

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

.....

November 1, 2017

Room G-31

Minnesota Judicial Center

.....

MINUTES

The meeting was called to order by Chair Rosen.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen, Swanson

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

MINUTES (October 4, 2017)

After discussion, the following motion was made:

Member Leppik's motion: To approve the October 4, 2017, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Thursday, December 14, 2017. After discussion, the Board decided to continue the practice of meeting at 10 a.m. on the first Wednesday of each month in 2018. Because of the late date of the December meeting, the January meeting is scheduled for Wednesday, January 10, 2018.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding a prima facie decision issued by the chair shortly before the November meeting. This memorandum is attached to and made a part of these minutes. Mr. Sigurdson told members that the chair had determined that the complaint did not state a prima facie violation of Chapter 10A because it concerned a local candidate.

Mr. Sigurdson also told members that the application period for the new program and educational analyst position had closed and that staff soon would begin interviewing qualified applicants. Mr. Sigurdson stated that the Board's SmART human resources contact was reviewing the revised position description for the assistant executive director position and that this position soon would be posted. In response to a member's request, Mr. Sigurdson then reviewed the laws applicable to political activities by Board members and the potential issues raised by those activities.

DISCUSSION LEGISLATIVE RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson first reviewed the criteria necessary for a successful legislative initiative and then reviewed the specific proposals in the document. Members discussed the need for legislative changes in the economic interest program, specifically exempting soil and water conservation district supervisors and other watershed management officials from the securities disclosure. Members also discussed whether public officials should report assets held by spouses. Members asked Mr. Sigurdson to discuss these issues with legislators along with the administrative rule proposals listed in the memorandum that would be more advantageous in statute than in rule.

ENFORCEMENT REPORT

A. Consent items

1. Confirmation of lobbyist termination – Thomas Grundhoefer

Ms. Pope told members that Mr. Grundhoefer's principal association, the Minnesota School Board's Association, had notified Board staff that Mr. Grundhoefer had passed away on February 19, 2017. Board staff then administratively terminated Mr. Grundhoefer's lobbyist registration effective on that date. Ms. Pope said that staff was asking the Board to confirm the administrative termination of Mr. Grundhoefer's registration.

2. Administrative termination of lobbyist Roger Smith

Ms. Pope told members that Roger Smith was the sole lobbyist registered for American Citizens, an entity located in Colorado. Ms. Pope said that Mr. Smith also was listed as the president of American Citizens. Ms. Pope stated that Mr. Smith had filed all required lobbyist and principal reports for the years 2011 through 2016 and that these showed that American Citizens had never spent anything on lobbying in Minnesota. Ms. Pope said that Mr. Smith had not filed the June 2017 lobbyist report and that staff efforts to contact him or anyone else with ties to American Citizens had been unsuccessful. Ms. Pope said that staff was asking the Board to administratively terminate the registration of lobbyist Roger Smith effective December 31, 2017.

After discussion, the following motion was made:

Member Rosen's motion:	To confirm the administrative termination of lobbyist Thomas Grundhoefer and to administratively terminate the registration of lobbyist Roger Smith.
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Vote on motion:	Unanimously passed.
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B. Discussion items

1. Reconsideration of waiver request – MN Counseling Association

Ms. Pope told members that at the Board's April 5, 2017, meeting, the MN Counseling Association had asked for waiver of a \$125 late filing fee that had accrued because the Association's lobbyist principal report was late. The Association's brief email stated that 2016 was the first year that it had hired a lobbyist and that it did not know it was required to file a report. Ms. Pope said that the Association now was asking for reconsideration and had provided additional information stating that 2016 was the first and only year that it had hired a lobbyist, that the person who hired the lobbyist had left before the end of 2016 and did not tell anyone that the Association would have to file a principal report, and that the lobbyist's contract ended in December 2016. Ms. Pope said that the Association also stated that it has a small membership spread across the state, that it is run long distance, and that no one regularly checks the mailbox where the report notice was sent. Ms. Pope stated that the Association also stated that it has a very small budget that would be depleted by the \$125 late fee.

After discussion, the following motion was made:

Member Swanson's motion: To grant the request for reconsideration and to waive the \$125 late fee.

Vote on motion: Unanimously passed.

2. Balance adjustment request – Howe for House

Ms. Pope told members that the Howe for House committee is the principal campaign committee of Rep. Jeff Howe. Ms. Pope said that in 2016, Board staff notified the Howe committee that there was a \$1,495.11 discrepancy between the beginning cash balance listed on its 2016 reports and the ending cash balance on its 2015 year-end report. Board staff asked the Howe committee to amend its report to correct the balance or to explain the discrepancy. Ms. Pope stated that although the Howe committee's examination of its records established that most of the discrepancy arose in 2013, the committee had been unable to find the reason for the discrepancy. Ms. Pope said that the Howe committee therefore was asking the Board for a one-time adjustment to change its beginning cash balance for 2016 from \$14,798.39 to \$13,294.28. The Howe committee registered with the Board on April 5, 2012, and had not received any other balance adjustments.

After discussion, the following motion was made:

Member Flynn's motion: To grant the Howe for House committee's balance adjustment request.

Vote on motion: Unanimously passed.

C. 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>
Pamela Luinenburg, MN Coalition of Licensed Social Workers	\$775 LFF	6/15/2017 lobbyist	Lobbyist intended to file termination report effective 1/31/2017 that would have satisfied the June reporting requirement. Due to personal medical issues and need to care for elderly parent also experiencing medical difficulties, lobbyist did not file termination report or June report. Lobbyist now has filed all required reports. Those reports show no disbursements by lobbyist or principal in 2017.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Bill Krebs, Sunrise River WMO	\$100 LFF \$300 CP	Original EIS	Public official was city liaison to WMO and did not know that EIS requirement applied to him. When he learned of requirement, he resigned from WMO after attending only two meetings.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Kenn Rockler, Tavern League of Minnesota	\$250 LFF	6/15/2017 lobbyist	Lobbyist was at Capitol only on a pro-bono basis to assist with transition to new lobbyist. He had medical issues in the spring that made it difficult for him to file termination and last report. Lobbyist had no disbursements during the reporting period.	Member Rosen	To waive the late filing fee.	Passed unanimously.
SEIU Local 26	3 x \$1,000 LFF	24-hr notice; 2016 10-day pre-general; 2016 year-end	SEIU Local 26 is a political fund and therefore not required to file reports for periods with no activity. In 2016, the fund filed a 42-day pre-general report but did not file any other reports. In June 2017 as part of effort to correct year-end balance issues, the fund filed a 2016 year-end report showing all its receipts as unitemized contributions. In discussions with staff, the fund stated that all its receipts were transfers from its parent association and that those transfers exceeded the itemization threshold. Staff then told the fund to amend its report to itemize the transfers. The amended report showed that based on the timing of the transactions, the fund should have filed a 24-hour notice before the primary, a 10-day pre-general-election report, and a year-end report.	No motion		

