

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

.....

**October 4, 2011**

**Room 225**

**Minnesota Judicial Center**

.....

**MINUTES**

The meeting was called to order by Chair Scanlon.

Members present: Luger, McCullough, Scanlon, Swenson, Wiener

Member Bettermann informed the Executive Director prior to Board meeting that she would not be able to attend.

Others present: Goldsmith, Sigurdson, Larson, White staff; Hartshorn, counsel

**MINUTES** (September 6, 2011)

Member McCullough's motion:                    To approve the September 6, 2011, minutes as drafted.

Vote on motion:                                    Unanimously passed.

**CHAIR'S REPORT**

**Board meeting schedule**

The next Board meeting is scheduled for Tuesday, November 1, 2011.

Board Members also discussed the 2012 tentatively scheduled Board Meetings with the noted change to Wednesday, November 7, 2012, to accommodate Election Day Tuesday, November 6, 2012.

**EXECUTIVE DIRECTOR'S TOPICS**

Executive Director Goldsmith reported on recent Board office operations, noting that the Board has filled both vacant positions. Jodi Pope will join staff on October 10 as a Management Analyst. The work will be a 60% of full time level to accommodate the budget.

Gary Bauer will begin work on October 12 as a full-time Information Technology Specialist.

**Board guidance related to definition of "contribution" with respect to ballot questions**

Mr. Goldsmith presented the Board with a memorandum which is attached to and made a part of these minutes. Mr. Goldsmith also presented the Board with a memorandum discussing the history of the definition of "association" under Chapter 10A. A copy of that memorandum is also attached to and made a part of these minutes.

Prior to the meeting, members received a letter from Cleta Mitchell, attorney for the National Organization for Marriage and a separate letter from Senator Ray Vandever and Representative Joyce Peppin. At the meeting, the Board was presented with a letter from Mike Dean of Common Cause Minnesota. The letters are made a part of these minutes by reference. The Board reviewed each letter prior to Mr. Goldsmith's presentation of the matter.

Mr. Goldsmith reviewed the actions the Board had taken leading up to the present meeting. He explained that the matter before the Board for consideration was the question of when money given to an association that has a major purpose other than to influence the nomination or election of candidates or to promote or defeat a ballot question is a "contribution" under Chapter 10A.

Mr. Goldsmith explained that the draft Statement of Guidance was based on input from the Board over the course of the past months that the Board has considered its approach to the application of Chapter 10A to ballot questions.

The draft Statement, if adopted, would conclude that money given to an association is a "contribution" to promote or defeat a ballot question under three scenarios:

- (1) If the donor expressly stated that the money was given to promote or defeat a ballot question;
- (2) if the donation was given in response to a solicitation that expressly requested money to promote or defeat a ballot question; or
- (3) if the donation was given in response to a solicitation that meets certain requirements outlined in the Statement, including the requirement that the solicitation is susceptible of no reasonable interpretation other than that money given in response to the solicitation will be used to promote or defeat a ballot question.

The Board discussed the proposed guidance at length and asked many questions of the Executive Director. The Board also discussed the letter received from legislators. The Board discussed in detail the assertion of Ms. Mitchell that a corporation is not an association.

After members completed their debate and all of their questions had been addressed,

The following motion was made:

Member Luger's motion:

To adopt the draft Statement of Guidance dated October 4, 2011, as the Board's Statement of Guidance regarding the definition of "contribution" as applied to ballot questions under Chapter 10A.

Vote on motion:

4 Yeah and 1 Nay (Swenson).

A copy of the adopted Statement of Guidance is attached to and made a part of these minutes.

**Board direction to staff regarding committees that unsuccessfully attempt to return a prohibited contribution**

Mr. Sigurdson presented the Board with a memorandum which is attached to and made a part of these minutes asking for Board direction to staff regarding committees that attempted to return a prohibited contribution and were unsuccessful.

At the end of each reporting year staff conducts a reconciliation between the contributions reported as received versus the contributions reported as made between principal campaign committees, political committees, political funds, and political party units. Most disparities discovered between the disclosure of contributions received and given are no more than reporting errors which are resolved by amendments that do not require board action.

On occasion however, a discrepancy occurs because a principal campaign committee receives a contribution which, if accepted, would cause the committee to exceed the special source or aggregate contribution limit for that office. If the principal campaign committee realizes the potential for a violation and never deposits the contribution, then the contribution is not deemed accepted whether the check is returned to the contributor or destroyed by the candidate's committee. Listing a donation to a candidate that was never accepted is a reporting error by the contributing committee, and is again resolved by amending report.

A treasurer for a principal campaign committee that deposits a contribution that creates a limits violation may still clear the violation if the contribution is returned within 60 days of being deposited in the committee's account. If the excess contribution is not returned within 60 days of deposit the contribution is deemed accepted, and the violation may be cured only with a conciliation agreement or findings.

In the past, the Board has considered matters where a check returning a contribution that caused a violation was issued within 60 days of receipt of the problem contribution, but never cleared the recipient's bank account. In those matters, the Board has issued findings or conciliation agreements even if the Board was convinced that the recipient committee had issued a check in an attempt to return the contribution. In those cases, no civil penalty was imposed for the violation.

Staff requests direction with regard to the handling of a contribution that was returned by a check issued within 60 days of deposit of the contribution, which was never cashed.

The staff memorandum explaining the matter to the Board proposed requirements which, if met, would result in considering the contribution to have been returned upon the issuance of the refund check, even if that check is not cashed in due course. A copy of the staff memorandum is attached and made a part of these minutes.

After discussion the following motion was made:

Member Wiener's motion: Subject to the requirements for documentation and follow-up actions set forth in the staff memorandum, the return of a contribution is effective on the date that the check returning the contrition was written and mailed to the donor even if the check is not subsequently cashed.

Vote on motion: Unanimously passed.

