

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

.....
**January 31, 2017
Nokomis Room
Centennial Office Building**

.....
MINUTES

The meeting was called to order by Chair Rosen.

Members present: Greenman, Leppik, Moilanen, Oliver, Rosen

Members absent: Flynn

Others present: Sigurdson, Fisher, Goldsmith, Pope, staff; Angela Behrens for Nathan Hartshorn, counsel

MINUTES (January 4, 2017)

After discussion, the following motion was made:

Member Greenman's motion: To approve the January 4, 2017, minutes as drafted.

Vote on motion: Unanimously passed.

CHAIR'S REPORT

Meeting schedule

The next Board meeting is scheduled for 10 a.m. on Wednesday, March 1, 2017.

EXECUTIVE DIRECTOR TOPICS

Mr. Sigurdson presented members with a memorandum on office operations that is attached to and made a part of these minutes. Mr. Sigurdson told members that all three major program areas overseen by the Board had reports due in January. Mr. Sigurdson said that staff would continue the outreach efforts to non-filers in the coming weeks. Mr. Sigurdson also stated that staff had started conducting training sessions for new treasurers in January. Mr. Sigurdson reported that the soft release of the new website had occurred but that some pages still were under development. Mr. Sigurdson said that the legacy website would remain in operation through the spring or early summer. Mr. Sigurdson stated that the governor's budget included a small increase in the Board's baseline that would be sufficient to cover expected increases in MN.IT and employee costs for the next biennium. Finally, Mr. Sigurdson said that a few bills related to Chapter 10A had been introduced at the legislature and that he would continue to report on relevant legislation at future meetings.

ADMINISTRATIVE RULES UPDATE

Mr. Sigurdson and Ms. Pope presented members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that Members Leppik and Moilanen had agreed to serve on the rule committee. Mr. Sigurdson said that the first meeting of the rule committee would be held on February 1, 2017, and that all members were welcome to attend.

ADVISORY OPINION 443

Mr. Sigurdson presented members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that the Board had received an advisory opinion request from Nancy Hylden on behalf of Minneapolis City Council Member Jacob Frey. The request asked the Board to determine whether Minnesota Statutes Chapter 383B allowed Mr. Frey to amend the registration for his campaign committee from city council to mayor. Mr. Sigurdson explained that the Board has the authority to issue advisory opinions regarding provisions in Chapter 383B and that the draft opinion had been revised to incorporate a suggestion from Member Rosen regarding the language that described this authority. Mr. Sigurdson then reviewed the analysis in the revised draft opinion. Mr. Sigurdson stated that the revised draft opinion concluded that Mr. Frey could make the requested amendment.

Nancy Hylden addressed the Board on behalf of Mr. Frey. Ms. Hylden told members that she agreed with the revised draft opinion's analysis and conclusion and asked the Board to adopt it as drafted. Ms. Hylden specifically argued that by using different language in the Chapter 10A and Chapter 383B definitions of candidate, the legislature signaled its intent to allow Chapter 383B candidates to amend their committee registrations as Mr. Frey sought to do.

Carla Kjellberg addressed the Board on her own behalf as a citizen of Minneapolis. Ms. Kjellberg told members that she disagreed with the revised draft opinion's analysis and conclusion and asked the Board to reject it. Ms. Kjellberg specifically argued that letting Mr. Frey amend his registration would allow him to circumvent the contribution limits in Chapter 383B and that this could not be the legislature's intent.

After discussion, the following motion was made:

Member Rosen's motion: To approve the revised advisory opinion as drafted.

Vote on motion: A roll call vote was taken. Four members voted in the affirmative. One member voted in the negative.

ENFORCEMENT REPORT

A. Discussion Items

1. Request to withdraw lobbyist registration – Thomas Perkins

Mr. Fisher told members that Mr. Perkins mistakenly had registered on behalf of the MN Public Employee Association when he was not required to do so. Mr. Fisher said that because no funds had been spent, Mr. Perkins was asking to withdraw his lobbyist registration.

After discussion, the following motion was made:

Member Leppik's motion: To approve the request of Thomas Perkins to withdraw his lobbyist registration.

Vote on motion: Unanimously passed.

2. Confirmation of lobbyist termination – Frank Miskowiec

Mr. Fisher told members that the principal (SEIU Local 63) had dissolved on April 4, 2016. Mr. Fisher said that Board staff then terminated Mr. Miskowiec's registration as of the date of dissolution and contacted him for a termination report.

After discussion, the following motion was made:

Member Oliver's motion: To confirm the termination of this lobbyist relationship.

Vote on motion: Unanimously passed.

3. Confirmation of lobbyist termination – Robert Dolan

Mr. Fisher told members that Mr. Dolan was registered as a lobbyist for Xcel Energy. Mr. Fisher said that Mr. Dolan had passed away on August 5, 2016, and that Board staff terminated the registration as of this date.

