

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

.....
**November 10, 2016
Nokomis Room
Centennial Office Building**

.....

MINUTES

The meeting was called to order by Chair Rosen.

Members present: Flynn (arrived after consideration of the minutes), Greenman, Leppik, Moilanen, Oliver, Rosen

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

MINUTES (October 5, 2016)

After discussion, the following motion was made:

Member Greenman's motion: To approve the October 5, 2016, minutes as drafted.

Vote on motion: Unanimously passed (Flynn absent, Moilanen abstained).

CHAIR'S REPORT

Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Monday, December 5, 2016.

EXECUTIVE DIRECTOR TOPICS

Office operations

Mr. Sigurdson told members that the pre-general-election reports were due on October 31. Mr. Sigurdson said that the Board's website had over 11,500 unique hits during the four days after this due date. Mr. Sigurdson stated that the reports showed that approximately \$8 million had been contributed to candidates while approximately \$11.5 million had been spent on independent expenditures. Mr. Sigurdson also said that the beta version of the new website had been released for testing and that full release of the new website was tentatively scheduled for early January.

POTENTIAL ADMINISTRATIVE RULE TOPICS

Mr. Sigurdson and Ms. Pope presented members with a memorandum on this matter and a list of proposed rulemaking topics that are attached to and made a part of these minutes. Mr. Sigurdson said

that the proposed topics were divided into three categories: controversial; potentially controversial; and noncontroversial. Mr. Sigurdson said that the list of proposed topics was not binding and that changes could be made in the future. Members did not remove any topics from the list. Ms. Pope answered questions from members about the rulemaking process.

George Beck addressed the Board and asked that the Board consider rules adopted in other states regarding independent expenditures.

After discussion, the following motion was made:

Member Leppik's motion:

To adopt the following resolution:

RESOLVED, that Jeff Sigurdson, the executive director of the Campaign Finance and Public Disclosure Board, is authorized and directed to sign and to give notice of a Request for Comments on rules related to campaign finance regulation and reporting, independent expenditures, economic interest disclosure, lobbying, gift ban provisions, and audits and investigations, Minnesota Rules chapters 4501 through 4525. The Request must note that two rulemaking proceedings are being considered: one for noncontroversial provisions and one for all other amendments. The executive director must give notice of the Request to all persons who have registered their names with the Board for that purpose. The executive director must also publish notice of the Request in the State Register. Furthermore, the executive director is authorized and directed to do anything else needed to complete the Request and notice of the Request, including giving notice to the governor's office.

Vote on motion:

Unanimously passed.

ENFORCEMENT REPORT

A. Discussion Items

1. Request to adjust 2014 year-end cash balance to zero and terminate committee as of 12/31/2014 – Mike Bidwell Volunteer Committee.

Mr. Fisher told members that this committee registered with the Board on July 23, 2008. The candidate last ran for office in 2008, and the committee had filed no change reports or reports disclosing only the payment of late filing fees since that time. Mr. Fisher said that the committee last reported a cash balance of \$702.59 as of 12/31/2014. The candidate stated that the bank balance actually was zero and that no records now existed to explain the discrepancy given the passage of time. Mr. Fisher said that terminating the committee as of 12/31/2014 would also effectively waive the \$1,000 late filing fee and \$1,000 civil penalty that had accrued due to the committee failing to file its 2015 year-end report.

After discussion, no motion was made on the waiver request. Members asked staff to gather more information from the candidate about the committee's activities since 2008 and to bring that information to the November meeting.

2. Request for reconsideration of waiver request – Small Business MN PAC.

Mr. Fisher told members that this committee accrued a \$200 late filing fee for its pre-primary-election report due 7/25/2016. The committee last reported a cash balance of \$435.85 as of 9/20/2016. Mr. Fisher said that at the October 5, 2016, meeting, no motion was made to waive or reduce the late filing fee. The initial waiver request was included with the Board materials. Mr. Fisher said that the request for reconsideration included more information on the treasurer's issues at the time of filing the report.

After discussion, the following motion was made:

Member Leppik's motion: To reconsider and grant the Small Business MN PAC's waiver request.

Vote on motion: Unanimously passed.

3. Request to settle outstanding judgments – Ray Egan and (Ray) Egan for Senate.

Mr. Fisher told members that almost ten years ago, the Board obtained two judgments against Mr. Egan and his committee. On December 1, 2006, a judgment of \$1,163.16 was entered, and on November 15, 2007, a judgment of \$1,157.32 was entered. Mr. Fisher said that judgments are enforceable for ten years after their entry. The initial judgment therefore would become unenforceable on 12/1/2016. Mr. Fisher stated that an attorney representing Mr. Egan's estate had reached out to the Board to attempt to resolve the matters. An offer of \$1,163.16 had been made to resolve both outstanding judgments.

