: $6,506 for noncampaign disbursements in 2011; $11,258 for noncampaign disbursements in 2012; $2,500 in campaign expenditures and $8,200 in noncampaign disbursements in 2013; and $6,068 in noncampaign disbursements in 2014.[1] In addition, the investigation was to examine whether the Committee's use of campaign funds complied with Chapters 10A and 211B.

Campaign committees are required to maintain records documenting the collection and use of committee funds for four years from the date a report is filed. The Board limited the

[1] The 2014 year-end report of receipts and expenditures had not been filed when the investigation was authorized by the Board. Reimbursements made in 2014 were included in the investigation based on a $1,500 reimbursement to Rep. Hoppe for noncampaign disbursements disclosed without itemization on the 2014 pre-general-election report.

investigation of the Committee's reimbursements to Rep. Hoppe to the years for which the Committee was required to have records. Rep. Hoppe was notified of the investigation on November 21, 2014, and was again requested to provide the spreadsheets referenced in the Committee's reports.

On January 7, 2015, Rep. Hoppe provided a spreadsheet of all expenditures he made on behalf of the Committee in 2012. Based on this cooperation, and in deference to the time demands of the legislative session on Rep. Hoppe, the investigation was deferred until June 2015.

On June 1, 2015, Rep. Hoppe met with Board staff to discuss the outstanding issues and how to move forward with the matter.

On July 6, 2015, Rep. Hoppe provided spreadsheets of all the expenditures that he had made on behalf of the Committee in 2011, 2013, and 2014. Staff's review of the spreadsheets raised new concerns regarding the accuracy of the campaign finance reports filed on behalf of the Committee during all four years. Although the spreadsheets listed all items purchased, including those below the $200 disclosure threshold, there was no indication of which noncampaign disbursement category justified each expenditure. Committees must provide the appropriate noncampaign disbursement category to explain why the purchase is something other than a campaign expenditure.

In particular the 2013 spreadsheet could not be tied back to the report without the required noncampaign disbursement categories. In that year Rep. Hoppe was reimbursed for both campaign expenditures and noncampaign disbursements . Without a noncampaign disbursement category for an item, Board staff was not able to identify which items in the 2013 spreadsheet were campaign expenditures and which were noncampaign disbursements.

By letter dated September 10, 2015, Rep Hoppe was asked to categorize the noncampaign disbursements, provide receipts or invoices for selected items listed in the spreadsheet, and explain the rationale used by the Committee to justify the reimbursement of some purchases made by Rep. Hoppe.

On September 15, 2015, Rep. Hoppe made himself the Committee's treasurer.

On October 26, 2015, Rep. Hoppe provided copies of receipts or invoices for most of the items requested by staff and spreadsheets with a noncampaign disbursement category designation. Upon review, many of the noncampaign disbursement categories claimed for purchases on the spreadsheets were clearly inconsistent with the definition of those categories provided in statute. Staff met with Rep. Hoppe again on December 2, 2015, to discuss the status of the investigation and explain the problem with the noncampaign disbursement categories reported in the spreadsheets. Staff requested that Rep. Hoppe reevaluate the noncampaign disbursement categories reported for the reimbursements and submit amended spreadsheets by January 7, 2016.

Despite repeated Board requests a response was not provided by Rep. Hoppe in the following months. Board staff met again with Rep. Hoppe on April 8, 2016, to provide assistance on the categorizing of noncampaign disbursements reported in 2011. An updated spreadsheet for 2011 was submitted by Rep. Hoppe on April 25, 2016. Updated spreadsheets for 2012, 2013, and 2014 were submitted on May 12, 2016.