**ENFORCEMENT REPORT**

The Board considered the monthly enforcement report, presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the Enforcement Report:

**Waiver Requests**

The Board considered the following waiver requests and took the action indicated in the grid below:

<u>Name of Candidate or Committee</u>	<u>Reason for Fine</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Heidi Myers MNSCU	Economic Interest	\$20	\$0	Address provided by Designer Selection Board designating Ms. Myers as a member was incomplete. No meetings were attended by Ms. Myers.			
Linda Hardy	Economic Interest	\$15	\$0	North Cannon River WMO notified staff that Ms. Hardy was a member. She states she did not accept the offer to be a member. She is no longer listed as a member on agency website.			
Tim Sanders	24-hr notice	\$750	\$0	Committee paid \$250 of the \$1000 late fee. Request reduction in late fee, which is consistent with all late 24-hr notices.			
Waiver requests by the Heidi Myers, Linda Hardy and Tim Sanders were considered as one motion. Member Luger's motion: To waive the late filing fees and civil penalties. Vote on motion: Unanimously passed.							
Jeff Dean Citizens for Impartial Judiciary	July 13, 2010, Report	\$200	\$0	Request for reconsideration. A family emergency caused Mr. Dean to travel out of the country. This is an inactive committee that is required to terminate.	No Motion		

Dale Joel Capital Growth	Annual Report of Lobbyist Principal	\$100	\$300	Paid \$50 toward the \$100 late fee. All lobbyists have terminated as of 4/30/11. 2011 report has been filed.	Member Scanlon	Waive the remaining late fee and civil penalty.	Unanimous
Tim Hafvenstein	Year-end Report	\$300	\$0	Request for reconsideration. Waiver not granted at the 5/31/11 meeting. Treasurer out of town at time of filing.	No Motion*		
Dana Wheeler, MN Govt Engineers Council	Lobbyist Disbursement Report	\$35	\$0	Zero disbursements since 2007. Registered since 2004.	No Motion		

\* Member Luger moved to reduce the late fee to account balance conditioned on the committee terminating its registration. After discussion, Mr. Luger withdrew that motion and the Board directed staff to contact the committee to determine whether it wished to terminate its registration or to remain active.

### Informational Items

**A. Payment of a late filing fee for the 2010 Year-end Report of Receipts and Expenditures due January 31, 2011 :**

Brian Boeddeker Campaign Committee, \$237

**B. Payment of a late filing fee for the Lobbyist disbursement Reports:**

Raymond Bohn, Nat'l Fire Sprinkler Assn., \$20

Elizabeth Doyle, Take Action Minn, \$45

Pan Luinenburg, MN Coalition of Licensed Social Workers, \$5

Michael Wilhelmi, Coalition for St. Croix River Crossing, College of St. Catherine, College of St. Scholastica, St. Cloud Area Chamber of Commerce, UNITE-HERE, \$50

**C. Payment of a late filing fee for a 24-hour pre-election notice:**

Tim Sanders Volunteer Committee, \$250

**D. Payment of a civil penalty for exceeding special source aggregate limit:**

Keith Downey for House, \$249. During 2010, the committee accepted \$6,749 in contributions from special sources. The total amount of these contributions from special sources, which for a state representative candidate was \$6,500. Representative Downey entered into a conciliation agreement on August 12, 2011.

Friends of Kurt Bills, \$300. During 2010, the Committee accepted \$6,800 in contributions from special sources. The total amount of these contributions exceeded by \$300 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$65,500. Representative Bills entered into a conciliation agreement on September 12, 2011.

Tim Mahoney for House, \$465 (1<sup>st</sup> payment plan). During 2010, the Committee accepted \$8,050 in contributions from special sources. The total amount of these contributions

exceeded by \$1,550 the applicable limit on aggregate contributions from special sources, which for a state representative candidate was \$6,500. Representative Mahoney entered into a conciliation agreement on August 29, 2011.

Committee for Sondra Erickson, \$125. During 2010, the Committee accepted aggregate contributions from party units in the amount of \$5,125. The total amount exceeded the \$5,000 election year limit by \$125. Representative Erickson entered into a conciliation agreement on September 12, 2011.

Patricia Anderson for State Auditor, \$500. During 2010, the Committee accepted cumulative contributions that total \$1,500 from an individual, exceeding the election year limit by \$500. Patricia Anderson entered into a conciliation agreement on August 25, 2011.

**E. Payment of a civil penalty for filing a false report:**

Terri Griffiths, \$400 (2<sup>nd</sup> payment)

**F. Deposit to the General Fund, State Election Campaign Fund:**

Mark Dayton for Better Minnesota, \$150 (anonymous contribution)

**ADVISORY OPINION REQUEST**

**Advisory Opinion Request #418 – Scope of prohibition on commercial use of data filed with the Board.**

Mr. Sigurdson presented the Board with a memorandum which is attached to and made a part of these minutes by reference. The advisory opinion request, which has not been made public, relates to the scope of prohibition on commercial use of data filed with the Board.

The advisory opinion request was received by the Board on July 29, 2011, and laid over at the August 16, 2011, and September 6, 2011, Board meetings.

The use by a third party of information submitted to the Board on disclosure reports and other filings is regulated by Minnesota Statutes, section 10A.35. This statute prohibits the use of Board data for a “commercial purpose”.

The request is from non-profit associations that wish to use Board data to contact individuals and associations and provide issue advocacy communications, solicitations for contributions to the association, and solicitations to join as a member of the association. Additionally, the request asks if an association that charges a fee to filter or enhance Board data is using the data for commercial purposes.

Mr. Sigurdson presented a draft response, which presents the position that the regulated “use” of board data means that act of contacting the individuals or associations whose names and addresses are contained in the data. This definition is consistent with Advisory Opinion 244 which also addresses the use of board data. By defining “use” in this manner only the end purpose for which Board data is used determines if a prohibited commercial purpose exists. Therefore, Board data may be enhanced by a vendor for a fee as long as the ultimate use of the data is for noncommercial purposes.

At the September meeting members expressed concerns which have been incorporated in the current draft version of Advisory Opinion 418. The opinion is now limited to non-profit associations, and has dropped sections that attempted to tie the use of board data to the nature of goods and services provided by the association. The result for the requestor is the same, the specific communications listed above are not for commercial purpose and therefore the use of board data is permitted. However, the wording of the opinion is now narrowed to the extent possible and does not attempt to provide guidance for for-profit associations except to the extent that they are providing services related to the noncommercial use of Board data.

Mr. Sigurdson presented the Board with minor grammatical and other changes that were made after the initial draft response was provided to the Board.

The Board discussed the request and the applicable provisions of Chapter 10A. After discussion, the following motion was made:

Member McCullough's motion: To adopt the Advisory Opinion #418 as amended.

Vote on motion: Unanimously passed.

SUMMARY: ADVISORY OPINION #418 signed by Chair John Scanlon, October 4, 2011:

Data gathered from reports and filings submitted to the Board may be used by a nonprofit noncommercial association to distribute issue advocacy material, solicit membership in the association, and solicit contributions. An association may, for a fee, assist a nonprofit noncommercial association in the use of the data for a noncommercial purpose.