After discussion, the following motion was made:

Member Oliver's motion: To accept the offer of \$1,163.16 to settle both the December 1, 2006, and the November 15, 2007, judgements.

Vote on motion: Unanimously passed.

4. Staff request for referral to Attorney General's Office – Ellingboe (Brenden) for House and Brenden Ellingboe.

Mr. Fisher told members that this committee registered with the Board on March 21, 2014. The committee's 2014 year-end report disclosed a cash balance of \$1,535.52 as of 12/31/2014. Mr. Fisher said that despite numerous letters and staff outreach attempts, the committee had failed to file its 2015 year-end report. The failure to file this report had resulted in the committee incurring the maximum \$1,000 late filing fee and \$1,000 civil penalty. Mr. Fisher stated that staff was asking the Board to authorize the executive director to refer this matter to the attorney general's office to seek an order compelling the filing of the 2015 year-end report and to obtain a judgment against the committee and the candidate for the \$2,000 in accrued late filing fees and civil penalties.

After discussion, the following motion was made:

Member Greenman's motion: To refer this matter to the attorney general's office.

Vote on motion: Unanimously passed.

B. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Minn African American Political Committee	\$25 LFF; \$50 LFF	6/14/2016 2nd report; 7/25/2016 Pre-primary	Previous treasurer experienced health issues around filing periods. New treasurer registered with the Board on 8/15/2016.	Member Leppik	To waive the late filing fee.	Passed unanimously.
Mohamoud Hassan Volunteer Campaign Committee	\$1,000 LFF; \$200 CP	7/25/2016 Pre-primary	Candidate was new to process and paying the assessed fees would be financially burdensome. Board staff spoke with Mr. Hassan on the day the report was due to remind him of filing. He said he would call staff the following Monday (8/1) for assistance. His report was filed on 9/19. The committee has now terminated.	Member Flynn	To reduce the late filing fee to \$200 and reduce the civil penalty to \$100.	Passed unanimously.
Trial-PAC	\$1,000 LFF	8/9/2016 24 Hour	Committee did not understand that 24 hour notice threshold applies to total contributions from a source and not to each contribution, individually.	No motion		
Minn State Council of UNITE HERE Unions	\$1,000 LFF	8/5/2016 24 Hour	Fund did not believe that a transfer of funds from the Council's general checking account constituted a contribution.	No motion		
Minn Electrical Industry PAC	\$550 LFF	7/25/2016 Pre-primary	Committee believed that no report was required as there was no activity and no change since the previous report. Individual has been registered as treasurer since the committee was formed in 2006 and has filed numerous no change reports. Committee was first notified by Board staff of outstanding report on 8/9 and filed the same day.	No motion		
St Louis County DFL	\$700 LFF	7/25/2016 Pre-primary	Treasurer states that he attempted to file the report on 7/16 and it apparently did not go through. Treasurer states he did not receive any confirmation that report had been uploaded. Board logs contain no record of activity for the party unit prior to filing the report on 8/14. Board staff left a voicemail with treasurer regarding outstanding report on 7/29.	No motion		

Informational Items

A. Payment of a late filing fee for 2014 pre-general report of receipts and expenditures:

Watsonwan County RPM, \$50

B. Payment of a late filing fee for 2015 report of receipts and expenditures:

7th Senate District DFL, \$425

C. Payment of a late filing fee for 2016 April 14 report of receipts and expenditures:

Compete Minnesota!, \$25
UAW MN State CAP, \$1,000

D. Payment of a late filing fee for 2016 June 14 report of receipts and expenditures:

Compete Minnesota!, \$200
UAW MN State CAP, \$625
Volunteer Fire Fighters Political Committee, \$50
White Earth PAC, \$50

E. Payment of a late filing fee for 2016 July 25 report of receipts and expenditures:

Brian Abrahamson for Senate, \$25
Tony Cornish for State Representative, \$150
Neighbors for Carlos Mariani, \$100
Friends of Tracy Nelson for House, \$450
Phil Sterner for Senate, \$50
5th Congressional District GPM, \$300
30th Senate District DFL, \$50
38th Senate District DFL, \$200
46th Senate District RPM, \$200
48th Senate District RPM, \$100
Dodge County RPM, \$200
Swift County DFL, \$50
Traverse County RPM, \$100
Austin Chamber Business Leadership Committee, \$650
Coalition of Minn Businesses PAC, \$200
Compete Minnesota!, \$200
DFL Hunting and Fishing Caucus, \$20 (partial payment)
Leech Lake PAC, \$500
Minn Farm Bureau, \$550
Minn Power PAC, \$200