Eric Reichwald, Down in the Valley	\$375 LFF	6/15/2017 lobbyist	Lobbyist started a new, non-lobbying job in April. He then traveled for most of the next 10 weeks. His new job is all consuming and he therefore neglected to file report. This is lobbyist's first late report. He had no disbursements during reporting period.	No motion		
Betsy Engelking, Geronimo Energy	\$525 LFF	6/15/2017 lobbyist	Lobbyist believed report had been filed before June 30, 2017, when she left country for business trip. Lobbyist promptly filed report upon return when she discovered it had not actually been filed. As alternative to waiver, lobbyist requests reduction to \$275 to reflect time when she was out of country and unable to file.	No motion		
Wade Fremling	\$1,000 LFF, \$1,000 CP	2016 year-end report	Candidate's parents became ill. Candidate spent time caring for them and working full time. Candidate believes he did not receive promised help from party unit.	Member Rosen	To waive civil penalty and reduce late filing fee to \$500.	Unanimously passed.
Kittson County DFL	\$1,000 LF	2016 amended year-end report	After routine reconciliation showed that party unit's year-end report needed to be amended to add contributions, party unit treasurer did not submit timely amended report. Treasurer said he misunderstood his responsibilities and made some mistakes. He explained that he did not initially report the contributions because he believed they occurred in 2017. The party unit does not have much activity.	No motion		

On-line reporting issues

Beth Holger-Ambrose, The Link	\$275 LFF	6/15/2017 lobbyist	Lobbyist had trouble with on-line system and believed it took her longer to figure out because she is new to lobbying.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Joe Samargia, PolyMet Mining, Inc.	\$425 LFF	6/15/2017 lobbyist	Lobbyist had trouble with on-line system when trying to complete report on June 8 th . Lobbyist had to end support session with staff when computer needed to be packed for cross-country move. When moving van with computer was delayed unexpectedly, lobbyist could not access computer to complete report on time. This is lobbyist's first late filing in over 20 years.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Don Chapdelaine, SKB Environ.	\$225 LFF	6/15/2017 lobbyist	Lobbyist had trouble with computer when filing and believed that he had certified and submitted his report.	Member Rosen	To waive the late filing fee.	Passed unanimously.

Hubert (Buck) Humphrey, Hockey Modernization Minnesota	\$25 LFF	6/15/2017 lobbyist	Lobbyist believed report had been submitted under new system but it had not.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Charles Repke, Selby Dayton LLC	\$225 LFF	6/15/2017 lobbyist	Lobbyist completed reports for all five clients and believed that all were submitted successfully on June 1st. When lobbyist learned that the last report had not been submitted, he promptly logged into system and sent report.	Member Rosen	To waive the late filing fee.	Passed unanimously.
David Hoch, Minnesotans for Responsible Government	\$275 LFF	6/15/2017 lobbyist	Lobbyist had problems with on-line system when trying to complete report. Lobbyist filed report as soon as he received log in assistance. This is first time lobbyist has had a late report.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Cap O'Rourke, MN Cycling Center; Renewable Energy Partners	2 x \$225 LFF	6/15/2017 lobbyist	Lobbyist completed reports for all clients and thought he received confirmation that all reports had been filed. Lobbyist filed two missing reports as soon as he received notice that they were missing.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Robert Ryan, United Steelworkers	\$325 LFF	6/15/2017 lobbyist	Lobbyist believed that he had filed report before deadline but report was not actually submitted. Lobbyist thinks that he may have missed a step in the new system. When lobbyist returned to office after work trip and learned report was late, he immediately contacted staff for help filing.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Sarah Janecek, Caribou MSP Airport	\$225 LFF	6/15/2017 lobbyist	Lobbyist attempted to file on June 16 but had log in issues. Lobbyist contacted staff for help and filed immediately after receiving that help.	Member Rosen	To waive the late filing fee.	Motion failed (two ayes, four nays).

Supplemental enforcement report

C. Waiver request – David Berglund

Ms. Pope told members that David Berglund is a Cook County Soil and Water Conservation District (SWCD) Supervisor. Ms. Pope said that Mr. Berglund was referred to the attorney general's office for failure to file his 2015 annual statement of economic interest and to pay the \$1,100 in late fees and civil penalties that accrued for that report. A hearing on the Board's summary judgement motion is scheduled for December 11, 2017.

Ms. Pope said that on October 31, 2017, Mr. Berglund filed his 2015 annual statement as well as the 2016 annual statement that became due after he was referred to the attorney general. Mr. Berglund also submitted a check for \$200 and a request to waive the remaining late fees and civil penalties that he owes. Ms. Pope stated that in his request, Mr. Berglund said that he is uncomfortable with the level of disclosure required on the form for SWCD supervisors and that he looked up the definition of public official and did not believe that it included SWCD supervisors.

Ms. Pope said that in addition to the late fees and civil penalties owed for the 2015 statement, Mr. Berglund also owed \$280 in late fees and civil penalties for his 2010 and 2014 original statements and \$100 in late fees for the 2016 annual statement. Ms. Pope told members that in 2011, the Board granted a waiver request from Mr. Berglund and reduced the \$600 civil penalty for his 2010 statement to \$100.

After discussion, the following motions were made:

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|------------------------|---|
| Member Rosen's motion: | To consider David Berglund's waiver request even though the matter was placed on the agenda and materials were distributed less than seven days before the meeting. |
| Vote on motion: | Unanimously passed. |
| Member Rosen's motion: | To reduce the total amount of late fees and civil penalties owed by David Berglund for his statements of economic interest to \$200. |
| Vote on motion: | Motion passed (four ayes, one nay, one abstention). |

Informational Items

A. Payment of a late filing fee for amended 2016 year-end report of receipts and expenditures

38th Senate District DFL, \$225
White Earth PAC, \$25
Neighbors for Jim Davnie, \$25

B. Payment of a late filing fee for 2016 year-end report of receipts and expenditures

Kandiyohi County RPM, \$200
Ben Denucci for MN House, \$150
MUCA PAC, \$500

C. Payment of a late filing fee for 2014 amended report of receipts and expenditures

Derrick Lehrke for House, \$157.67 (revenue recapture)

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

Cristine Almeida, 14 lobbyist reports, \$3,850
David Anderson, All Parks Alliance for Change, \$150
Dana Lee Brooks, Land-O-Lakes, \$275
Dan Campo, BPAM, MN Athletic Trainers, MN Hearing Healthcare Providers, \$545
Kevin Cooper, Enterprise Rent-a-Car, \$50
Lisa Daniels, Windustry, \$25
Joe Davis, Alliance for a Better MN, \$225
Elizabeth Dickinson, Community Power, \$25

Dick Diercks, Park Dental, \$25
Carla Ferrucci, MN Association for Justice, \$25
Chris Galler, MN Assn of Realtors, MN Homeowners Alliance, \$450
Thomas Garrett, Thomas J Garrett, \$25
Joe Gimse, Bollig Inc, City of Sacred Heart, \$100
Deanna Smiley Gulliford, Goodwill/Easter Seals, \$25
Eric Hauge, HOME Line, \$25
Lynn Hinkle, Innovative Power Systems, \$275
Kelsey Johnson, Iron Mining Assn of MN, \$75
Robert Johnson, Insurance Federation of MN, \$100
Joseph Lally, Delta Dental of MN, \$75
Andrea Ledger, NARAL ProChoice Minn, \$125
Senta Leff, MN Coalition for Homeless, \$400
Deborah Loon, MN Valley Natl Wildlife Refuge Trust, \$275
John MacKenzie, MN Golf Course Supervisors, \$250
Jay McLaren, Medica, \$25
Joseph Olson, Gun Owners Civil Rights Alliance, \$25
Christopher Parsons, MN Professional Fire Fighters, \$225
Jamie Pfuhl, MN Grocers Assn, \$225
Joseph Richardson, Gaming Studio Inc., \$250
Robyn Rowen, Eden Prairie Firefighters, MN Insurance and Financial Serv, \$550
Erin Rupp, Pollinate Minn, \$75
Susan Schatz, Lutheran Social Services, \$25
Inga Schuchard, US Energy Services, \$225
Erin Sexton, Mayo Clinic, \$100
Wyman Spano, Special Education Graduates Work, \$225
Dominic Sposeto, payment for 7 lobbyist reports, \$350
Thomas Steinbrenner, Brotherhood of Maintenance Way Employees, \$225
Kevin Thoma, NW Petroleum Assn, \$75
Steve Veverka, Areas USA, Endo Pharmaceuticals, \$450
Jonathan Weinhagen, Minneapolis Homefield Advantage, \$275
Sara Wolff, MN Environmental Partnership, \$250
Steve Woods, Freshwater Society, \$225
Lars Negstad, Isaiah, \$50
Brian Sanders, Friends of American Ski Jump, \$250