**LEGAL COUNSEL'S REPORT**

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

**EXECUTIVE SESSION**

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order and the following items were reported from the Executive Session:

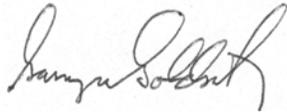
**Findings in the matter of Aitkin County DFL Club and Mark Ritchie for Secretary of State Committee**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Orders which are attached to and made a part of these minutes.

**OTHER BUSINESS**

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

Respectfully submitted,



Gary Goldsmith  
Executive Director

Attachments:

September 26, 2011, memorandum regarding Board guidance related to the definition of “contribution” with respect to ballot questions

October 3, 2011, memorandum regarding the history of the definition of “association” in Chapter 10A

October 4, 2011, Statement of Guidance

September 19, 2011, memorandum regarding Board direction regarding committees that unsuccessfully attempts to return a prohibited contribution

Advisory Opinion 418

Findings in the matter of Aitkin County DFL and Mark Ritchie for Secretary of State Committee

Minnesota

# *Campaign Finance and Public Disclosure Board*



**Date:** September 26, 2011

**To:** Board members

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-296-1721

**Re:** Board guidance related to definition of Contribution with respect to ballot questions

## **Background**

Over the past few months, members have reviewed and discussed the definition of "contribution" under Chapter 10A as it relates to ballot question expenditures. The attached draft Statement of Guidance was developed as the result of those discussions.

Except in the case of express solicitations or donations given with express instructions, the purpose for which a donation is given must be derived from surrounding facts. The state has an interest in obtaining disclosure about money given or received for political purposes. When addressing the factors that permit a legal conclusion that money was given or received to promote or defeat a ballot question, care must be taken, however, not to be overly broad or vague. The attached draft Statement of Guidance, if adopted, would establish the Board's position on how the determination of "contribution" status should be made.

From discussion during previous meetings staff recognizes a well-placed reluctance by the Board to adopt an interpretation that would bring a great deal of speech into the disclosure system at the expense of vagueness in the definition. Staff agrees with this position, which has a sound constitutional basis. Therefore, the guidance does not propose an interpretation such as the broad one incorporated into Maine statutes which are currently being litigated.

As the agency that applies and enforces Chapter 10A, it is the Board's responsibility to explain how the chapter will be applied. A Board decision on the definition of ballot question contributions would be required if the question were asked in an advisory opinion or if the Board were addressing a complaint regarding particular contributions. Rather than limit its consideration to the hypothetical facts of an advisory opinion request, or to the limited facts of an actual complaint, the Board may also provide guidance on its own initiative. Of course, the issuance of guidance may lead to advisory opinion requests about specific applications of the guidance. These requests would give the Board the opportunity to refine and further clarify the guidance in cases of actual or hypothetical application.

The draft guidance proposes a conservative approach to the definition of "contribution". To be sure, if it is adopted there may be donations of money that were, in fact, for the purpose of promoting or defeating a ballot question yet are not subject to disclosure. This proposed narrow definition favors free speech at the expense of not obtaining the maximum possible disclosure that might be constitutionally permitted.

## Definitions

The definitions are included in the draft for two reasons. First, to set forth in the Guidance document itself some of the critical statutory language and, second, to provide shorthand terms by which more complex concepts may be referred.

The definition of "association", for example, is taken directly from statute. However, for clarification, the longstanding Board interpretation that an "association" includes all legal entities is included. The Board has addressed this question before and I do not believe that the interpretation is subject to controversy.

Staff has regularly used the term "non-major-purpose association" in the past. The purpose of formally defining the term is so that it can be used in the Guidance later rather than having to spell out each time that we are talking about an association whose major purpose is something other than ....., etc.

The statutory definitions of "contribution" and "political fund" are included for convenience of reference since the text of those two definitions lead directly to the starting point for defining a contribution to a non-major-purpose association. A statement is added at the end of the statutory political fund definition to clarify the Board's recognition that the political fund is not a separate entity from the association that uses the political fund as a reporting structure.

The term "general donation" is new. In litigation not involving the Board, the concept has been referred to as "regular donations" and by other terms. Reading the definition should make its purpose clear. It provides a shorthand term to describe what is typically going to be most of the money given to a non-major-purpose association. General donations are essentially all of the money available for the association to use to promote or defeat a ballot question, other than Chapter 10A "contributions". The additional term "general treasury money" has been used regularly and is shorthand for the pool of money consisting of all general donations.

Staff does not believe that there is anything new or controversial about the proposed definitions.

## Classification guidance

This section deals with the criteria for determining when a donation of money is a Chapter 10A contribution. These paragraphs relate to that section of the Guidance under the heading "Classification Guidance".

There is no single court case that says: "In the case of contributions, here is how "given for the purpose of influencing" must be interpreted. Nevertheless, other cases have taken up the phrase, particularly in the context of expenditures made "to influence" or "for the purpose of influencing" elections. Those cases are drawn upon to reach the definitions proposed in this draft.

**1. Money designated by the donor.** There can be no dispute that if a donor states that the money is given for this purpose, it fits within the definition. A variation of the Statement of Guidance on this scenario was adopted by the Board on June 30, 2011.

**2. Money given in response to an express request.** In this scenario, instead of the donor telling the association the purpose for which the money is given, the association tells the donor the purpose for which the request for money is made. This component of the definition requires an express statement of the purpose. If money is requested for a specific purpose and money is given in response to that request, it follows without further analysis that the money may be considered as to be given for the requested purpose.

Both sections 1 and 2 draw on the *Buckley v. Valeo* concept of "express advocacy". If something is stated in express terms, then it is presumed to be for the purpose of achieving what it states. A statement "Elect John Doe" is presumed to be for the purpose of influencing John Doe's election. A statement "Please donate so that we can enact the Arts and Outdoors legacy amendment" is presumed to be for the purpose of promoting that ballot question.

### **3. Money given in response to a request with an implied purpose.**

This section of the criteria addresses transactions that are not explicitly specified by either the donor or the recipient to be for the purpose of promoting or defeating a ballot question.

This criterion is based on the express advocacy requirement of *Buckley v. Valeo* as later modified by *McConnell v. FEC*, 50 U.S. 93 (2003) and *FEC v. Wisconsin Right To Life (WRTL II)* 551 U.S. 449 (2007).

The *McConnell* Court held that express advocacy was not a constitutional requirement before disclosure of the costs of communications to influence elections could be compelled. It concluded that if the communication was the "functional equivalent" of express advocacy, it was subject to disclosure.