Statutory Authority and Related Administrative Rules

Minnesota Statutes section 211B.12 provides that money collected by campaign committees may be used for specific political purposes, or for purposes consistent with the noncampaign disbursements defined in Chapter 10A. In addition, Minnesota Statutes section 211B.12 limits the use of campaign committee funds with a general prohibition that states, "Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use." Minnesota Statutes section 10A.20, subdivision 3 (h), requires committees to provide the purpose of each expenditure if the amount purchased from a vendor exceeds $200 over a calendar year. The descriptions provide the detail necessary to determine whether a purchase was a proper use of committee funds under Chapters 10A and 211B.

The expenses incurred by a candidate's committee are generally categorized as either campaign expenditures, which are made to influence the nomination or election of the candidate, or as noncampaign disbursements, which are a separate category of spending identified in statute. Noncampaign disbursements do not count against the committee's campaign expenditure limit that applies if the candidate voluntarily signed the public subsidy agreement. There are 22 noncampaign disbursement categories recognized in Minnesota Statutes section 10A.02, subdivision 26. This statute provides in part, "The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision."

The Board is also authorized to recognize additional noncampaign disbursements through administrative rule or advisory opinion. In Minnesota Rules 4503.0900 the Board has recognized six additional noncampaign disbursement categories that are applicable to all candidates.

Noncampaign disbursements must be itemized on a candidate's campaign finance report if the amount purchased from a vendor over a calendar year exceeds $200. Itemized noncampaign disbursements must include sufficient information to both identify the goods or services purchased, and to justify the noncampaign disbursement category claimed for the purchase.[2]

Many of the noncampaign disbursements provided in statute are specific as to what items may be included in the category, and therefore it is a straightforward matter to determine if a purchase qualifies. However, some of the categories are broadly stated, and campaign committees have asked for clarification regarding these categories in advisory opinion requests to the Board.

Advisory opinions are issued as guidance and are a safe harbor only to the requestor of the opinion. While advisory opinions provide understanding on the Board's interpretation of statutory requirements to other committees with similar questions, the opinions are not binding on those committees. If the Board believes that the guidance stated in an advisory opinion should be applicable to more than the requestor the Board must adopt an administrative rule to achieve that end. The process of adopting administrative rules provides an opportunity for the public, the legislature, the Office of Administrative Hearings, and the Governor to evaluate the proposed rules and provide input to improve the content.

This limitation on advisory opinions is specifically noted because, in some cases, the Committee reported purchases for noncampaign disbursements that were not consistent with the guidance provided by the Board in advisory opinions for similar expenditures. While the Board concludes

[2] See Minnesota Statutes section 10A.20, subdivision 3(m), and Minnesota Rules 4503.0900, subpart 3.

that the Committee's use of certain noncampaign disbursement categories is not permitted by statute, it acknowledges that the Committee was not bound by the advisory opinions and that the Board has not adopted administrative rules to make those opinions binding. Therefore, although the Board finds the use of certain noncampaign disbursements to be impermissible under the applicable statutes, it will not impose a civil penalty for those uses nor will it require amendments to the Committee's reports in those cases.

Campaign funds are contributions made to a committee, often by individual citizens, to assist in getting the candidate elected. For that reason, the Board concludes that statutes permitting the use of committee funds for purposes not related to influencing the candidate's election should be applied narrowly. Given the previous lack of clear guidance on the scope of some noncampaign disbursement categories, the Board will develop and distribute bulletins and training materials on noncampaign disbursements. Additional guidance in statute or the adoption of additional administrative rules by the Board may be needed to provide consistent enforcement of some categories.

Noncampaign Disbursements Reported by the Committee

Many noncampaign disbursements reported by the Committee were consistent with the clear language of the statute or administrative rule used to categorize the purchase. Others were consistent with broader interpretations expressed in advisory opinions issued by the Board. These disbursements were excluded from further review early in the investigation.

The Committee's use of other noncampaign disbursement categories was not as clear. As part of the investigation the following noncampaign disbursements categories were reviewed. The wording and identifying number of the noncampaign disbursement provided in Minnesota Statutes section 10A.02, subdivision 26, is provided in bold.