F. Payment of a late filing fee for 2016 September 27 report of receipts and expenditures:

Minn Gun Owners Political Committee, \$50

G. Payment of a late filing fee for a 24-hour notice of large contribution:

United Food and Commercial Workers Council 6, \$400

H. Payment of a late filing fee for June 15, 2016, lobbyist disbursement report:

Kara Genia, Karen Organization of MN, \$25
Blake Johnson, Prairie Island Dakota Indian Community, \$25

I. Payment of a late filing fee for candidate economic interest statement:

Jerry Loud, \$35
Ilhan Omar, \$30

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

Tim Manthey, \$200 payment

K. Civil penalty for 2016 disclaimer violation:

Committee to Elect Mike Moore, \$350

PRIMA FACIE DETERMINATIONS FINDING NO VIOLATION

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that since the last meeting, Chair Rosen had dismissed three complaints on the grounds that they did not state prima facie violations.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn told members that he had nothing to add to the report that is attached to and made a part of these minutes.

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 complaint of James Flaherty regarding the David Bly Committee 20B

Findings, conclusions, and order in the matter of the complaint of the Minnesota Jobs Coalition regarding Robin Brown and Robin Brown for Minnesota

Order in the matter of the staff review of R. Reid LeBeau, Lobbyist

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding rulemaking and list of potential rulemaking topics

Memorandum regarding prima facie determinations finding no violation

Legal report

Findings, conclusions, and order in the matter of the complaint of James Flaherty regarding the David Bly Committee 20B

Findings, conclusions, and order in the matter of the complaint of the Minnesota Jobs Coalition regarding Robin Brown and Robin Brown for Minnesota

Order in the matter of the staff review of R. Reid LeBeau, Lobbyist

Campaign Finance *and* Public Disclosure Board



190 Centennial Building . 658 Cedar Street . St. Paul, MN 55155-1603

DATE: November 3, 2016

TO: Board Members

FROM: Jeff Sigurdson
Executive Director

TELEPHONE: 651-539-1189

Jodi Pope
Management Analyst

651-539-1183

SUBJECT: Review of administrative rule topics

At the October meeting, members asked staff to separate the potential rulemaking topics presented into categories according to the level of potential controversy. The attached document divides the potential topics into three categories: controversial; potentially controversial; and noncontroversial. The controversial and potentially controversial sections provide examples of why an administrative rule on a subject may be needed. Some examples are based on Board investigations or advisory opinions, and others are more hypothetical. The noncontroversial rules are rules that need to be updated because they contain obsolete statutory references or requirements, or the entire rule is obsolete or duplicative and should be repealed. Because the noncontroversial rules are existing rules, each specific subpart is listed.

Because of time constraints it may not be possible for the Board to reach a conclusion on all of the proposed rulemaking subjects in November. Concluding the determination on the subjects to include in the Request for Comments at the December meeting should still allow for the final adoption of the administrative rules before the start of the 2018 election year.

Staff is recommending a dual track approach that will separate the controversial and potentially controversial rules into one rulemaking proceeding and the noncontroversial rules into a separate proceeding. Although this approach creates some duplication in staff efforts, it will ensure that the noncontroversial changes occur and focus efforts on reaching a consensus on the controversial subjects.

If the Board decides to proceed with rulemaking at this time, it should adopt the resolution attached to this memo. The resolution authorizes the executive director to give notice of a Request for Comments. The Request will state that two rulemakings are being considered: one for noncontroversial provisions and one for all other amendments.

The rulemaking progress chart also is attached for reference.

Attachments

List of proposed rulemaking topics
Rulemaking progress chart
Resolution authorizing request for comments

Controversial changes

Clarifying conduct, actions, or relationships that prevent an expenditure from being independent and related topics

George Beck petitioned the Board to adopt rules clarifying what conduct, actions, and relationships would prevent an expenditure from being independent. Other potential topics for rulemaking in the independent expenditure area include republication of communications, fundraising, common consultants, former staff, and agents of the candidate. These topics all would be controversial.