After discussion, the following motion was made:

Member Greenman's motion: To confirm the termination of this lobbyist relationship.

Vote on motion: Unanimously passed.

4. Confirmation of rescinding referral to attorney general's office – Jeffrey Joseph Johnson

Mr. Fisher told members that at the May 27, 2016, meeting, the Board referred this matter to the attorney general's office to compel the filing of an unfiled economic interest statement. Mr. Fisher said that the Shingle Creek Watershed Management Commission had notified the Board that Mr. Johnson was no longer serving as a member and had last attended or participated in any meeting on October 8, 2015. Mr. Fisher said that Board staff terminated Mr. Johnson as a public official as of this date, and therefore the suit was no longer necessary.

After discussion, the following motion was made:

Member Leppik's motion: To confirm the rescinding of this referral.

Vote on motion: Unanimously passed.

B. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Committee to Elect Judge Larry Stauber	\$100 LFF	6/14/2016 2nd report	Treasurer resigned and candidate did not believe he still had a registered committee. Candidate terminated registration with Board as of 12/29/2016.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Grand Portage PAC	\$500 LFF	10/31/2016 Pre-general	PAC was in transition period between treasurers and the report filing responsibilities were overlooked.	No motion		
Meier (Patti) For House	\$1,000 LFF ¹	11/3/2017 24 Hr Rep	Treasurer did not understand that the 24-hour reporting requirement could be triggered by cumulative contributions received during the period exceeding the reporting threshold (as opposed to a single contribution exceeding the reporting threshold).	Member Rosen	To reduce the late filing fee to \$250.	Passed unanimously.
Larry Stelmach	\$400 LFFs; \$4,000 CPs	7/19/15 EIS (x2); 2/8/2016 EIS (x2)	The official has left his positions. Due to Osseo being part of two separate watershed organizations, penalties were doubled for Mr. Stelmach. Mr. Stelmach requested a waiver and/or a payment plan of the accrued fines.	Member Leppik	To reduce the late filing fee to \$200 and to waive the civil penalty.	Passed unanimously.

Informational Items

A. Payment of a late filing fee for 2014 amended year-end Report of Receipts and Expenditures

Volunteers for Dan Surman, \$50

B. Payment of a late filing fee for 2015 Report of Receipts and Expenditures

Freeborn County DFL, \$200

¹ The Board has historically reduced many 24-hour report late filing fees to \$250.

C. Payment of a late filing fee for July 25, 2016, Report of Receipts and Expenditures

DFL Hunting and Fishing Caucus, \$20
Women's Victory Fund, \$200
Mohamoud Hassan Volunteer Committee, \$200 late fee and \$100 civil penalty

D. Payment of a late filing fee for June 15, 2016, Lobbyist Disbursement Report

Douglas Gasek, Preservation Alliance of Minn, \$25

E. Payment of a late filing fee for January 17, 2017, Lobbyist Disbursement Report

Peter Roess, Solar Roess Engineering, \$25

F. Payment of a civil penalty for 2016 disclaimer violation

Erin Wagner for Minnesota, \$300

G. Deposit to the General Fund, State Elections Campaign Fund:

Jacob Frey for Our City, \$100 (Hennepin County registered committee)

LEGAL COUNSEL'S REPORT

Angela Behrens attended the meeting for Mr. Hartshorn who is on paternity leave. Ms. Behrens had nothing to add to the submitted report, which is attached to and made a part of these minutes.

OTHER BUSINESS

There was no other business to report.

EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair reported the following matters into regular session:

Findings, conclusions, and order in the matter of the complaint of Stevens regarding Duff (Alan) for House and the MN Tea Party Alliance

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



Jeff Sigurdson
Executive Director

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Minutes
January 31, 2017

Attachments:

Memorandum regarding executive director topics

Memorandum regarding administrative rules update

Memorandum regarding revised draft advisory opinion 443

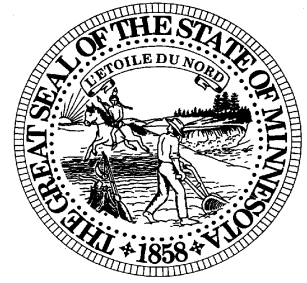
Revised draft advisory opinion 443

Legal report

Findings, conclusions, and order in the matter of the complaint of Stevens regarding Duff (Alan) for House and the MN Tea Party Alliance

Minnesota

Campaign Finance and Public Disclosure Board



Date: January 24, 2017

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations January 2017

Year-end Reports

All three major program areas; campaign finance, lobbying, and economic interest statements have year-end filing requirements in January. A brief update for each program follows:

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2016, was due on January 17, 2017. Only 4 of the 2,117 reports due were not filed by the deadline. The use of the online reporting system remains high with 96% of reports filed electronically.