(10) Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

The Committee reported unusually large expenditures for three types of purchases that were categorized as costs of serving in office: cell phone plans, Chaska Rotary Club membership dues and fees, and food purchases for legislative staff.

Cellphone Plan - During 2011 – 2014 the Committee reimbursed Rep. Hoppe $9,147.49 for cellphone plan charges. The plan provided four lines, one for Rep. Hoppe and three lines for family members. The reimbursement did not separate out the portion of the bill related to the phone used by Rep. Hoppe for communication related to legislative service and the cellphone service provided to the other lines on the plan. The Board concludes that the use of Committee funds for cellphone access other than the service provided to Rep. Hoppe results in an impermissible personal benefit.

The best practice for committees with respect to cell phone plans is to have a separate account for the candidate's phone. However, if a legislator uses committee funds to pay for a portion of a family cell phone plan, then the amount the committee pays must reflect only the use attributable to the legislator.

To avoid a conversion of committee funds to personal use a campaign committee may either: (1) track the data, text, and phone calls used each month by each phone on the plan to determine the portion of the plan cost that should be allocated to the legislator's phone for that month and then add that amount to the line cost for the legislator's phone, or (2) use a pro-rata

division of the entire monthly bill (the total cost divided by the number of phones on the plan). The latter approach, although not as precise as the former, is sufficient to ensure that no significant personal benefit is being paid for with campaign funds and has the benefit of being easy to calculate for a treasurer.

Rep. Hoppe has verbally stated that the cellphone plan was an inadvertent error that occurred, in part, because of a change in the cellphone service provider and has agreed to pay back the committee for that portion of the cellphone plan not related to his phone line. Rep. Hoppe has not provided the monthly cellphone bills from 2011 through 2014 needed to track the data, text, and phone calls used by each line. Therefore the Board will use option 2 above to require that Rep. Hoppe reimburse the Committee 75% of the cellphone plan costs paid by the Committee during the years 2011 through 2014. This will require a payment to the Committee of $6,860.62.

Although the Committee's expenditures in 2015 are not a part of this investigation, the Committee should also examine the payments made for the cellphone plan in 2015 to ensure it complies with one of the two calculations provided above. If a payment for the cellphone plan from Rep. Hoppe to the Committee is required, it should be reported on the Committee's 2016 pre-primary-election report of receipts and expenditures.

Rotary Club Membership Dues and Fees - From 2011 through 2014 the Committee reimbursed Rep. Hoppe $6,219 for membership dues and other fees paid to the local Rotary Club. Belonging to a local organization like the Rotary Club can raise the profile of the candidate to voters in the candidate's district and generally serves as an opportunity to promote the campaign. For that reason the Board has not questioned campaign committees that disclosed membership dues to local organizations as a campaign expenditure.

Rep. Hoppe has categorized the Rotary Club payments as a cost of serving in office. The Board concludes that membership in this type of organization is not a cost of serving in office and will direct the Committee to file an amendment that reports the $104 annual cost of membership as a campaign expenditure. The meetings of this organization are conducted with either breakfast or lunch served to all members in attendance. The meals are not an optional cost of membership. The cost of the meals, which is $528 a year, may be reported as a noncampaign disbursement under the category of food or beverage consumed by the candidate while campaigning. The reimbursement of $416 for four years of membership dues and $2,112 for four years of meals served as a part of attending meetings will need to be itemized and reported as described above on amended reports of receipts and expenditures.

As part of the investigation Rep. Hoppe provided copies of invoices issued by the Rotary Club that listed items purchased through the organization in addition to membership dues and meals at meetings. The other items purchased through the organization were not required in order to be a member. The items purchased could provide personal benefit to Rep. Hoppe and therefore cannot be paid for with Committee funds. Therefore, Rep. Hoppe will be required to pay back the Committee $3,691, which is the difference between the total reimbursements made to Rep. Hoppe for payment to the Rotary Club and the amount paid for membership fees and meals served with meetings.