E. Payment of a late filing fee for an amended 2016 annual report of lobbyist principal

Caribou MSP Airport, \$650

F. Payment of a late filing fee for 24-hour notice of large pre-election contribution

DLCC for Minnesota, \$2,000 (two 24-hour notices)
IATSE Local #13, \$125

G. Payment of a civil penalty for false certification

Branden Petersen, August, \$280
Brandon Petersen, September, \$280

H. Payment of a civil penalty for conversion to personal use, inadequate record keeping

John Lesch, \$15,000 and John Lesch for State Representative, \$5,000

I. Payment of a civil penalty for excess special source contributions:

(Jamie) Becker-Finn for 42B, \$60

J. Payment of a civil penalty for excess party unit contributions:

Steve Cwodzinski for Senate, \$225

K. Deposit to the General Fund

Jerry Hertaus for House 33A, excess carryforward, \$212.63
Kathy Sheran for State Senate, \$373.17, anonymous, could not determine source
Joe Hoppe Volunteer Committee, excess public subsidy, \$1,127.59

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn provided additional information regarding three items on the report. Mr. Hartshorn said that given David Berglund's submission of his economic interest statements and the granting of his waiver request, this matter probably would be dismissed. Mr. Hartshorn also stated that Christopher John Meyer had submitted his committee's missing year-end report but that the late fees and civil penalties that had accrued for that report had not been paid. Finally, Mr. Hartshorn said that he had learned that Board staff had communicated with Kristen Johnson but that she had not yet submitted her statement of economic interest or the accrued late fees and civil penalties.

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 investigation of the Goodhue County RPM and the David Osmek Volunteer Committee

Findings, conclusions, and order in the matter of the investigation of Laura Walker, former treasurer of the Freeborn County DFL

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



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding prima facie decision

Memorandum regarding legislative recommendations

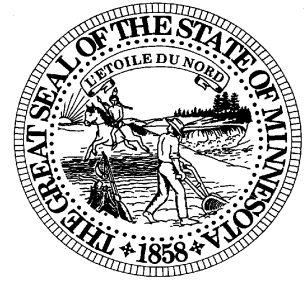
Legal report

Findings, conclusions, and order in the matter of the investigation of the Goodhue County RPM and the David Osmek Volunteer Committee

Findings, conclusions, and order in the matter of the investigation of Laura Walker, former treasurer of the Freeborn County DFL

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: October 31, 2017

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 complaint was dismissed by the chair and the prima facie determination is provided here as an informational item to the other Board members. No further action of the Board is required.

Complaint regarding Shannon Bryant

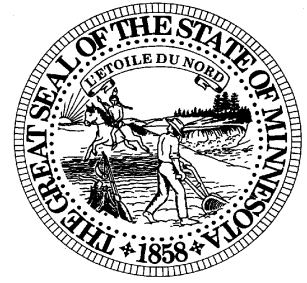
On October 16, 2017, the Campaign Finance and Public Disclosure Board received a complaint submitted by Jeff Huber regarding Shannon Bryant. The complaint alleges that Ms. Bryant received at least six anonymous contributions of over \$20, and failed to disclose contributions received at a Go Fund Me webpage. Ms. Bryant is a candidate for Mayor of the City of Grant. Because the Board does not have the authority to investigate complaints involving local office candidates, the Board chair made a determination on October 24, 2017, that the complaint did not state a prima facie violation.

Attachments:

Prima Facie Determination
Complaint

Minnesota

Campaign Finance and Public Disclosure Board



Date: October 25, 2017

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Legislative recommendations

As provided in Minn. Stat. §10A.02, subd. 8, the Board "...may indicate apparent abuses and offer legislative recommendations." The last time the Board submitted legislative recommendations was in 2015. If the Board is interested, I believe that there is an opportunity to propose a package of recommendations for improving Chapter 10A at the 2018 session.

It will of course be a Board decision as to whether there should be legislative recommendations this year, and if so what recommendations to include. However, as guidance to the Board, I believe that there are three standards to meet in order for the recommendations to be successful this upcoming year:

- There must be bipartisan support for the recommendations. The Board can draft proposed legislation on its own authority, but finding members of the legislature willing to carry the bill is a different matter. If authors and co-authors from both parties in both the Senate and House will not sign on to the legislation prior to introduction, then I will strongly recommend that the effort for 2018 end. There is simply no productive result possible from recommendations that are supported by members of only one party.
- The Governor's office must also be in agreement with, or at least not in opposition to, the recommendations. I have had some discussions with legislators on the feasibility of legislation this year. Almost without exception, the legislators stated that they would not be interested in working on a bill unless there was reason to believe that the Governor did not oppose the legislation.
- The recommendations should be relatively limited in scope. I do not mean that significant policy issues are to be avoided. However, there is only so much time and attention that the legislature has to dedicate to Chapter 10A in any given year. Recommendations that propose multiple complex issues will flounder under their own weight.

The legislative session begins on February 20, 2018. It would be advisable to have legislative recommendations ready for introduction by that date. Here is the anticipated calendar going forward to prepare recommendations:

- November Meeting: Review list of possible recommendations identified by staff and by the administrative rule committee. If the Board is interested in developing a recommendation, staff will prepare draft statutory language for approval at the

December meeting. If there are other topics that Board members wish to consider, please raise these topics at the November meeting.

- Between the November and December meetings, staff will develop proposed language and reach out to legislators and the Governor's office to keep them informed on the possible legislative recommendations.
- December meeting: The Board will adopt which legislative recommendations it wishes to pursue in 2018.

Possible recommendations related to the economic interest statement program.

During the development of the draft administrative rules Board members and staff discussed the effectiveness of the economic interest statement (EIS) program. Generally it was agreed that the EIS program requires disclosure that in some cases is unnecessary, and in other cases is insufficient to alert the public of a possible conflict of interest. Recommendations to address these deficiencies could include the following:

- **Establish a two-tiered disclosure system.** Disclosure required for soil and water conservation district supervisors, members of watershed districts and watershed management organizations, and perhaps some other public officials with very limited authority would not include financial investments. A higher level of disclosure would remain for other public officials.
- **Raising the dollar-level threshold for disclosure.** Currently the disclosure of investments, non-homesteaded real estate, and compensation by principal business or professional activity category is required when the value is over \$2,500. That amount has not been adjusted for inflation in decades (set in 1974), and could be increased to \$10,000 without damaging the public's knowledge of possible conflicts of interest.
- **Raising the dollar-level threshold for disclosure of income derived from businesses.** Currently disclosure is required of each business from which the official receives more than \$50 per month. That amount could be raised to \$250 per month.
- **New disclosure.** Requiring the disclosure of any direct or indirect interest in public expenditures or contracts with public entities.
- **Disclosure for spouse.** Increase disclosure on the EIS to include the occupation and investments of the public official's spouse. This is admittedly an unpopular subject, but it has been recognized in almost every other state that the financial interests of the public official's spouse could in fact create a conflict of interest for the public official.
- **Filing with the Board.** Expanding the officials required to file economic interest statements directly with the Board to include elected officials in cities of the first class. Currently elected officials from metropolitan area cities with a population of over 50,000 file with the city clerk.