*WRTL II* followed *McConnell* and addressed the question of what, actually, was the "functional equivalent" of express advocacy. Writing for the Court, Justice Roberts first recognized that the test "must give the benefit of any doubt to protecting rather than stifling speech". The draft guidance incorporates this requirement.

Justice Roberts went on to define when speech should be considered to be the functional equivalent of express advocacy, saying:

[A] court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Summarizing, in these cases, the Supreme Court was interpreting the phrase "for the purpose of influencing", which is similar to Minnesota's phrases "to influence the nomination or election of a candidate", which is used in the election context and "to promote or defeat a ballot question", which is used in the ballot question context. For practical purposes, the three phrases are the same. "To promote or defeat a ballot question" is no different than "to influence a ballot question" or "for the purpose of influencing a ballot question."

The interpretation took two steps (with *McConnell* being an interim step) to reach its present state. First, the Court in *Buckley* said that a communication "for the purpose of influencing" was limited to a communication including words of express advocacy of or defeat of a clearly identified candidate. The guidance in parts 1 and 2 says that a contribution is given to promote or defeat a ballot question if the donor or the recipient use words of express advocacy to convey that purpose.

In *WRTL II*, the court eliminated the requirement for words of express advocacy in favor of a "no other reasonable interpretation" rule. In *WRTL II*, the court was considering a statute related to electioneering communications. That statute specified a timeframe within which communications must be made before they would come under its requirements. It also required clearly identifying the subject candidates.

The Supreme Court's holding in *WRTL II* is the basis for the third part of the contribution criteria: (1) the solicitation is made during a specific time, (2) the solicitation clearly identifies the ballot

question, and (3) the solicitation can have no reasonable interpretation other than that money received as a result of the solicitation will be used to promote or defeat the ballot question.

There is no one case that provides a clear outline as to the outer bounds that the Board might apply to the definition of a contribution in the ballot question context. The definition proposed in part 3 of the criteria is a relatively conservative one supported by current case law.

**Money solicited in the name of the political fund**

The final criterion in the contribution definition is not considered controversial. In the past it has been very common for associations register political fund accounts and to choose to refer to them by a name that may be similar to the name of the association or may be strikingly different. These associations have raised money in the name of the political fund, asking for donations "to" the political fund. This last criteria recognizes this longstanding practice as resulting in reportable contributions.

Attachment: Draft Statement of Guidance

Minnesota

*Campaign Finance and  
Public Disclosure Board*



**Date:** October 3, 2011

**To:** Board members

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-296-1721

**Re:** History of the definition of "association" in Chapter 10A

Prior to its amendment during a complete recodification of Chapter 10A in 1999, the definition of "association" read as follows:

"Association" means business, corporation, firm, partnership, committee, labor organization, club, or any other a group of two or more persons, which includes more than an immediate family, acting in concert.

The recodification was done to rearrange Chapter 10A into a more organized whole, grouping relevant sections and moving definitions to the front of the section. Previously the definitions had been scattered throughout the chapter. I was Assistant Executive Director of the Board at the time and was involved in the drafting and passage of the recodification.

In the definitions section, the definition of "association" was amended to read as it currently reads: "Association" means a group of two or more persons, who are not all members of an immediate family, acting in concert."

I recall the discussion of the amendment at the time. There was concern that Minnesota had recognized new forms of entities, such as limited liability partnerships and limited liability companies. The previous definition of "association" tried to list out each possible type of entity and there was concern that it was already under inclusive and might become so again in the future if the approach of listing every type of entity was maintained. By removing the specific list, it was the intention that the definition become broader, not more limited.

House Research did an analysis of the recodification bill. With regard to the definitions section, the House Research summary states:

Stylistic improvements are made throughout the section. Provisions are also relocated within subdivisions or among subdivisions of this section, as appropriate. In addition, changes of note are made in the following subdivisions [noting specific changes of note].

No "changes of note" were indicated for the definition of "association".

Both before and after the recodification, it was understood that the word "association" included entities such as corporations, partnerships, and other forms of legal existence. The Board's interpretation of the term has never wavered.

## **If corporations are not "associations"**

**Lobbyist registration.** A lobbyist must register after becoming employed by an individual, association, political subdivision, or public higher education system. If a corporation is not an association, lobbyists representing corporations would not be required to register and report.

**Principal definition.** A "principal" is an individual or association that meets certain requirements with respect to efforts to influence official action. If a corporation is not an association, corporations will never be principals under the lobbying statutes.

Concluding that a corporation is not included in the definition of "association" would exclude corporations from all lobbying statutes.

**Gift prohibition.** The gift prohibition of 10A.071 is triggered on gifts given or requested by lobbyists or principals. If corporations are not associations, the gift prohibition would have no application to corporate gifts to officials.

**Political fund registration.** A political fund is an accumulation of money by an association. If a corporation is not an association, the corporation would never be required to register a political fund or report on its spending, even for independent expenditures.

**Potential for manipulation of political committee status.** A political committee is an association whose major purpose is to influence the nomination or election of candidates or to promote or defeat a ballot question. An unincorporated group of people is an association. If they associate for the prescribed political purposes, they would be a political committee. However, if this same group incorporates, and a corporation is not an association, they would not be required to register as a political committee.

Minnesota

# *Campaign Finance and Public Disclosure Board*



October 4, 2011

## **Statement of Guidance**

**Providing guidance to Board staff in implementing the determination of "contribution" under Chapter 10A as applied to associations making expenditures to promote or defeat a ballot question.**

"Contributions" received by an association must be reported regardless of whether (a) the association is a political committee, party unit, or principal campaign committee; or (b) the association reports on its political activity through a political fund account.

This Guidance is to provide Board staff with information to enable them to advise associations regarding registration and reporting requirements related to or triggered by the acceptance of "contributions" as defined in Chapter 10A for the purpose of ballot questions.

This Guidance does not expand, limit, or otherwise affect the application of Chapter 10A. Rather, its purpose is to recognize certain definitions and enforcement positions that staff and others may rely on when applying registration and reporting requirements. The Board's Executive Director must consider this Guidance when advising interested persons and when determining whether to bring a matter to the Board for investigation or other action.

This Guidance is designed to provide a safe harbor. Therefore, the policies and definitions provided in this Guidance may be more narrowly tailored than a definition that the Board might adopt in an administrative rulemaking procedure. However, in the absence of a completed administrative rulemaking procedure or legislative action, the Board intends to apply these definitions and policies in its application of Chapter 10A as it relates to ballot questions that will be on the 2012 general election ballot.