Out of State Travel - Rep. Hoppe used the Committee's funds to attend National Conference of State Legislatures meetings and reported the costs as a cost of serving in office. This is consistent with the Board's longstanding recognition that the cost of attending conferences at

which subjects before the legislature are discussed may be paid for with committee funds and reported as a noncampaign disbursement.[3]

Rep. Hoppe also traveled to Washington DC in 2013 and 2014. During those trips Rep. Hoppe met with a Minnesota Congressional member's staff. Rep. Hoppe could not recall or document a specific issue or legislation that required him to make trips to Washington DC. Trips that are for general fact finding and relation building have not been viewed by the Board as a reasonable cost of office to be paid for with campaign committee funds.[4] However, in both 2013 and 2014 Rep. Hoppe's expenditures for costs he believed related to serving in office were greater than the amount actually reimbursed by the Committee. Because the value of the items that were not reimbursed exceeds the cost of the trips to Washington DC, the Board will not require Rep. Hoppe to repay the Committee for the trips.

Meals for Legislative Staff - From 2011 through 2014 the Committee reimbursed Rep. Hoppe $3,104.18 for meals provided to legislative staff. Rep. Hoppe explained that the meals were bought at occasions where he and his staff were discussing and working on issues related to legislation or to the operations of the legislative office.

The Board considered a similar scenario in Advisory Opinion 354, in which campaign committee funds were used to purchase meals for legislative office staff at an event at which training and discussion of office operations occurred.[5] The opinion concluded that the meals were not an expected or reasonable cost of serving in office and that committee funds should not be used for that purpose. The conclusion of this opinion was not adopted as an administrative rule and, therefore, was not binding on any candidate's committee. The Board formally concludes here that the purchase of meals for legislative staff is outside of the costs of serving in office that may be paid for with campaign funds. Because this application of the statute, although stated in Advisory Opinion 354, has not been applied in an adjudicative matter, it will not be given retroactive application to the expenditures made by Rep. Hoppe.

(7) Payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities

From 2011 through 2014 the Committee reimbursed Rep. Hoppe $2,048.71 for the purchases of food and beverages for volunteers or the candidate while engaged in campaign activities. This noncampaign disbursement category was used in a nonelection year and, in some cases, at restaurants outside of the Rep. Hoppe's district. Consequently, the Board asked the Committee to further explain its use of this category of noncampaign disbursement.

Rep. Hoppe explained that during non-election years the meals were provided at meetings with individuals who were writing campaign material for use during the election and with individuals who volunteered for the campaign in prior election years to plan out activities for the next election. The Board notes that there are no time constraints on this noncampaign disbursement category and that planning for an election may reasonably be considered to be a campaign activity.

However, the Board cautions that this category does not extend to the cost of meals or beverages provided as a thank you to volunteers and supporters.[6] Before reporting

[3] See Advisory Opinions 277 and 391 (issue 5).
[4] See Advisory Opinion 390
[5] See Advisory Opinion 354
[6] Minnesota Statutes section 10A.01, subdivision 26 (13) provides that a candidate's committee may pay for the cost of one postelection party during the election year as a noncampaign disbursement.

expenditures with this noncampaign disbursement category, a committee treasurer should ensure that the purpose of the meeting qualifies as a campaign activity that supports the election of the candidate.

Reporting Requirements

The campaign finance reports filed by the Committee during the years 2011 through 2014 did not provide the required itemization and description of the items purchased by Rep. Hoppe and reimbursed by the Committee. Discussions with Rep. Hoppe as to why the reports were incomplete lead the Board to conclude that a knowing violation of the reporting requirements of Chapter 10A did not occur and that the omissions made in reporting the noncampaign disbursements were inadvertent.