Possible recommendation related to independent expenditures.

- **Close loophole used to avoid registration and reporting.** Currently a communication that does not use the eight words of express advocacy (vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat, and reject) may not be classified as

an independent expenditure. The words of express advocacy were recognized in a footnote in the Buckley v. Valeo Supreme Court decision in 1976. In subsequent cases, (McConnell v. Federal Election Commission in 2003 and Federal Election Commission v. Wisconsin Right to Life, Inc in 2007) the Supreme Court has adopted a functional equivalent of express advocacy standard that recognizes that communications can easily convey support for or opposition to a candidate while avoiding use of the “magic words.” A possible recommendation would be to amend the definition of independent expenditure to include words of express advocacy and their functional equivalent.

The Board should know that this recommendation has been offered before as part of a much broader package of recommendations on independent expenditures. The legislature declined to pass any part of that recommendation. Nonetheless, I have been approached by legislators from both parties who are concerned about the increase in mailers in their districts that are clearly intended to influence voting, but which are not identified as independent expenditures. On this one issue related to independent expenditures, I believe there is the potential for some bipartisan agreement.

Notice to contributors.

Board members will recall the annual controversy over the donut booth operated at the state fair by a political committee registered with the Board. Individuals purchase food at the booth without knowing that their purchase is in fact a political contribution to the political committee. The issue of providing notice to consumers when goods or services are sold by a political committee has come up before. In Advisory Opinion 293, the Board provided guidance to a committee that was also raising funds through the sale of merchandise. The opinion provides in part:

The Board recommends that the Committee inform purchasers of more than \$20 worth of merchandise that their purchase is a contribution to the committee. Although this notice is not required by Minnesota Statutes Chapter 10A, it would be a natural disclosure to make when obtaining the purchaser’s name and address or contact information. This notice would allow a potential purchaser to make an informed decision as to whether or not to make the purchase, understanding that it constitutes a political contribution.

For Board consideration staff has drafted the following language that would address this issue:

10A.XX

Subdivision 1. Notice to contributors. A political committee, political fund, political party unit, or principal campaign committee that raises funds through the sale of goods or services must disclose to potential customers that the proceeds from the purchase are a political contribution. The notice may be provided verbally at the time of purchase, or through the prominent display of a sign providing the notice at the location where the goods or services are retailed.

Subdivision 2. Exception. This section does not apply to goods or services sold at fundraising events which require the purchase of a ticket to attend.

Subdivision 3. Penalty. A political committee, political fund, political party unit, or principal campaign committee that knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000.

Proposed administrative rules in statutory form

As Board members know there is a preference by some members of the legislature that the proposed administrative rules be brought forward as legislation. Senator Kiffmeyer and Representative O'Driscoll offered to work with the Board on legislation that included the proposed administrative rules in their August 31, 2017, letter to the Board.

In my view there would be advantages to moving some sections of the proposed administrative rules into statute. For example, if the disclaimer provisions for independent expenditures is moved into Minn. Stat. § 211B.04 the language then could be used for independent expenditures made in municipal, county, and school district elections. In other cases the majority of the regulation provided on a given subject is already in statute, and it would be easier for the regulated community to add to an existing statute rather than adopt or amend a separate administrative rule.

The following list of existing statutes have been modified to show how the provisions from the administrative rules could be incorporated. Underlined text is the language from the proposed rules. The statutes have been grouped by subject area.

Disclaimers for independent expenditures

10A.17 EXPENDITURES

* * *

Subd. 4. **Independent expenditures.** (a) Except as provided in paragraphs (b) and (c), an individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written and broadcast communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in substantially the form provided in Minnesota Statutes section 211B.04. ~~that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type~~ The statement must be on the front page of all written communications literature and advertisements published or posted, and at the end of all broadcast communications advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

211B.04 DISCLAIMERS.

Subdivision 2. Independent Expenditures. Notwithstanding subdivision 1, when campaign material is an independent expenditure, the following provisions apply :

(a) (1) The required form of the statement on a written independent expenditure is:

“This is an independent expenditure prepared and paid for by (insert name of entity participating in the expenditure), (insert address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.” If the material is produced and disseminated without cost, the words "paid for" may be omitted from the disclaimer.

(2) When more than one entity participates in the preparation and dissemination of a written independent expenditure, the name and address of every participating entity must be included in the statement.

(b) (1) The required form of the statement on a broadcast independent expenditure is: “This independent expenditure is paid for by (insert name of entity participating in the expenditure). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.” If the broadcast independent expenditure is produced and disseminated without cost, the required form of the disclaimer is: “(insert name of entity participating in the expenditure) is responsible for the contents of this independent expenditure. It is not coordinated with or approved by any candidate nor is any candidate responsible for it.

(2) When more than one entity participates in the preparation and dissemination of a broadcast independent expenditure, the name of every participating entity must be included in the statement.

Subdivision 3. Material that does not need a disclaimer. (a) This section does not apply to an individual or association that is not required to register or report under chapter 10A or 211A.

(b) This section does not apply to the following:

(1) bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer.

(c) This section does not modify or repeal section 211B.06.

Subdivision 4. Websites. The requirements in this section are satisfied for an entire website or social media page when the statement required in subdivisions 1 and 2 appears once on the homepage of the site.

Noncampaign Disbursements

10A.01 DEFINITIONS

Subd. 26 **Noncampaign disbursement.** "Noncampaign disbursement" means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes:

* * *

(24) a contribution to a fund established to support a candidate's participation in a

recount of ballots affecting that candidate's election;

(25) costs paid by a candidate's principal campaign committee for a single reception given in honor of the candidate's retirement from public office after the filing period for affidavits of candidacy for that office has closed;

(26) a donation from a terminating principal campaign committee to the state general fund; and

(27) a donation from a terminating principal campaign committee to a county obligated to incur special election expenses due to that candidate's resignation from state office.

10A.175 NONCAMPAIGN DISBURSEMENTS

Subd. 1. **Services for a constituent.** (a) A candidate's committee may claim the expenses listed below as services for a constituent during the periods listed in Minnesota Statutes section 10A.01, subdivision 26, paragraph (6).

1. The cost of a charter bus to transport constituents to an educational day held at the state capitol during a legislative session;
2. The cost of hiring an intern that is directly attributable to the intern's provision of services for constituents;
3. The cost of congratulatory letters sent to the office holder's constituents that include information about government services available to the recipient or how the recipient can register to vote; and
4. The cost of printing and distributing a review of legislative action and issues to the office holder's constituents if the distribution occurs prior to the sine die adjournment of the legislature.

If the review of legislative action described in clause 4 is distributed after the legislature adjourns sine die, the printing and distribution costs must be prorated between noncampaign disbursements and campaign expenditures as described in Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), even if the printing occurred prior to adjournment.

(b) A candidate's committee may not claim the expenses listed below as services for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6).

1. The cost of food or beverages consumed by a constituent during a meeting with the office holder; and
2. The cost of a communication to constituents that advocates for the re-election of the office holder, solicits campaign contributions to the candidate or a political party, or advocates for or against the election of candidates of a political party.

(c) A communication prepared as a service for a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6), must include the disclaimer required by Minnesota Statutes section 211B.01 when the communication is disseminated after adjournment sine die of the legislature in the election year for the office held.

Subd. 2. **Food and beverages while campaigning.** A candidate's committee may not claim the expenses listed below as payments for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities under Minnesota Statutes section 10A.01, subdivision 26, paragraph (7).