### **Definitions.**

The following definitions apply to the specified terms as they are used in this Guidance and in application of this Guidance by Board staff.

#### **Association**

An association is a group of two or more persons, who are not all members of an immediate family, acting in concert. The term "association" includes corporations and other legal forms of existence such as partnerships, as well as groups of people without a formal legal structure.

#### **Non-major-purpose association**

An association that has as its major purpose something other than to influence the nomination or election of candidates or to promote or defeat a ballot question is referred to as a "non-major-purpose association." Any association that is not a political

committee, party unit, or principal campaign committee, as those terms are defined in Chapter 10A, is a non-major-purpose association.

**Statutory definition of "contribution"**

A "contribution" is "money, a negotiable instrument, or a donation in-kind that is given to a political committee, political fund, principal campaign committee, or party unit." Minnesota Statutes Section 10A.01, subd. 11.

**Statutory definition of "political fund"**

A "political fund" is "an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question." Minnesota Statutes Section 10A.01, subd. 28.

A political fund is an accumulation of an association's money tracked by some accounting mechanism. It is not a separate association or legal entity.

**General donation**

A "general donation" is money given to a non-major-purpose association that does not constitute a "contribution" under Chapter 10A and is not restricted by the donor as to its use. General donations may be referred to by the recipient as "membership dues" "fees" "contributions", "donations", or similar terms. Whether money received by a non-major-purpose association is a "general donation" or a "contribution" is not determined by the words the recipient uses to describe it, but by the purpose for which the money was given, as determined by the criteria set forth in this Guidance.

**General treasury money**

An association's "general treasury money" is all of the money received by the association in the form of general donations.

**Scope and purpose of Guidance**

A non-major-purpose association that engages in expenditures to promote or defeat a ballot question is not a political committee. It is required to report on only that pool of its money that constitutes its political fund. For these associations it is important to understand whether money received is a "contribution" that is reportable through the political fund accounting mechanism or whether it is a general donation, which is subject to more limited disclosure and then only if the money was actually used to make ballot question expenditures.

This Guidance is limited to providing guidance to assist in determining when money received from individuals or other associations by a non-major-purpose association engaging in expenditures to promote or defeat a ballot question falls within the Chapter 10A definition of a contribution.

Disclosure related to a non-major-purpose association using its general treasury money to promote or defeat a ballot question is controlled by other provisions of Chapter 10A as more fully described in the Statement of Guidance issued by the Board at its meeting of June 30, 2011, and is not within the scope of this Guidance. Also not within the scope of this Guidance are issues related to associations engaging in other potentially regulated transactions such as making independent expenditures or making contributions to candidates or associations registered with the Board.

Considering the definitions included in Section 10A.01, subds. 11 and 28 together, and excluding the case of expending general treasury money to promote or defeat a ballot question, the definition of "contribution" in the context of a non-major-purpose association making expenditures to promote or defeat a ballot question may be restated as follows:

A contribution is money given to an association for the purpose of promoting or defeating a ballot question.

This Statement of Guidance is adopted to clarify when money given to an association is considered to be for the purpose of promoting or defeating a ballot question.

### **Classification of a transfer of money as a "contribution" or a "general donation".**

#### **1. Money designated for ballot question expenditure purposes**

Money received by an association is a contribution if the contributor specified that the money was given to support the association's campaign to promote or defeat the ballot question.

(This statement replaces the corresponding statement adopted by the Board in its preliminary guidance issued June 30, 2011.)

#### **2. Money given in response to a solicitation including an express request**

Money given in response to a solicitation that requests money for the express purpose of supporting the association's campaign to promote or defeat the ballot question is a contribution.

An express request is a request that asks for money and states that the money is sought to support the ballot question campaign.

#### **3. Money given in response to a solicitation including an implied request**

Money given in response to a solicitation that meets the all of the following criteria is a contribution:

- A) The solicitation is made after the date of final enactment by the legislature of the bill placing the subject ballot question on the general election ballot;
- B) The solicitation clearly identifies the subject ballot question; and
- C) The solicitation is susceptible to no reasonable interpretation other than that money given as a result of the solicitation will be used to promote or defeat the subject ballot question.

For the purpose of determining whether a solicitation clearly identifies the ballot question, the "solicitation" includes:

- A) For a mailed solicitation: the solicitation itself and any material included in the same mailing;
- B) For an electronically transmitted solicitation: the electronic communication itself and any attachments to the communication. An electronic solicitation also

includes material accessed directly by a hyperlink in the solicitation or its attachments. Intermediate hyperlinks inserted merely to subvert the direct link requirement will not be considered when examining whether the solicitation directly links to a page that refers to the subject ballot question;

C) For a website based solicitation: the solicitation form itself and all other pages of the association's website.

#### **Limitation**

It is the Board's intention that the definitions of "contribution" set forth in this Guidance be applied in favor of excluding transfers of money from the definition of "contribution" in any case where it is not clear that all of the specified criteria have been met.

#### **4. Money solicited in the name of an association's political fund**

Some associations choose to establish a more formal structure than is required for their political fund accounts. They may set up bank accounts separate from those used for the association's general treasury money. They may solicit money under the name of the political fund as if the fund were, itself, an entity separate from the association. Money given in response to solicitations that ask for money in the name of the political fund itself are contributions.

# *Campaign Finance and Public Disclosure Board*

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

**DATE:** September 19, 2011

**TO:** Board Members  
Counsel Hartshorn

**FROM:** Jeff Sigurdson  
Assistant Director

**SUBJECT:** Board Direction to Staff Regarding Committees that Unsuccessfully Attempted to Return a Prohibited Contribution.

The purpose of this memo is to discuss what Board action, if any, should occur when a committee treasurer issues a check returning a contribution that created a violation within the 60 days of deposit, but for whatever reason, the contributor committee does not receive or deposit the check. Additionally this memo will review possible standards for staff to use in documenting that a committee did make an attempt to return the contribution within the 60 day period, and will conclude with a request for Board direction to staff on the management of committees in this situation.

At the end of each reporting year staff conducts a reconciliation between the contributions reported as received versus the contributions reported as made between principal campaign committees, political committees, political funds, and political party units. Most disparities discovered between the disclosure of contributions received and given are no more than reporting errors which are resolved by amendments that do not require Board action.