Here are examples of specific issues that have arisen in this area:

- Can a candidate and a committee making independent expenditures use the same vendor to prepare their communications? See Advisory Opinion 400 (discussing circumstances under which consultants may provide services to both candidates and IE committees).
- When a candidate fundraises for a committee, can any expenditures made by the committee on that candidate's behalf ever be independent? See Advisory Opinion 412 (determining that candidate committee may not contribute to IE committee or fund when candidate has signed public subsidy agreement); Advisory Opinion 437 (discussing consequences when candidate fundraises for IE committee).
- Under what circumstances does posting pictures or videos on a candidate's public website constitute cooperation or implied consent to expenditures that later use those pictures or videos? See Complaint of the Republican Party of Minnesota Regarding the Minnesota DFL Party and the Mark Dayton for a Better Minnesota Committee (finding no violation when DFL used short part of campaign video published by Dayton committee on YouTube in independent expenditure, but warning that different fact situation involving more of video or entire video may have resulted in different finding).
- Under what circumstances does a candidate's cooperation with the production of photographs or other media defeat the independence of expenditures that include the photographs or other media? See Findings in the Matter of the Investigation of Expenditures Made by the DFL Senate Caucus (finding that communications and interactions between senate caucus and candidates and candidate's assistance in arranging and completing photo shoots constituted cooperation that defeated independence of any material using photographs).
- What relationships make a person an agent of a candidate? See Advisory Opinions 296 and 338 (discussing agent relationships); Complaint Regarding the Tim Pawlenty for Governor Committee and the Republican Party of Minnesota (finding Pawlenty committee responsible for actions of staff that were not authorized by candidate).
- Are there actions that do not prevent expenditures from being independent? See Advisory Opinion 410 (discussing 19 different questions regarding communications that could affect the independence of subsequent expenditures).

Noncampaign disbursements

There probably are some provisions regarding this topic to which no one would object. For example, the Board has recognized two noncampaign disbursement categories in advisory opinions that could be enacted into rule. See Advisory Opinion 415 (contributions to recount fund); Advisory Opinion 424 (cost of retirement reception for retiring legislator). Others,

however, would be controversial. To ensure that any regulations adopted are comprehensive, all provisions related to noncampaign disbursements should be included in the controversial list.

Candidates frequently seek guidance from staff about whether an expense should be classified as a noncampaign disbursement or a campaign expenditure. An expense that does not fit into these two categories, or that is not a charitable contribution of \$100 or less, is an improper use of committee funds. Many of the questions concern the noncampaign disbursement categories for the expenses of serving in office, food and beverage expenses, and technology expenses. The Hoppe and Atkins committee findings also demonstrate the need to provide standards for the use of committee funds for noncampaign disbursements.

The following is a list of areas where additional rule language would help committees use their funds for permitted uses and properly report those expenditures.

- Provide that a cell phone plan paid for as a noncampaign disbursement or a campaign expenditure must be a single user plan and may not be a part of a family plan;
- Clarify that membership fees and dues for local organizations may be campaign expenditures but not costs of serving in office;
- Clarify when mileage reimbursements qualify as campaign expenditures, noncampaign disbursements, or personal expenses;
- Clarify when a committee may pay for the cost of meals as a campaign expenditure or a noncampaign disbursement; and
- Provide that the purchase of computers, printers, and similar items are always campaign expenditures. See Advisory Opinions 211 and 228 (stating that computer purchases are always campaign expenditures).

Potentially controversial changes

Clarify disclaimer requirements and exemptions for independent expenditure and attribution disclaimers

Chapters 10A and 211B regulate disclaimers on campaign material and independent expenditures. These statutes contain terms and provisions which would benefit from clarification in administrative rule.

Here are examples of issues that have arisen regarding this topic that could be resolved through administrative rulemaking.

- What is the minimum type size necessary for an independent expenditure disclaimer to be “conspicuous” as required by Minnesota Statutes section 10A.17, subdivision 4, and for a campaign material disclaimer to be “prominent” as required by Minnesota Statutes section 211B.04? Do conspicuous and prominent mean the same thing?
- Because an independent expenditure communication must include both the independent expenditure disclaimer and the campaign material disclaimer, is there language that can be used that satisfies the requirements of both statutes?
- What should the form of the disclaimer be when more than one entity is participating in preparing, disseminating, and/or paying for a communication?
- Clarify the requirement, if any, for the use of a disclaimer on material that may be reported as a noncampaign disbursement.

Revise investigation rules to allow staff reviews to be resolved immediately through issuance of findings, conclusions, and order

A staff review is an investigation where staff works informally with a respondent to determine whether a violation has occurred and, if so, how best to resolve that violation. The rules currently specify what the Board must do when a staff review is resolved by a conciliation agreement or elevated to a full investigation.