(a) The cost of food and beverages consumed by the candidate or volunteers when the candidate or volunteers are distributing communications that qualify as services to a constituent under Minnesota Statutes section 10A.01, subdivision 26, paragraph (6); and

(b) The cost of food and beverages consumed by the candidate and volunteers when the candidate and volunteers are campaigning outside of the candidate's district.

Subd. 3. Food and beverages; legislative duties. A candidate's committee may not claim the expense of food and beverages consumed by individuals other than the legislator at a reception or meeting as a noncampaign disbursement under Minnesota Statutes section 10A.01, subdivision 26, paragraph (8).

Subd. 4. Expenses for serving in public office. (a) A candidate's committee may claim the expenses listed below as expenses for serving in public office under Minnesota Statutes section 10A.01, subdivision 26, paragraph (10).

1. The cost of transportation, lodging, meals, and other expenses necessary to attend meetings and conferences when the reason that the candidate attends the event is to assist the candidate in performing the duties of the office held and the candidate would not attend the event if the candidate were not an office holder; and
2. The cost of traveling to the state capitol for scheduled legislative committee meetings and regular and special legislative sessions when those costs are not reimbursed by another source;

(b) A candidate's committee may not claim the expenses listed below as expenses for serving in public office under Minnesota Statutes section 10A.01, subdivision 26, paragraph (10).

1. The cost of meals for staff;
2. The cost of membership fees and dues necessary to belong to organizations located in the office holder's district;
3. Costs incurred for transportation, lodging, and other expenses for trips taken outside of the office holder's district for the purpose of relationship building; and
4. Costs incurred for transportation, lodging, and other expenses by an individual accompanying an office holder on a trip unless the office holder is a person with a disability, as defined in Minnesota Statutes, section 363A.03, subdivision 12, and the accompanying individual is providing services that are made necessary by the disability.

(c) Paragraph (b), clause 4, does not require a committee to allocate a travel expense between an office holder and an individual accompanying the office holder on a trip when the presence of the accompanying individual does not increase the amount of the expense.

Recordkeeping and reporting

10A.155 VALUE OF CONTRIBUTIONS REIMBURSEMENT OF AUTOMOBILE USE.

Automobile use provided to a committee by an individual who will be reimbursed may be valued at the ~~lowest rate used by the state to reimburse its employees for automobile use.~~ standard mileage rate set by the Internal Revenue Service for business miles. Alternatively, the value of the automobile may be calculated as the actual cost of fuel, maintenance, repairs, and

insurance directly related to the use of the automobile. An automobile provided by an association must be valued at the fair market value for renting an equivalent automobile.

When a committee pays mileage expenses, it must obtain a mileage log documenting those expenses that shows the following information:

- (a) The date of each trip taken;
- (b) The purpose of each trip taken;
- (c) The distance traveled during the trip; and
- (d) If the mileage is not being paid at the standard mileage rate set by the Internal Revenue Service for business miles, the actual cost of fuel, maintenance, repairs, and insurance directly related to the use of the automobile.

10A.20 CAMPAIGN REPORTS

* * *

Subd. 3. **Contents of report.** (a) The report required by this section must include each of the items listed in paragraphs (b) to (q) that are applicable to the filer. The board shall prescribe forms based on filer type indicating which of those items must be included on the filer's report.

* * *

(h) The report must disclose the name, address, and registration number if registered with the board of each individual or association to whom aggregate expenditures, approved expenditures, independent expenditures, and ballot question expenditures have been made by or on behalf of the reporting entity within the year in excess of \$200, together with the amount, date, and purpose of each expenditure, including an explanation of how the expenditure was used, and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat and an indication of whether the expenditure was to promote or to defeat the ballot question, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

* * *

(m) The report must disclose the name, address, and registration number if registered with the board of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$200 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement, including an explanation of how each noncampaign disbursement was used.

* * *

(q) Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed \$200 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or

became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased, and an explanation of how the service or item was used. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.

* * *

Subd. 13. **Third-party reimbursement.** (a) When a committee reimburses an individual or association for an expenditure or a noncampaign disbursement, the reimbursement is not required to be itemized on a report of receipts and expenditures under subdivision 3, paragraph (h), (m), or (q), unless the total reimbursements and payments made by the committee during the year to that individual or association exceed \$200.

(b) An individual or association filing a report disclosing an expenditure or noncampaign disbursement that must be reported and itemized under paragraph (a) and subdivision 3, paragraph (g) or (l) (h), (m), or (q), that is a reimbursement to a third party must report the purpose of each expenditure or disbursement for which the third party is being reimbursed information below:

1. The name and address of the individual or association to which reimbursement was made;
2. The name and address of the vendor supplying the good or service for which reimbursement was made;
3. The date of the expenditure or noncampaign disbursement for which reimbursement was made;
4. The date of the reimbursement;
5. A description of the specific good or service purchased;
6. An explanation of how the specific good or service purchased was used; and
7. If the reimbursement was for a noncampaign disbursement, the specific noncampaign disbursement category in Minnesota Statutes section 10A.01, subdivision 26, or this chapter that is applicable to the good or service for which reimbursement was made.

(c) In the alternative, the reporting individual or association may report individually each of the underlying expenditures, and noncampaign disbursements being reimbursed as provided in subdivision 3.

Miscellaneous provisions

10A.25 SPENDING LIMITS

* * *

Subd. 3a. **Independent expenditures.** The principal campaign committee of a candidate must not make independent expenditures or contribute to an independent expenditure committee or fund.

10A.322 SPENDING LIMIT AGREEMENTS.

Subdivision 1. **Agreement by candidate.** (a) As a condition of receiving a public subsidy, a candidate must sign and file with the board a written agreement in which the candidate agrees that the candidate will comply with sections 10A.25; 10A.27, subdivision 10; 10A.324; and 10A.38.

(b) Before the first day of filing for office, the board must forward agreement forms to all

filing officers. The board must also provide agreement forms to candidates on request at any time. The candidate must file the agreement with the board at least three weeks before the candidate's state primary. An agreement may not be filed after that date. An agreement once filed may not be rescinded.

(c) The board must notify the commissioner of revenue of any agreement signed under this subdivision.

(d) Notwithstanding paragraph (b), if a vacancy occurs that will be filled by means of a special election and the filing period does not coincide with the filing period for the general election, a candidate may sign and submit a spending limit agreement not later than the day after the close of the filing period for the special election for which the candidate filed.

(e) Notwithstanding paragraphs (b) and (d), if a vacancy occurs that will be filled by means of a special election called under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c), a candidate may sign and submit a spending limit agreement not later than eight calendar days after the general election.

10A.323 AFFIDAVIT OF CONTRIBUTIONS

* * *

(b) A candidate for a vacancy to be filled at a special election for which the filing period does not coincide with the filing period for the general election must accumulate the contributions specified in paragraph (a) and must submit the affidavit required by this section to the board within five days after the close of the filing period for the special election for which the candidate filed.

(c) Notwithstanding paragraphs (a) and (b), a candidate for a vacancy to be filled at a special election called under Minnesota Statutes section 204B.13, subdivision 2, paragraph (c), must accumulate the contributions specified in paragraph (a) and must submit the affidavit required by this section to the board within 12 calendar days after the general election.

~~(e)~~ (d) A candidate or the candidate's treasurer must be able to electronically file the affidavit required under this section in the same manner as other reports required by this chapter. The board must not require the candidate or candidate's treasurer to notarize the affidavit of contribution.