On occasion however, the discrepancy occurs because a principal campaign committee receives a contribution which, if accepted, would cause the committee to exceed the special source or aggregate contribution limit for that office. If the principal campaign committee realizes the potential for a violation and never deposits the contribution, then the contribution is not deemed accepted whether the check is returned to the contributor or destroyed by the candidate's committee. Listing a donation to a candidate that was never accepted is a reporting error by the contributing committee, and is again resolved by amending a report.

A treasurer for a principal campaign committee that deposits a contribution that creates a limits violation may still clear the violation if the contribution is returned within 60 days of being deposited in the committee's account. If the excess contribution is not returned within 60 days of deposit the contribution is deemed accepted, and the violation may be cured only with a conciliation agreement or findings.

The return of a contribution within 60 days of deposit may also be used to cure a sessional contribution violation from a lobbyist or political committee or fund, or to return a contribution from an unregistered association that was received without the required additional disclosure.

## **Statutory Provision**

Minnesota Statutes, section 10A.15, subdivision 3, provides the timeline for returning a contribution. The statute states in part:

“...A candidate, principal campaign committee, political committee, political fund, or party unit may refuse to accept a contribution. A deposited contribution may be returned to the contributor within 60 days after deposit. A contribution deposited and not returned within 60 days after that deposit must be reported as accepted.”

The 60 day period to return a contribution is generous compared to most states, and reflects an understanding by the legislature that the majority of treasurers in Minnesota are volunteers who have limited time to spend on committee records. While it would be preferable if treasurers evaluated contributions prior to deposit, staff experience is that record keeping and review of contributions often occurs long after the deposit of funds in the committee account. The 60 day period allows the treasurer additional time to detect the potential violation, but at the same time limits the advantage the committee may gain from using the funds before they are returned.

The choice and action to return a contribution is controlled by the recipient committee. The contributing committee may not prevent the return of a contribution it gave by not accepting or failing to deposit the check used for the contribution's return. To conclude otherwise and allow the actions of the contributing committee to determine if a contribution may be returned is inconsistent with the statute's goal of providing an opportunity for recipient committees to review contributions and self-correct potential violations before they occur.

## **Need for Board Action – Documentation of Good Faith Effort**

On a few occasions in the past, the Board has considered matters where a check returning a contribution that caused a violation was issued within 60 days of receipt of the problem contribution, but never cleared the recipient's bank account. In those matters, the Board has issued findings or conciliation agreements even if the Board was convinced that the recipient committee had issued a check in an attempt to return the contribution. In those cases, no civil penalty was imposed for the violation.

The question staff presents to the Board is whether a contribution is returned to the donor at the time the return check returning the contribution is written and mailed or if the person returning the contribution has some additional obligation to ensure that the return check is subsequently cashed. Additionally, if there is some additional obligation, is there a specific time frame within which it must be completed? Neither the statutes nor administrative rules provide guidance in determining when the return of a contribution is effective. Under its authority to interpret Chapter 10A, the Board may issue direction to staff on the question.

Formal Board action in these matters would not be necessary if the Board concludes that the violation was cleared upon issuance of the return check within the 60 day time frame, contingent on providing documentation and taking further action to complete the

return within a reasonable time once the committee recognizes that the check has not cleared its bank.

To prevent abuse of this position a standard for determining and documenting that the treasurer acted in good faith in the attempt to return the contribution would need to be established. The standard used by Board staff to prove a good faith effort should be detailed enough to support consistent application, and which can be used to explain why in some cases an effort to return a contribution may not have been sufficient to clear a violation. To that end staff recommends the following be required:

**Documentation and follow-up actions for a contribution returned  
with a check that is not subsequently cashed**

(1) The treasurer must provide:

- A copy of the check used in the attempted return which shows an issue date within the 60 day period or a copy of a checkbook register or other record showing the date the check was issued and to who the check was issued and;
- A copy of a bank statement that shows a gap in the checks processed for the committee that matches the check issued to return the contribution. The bank statement should support that the attempt to return the contribution occurred within the 60 day period.

(2) The treasurer must certify pursuant to Minnesota Statutes Section 10A.025, subd. 2, that the check was issued and mailed as represented.

(3) Upon notification that the return of the contribution was not successful the recipient committee must reissue the return of the contribution and verify that it was received and deposited. This must occur within 30 days of notification by Board staff of the problem. Documentation of the successful return must be provided to the Board. Failure to act within the 30 day time frame will result in a Board action in which the return of the contribution is ordered and a civil penalty for failure to return the contribution within 60 days is applied.

As a matter of practice, staff would also determine why the contributing committee did not deposit the initial check attempting to return the contribution and why the committee returning the contribution did not recognize that the return check had not been cashed. Staff would provide instruction to both committees on the proper handling and reporting of a returned contribution.

**Board Direction Requested**

Staff requests direction with regard to the handling of a contribution that was returned by a check issued within 60 days of deposit of the contribution, which check was never cashed.

If the Board elects a position consistent with the discussion in this memorandum, the Board's position could be stated as follows:

Subject to the requirements for documentation and follow-up actions set forth above, the return of a contribution is effective on the date that the check returning the contribution was written and mailed to the donor even if the check is not subsequently cashed.

Matters in which the required documentation is not provided or the follow-up actions are not completed would continue to be brought to the Board as regular enforcement matters in the same manner as if no effort to return the violating contribution was made.

**State of Minnesota**  
**Campaign Finance & Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY  
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA  
under Minn. Stat. § 10A.02, subd. 12(b)**

**RE: Use of Information from Campaign Finance and Public Disclosure Board Records**

**ADVISORY OPINION 418**

**SUMMARY** Data gathered from reports and filings submitted to the Board may be used by a nonprofit noncommercial association to distribute issue advocacy material, solicit membership in the association, and solicit contributions. An association may, for a fee, assist a nonprofit noncommercial association in the use of the data for a noncommercial purpose.