Campaign Finance Program. The year-end report of receipts and expenditures for 2016 is due on January 31, 2017. As of the date of this memo, 356 of the 1,358 reports from candidates, political party units, and political committees and funds have been received. Staff will be sending a series of e-mail and telephone call reminders to non-filers over the next week.

Economic Interest Statement. The annual certification by public officials for 2016 is due on January 30, 2017. As of the date of this memo, 1,937 of the 2,637 annual certifications (74%) have been filed. Additionally, 148 of the 359 original economic interest statements (41%) required from judges, county commissioners, and soil and water district commissioners elected for the first time in 2016 have been filed. Staff will be sending a series of e-mail and telephone call reminders to non-filers over the next week.

Presentations by staff

With the new year staff has again started to schedule campaign finance compliance training and software training. Eight committees attended the January software training class. Attendance at training classes during a non-election year is usually somewhat low, but important as committees bring in new treasurers.

I presented an overview of Board functions to the House Government Operations and Elections Policy Committee (Rep. Tim O'Driscoll, Chair) on January 12th, and a similar presentation to the Senate State Government Finance and Policy and Elections Committee (Sen. Mary Kiffmeyer, Chair) on January 17th. At both presentations, the majority of questions from committee members were on the administrative rules under consideration by the Board.

I will be presenting an overview of operations with more emphasis on budget to the House State Government Finance Committee (Rep. Sarah Anderson, Chair) on January 26th.

Web Site Development

The new web site is available to the public at <https://cfb.mn.gov> for use, review, and comment. There are still pages under development for the new site, so for the next several months the legacy site will remain available and the primary site for the Board.

Board Budget

The Governor released his biennial budget recommendations on January 24, 2017. The Governor has recommended a \$37,000 increase to the Board's base budget for the FY 2018-2019 biennium. The Board's current yearly budget is \$1,028,000. The Governor's budget proposal increases the budget to \$1,041,000 in FY 2018, and \$1,052,000 in FY 2019. The additional amount is to cover anticipated increases in employer-paid healthcare contributions, pension contributions, salary compensation, rent, and MNIT services.

Campaign Finance and Public Disclosure Board



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

DATE: January 24, 2017

TO: Board Members

FROM: Jeff Sigurdson
Executive Director

TELEPHONE: 651-539-1189

Jodi Pope
Management Analyst

651-539-1183

SUBJECT: Administrative rule update

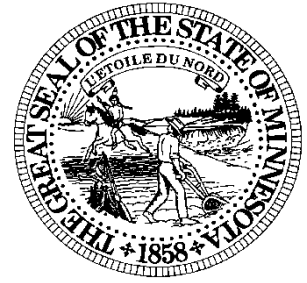
At the January meeting, Members Leppik and Moilanen agreed to serve on the rule committee. The first rule committee meeting will be take place on February 1, 2017, at 1 p.m. in the Lady Slipper Room, Ground Floor, Centennial Office Building. The agenda for the meeting is attached. The meeting materials are available on the rulemaking docket of the Board's webpage. All members are invited to attend the February meeting and all future meetings as well.

Attachments

Agenda for February 1, 2017, rule committee meeting

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: January 23, 2017

To: Board Members

From: Jeff Sigurdson
Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 443

The Board received the request for Advisory Opinion 443 on January 11, 2017. The request is from Nancy Hylden on behalf of Minneapolis City Council Member Jacob Frey. A consent form releasing the request as public information is on file with the Board.

Mr. Frey has announced that he is a candidate for Mayor of Minneapolis. The request asks if Mr. Frey may amend the registration for his principal campaign committee from the current office of city council to the office of mayor. Candidates for Minneapolis city office register their campaign committee with Hennepin County under the provisions of Minnesota Statutes chapter 383B.

As explained in greater detail in the draft opinion, the Board does have authority to issue an advisory opinion on certain provisions of chapter 383B. Requests on the requirements of that chapter are infrequent, with the last advisory opinion on chapter 383B issued in 1988.

The draft opinion provides that the relevant statutes do not require Mr. Frey to register a new committee for the office of mayor, and that he may amend the office of the current committee registration. As a result, Mr. Frey will be able to use the money currently in his principal campaign committee for his mayoral campaign.

Please contact me if you have questions or changes that you would like incorporated into the draft.

Attachments:

Draft Advisory Opinion 443

Request letter dated January 11, 2017

**State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information
provided by the requester**

Issued to: Nancy Hylden
Hylden Advocacy & Law
310 4th Avenue South, Suite 5010
Minneapolis, MN 55415

RE: Amendment of a Principal Campaign Committee registered under Chapter 383B

ADVISORY OPINION 443

SUMMARY

A principal campaign committee registered under the provisions of Minnesota Statutes Chapter 383B may amend its registration to reflect the office to which the candidate currently seeks election.