In practice, however, there have been cases where the proper resolution for a staff review was the immediate issuance of findings, conclusions, and an order ending the matter. For example, in some disclaimer matters, the respondent can cure a violation by quickly adding a disclaimer to the disputed material. In these cases, there is no need to elevate the matter to a full investigation. Instead, the Board should have the flexibility to conclude some staff reviews by issuing findings, conclusions, and an order. A modification to the rules in this area should lead to a shorter period of time between the start of the staff review and the conclusion of the investigation.

Clarify how to report reimbursements and the purpose of expenditures

The current rules specifying how to report reimbursements to candidates and others and what level of detail is necessary to explain an expenditure's purpose should be clarified so that these items are reported uniformly by all committees.

For example, many committees currently report large lump sum reimbursements to candidates using general terms such as "expenses of serving in office" or "campaign expenses." These committees also report the date that the reimbursement was made to the candidate instead of the date of each transaction that should be itemized. Lumping multiple purchases together under a broad description and a single date does not adequately disclose to the public what the committee is spending its campaign funds on or when those expenses actually occurred. Similarly, some committees use vague terms such as "campaign expense" or "printing" to describe the purpose of their expenditures. Again, these vague terms do not adequately disclose to the public how the committee is using its funds.

Without an accurate description of the purpose of a reimbursement or an expenditure, the Board and the public cannot be sure that a committee's funds were spent for a use permitted under Minnesota Statutes section 211B.12.

Clarify when contributions made electronically are received

The rules governing receipt of contributions should be updated to cover receipt of electronic contributions.

The current rules provide that a contribution is considered to be a contribution when it is received. The rules go on to provide that a monetary contribution is received when the committee takes physical possession of the instrument conveying the contribution.

These provisions were adopted before the advent of electronic contributions and they do not reflect the manner in which electronic contributions are processed. Typically, PayPal and other electronic contribution processors hold a contribution for a length of time before transferring the funds to the candidate. The candidate then must electronically move the funds from the processor to the candidate's account. Questions have arisen regarding when the candidate

receives these electronic contributions, and if received near a filing deadline, on which report to disclose the contributions.

In addition, the Board has issued advisory opinions answering questions about whether electronic contribution processors are bundling or making contributions themselves to the candidates when they forward the contributed funds and whether these processors therefore must register as political committees. See Advisory Opinions 319, 369, and 434 (holding that electronic contribution processors are not bundling or making contributions themselves when they forward contributed funds to candidates as part of their businesses). Similar questions arose when committees began using credit cards for expenditures and rules were enacted specifying that activities conducted in a credit card company's ordinary course of business did not require the company to register or report. Similar language could be adopted for electronic contribution processors.

Replace redundant language governing public subsidy payments in special elections with language governing special elections called under Minnesota Statutes section 204B.13

The rules currently contain language specifying when an affidavit of contributions in a special election must be filed. This language is redundant and should be repealed because this deadline has been codified into statute.

New language should be added to this part to establish the public subsidy filing deadlines in special elections called under Minnesota Statutes section 204B.13. Section 204B.13 is a new statute that governs vacancies in nomination that occur in partisan offices after the official filing period has closed. This statute was recently invoked to call a special election in house district 32B after the Minnesota Supreme Court found a candidate was ineligible to run for that seat and removed him from the ballot.

In a typical special election, the deadlines for actions necessary to qualify for public subsidy payments are calculated based on the close of the filing period for the special election. Special elections called under Minnesota Statutes section 204B.13, however, do not have filing periods. To calculate the public subsidy deadlines for the special election in house district 32B, Board staff first determined that the deadline for filing the nomination certificate was the date most analogous to the close of the filing period. Staff then calculated the required public subsidy deadlines based on the deadline for filing the nomination certificate.

To ensure that everyone knows the deadlines for actions needed to qualify for public subsidy in a special election called under Minnesota Statutes section 204B.13, the current rules should be amended to specify that the deadline for nomination certificates is the date on which filing deadlines for the public subsidy agreement, affidavit of contributions, and the economic interest statement for candidates in the special election must be calculated.

Revisit the definition of securities for economic interest statements to ensure that it is not overbroad

The definition of securities for economic interest statements should be revisited to ensure that it is not overbroad and that only those holdings where potential conflicts of interest actually could exist are disclosed.