Economic interest statements

10A.01 DEFINITIONS

Subd. 35a. **Securities.** (a) "Securities" means any stock, share, bond, warrant, option, pledge, note, mortgage, annuity, debenture, lease, or commercial paper, in any corporation, partnership, trust, or other association.

(b) "Securities" does not include deposits in a savings account; certificates of deposit; money market certificates; treasury bills; treasury bonds; treasury notes; dividends from securities; shares in a mutual fund; shares in an exchange traded fund; or the underlying holdings owned by an annuity or in a defined benefit pension plan. For beneficiaries of a blind trust, "securities" does not include the underlying assets owned by the blind trust.

Independent expenditure provisions

10A.173 COORDINATED AND NONCOORDINATED EXPENDITURES; DEFINITIONS.

Subdivision 1. Scope. The definitions in subdivisions 2 to 8 apply to sections 10A.173 to 10A.177.

Subd. 2. Agent. “Agent” means a person who served during the election segment as the candidate’s chairperson, deputy chairperson, treasurer, deputy treasurer, fundraiser, advisor, or business representative, or any other person authorized to act on the candidate’s behalf.

Subd. 3. Candidate. “Candidate” means a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10; the candidate's principal campaign committee; and the candidate's agent.

Subd. 4. Consultant. “Consultant” means a person or an association that provides consulting services.

Subd. 5. Consulting services.

(a). “Consulting services” means polling, communications planning and design, advertising, messaging, and any other service that involves campaign strategy.

(b). “Consulting services” does not mean printing or mailing campaign material, legal services that do not involve campaign strategy, accounting services, or costs for the use of a medium for communications purposes.

Subd. 6. Coordinated. “Coordinated” means with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate. A coordinated expenditure is an approved expenditure under Minnesota Statutes section 10A.01, subdivision 4.

Subd. 7. Domestic partner. “Domestic partner” means an unrelated individual who shares an intimate interpersonal relationship with the candidate and resides in the same residence as the candidate but is not married to the candidate.

Subd. 8. Spender. “Spender” means an individual; an association; a political committee; a political fund; an independent expenditure political committee; an independent expenditure political fund; or a party unit.

10A.175. COORDINATED EXPENDITURES.

Subdivision 1. Scope. An expenditure described in subparts 2 to 7, when expressly advocating for the election of the candidate or the defeat of the candidate’s opponent, is a coordinated expenditure and is not independent under Minnesota Statutes section 10A.01, subdivision 18:

Subd. 2. Fundraising. (a) An expenditure made during an election segment by a spender for which the candidate, during that same election segment, has engaged in fundraising of money that is not general treasury money of the spender.

(b) Fundraising includes the following actions:

1. Soliciting, collecting, or directing money that is not general treasury money for or to the spender;
2. Providing names of potential donors of money that is not general treasury money to the spender; and
3. Appearing as a speaker at an event raising money that is not general treasury money for the spender.

(c) This subdivision applies to fundraising for money that is not general treasury money of the spender by an individual prior to the individual meeting the definition of a candidate in Minnesota Statutes section 10A.01, subdivision 10.

(d) This subdivision does not apply to a candidate's fundraising on behalf of a party unit.

Subd. 3. Consulting services. (a) An expenditure made during an election segment for consulting services from a consultant that has also provided consulting services to the candidate or the candidate's opponent during that same election segment.

(b) This subdivision does not apply when the following conditions are met:

(1) The consultant assigns separate personnel to the spender and the candidate;

(2) The consultant has a written policy that describes the measures that the consultant has taken to prohibit the flow of information between the personnel providing services to the spender and the personnel providing services to the candidate;

(3) The written policy has been distributed to all personnel and clients covered by the policy including the candidate and the spender;

(4) The consultant has implemented the measures described in the written policy; and

(5) No information has been shared between the spender and the personnel provided services to the spender and the candidate and the personnel providing services to the candidate.

Subd. 4. Relationship with spender. An expenditure made during an election cycle by a spender that:

(a) Is not a party unit; and

(b) Was established, directed, or managed during the same election cycle by any of the following:

1. The individual who is the candidate at the time of the expenditure regardless of whether that individual met the definition of a candidate under Minn. Stat. section 10A.01, subdivision 10, at the time of the establishment, direction, or management of the spender; or
2. The candidate's spouse or domestic partner.

(c) This subdivision does not apply to the spouse or domestic partner of the candidate's agent.

Subd. 5. Receiving nonpublic information. An expenditure made after the spender receives from the candidate information that is not publically available regarding the candidate's campaign plans, strategy, or needs.

Subd. 6. Spender provides information. An expenditure made when:

(a) The spender provides information to the candidate regarding the expenditure's contents, intended audience, timing, location or mode, volume, or frequency; and

(b) The information is provided to the candidate before the expenditure is communicated to the public.

Subd. 7. Candidate's participation. An expenditure made with the candidate's participation in the following:

(a) Any of the processes required for the creation and development of the expenditure, including budgeting decisions, media design, acquisition of graphics and text, production, and distribution of the final product; or

(b) Any decision regarding the content, timing, location, intended audience, volume of distribution, or frequency of the expenditure.

10A.177 NON-COORDINATED EXPENDITURES.

An action listed below, by itself, does not establish that an expenditure made by the spender was coordinated with the candidate:

- (a) A candidate asks a spender not to make any expenditure to support the candidate or oppose the candidate's opponent.
- (b) An expenditure uses a photograph obtained from a publicly available source or public event.
- (c) An expenditure uses information obtained from a biography, position paper, press release, or similar material about the candidate from a publicly available source or public event.
- (d) The spender contributes to the candidate or endorses the candidate.
- (e) An expenditure includes a hyperlink to the candidate's website or social media page.
- (f) An expenditure appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication.
- (g) The spender discusses the candidate's position on a legislative or policy matter with the candidate. This paragraph includes the sending, completion, and return of a survey conducted by the spender to determine whether to endorse the candidate.
- (h) The spender invites the candidate to appear before the spender's members, employees, or shareholders including the candidate's participation in the event, unless the event

promotes the election of the candidate or the defeat of the candidate's opponent, or the candidate requests or accepts campaign contributions at the event.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
November, 2017**

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
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	12/30/16 8/18/17			Summary Judgment Hearing scheduled for 12/11/17
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Personal service unsuccessful Hold by Board
Kirsten Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17	5/26/17			Summons and Complaint were personally served; Johnson filed an answer

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

FINDINGS, CONCLUSIONS, AND ORDER IN THE MATTER OF THE INVESTIGATION OF THE GOODHUE COUNTY REPUBLICAN PARTY OF MINNESOTA AND THE DAVID OSMEK VOLUNTEER COMMITTEE

Background

This investigation examined the activities of the Goodhue County Republican Party of Minnesota (the Goodhue RPM) and the David Osmek Volunteer Committee (the Osmek committee) in relation to a contribution by the Osmek committee to the Goodhue RPM. Although they were not subjects of the investigation, the transactions also involved Michael Goggin and the Michael Goggin for Senate committee (the Goggin committee), which was the committee supporting Michael Goggin's 2016 challenge to the incumbent senator in senate district 21.

Each year, after year-end reports of campaign receipts and expenditures are filed, the Board conducts a reconciliation in which it compares contributions reported by donors who are registered with the Board with the corresponding receipts reported by recipients. Except for transactions that cross over calendar years, each donor-reported contribution should match the corresponding recipient-reported contribution.