**FACTS**

As the legal representative of associations who wish to comply with the provisions of Minnesota Statutes Chapter 10A, you ask the Campaign Finance and Public Disclosure Board, (“the Board”), for an advisory opinion based on the following facts:

1. You represent two associations each of which wish to communicate with individuals for the purpose of providing issue advocacy communications, solicitations for memberships in the association, and solicitations for contributions to the association or to a purpose the association supports. Both associations are recognized by the Internal Revenue Service as non-profit organizations under I.R.S. Code Sections 501(c)(3) or 501(c)(4). For the purpose of this request, neither association engages in efforts to influence the nomination or election of candidates in Minnesota.
2. You represent a third association that does not typically communicate with individuals directly, but which provides services that assist other associations with their outreach and educational communications. The assistance may take the form of mailing list and database information acquisition and analysis that helps focus outreach communications to a receptive audience. The association is recognized by the Internal Revenue Service as a non-profit corporation under I.R.S. Code Section 501(c)(4).
3. The two associations described in Fact 1 have asked the association described in Fact 2 to develop information on individuals that will be used in communication and outreach efforts. The information will be extracted from a database obtained from the Board of individuals who have contributed to Minnesota political committees and funds, candidates, and political party units.
4. You are aware of the Board’s Advisory Opinion 244 which permitted the use of Board data on a revenue generating website because the website contained information about Minnesota political activity and was therefore determined by the Board to have a political

purpose. You believe that the type of communications that are listed in Fact 1 should also be viewed as having a political purpose and that the approval of the use of Board data in Advisory Opinion 244 should be extended to the purposes identified in this request.

### **Introduction**

The requester poses a number of questions and makes several legal arguments regarding the issues raised by the request. However, the issues may be simplified and presented as two questions that will provide both the requester and other similarly situated associations with guidance on the use of data included in reports filed with the Board.

Minnesota Statutes Section 10A.35 prohibits "use" of data filed with the Board when that "use" is for a "commercial purpose." The requester essentially asks the Board to define what constitutes "use" of Board data as contemplated by the statute and, further, to determine when that use is for a "commercial purpose."

### **Issue One**

What constitutes "use" of data from reports filed with the Board?

### **Opinion**

The use of data acquired from reports and documents filed with the Board (Board data) is regulated by Minnesota Statutes, section 10A.35. This statute provides:

Information copied from reports and statements filed with the board, other than reports and statements filed by lobbyists and lobbyist principals, may not be sold or used by an individual or association for a commercial purpose. Purposes related to elections, political activities, or law enforcement are not commercial purposes. An individual or association who violates this section is subject to a civil penalty of up to \$1,000. An individual who knowingly violates this section is guilty of a misdemeanor.

Two approaches to the definition of "use" or "used" have been suggested. The first would result in a broad definition of the term. Under that approach, any time Board data is incorporated into a product or a form of information would be "use" of Board data. The second approach would define "use" of Board data more narrowly to mean using the names and addresses of individuals and associations that are contained within Board data for the purpose of contacting those same individuals and associations.

The Board has previously adopted the second approach to the definition of "use" of Board data. In Advisory Opinion 244, the Board permitted publication of Board data on a website for the purpose of informing the public about political contributions made in Minnesota. The website was to be supported by paid advertising and, thus, was a commercial venture. Although the Board did not articulate an analysis of the difference in between using the data to create a product and using the data to contact the subjects of the data, Advisory Opinion 244 implicitly adopted a position that including Board data in a commercial product is not "use" of the data as contemplated by Minnesota Statutes Section 10A.35.

Additional support for interpretation of the word "use" to mean use for the purpose of contacting subjects of the data is provided by the provision of the statute itemizing certain exclusions from

the prohibition on use of the data. Each of the exclusions contemplates use of the data to contact the subjects of the data.

The Board reaffirms the guidance on "use" of Board data that was first suggested in Advisory Opinion 244: Board data is "used" within the meaning of Minnesota Statutes Section 10A.35 when the names and addresses that constitute the data are used to contact subjects of the data.

Therefore, an association, including a for-profit association, may filter, improve or implement the use of Board data for a fee. Preparing or assisting in the use of Board data so that it more efficiently or effectively contacts individuals and associations does not change the use of the Board data into a commercial purpose. Similarly, if an association's use of Board data to communicate individuals or associations is not for a commercial purpose it may contract with another association, including a for-profit association, to carry out the communication.

Vendors providing enhanced Board data to associations are advised that the best practice would be for them to notify the end-users of the data of the commercial use prohibition. Use of Board data for a prohibited purpose results in a violation of Minnesota Statutes, section 10A.35, even if the end-user is unaware of the prohibition.

## **Issue Two**

Are the uses of Board data proposed by the requestor of this opinion for a "commercial purpose" that is prohibited in Minnesota Statutes 10A.35?

## **Opinion**

In Issue One, the Board defined use of Board data as use for the purpose of contacting the subjects of the data. In Issue Two the question becomes the type of communication that may be undertaken when Board data is used to contact individuals and associations. If the communication provided through the use of Board data is for a "commercial purpose" it will exceed the limited use of Board data provided in Minnesota Statutes, section 10A.35.

Chapter 10A does not define "commercial purpose". The word "commercial" appears more than 800 times in other Minnesota statutes not regulated by the Board. In most cases it is not defined. However, Minnesota Statutes Section 325E.26, which regulates telephone solicitations done by automatic dialing devices, is instructive. This statute provides guidance on when such contacts should be considered to be for a commercial purpose. The statute states:

"Commercial telephone solicitation" means any unsolicited call to a residential subscriber when the person initiating the call has not had a prior business or personal relationship with the subscriber, and when the purpose of the call is to solicit the purchase or the consideration of purchase of goods or services by the subscriber. Commercial telephone solicitation does not include calls initiated by organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e).

This definition is helpful in two respects. First, it limits commercial solicitation to those solicitations that attempt to solicit a purchase of goods or services. Second, it specifically exempts organizations listed in Minnesota Statutes 2000, section 290.21, subdivision 3, clauses (a) to (e), which are Minnesota's charitable, religious, and similar organizations.

As provided in the facts of this opinion, the associations that want to use Board data to contact individuals and associations are nonprofit organizations registered as either a social welfare advocacy organization or as an educational charity under Internal Revenue Service tax code. In this opinion, the Board will limit its guidance to the facts of the request; the associations that will use the data are organized on a nonprofit basis.

This does not mean that any use of Board data by a nonprofit association is permitted. Regardless of the status of the association, the use of Board data for a commercial purpose is prohibited. The requestor describes three reasons why the association may wish to use Board data and asks if any of the reasons are for a commercial purpose. The proposed uses of Board data are; (1) distribution of issue oriented communications, (2) to request contributions to support one or more goals of the association, and (3) to solicit individuals to join as a member of an association. Because the proposed uses of the data are distinct, the Board will evaluate each purpose separately.

### **Distribution of Issue Advocacy Communications**

Typically an association distributes issue advocacy communications to educate the recipients on the specifics of an issue and thereby influence the recipient's opinion on that issue. Educational material is not for a commercial purpose unless a desired outcome of the issue advocacy communication is the recipient purchasing specific goods or services. As long as the issue advocacy communication is not a vehicle to sell goods or services, Board data may be used to facilitate the communication.