For example, given the size of most mutual funds, it is possible that disclosing ownership interests in those funds is not very helpful to the public, particularly when the funds are part of a 401k account. There also is confusion about which “holdings in a pension or retirement plan” do not have to be disclosed and whether new investment options such as 529 college savings plans should be disclosed.

Non-controversial changes

4501.0500, subpart 2, item A - Repeal language stating that faxes or electronic files received after 4:30 are considered received the next business day. This requirement is more stringent than statute and does not comply with current practice. (In obsolete rule report – ORR)

4501.0500, subpart 2, item B - Remove sentence stating that filing electronically is optional. The statute now requires all campaign finance reports to be filed electronically unless the filer has a waiver. Other language in Chapter 10A specifies that all other reports may be filed electronically. Consequently, the rule language either contradicts the statute or is redundant.

4503.0200, subpart 6 – Repeal language that no longer applies to political funds and that repeats the statutory requirement for political committees. (ORR)

4503.0300, subpart 4 - Repeal language requiring payment plans for terminating committees with debts because statutory requirement to retire debt before terminating was repealed in 2014.

4503.0400, subpart 1 – Repeal subpart because it restates statutory language requiring in-kind contributions over the itemization threshold to be disclosed, it refers to the old \$100 itemization threshold, and it includes a statutory citation that no longer applies to disclosure of in-kind contributions.

4503.0500, subpart 5 - Change threshold for disclosure from \$100 to \$200. (ORR)

4503.0500, subpart 8 - Remove sentence that requires automobile use to be reimbursed or counted as an in-kind contribution to conform to statutory change. (ORR)

4503.0700, subparts 2 and 3 - Change language to conform to new election segment/nonelection segment terminology. (ORR)

4503.1300, subpart 5 - Change time period for returning contributions to source to 90 days to comply with change to statutory time period.

4503.1400, subpart 9 - Change language to conform to new election segment/nonelection segment terminology. (ORR)

4503.1400, subpart 1 – Repeal language referring to the general account public subsidy agreement and its requirements because this type of agreement and its requirements have been abolished.

4503.1450, subpart 3 - Repeal language regarding estimate of general account public subsidy payment that is obsolete due to statutory changes in this area. (ORR)

4503.1600 – Repeal language to conform to new statutory investigation requirements.

4503.1700 - Repeal language regarding filing of 48-hour notice that is obsolete due to statutory changes. (ORR)

4503.1800, subparts 1 and 2 - Change \$100 to \$200 to conform to new itemization threshold. (ORR)

4505.0100, subpart 3 - Change “supplementary” to “annual” to reflect change to economic interest statement terminology. (ORR)

4505.0900, subparts 2 through 6 - These changes are necessary to conform the rule to new statutes requiring all public officials to file annual statements by the last Monday in January and to ensure that officials are not required to file unnecessary statements. (ORR)

4505.0900, subpart 7 - Change reporting threshold to “more than” to conform to statutory requirement.

4511.0500, subpart 2, item E - Change late fee and notice provisions to conform to new statutory requirements that impose late fee on day after report was due without notice.

4512.0100, subpart 2 – Repeal definition of “field of specialty” because this term is no longer used in gift ban statute. (ORR)

4512.0100, subpart 5 - Repeal “or similar memento” because this phrase is no longer used in the reference to plaques in the gift ban statute. (ORR)

4525.0210, subpart 1 - Repeal language referring to right to respond to complaint at prima facie stage to conform with statutory repeal of this provision.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: November 3, 2016

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Prima facie determinations finding no violation

Complaints filed with the Board are subject to a prima facie determination made by the Board chair in consultation with staff. If the Board chair determines that the complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If, however, the chair determines that the complaint does not state a prima facie violation, the chair must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following three complaints were dismissed by the chair and the prima facie determinations are provided here as an informational item to the other Board members. No further action of the Board is required.

Complaint regarding citizenfororono.com:

On October 5, 2016, the Board received a complaint submitted by Denny Walsh regarding citizenfororono.com and its responsible entity. The complaint alleged that: (1) Various pieces of campaign material do not identify who is responsible for the material by including the required disclaimer, in violation of Minnesota Statutes section 211B.04; (2) no entity relating to "citizenfororono" has registered with the Board, in violation of Minnesota Statutes section 10A.14; and (3) a mailing sent out by the entity contains certain false allegations, in violation of Minnesota Statutes section 211B.06. Because the candidate in question in the subject literature was a local-level candidate, and because the Board does not have the authority to investigate complaints involving local races, the Board chair made a determination on October 7, 2016, that the complaint did not state a prima facie violation.