In conducting its reconciliation of the 2016 reports of the Goodhue RPM, the Goggin committee, and the Osmek committee, the Board identified the following discrepancies:

- The Goodhue RPM reported receiving \$625 from the Goggin committee while the Goggin committee did not report making any contribution to the Goodhue RPM;
- The Goodhue RPM reported contributing \$1,800 to the Goggin committee while the Goggin committee reported receiving \$1,175 from Goodhue RPM;
- The Goodhue RPM reported receiving \$1,000 from the Osmek committee while the Osmek committee reported donating only \$375 to the Goodhue RPM.

Board staff wrote to the Goodhue RPM treasurer on April 12, 2017, asking for an explanation of these discrepancies. The treasurer responded on April 25, 2017, explaining that the reports were correct but that various treasurers had reported the transactions, which in each case involved some form of refund, differently.

In his explanation, the Goodhue RPM treasurer indicated that on or about August 27, 2016, the Osmek committee made a contribution of \$1,000 to the Goodhue RPM and that on or about September 1, 2017, the Goodhue RPM made a contribution of \$1,000 to the Goggin committee. He further related that the Goggin committee refunded \$625 to the Goodhue RPM because it believed it had exceeded the limit that it could accept from party units and that the Goodhue RPM subsequently refunded \$625 to the Osmek committee.

Based on the timing and flow of funds from the Osmek committee to the Goodhue RPM to the Goggin committee and then in the reverse direction, the executive director was concerned that earmarking or circumvention of the requirements of Chapter 10A may have occurred. As a result the executive director submitted the matter to the Board at its June 14, 2017, meeting for consideration of the initiation of an investigation. The Goodhue RPM and the Osmek Volunteer committee were notified of the submission as required by statute. Senator David Osmek responded in writing but the parties did not appear in person at the submission hearing.

At its June 14 meeting the Board ordered an investigation of the Goodhue RPM and the Osmek committee into possible violations of the Chapter 10A prohibitions on earmarking and circumvention.

The investigation

Notice of the investigation was provided to the parties, both of whom were represented by attorney Richard Morgan. The Board requested that the parties make witnesses available for sworn interviews and that the parties and the witnesses produce documents relating to the matters under investigation.

During the course of the investigation, the Board conducted sworn interviews with Merle Larson and Jeff Hommedahl, the Goodhue RPM chair and treasurer, respectively. The Board also conducted sworn interviews of Senator David Osmek, who serves as the treasurer of the Osmek committee and of Senator Michael Goggin, who had won the 2016 election in senate district 21.

Earmarking

Minnesota's prohibition on accepting earmarked contributions, Minnesota Statutes section 10A.16, provides:

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.

The language of the statute makes it clear that an earmarking violation is only applicable to the entity that solicits or accepts of an earmarked contribution. In the present matter, the Goodhue RPM's acceptance of the Osmek contribution would result in an earmarking violation if the party unit accepted the contribution with an express or implied condition that it be directed to the Goggin committee.

With respect to earmarking, the Board has held that the requirement that the contribution be "directed to" a particular candidate does not mean that the money must be donated by the original recipient on to the candidate to whom the contribution is "directed." A contribution is

“directed to” a particular candidate if the express or implied condition is that the contribution be used to benefit that specific candidate.¹

The condition that triggers the earmarking statute need not be a condition precedent to making the contribution. It is sufficient that the condition is expressed in the context of the contribution and provides direction as to its intended use. In other words, it is not necessary for the donor to say, in effect, “I will not give you this contribution unless you agree to this condition.” The requirement for the condition is met if the donor conveys to the recipient expressly or by implication the fact that the contribution is intended to benefit a particular candidate.

In the present matter the facts are not generally in dispute as they are established by the testimony of various witnesses or by documentary evidence.

The relevant timeline starts with a telephone call from David Osmek to Michael Goggin at 5:55 PM on August 25, 2016. According to Osmek’s telephone bill, they spoke for 10 minutes. The next morning, August 26, Osmek and Goggin exchanged three text messages .

Goggin and Osmek both related that the August 25 telephone conference centered around the fact that Osmek wanted to help Goggin get elected. Osmek stated he knew that Michael Goggin was running against Matt Schmit, the incumbent senator representing district 21. Describing the conversation with Goggin, Osmek stated, “I spoke with him in late August, asking him for a BPOU that could use some help in defeating Matt Schmit, and he contacted me back with a BPOU treasurer location that I could send a check to . . .”²

About 14 minutes after Goggin finished his conversation with Osmek, Goggin called Merle Larson, chair of the Goodhue RPM and spoke with him for seven minutes. Goggin did not recall the specifics of this conversation, though he acknowledged that he could have told Larson about the pending contribution. When asked if Goggin had talked to him about the contribution before it was received, Larson said that he had not.³

That same day, Osmek wrote a check on the Osmek committee’s account for \$1,000 payable to “Goodhue County BPOU”⁴ but he did not mail it. The next morning, August 26, he received text communications from Goggin that he recalls provided him with information as to whom and to

¹ See Advisory Opinion 370 (November 22, 2005), in which the Board concluded that a contribution could be directed to a particular candidate if there was a condition that it be used for multi-candidate expenditures that would benefit that particular candidate. See also Advisory Opinion 356 (April 28, 2004). In Findings in the Matter of the Complaint against the Margaret (Kelliher) for Governor Committee and the Minnesota DFL State Central Committee (January 12, 2010), the Board concluded that earmarking occurred when donors gave money to the DFL party for the specific purpose of paying for the Kelliher committee’s access to the DFL voter database system.

² Osmek thought Goggin provided him with a treasurer to whom he could send the contribution. Actually, Goggin provided the party unit chair’s name and address.

³ Larson was interviewed prior to the Board’s receipt of telephone records, so he was not asked specifically about the call that was disclosed in the records.

⁴ A BPOU is a Republican Party basic political organizational unit, which a local unit of the party.

what address he should send the check. Following the receipt of this information, Osmek mailed the check to Merle Larson.

Larson received the check on Tuesday, August 30, and gave it to a deputy treasurer to deposit. When he received the check, Larson sent an email to the party unit treasurer informing him that the check came with the “expressed request that this donation should be sent on to the Mike Goggin for Senate Committee. The memo says ‘BEAT MATT SCHMIT!’” He instructed the treasurer to issue a Goodhue RPM check to the Goggin committee for \$1,000, which the treasurer did on September 1, 2016.

In his statement to the Board, Larson says he drew his conclusion about the express request that the money be donated to Goggin solely from the memo on the check. However, the text of the memo line on the check does not make such an express request.

The only conclusion supported by the entire body of evidence is that in the telephone call from Goggin to Larson, which closely followed Goggin’s conversation with Osmek, Goggin relayed his understanding of Osmek’s intentions to Larson. On the basis of that conversation and the memo on the check, Larson understood that the Osmek contribution was to be used to defeat Matt Schmit, thereby helping Goggin get elected. However, Larson also drew the further conclusion that the proceeds of the Osmek contribution were to be contributed directly to the Goggin committee.

Neither Osmek’s testimony nor the memo on the check support Larson’s ultimate conclusion that the money was to be transferred directly to the Goggin committee. However, such a specific condition is not required to establish an earmarking violation. The Goodhue RPM’s understanding of Osmek’s intention that the contribution was to be used to help get Goggin elected is sufficient.

Throughout the entire relevant time period, members of the Goodhue RPM knew about Larson’s understanding that the Osmek contribution was given with the condition that it be used for the benefit of the Goggin committee. In his September 2016 treasurer’s report, treasurer Hommedahl stated, “We received a donation of \$1,000 from the Osmek Volunteer committee that was designated to go to the Goggin for Senate Campaign.”

