

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MATT STEVENS REGARDING THE DUFF (ALAN) 4 HOUSE COMMITTEE, THE MN TEA PARTY ALLIANCE, AND THE NEW LEADERSHIP PAC:

On August 1, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Matt Stevens regarding the Duff (Alan) 4 House committee, the MN Tea Party Alliance, and the New Leadership PAC. The Duff 4 House committee is the principal campaign committee of Alan Duff in his bid for the seat in house district 31A. The other two respondents are general purpose political committees registered with the Board.

The complaint arises out of communications distributed by the two political committees that they identified as independent expenditures. The complaint alleges that relationships between the respondents preclude the subject communications from meeting the statutory requirements for independent expenditures. The complaint further alleges that because the expenditures were not independent, they were campaign contributions to the Duff committee that exceeded the contribution limits and were reported incorrectly by the candidate and the political committees. The complaint argues in the alternative that if the communications were independent expenditures, the MN Tea Party Alliance communication lacked the required independent expenditure disclaimer.

On August 9, 2016, the Board chair determined that the complaint alleged a prima facie violation of Chapter 10A.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (2). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

In this case, the contribution limit, reporting, and disclaimer allegations all hinge on whether the subject communications were independent expenditures. Minnesota Statutes section 10A.01, subdivision 18, provides that to qualify as an independent expenditure, a communication must be made:

without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent.

The complaint and its exhibits allege that the two political committees and the Duff committee all used the same vendor to produce their communications and that this joint use defeated the independence of any expenditures made by the political committees. The complaint points to the fact that the communications concerned the same topic as evidence of cooperation.

The complaint goes on to allege that a Duff committee advisor is the executive director of the MN Tea Party Alliance and hosts a podcast with the chair of that committee. The complaint states that the podcast has, on multiple occasions, discussed how the advisor and chair were working together to help the Duff campaign. The complaint further alleges that the vendor is the treasurer of the MN Tea Party Alliance. The complaint argues that given the relationship between the advisor and the MN Tea Party Alliance chair and the shared use of the vendor/treasurer by these individuals, any communications produced by the vendor for the MN Tea Party Alliance could not have been independent of the Duff committee.

In its response to the complaint, the New Leadership PAC admits that it used the shared vendor to produce its communications. The New Leadership PAC, however, states that it delivered a complete communication to the vendor with express instructions regarding its printing and mailing and that the vendor had no input into any component of the communication. The information submitted by the New Leadership PAC also purports to show that its officers had no outside relationship with the vendor in his capacity as treasurer of the MN Tea Party Alliance and that the committee and its officers were unaware that the vendor was also producing pieces for the Duff committee.

In their responses, the Duff committee and the MN Tea Party Alliance admit that they used the same vendor but deny coordinating their communications. The vendor, however, states that as treasurer of the MN Tea Party Alliance, he approved the independent expenditure and as vendor, he printed it and contracted to have it mailed. In addition, the Duff committee agrees that the advisor is one of the committee's volunteers. Neither response addresses the roles that the advisor and the chair of the MN Tea Party Alliance played in the design, production, and mailing of any of the communications.

Findings:

1. On August 9, 2016, the Board chair made a prima facie determination that the complaint stated a violation of Chapter 10A.
2. The complaint and its exhibits contain evidence showing the Duff (Alan) 4 House committee used the same vendor that the MN Tea Party Alliance and the New Leadership PAC used to produce independent expenditure communications. The complaint and its exhibits allege additional relationships between the vendor, a Duff committee advisor, and the officers of the MN Tea Party Alliance that, if true, would defeat the independence of the expenditures made by the MN Tea Party Alliance.

3. The response submitted by the New Leadership PAC contains information asserting that although the New Leadership PAC used the same vendor as the Duff committee, the vendor had no input into the design, production, or mailing of any of the New Leadership PAC's communications and that the New Leadership PAC and its officers had no outside relationship with the vendor in his capacity as treasurer of the MN Tea Party Alliance.

4. The responses submitted by the Duff committee and the MN Tea Party Alliance do not address the roles that a Duff committee advisor and the chair of the MN Tea Party Alliance played in the development of candidate and independent expenditure communications. The MN Tea Party Alliance response shows that the vendor approved an independent expenditure in his capacity as MN Tea Party Alliance treasurer.

Conclusions:

1. There is no probable cause to believe that the communications produced by the New Leadership PAC were not independent expenditures.

2. There is probable cause to believe that the relationships between the Duff committee advisor, the officers of the MN Tea Party Alliance, and the vendor defeated the independence of the MN Tea Party Alliance's independent expenditures and that those expenditures were instead contributions to the Duff committee in the form of approved expenditures.

3. An investigation is required to determine the facts of the matter and to allow the Board to arrive at a final disposition.

Order:

1. The complaint against the New Leadership PAC is dismissed for lack of probable cause.

2. The executive director shall conduct a formal investigation of this matter to determine whether there have been violations of the Chapter 10A provisions regarding independent expenditures, contribution limits, reporting requirements, and disclaimers. The executive director is authorized to issue administrative subpoenas if needed to secure testimony or records necessary to determine the facts of the matter.

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

Date: 9/7/2016