Nonetheless, filing accurate and complete campaign reports to inform the public of the Committee's financial activity is a basic requirement of Chapter 10A. The Committee's reports for 2011 through 2014 have, to this point, failed to meet that requirement. The prolonged time between when the Board first asked for required amendments and the issuing of these findings leads the Board to conclude that Rep. Hoppe may not be in a position to file accurate and timely disclosure reports. In consultation with Board staff, Rep. Hoppe agreed that as a part of the resolution of this matter, the Board may issue an order requiring him to appoint a treasurer other than himself to be responsible for the recordkeeping and reporting requirements of Chapter 10A.

Under Minnesota Statutes section 10A.025, subdivision 4, Rep. Hoppe and the Committee have 10 days from the date of this order to submit amended reports for the years 2011 through 2014 that provide the required itemization and description of the reimbursements made to Rep. Hoppe. Failure to submit the amended reports by this deadline will result in the application of the late fees and civil penalties provided in section 10A.025, subdivision 4.

Other Issues Identified by the Investigation

The Board reviewed all reimbursements made to Rep. Hoppe by the Committee. Although not every reimbursement that was included on the spreadsheets is specifically discussed in this document, the order issued herein resolves all issues related to reimbursements made by the Committee to Rep. Hoppe through 2014.

Based on its investigation, the Board makes the following:

Findings of Fact

1. The Joe Hoppe Volunteer Committee is the principal campaign committee of Rep. Joe Hoppe.

2. Between 2011 and 2014 the Committee reimbursed Rep. Hoppe for a cellphone plan that provided $6,860.62 in services to individuals other than Rep. Hoppe.

3. Between 2011 and 2014 the Committee's reimbursed Rep. Hoppe $3,691.00 for the purchase of items through the local Rotary Club that were not membership dues or the required meals at Club meetings.

4. The Committee's year-end reports of receipts and expenditures for the years 2011 through 2014 did not accurately disclose and itemize its expenditures and the payments to Rep. Hoppe.

Based on the Findings of Fact, the Board makes the following:

Conclusions of Law

1. The $10,551.62 in Committee reimbursements made to Rep. Hoppe between 2011 and 2014 for cellphone service for individuals other than Rep. Hoppe and for items purchased through the Rotary Club other than membership dues and the required meals at Club meetings resulted in an impermissible use of Committee funds under Minnesota Statutes section 10A.01, subdivision 26 (10), and Minnesota Statutes section 211B.12.

2. The Committee's reports of receipts and expenditures from 2011 through 2014 do not meet the disclosure requirements of Minnesota Statutes section 10A.20, subdivision 3, because the reports failed to itemize and provide required information on purchases made by Rep, Hoppe that were reimbursed by the Committee.

3. Rep. Hoppe improperly classified the payments for meals and beverages consumed by legislative staff as a cost of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.

4. Rep. Hoppe improperly classified costs for travel and lodging to Washington DC as a cost of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.

Based on the preceding Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. Rep. Hoppe must personally reimburse the Committee $10,551.62. This payment will reimburse the Committee for the campaign funds that were used for purposes not permitted by statute from 2011 through 2014. Rep. Hoppe must provide documentation within 30 days of the date of this order showing the deposit of the reimbursement into the Committee's account. In the alternative, Rep. Hoppe may, within 30 days of the date of this order, enter into a payment agreement with the Executive Director calling for payments to the Committee over a period not to exceed 24 months. Such a plan must include provisions for verification of the monthly payments and must include a provision that if a payment is late, the entire balance is immediately due.

2. The Joe Hoppe Volunteer Committee is directed to submit amended year-end reports of receipts and expenditures for 2011 through 2014 to resolve the reporting errors and omissions identified in these findings. The amended reports must be submitted within 10 days of the date of this order.

3. Rep. Hoppe must appoint an individual other than himself to serve as treasurer of the Committee. An amended committee registration naming the new treasurer must be submitted within 30 days of the date of this order.

4. If the Joe Hoppe Volunteer Committee 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.

5. 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 (a).

Dated: May 27, 2016

Christian Sande, Chair
Campaign Finance and Public Disclosure Board