

**State of Minnesota
Campaign Finance and Public Disclosure Board**

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MICHAEL QUALY REGARDING THE LIBERTARIAN PARTY OF MINNESOTA AND EMILY MELLINGEN

On February 1, 2018, the Campaign Finance and Public Disclosure Board received a complaint submitted by Michael Qualy regarding the Libertarian Party of Minnesota (LPMN) and Emily Melligen, the party's candidate in the special election for the seat in Senate District 54. The complaint alleged the following violations:

1. The LPMN violated the earmarking provisions in Minnesota Statutes section 10A.16 by using a GoFundMe page to solicit and accept contributions with the express or implied condition that the contributions be directed to Ms. Melligen's campaign.
2. The LPMN and Emily Melligen circumvented the recordkeeping provisions in Chapter 10A and the prohibition against accepting anonymous contributions by not obtaining required address and employer information from people donating through the GoFundMe page.
3. The LPMN violated Minnesota Statutes section 211B.04 by not including the words "Prepared and paid for" and an address in the disclaimer on the GoFundMe page.

On February 8, 2018, the Board vice chair concluded that the complaint was sufficient to state a prima facie violation with respect to the earmarking and disclaimer allegations but was not sufficient to state a prima facie violation with respect to the circumvention and recordkeeping allegations. The vice chair therefore dismissed the circumvention and recordkeeping claims.

Analysis

Minnesota Statutes section 10A.022, subdivision 3, paragraph (2), provides that when a member of the Board 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.

The complaint here first alleges that the LPMN violated the earmarking prohibition in Minnesota Statutes section 10A.16. Minnesota Statutes section 10A.16 provides as follows:

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient.

To support the earmarking claim, the complaint quotes language from the GoFundMe page that states, "This GoFundMe page was created by the LPMN and to be clear donations will be going to the candidates (Emily) campaign committee."

In response to this allegation, the LPMN first argues that the party unit did not actually create the GoFundMe page. Instead, the LPMN maintains that an individual created the page on his own initiative for the Mellingén committee. The individual who created the page, however, is the deputy treasurer of the LPMN. In addition, the LPMN's response shows that the party unit chair was deeply involved in discussions about the final wording and organization of the GoFundMe page. Given the degree of party involvement described in the LPMN's response, the record here is sufficient to find probable cause to believe that the LPMN created the GoFundMe page.

In its response, the LPMN also explains that the contributions collected through the GoFundMe page went directly to the Mellingén committee and that the LPMN did not receive any of the contributed funds. Candidate Mellingén therefore was the initial recipient of the contributions solicited and accepted through the GoFundMe page. Because the GoFundMe page did not solicit or accept contributions with the condition that they be directed to a candidate other than the initial recipient, the record here does not establish probable cause to believe that the LPMN violated the earmarking statute.

The complaint next alleges that the GoFundMe page did not include the disclaimer required for campaign material. Minnesota Statutes section 211B.04 provides that campaign material must include a disclaimer that is substantially in the form specified in the statute. For material prepared and paid for by a person or committee other than a principal campaign committee, the statute states that the required form of the disclaimer is "Prepared and paid for by the committee,(address)." Minnesota Statutes section 211B.04 further provides that "[i]f the material is produced and disseminated without cost, the words "paid for" may be omitted from the disclaimer."

The GoFundMe page stated that it was created by the LPMN. The phrase "created by" is substantially in the form required by the statute because the meaning of this phrase is nearly identical to the meaning of the phrase "prepared by." In addition, as the LPMN noted in its response, the creator of the GoFundMe page donated his services and the GoFundMe page did not cost anything to post. Consequently, the party unit was allowed to omit the words "paid for" from the disclaimer. The omission of the party unit's address from the disclaimer, however, violated the statutory requirements. The record therefore is sufficient to establish probable cause to believe that the LPMN violated Minnesota Statutes section 211B.04.

The LPMN argues that it viewed the GoFundMe page as a payment processing page that linked to other websites and Facebook pages. Minnesota Statutes section 211B.04 does have an exception for "online banner ads and similar electronic communications that link directly to an online page that includes a disclaimer." The GoFundMe page did have a link to the Mellingén campaign webpage. The Mellingén campaign webpage, however, was prepared by the Mellingén campaign, not the LPMN. Consequently, the disclaimer on the Mellingén campaign webpage would not have been correct for the LPMN's GoFundMe page. The LPMN does not

cite any other website that contains the required disclaimer and also links to the GoFundMe page.

When the Board determines that there is probable cause that a violation has occurred, the Board also must determine whether the violation warrants a formal investigation. Minnesota Rules part 4525.0210, subpart 5, provides that the Board must consider the following factors when making this determination:

[T]he 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 alleged violation warrants a formal investigation.

Here, the Board concludes that no formal investigation of the disclaimer violation is warranted. There is no other evidence relevant to this violation that could be discovered if the Board were to order a formal investigation. In addition, the partial disclaimer on the GoFundMe page was sufficient to show that the LPMN was responsible for the page even though the omitted address violated the statutory requirements. Finally, the LPMN's response shows that the party unit did not intend to hide its identity as the page's creator, that the party unit believed it had complied with the disclaimer requirements, and that the party unit now is aware of the correct disclaimer requirements. For these reasons, the disclaimer violation in this matter does not warrant a formal investigation.

Order

1. The allegation that the Libertarian Party of Minnesota solicited or accepted earmarked contributions in violation of Minnesota Statutes section 10A.16 is dismissed for lack of probable cause.
2. The allegation that the Libertarian Party of Minnesota violated the disclaimer requirements in Minnesota Statutes section 211B.04, is dismissed because although there is probable cause to believe that this violation occurred, no further investigation is warranted.

/s/ Carolyn Flynn
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

Date: March 7, 2018