When the Goggin committee returned \$625 of the contribution, Hommedahl’s treasurer’s report stated, “We received a refund of \$625 from the Goggin Campaign as they met the maximum amount that they could receive from us, I suggest that we give it back to the Osmek for Senate campaign as they gave us a check for \$1,000 to give to the Goggin campaign.”

In his sworn interview Hommedahl explained that his characterization of the conditions attached to the Osmek contribution arose solely from the original email Merle Larson sent him when the contribution came in saying that the contribution came “with the expressed request that this donation should be sent on to the Mike Goggin for Senate campaign.”

The record establishes by a preponderance of the evidence that the Goodhue RPM accepted the Osmek committee's contribution with the condition that it was to be used to defeat Goggin's opponent, and, thus, to help get Goggin elected. By accepting the contribution with this condition, the Goodhue RPM violated the section 10A.16 prohibition on accepting earmarked contributions.

Circumvention

Minnesota's circumvention statute, section 10A.29, provides as follows

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

When an earmarked contribution is accepted by the initial recipient and then re-donated to a candidate, the possibility of circumvention arises. If the condition with which the contribution was made by the initial donor was not merely that it be used to influence the nomination or election of the candidate, but that it be donated on to the candidate, a circumvention violation arises.

In this matter it is clear that Senator Osmek wanted his contribution to the Goodhue RPM to be used to defeat Matt Schmit. That resulted in the Goodhue County RPM accepting an earmarked contribution. However, Osmek's testimony was clear that he did not intend or expect to exert any control over *the means by which* the party unit used the money to influence the Goggin-Schmit election.

Merle Larson somehow came to the conclusion that the proceeds of the Osmek contribution were to be directly donated to the Goggin committee. If that had been an understanding reached between Larson and Osmek, a circumvention violation would have resulted. However, the evidence does not support a finding that Larson's conclusion is attributable to Osmek. There was no direct communication between Osmek and Larson. Additionally, Larson testified that he arrived at his conclusion solely based on the memo on the check, which the Board finds insufficient by itself to constitute an instruction from Osmek to redirect the contribution to the Goggin committee. Osmek's clear testimony was that he intended the money to be used in any of the various ways that party units help their candidates.

Considering all of the evidence, the Board concludes that it is insufficient to support a finding that the Osmek committee and the Goodhue RPM acted in violation of the section 10A.29 prohibition on circumvention.

As it concludes this matter, the Board notes that during the discussion of candidates and their local party units, the point has been made that party units are known to support their local candidates. That is a primary reason for their existence. There is nothing improper about

making contributions with the expectation or even the intent that the money will benefit the local party unit's candidates.

However, when that expectation or intent is conveyed with the contribution a donor runs the risk of turning a general contribution into an earmarked contribution.

Based on the body of evidence before it, the Board makes the following:

Findings of fact

1. On August 25, 2016, Senator David Osmek, treasurer of the Osmek Volunteer Committee, had a telephone conversation with senate district 21 candidate Michael Goggin in which Osmek informed Goggin that Osmek wanted to make a contribution to a local party unit to be used for the purpose of helping defeat Goggin's opponent.
2. During the conversation, Osmek asked Goggin to identify a party unit to receive the contribution and to provide information as to whom and where to send the check.
3. Shortly after his conversation with Osmek, Goggin talked to Merle Larson, chair of the Goodhue County Republican Party of Minnesota, about the contribution.
4. On August 26, 2016, Goggin informed Osmek that Osmek should mail the proposed contribution to Larson. That same day Osmek mailed an Osmek committee check for \$1,000 to the Goodhue RPM by sending it to Larson at his home address.
5. Larson received the contribution on August 30, 2016, and the same day delivered it to a deputy treasurer for deposit into the party unit's depository.
6. Just after receiving the contribution, Larson sent an email to the Goodhue RPM treasurer informing him of the contribution and telling him that even though the contribution was payable to the party unit, it came "with the expressed request that this donation be sent on to the Mike Goggin for Senate Committee." Larson directed the treasurer to issue the contribution to the Goggin committee.
7. The deputy treasurer deposited the Osmek Committee check on August 30 and the treasurer issued the check to the Goggin committee in the same amount on September 1, 2016.
8. Subsequently on two occasions the treasurer reported to the full Goodhue RPM about the contribution both times indicating that it had been given to the party unit by the Osmek committee "to be given to" or "to go to" the Goggin committee.

Based on the above findings of fact, the Board makes the following:

Conclusions of law

1. The Goodhue RPM, acting through its chair and treasurer accepted a contribution with the express condition that it was to be directed to a particular candidate. As a result, the Goodhue RPM violated Minnesota Statutes section 10A.16, which prohibits the acceptance of earmarked contributions.
2. The evidence is insufficient to support a conclusion that the actions surrounding the subject contribution violated Minnesota Statutes section 10A.29, which prohibits circumvention.

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

Order

1. The Goodhue RPM must return \$375 to the Osmek committee, which represents the amount of the earmarked contribution not previously returned.
2. The Goodhue RPM must pay a civil penalty of \$1,000 for its violation of the Chapter 10A prohibition on the acceptance of earmarked contributions.
3. The refund required in paragraph 1 and the civil penalty required in paragraph 2 must be made not later than 60 days from the date of this agreement. Payment of the civil penalty must be made by sending to the Board a check made payable to the State of Minnesota. The refund must be confirmed by sending a copy of the front and back of the cancelled check along with a copy of the letter making the refund to the Board not later than 30 days after the refund is made.
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.

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

Date: November 1, 2017

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

ORDER

IN THE MATTER OF THE INVESTIGATION OF LAURA WALKER, FREEBORN COUNTY DFL:

On January 5, 2017, the Board authorized an investigation of the Freeborn County DFL and its former treasurer, Laura Walker, to determine whether the party unit's funds were used as permitted by law and whether Ms. Walker falsely certified the party unit's campaign finance reports. The investigation was prompted by the Freeborn County DFL's request to waive late filing fees for the 2016 pre-general-election report on the grounds that the party unit had just discovered that Ms. Walker had made unauthorized withdrawals from the party unit's bank account.

Criminal charges were filed against Ms. Walker and in June 2017, she pleaded guilty to one count of felony financial transaction card fraud. At the plea hearing, Ms. Walker admitted that she had made unauthorized purchases on the party unit's bankcard for personal use.

At the September 21, 2017, sentencing hearing, Ms. Walker was placed on probation for five years. The conditions of Ms. Walker's probation include payment of \$3,420.78 in restitution to the Freeborn County DFL. The restitution award was based on the party unit chair's best estimate of the amount that Ms. Walker had taken from the party unit. As a condition of probation, Ms. Walker also was ordered not to work or volunteer for any party unit or in any political capacity for five years.

Because the criminal investigation of this matter has resolved the questions to be answered by the Board's investigation, there is no reason to continue the Board's investigation. Similarly, because Ms. Walker must repay the party unit as a condition of her probation, there is no need for the Board to order this repayment under its civil authority.

The Board also has the authority to impose additional civil penalties against Ms. Walker for the conversion of party unit funds to personal use and the false certification of the party unit's reports. The felony criminal conviction, however, is a more severe consequence for Ms. Walker's actions than a civil penalty. In addition, the probationary term barring Ms. Walker from political volunteering for five years ensures that she cannot repeat her offense. For these reasons, the Board will not impose any civil penalties in this case. The Board, however, will grant the party unit's request to waive the \$350 in late filing fees that it incurred due to Ms. Walker's actions.

Based on the information above, the Board issues the following:

Order

The investigation in this matter is dismissed. The \$350 in late filings fees incurred by the Freeborn County DFL for the 2016 pre-primary-election report are waived.

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

Date: November 1, 2017