### **Request Contributions to Support a Goal of the Association**

Issue advocacy communications commonly include a solicitation of a contribution to support the association's efforts on behalf of the issue. This type of solicitation is functionally no different than the requests for contributions that accompany the candidate, political party, and political committee communications that are specifically excluded from "commercial purpose" in Minnesota Statutes, section 10A.35.

A contribution made in response to a request to support the goal(s) of an association, candidate, political party, or political committee is an expression of support by the contributor. The contribution does not constitute the purchase of any discernible goods or service, therefore requesting a contribution in the circumstances described in this opinion is not for a commercial purpose.

The Board notes that requesting and collecting contributions for a purpose may, in certain circumstances, create a requirement for the association to register and report with the Board. For example, if the contributions are used for the purpose of influencing the actions of public officials, the association may become a principal under Minnesota's lobbying statutes with reporting obligations to the Board. If the purpose supported by the association is the defeat or passage of a constitutional amendment, the association may be governed by the political committee or fund registration and reporting requirements of Chapter 10A.

### **Solicitation of Membership in an Association**

The solicitation to become a member of an association serves as another opportunity for the recipient of the communication to make a contribution in support of the goals of the association. The only real distinction is that membership in an organization creates an ongoing relationship between the individual and the association where a onetime contribution may not.

Paying for membership in an issue-oriented association may in the broadest sense provide a “service” to the individual if the association provides members with a way to receive information and communicate with other individuals who share similar views, concerns, and goals. In the Board’s opinion this type of membership service does not constitute the sale of a service that would constitute a commercial transaction. Because the solicitation of membership by, and the payment of dues to, the issue-oriented associations described in the facts of the request does not in itself result in the commercial purchase of goods or services, the use of Board data in making the solicitation is not a prohibited commercial purpose.

In some cases membership in a nonprofit association may result in the commercial purchase of defined services. For example, in Minnesota, nonprofit health care providers deliver to “members” services in exchange for payment in what are clearly commercial transactions. For the purposes of this opinion, the associations who request the use of Board data to contact potential members are limited to advocacy organizations or educational charities, and will not be providing the type of defined service benefit to members that could be seen as having a commercial purpose.

Issued October 4, 2011

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John Scanlon, Chair  
Campaign Finance and Public Disclosure Board

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

**Findings and Order In The Matter of a Contribution  
Made without Providing a Registration Number by the Aitkin County DFL Club to the  
Mark Ritchie for Secretary of State Committee**

**Summary of the Facts**

Minnesota Statutes, Section 10A.15, subdivision 5, requires a registered political committee making a contribution to provide the name and registration number of the political committee. A political committee that violates this section is subject to a civil penalty imposed by the Board of up to \$1,000. This statutory provision exists to insure that candidates may accurately identify the source of the contribution, and thereby apply the amount of the contribution against the appropriate aggregate, special source, or political party contribution limit.

In 2010 the Aitkin County DFL Club, a political committee registered with the Campaign Finance and Public Disclosure Board, made a \$300 contribution to the Mark Ritchie for Secretary of State Committee (the Committee). The Aitkin County DFL Club registration number was not provided to the Mark Ritchie for Secretary of State Committee either on or with the contribution check. A copy of the check used for the contribution was provided to the Board as verification.

The Mark Ritchie for Secretary of State Committee reported the contribution as a contribution by the Aitkin County DFL political party unit. In a letter dated July 31, 2011, Pam Rykken, finance director for the Committee explained how this occurred. "Since there wasn't a committee number on the check, and since 'DFL' was in the committee name, I looked in the 'Political Parties' section on the Campaign Finance website, and found 'Aitkin County DFL Committee', and thought I had a match."

As a result of misclassifying the contribution as being from a political party unit the Committee was not aware that by accepting the contribution it exceeded the aggregate special source limit. The aggregate special source limit is the total amount that may be accepted from political committees, lobbyists, and large givers. When properly categorized the contribution from the Aitkin County DFL Club caused the Committee to exceed the special source limit by \$283.94.

In response to a staff inquiry the Board received a letter from B.J. Garner, Jr., treasurer of the Aitkin County DFL Club on August 29, 2011. Mr. Garner stated, "In regard to your question...do we usually include our club number (40086) on checks to candidates? The answer is "no". We never have over the past years. I was not aware that it was necessary. I will certainly include it from now on."

This matter was considered by the Board in executive session on October 4, 2011. The Board's decision is based on the correspondence received from Pam Rykken, B.J. Garner, and Board records.

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

**Findings Concerning Probable Cause**

1. There is probable cause to believe that the Aitkin County DFL Club violated Minnesota Statutes, section 10A.15, subdivision 5, by contributing \$300 to the Mark Ritchie for Secretary of State Committee without providing the registration number of the Aitkin County DFL Club with the contribution.
2. There is probable cause to believe that the Mark Ritchie for Secretary of State Committee accepted the contribution as coming from a party unit with a similar name because there was no registration number to identify the donor as a political committee. As a result, the Mark Ritchie for Secretary of State Committee exceeded the aggregate special source limit in 2010 by \$283.94.
3. There is probable cause to believe that the Mark Ritchie for Secretary of State Committee has returned \$300 to the Aitkin County DFL Club, thereby removing the excess contribution from its account.
4. There is no probable cause to believe that the violations were intentional or done with the intent to circumvent the requirements of Minnesota Statutes, Chapter 10A.

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

**Order**

1. The Board imposes no civil penalty on the Mark Ritchie for Secretary of State Committee for exceeding the 2010 aggregate contribution limit from special source contributors.
2. The Board imposes a civil penalty of \$300, which is one times the amount of the contribution, on the Aitkin County DFL Club, for failure to provide a registration number on or with the contribution.
3. The Aitkin County DFL Club is directed to forward to the Board payment of the \$300 civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
4. If the Aitkin County DFL Club does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statute, section 10A.34.
5. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11, and upon payment by the Aitkin County DFL Club of the civil penalties imposed herein, the matter is concluded.

Dated: October 4, 2011

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John Scanlon, Chair  
Campaign Finance and Public Disclosure Board

### Relevant Statutes

Minnesota Statutes, section 10A.15, subdivision 5. **Registration number on checks.** A contribution made to a candidate by a lobbyist, political committee, political fund, or party unit must show the name of the lobbyist, political committee, political fund, or party unit and the number under which it is registered with the board.