Attachments: Complaint, Prima Facie Determination

Complaint regarding Kevin Dahle for Senate and the David Bly Committee 20B:

On October 11, 2016, the Board received a complaint submitted by Douglas Jones regarding Kevin Dahle for Senate and the David Bly Committee 20B. The complaint alleged that the Dahle and Bly Committees occupied space rented by a federal campaign and failed to report a corresponding expenditure or contribution relating to that space on campaign finance reports filed with the Board. Failure to report in-kind contributions or expenditures would be a violation of Minnesota Statutes, section 10A.20. The Board chair made a determination on October 14, 2016, that the complaint did not state a prima facie violation.

Attachments: Complaint, Prima Facie Determination

Complaint regarding the Republican Party of Minnesota and the House Republican Campaign Committee:

On October 13, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Ken Martin, chair of the Minnesota DFL Party, regarding the Republican Party of Minnesota (RPM) and the House Republican Campaign Committee (HRCC). The complaint alleged that disclaimers printed on six independent expenditure pieces stating that the communications were prepared and paid for by the RPM and the HRCC were false and violated Minnesota Statutes section 211B.04. The complaint alternatively alleged that, if the disclaimers were correct, then the RPM violated the reporting requirements in Minnesota Statutes section 10A.20 by not disclosing those expenditures on its September report. The Board chair made a determination on October 27, 2016, that the complaint did not state a prima facie violation

Attachments: Complaint, Prima Facie Determination

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
November, 2016**

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Jeffrey Hoffman	Yellow Medicine River Water District	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				
Larry Stelmach	West Mississippi Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				
	West Mississippi Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
David Berglund	Cook Soil and Water Conservation District	Unfiled Economic Interest Statement due January 25, 2016 Untimely Filing of 2015 Economic Interest Statement Untimely Filing 2011 Economic Interest Statement	\$100 LF \$1,000 CP \$80 LF \$100 LF \$100 CP	7/7/16				
Jeffrey Johnson	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				

CLOSED FILES

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

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

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

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

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

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

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

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

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

Analysis

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

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

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

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

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

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

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

Findings of fact

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

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

Conclusions of law

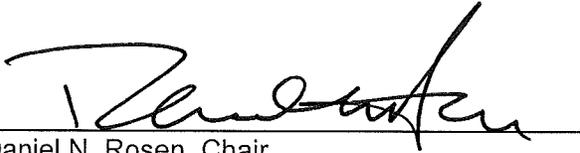
1. The books that the David Bly Committee 20B paid for and caused to be distributed were campaign material.
2. The limited exceptions to the requirement to provide a disclaimer on campaign material found in Minnesota Statutes section 211B.04 do not apply to the books.
3. The David Bly Committee 20B violated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

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

Order

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

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



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

Date: November 10, 2016

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

FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA JOBS COALITION REGARDING ROBIN BROWN AND ROBIN BROWN FOR MINNESOTA

On August 25, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Kevin Magnuson on behalf of the Minnesota Jobs Coalition regarding Gary Schindler, Schindler (Gary) for House, Robin Brown, Robin Brown for Minnesota, and Wedgewood Peruvian Pasos. The Schindler (Gary) for House committee is the principal campaign committee of Gary Schindler for the seat in the House of Representatives for district 27A. The Robin Brown for Minnesota committee is the now-terminated principal campaign committee of Robin Brown for the seat in the House of Representatives for district 27A.

The complaint alleged three violations. First, Robin Brown wrote a check from Wedgewood Peruvian Pasos, a business that she owns and operates, that was reported by both the donor and the recipient as a contribution from the Robin Brown for Minnesota committee to the Schindler for House committee. If the funds were from the Robin Brown for Minnesota committee, then those funds had been commingled with other funds in violation of Minnesota Statutes section 10A.11, subdivision 5. Second, the contribution from Wedgewood Peruvian Pasos to the Schindler for House committee was a prohibited corporate contribution in violation of Minnesota Statutes section 211B.15, subdivision 2. Finally, the Robin Brown for Minnesota and Schindler for House committees, and their respective candidates, filed false campaign finance reports by listing the contribution as being from Robin Brown for Minnesota when it was instead made by Wedgewood Peruvian Pasos, in violation of Minnesota Statutes section 10A.025, subdivision 2.

On August 29, 2016, the chair determined that the complaint and its attachments stated a prima facie violation of the commingling, corporate contribution, and false campaign finance reports provisions. On August 29, 2016, the Board received a response from the Brown committee. On September 22, 2016, Gary Schindler also submitted a response for consideration at the probable cause hearing.

The response submitted by the Brown committee stated the following: (1) Wedgewood Peruvian Pasos has never been an incorporated business; (2) the Brown committee's campaign funds were placed into the bank account of "Wedgewood Peruvian Pasos; Robin K Brown or Joseph Brown," an account for horse-related expenditures, when the candidate and her husband (who was treasurer to the committee) closed the campaign account to combine three separate accounts into two accounts; and (3) the check from the Wedgewood account to the Schindler committee was for exactly the remaining funds of the campaign as reported on the termination report for the Brown committee.

The Schindler committee provided evidence that the committee had good reason to believe that the contribution was from the Robin Brown for Minnesota committee.

Based on the evidence submitted by the parties, the Board found that probable cause did not exist to believe that either committee or Wedgewood Peruvian Pasos violated the corporate contribution prohibition of Minnesota Statutes section 211B.15, and that allegation was dismissed. The Board also found that probable cause did not exist to believe that either committee filed false campaign finance reports. That allegation was also dismissed. Only Robin Brown and Robin Brown for Minnesota remained as respondents after these two allegations were dismissed.

The Board found that probable cause existed to believe that Robin Brown for Minnesota commingled committee funds with personal funds in violation of Minnesota Statutes section 10A.11, subdivision 5. An investigation was ordered on that remaining issue.

The Board received a letter from Robin Brown for Minnesota on October 19, 2016, further explaining the commingling issue. After restating certain information contained in the response of August 28, Joseph Brown, treasurer for Robin Brown for Minnesota, acknowledged that he commingled campaign funds with personal funds.

In a follow-up email on October 31, 2016, Mr. Brown stated that the funds had not actually been transferred into the personal account in one transaction at the close of the committee account, as implied in previous communications, but that multiple transfers and commingling events had occurred between the committee and personal accounts.

Analysis

Minnesota Statutes section 10A.11, subdivision 5, states that a “principal campaign committee . . . may not commingle its funds with personal funds of officers, members, or associates of the committee.” Mr. Brown, treasurer for Robin Brown for Minnesota, admitted to commingling the committee’s funds with personal funds belonging to him and Robin Brown on multiple instances.

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

Finding of fact

Joseph Brown, as treasurer for Robin Brown for Minnesota, and Robin Brown commingled the committee’s funds with personal funds on multiple instances.

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

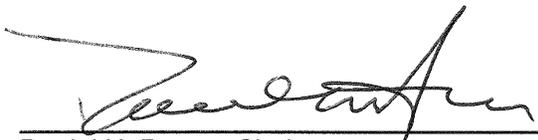
Conclusion of law

Joseph Brown and Robin Brown violated Minnesota Statutes section 10A.11, subdivision 5, by commingling principal campaign committee funds with personal funds on multiple instances.

Based on the analysis, finding of fact, and conclusion of law, the Board issues the following:

Order

1. A civil penalty in the amount of \$1,000 is assessed against Joseph Brown and Robin Brown for commingling campaign funds with personal funds in violation of Minnesota Statutes section 10A.11, subdivision 5.
2. Joseph Brown and Robin Brown are directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If Joseph Brown and Robin Brown do not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.



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

Date: November 10, 2016

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

ORDER OF DISMISSAL

IN THE MATTER OF THE STAFF REVIEW OF R. REID LEBEAU, LOBBYIST:

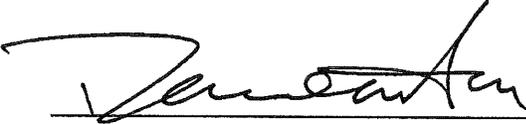
On April 5, 2016, the Board initiated a staff review of R. Reid LeBeau regarding a possible violation of the ban on gifts from lobbyists to public officials. Mr. LeBeau made a statement to the Board in executive session on October 5, 2016. The executive director submitted the matter to the Board for decision on November 10, 2016.

When the Board makes a determination in a staff review that was not resolved by conciliation agreement, the Board must consider factors such as "the type of possible violation; the magnitude of the violation if it is a financial violation; the extent of knowledge or intent of the violator; the benefit of formal findings, conclusions, and orders compared to informal resolution of the matter; the availability of board resources; whether the violation has been remedied; and any other similar factor necessary to decide whether the matter under review warrants a formal investigation." Minn. R. 4525.0340, subp. 2.

Based on its consideration of these factors, the submission from the executive director, and the information provided by respondent, the Board issues the following:

Order

The staff review in this matter is dismissed without prejudice.



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

11-10-16

Date