FACTS

As the legal representative of Jacob Frey, a candidate for elective office in Minneapolis, you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in discussions with Board staff.

1. Jacob Frey currently represents Ward 3 on the Minneapolis City Council. Mr. Frey registered the principal campaign committee Jacob Frey for Our City in October of 2012. The committee is currently registered with Hennepin County for the office of council member.
2. Mr. Frey has announced that he is a candidate for the office of Mayor of Minneapolis. Mr. Frey does not intend to seek reelection to his city council seat, which would be on the same ballot as the mayoral race.
3. Mr. Frey wishes to amend the existing Jacob Frey for Our City committee so that it will be the principal campaign committee for his candidacy for Mayor of Minneapolis. The amendment will change the office of record for the committee from city council to mayor.
4. If Mr. Frey may amend the committee registration, the funds currently in the Jacob Frey for Our City bank account will be used to support his mayoral campaign.

INTRODUCTION

Typically, the Board does not issue advisory opinions for municipal office candidates. However, the Board is authorized to issue an advisory opinion on the facts listed above by Minnesota Statutes section 383B.055, Subdivision 1, which provides, in part:

The state Campaign Finance and Public Disclosure Board shall:

(1) issue and publish advisory opinions concerning the requirements of sections 383B.041 to 383B.057 upon application in writing by the county filing officer of Hennepin County or any individual or association who wishes to use the opinion to guide the applicant's own conduct.

Sections 383B.041 to 383B.057 apply to county elections in Hennepin County; for city elections in home rule charter cities and statutory cities located wholly within Hennepin County, having a population of 75,000 or more; and for school board elections in Minneapolis School District No. 1. Elections to offices in the City of Minneapolis fall within the scope of these sections.

The legislature authorized the Board to issue advisory opinions on this section of law presumably because the procedures and requirements for political committees and candidates in Chapter 383B are somewhat similar to those found in Chapter 10A.

When the Board issues an advisory opinion on the provisions of Chapter 10A it applies a statutory rule that requires meaning be given to each word or phrase used in a statute. Further, the Board will not place a restriction on a candidate's ability to seek election to an office unless it is clear that the legislature intended for some regulation to exist. The Board will apply the same principals when asked for an advisory opinion on chapter 383B.

ISSUE

May the candidate amend his principal campaign committee's registration from the office of city council to the office of mayor?

OPINION

There are two provisions in chapter 383B relevant to this question. Minnesota Statutes, section 383B.042, subdivision 16, defines a candidate's committee when it provides, in part:

"Principal campaign committee" means *the single political committee designated by a candidate for election for any city office in...the city of Minneapolis;...* [Emphasis added]

The registration of a principal campaign committee is provided in Minnesota Statutes, section 383B.045:

Every candidate who receives contributions or makes expenditures in excess of \$100 *shall designate and cause to be formed a single political committee* which shall be known as the candidate's principal campaign committee...[Emphasis added]

The statutes do not require a candidate to establish a separate principal campaign committee for each office sought or held.¹ Instead, both statutes give the candidate authority to establish and register a single committee for any office in the city of Minneapolis as designated by the candidate. Further, neither statute indicates a requirement or provides a procedure for a candidate to terminate

¹ In contrast, Minn. Stat. §10A.105, states that a candidate for state level office must not raise more than \$750 "unless the candidate designates and causes to be formed a single principal campaign committee *for each office sought. . .*" [Emphasis added.] The legislature provided specific and clear language when it wanted to require a candidate to register a separate principal campaign committee for each office sought. No similar language exists in chapter 383B.

an existing committee and organize a new committee if the candidate decides to run for a different office.

The Board concludes that the candidate may designate the existing Jacob Frey for Our City committee as the principal campaign committee for the office of mayor of Minneapolis and may amend the registration of the committee to reflect that designation.²

Addendum

The Board notes that Chapter 10A specifically allows the transfer of funds from one principal campaign committee to another principal campaign committee for the same candidate without limit as long as two conditions occur³. First, the committee that is the source of the funds must terminate. Second, the contribution limits for the office of the committee that receives the funds must be the same or higher than the office of the committee that raised the funds.

A similar provision does not exist in Minnesota Statutes section 211A.12, which sets the contribution limits for municipal level offices. During a year when the office of mayor of Minneapolis is on the ballot, a candidate for that office may receive up to \$1,000 per contribution. This is a higher limit than is available for a city council candidate.

Amending the registration for a principal campaign committee from mayor to city council could allow a candidate to collect contributions while running for the office of mayor that exceed the limit for city council, and then move those contributions into the campaign for city council. Whether this would result in a violation of the contribution limits in section 211A.12 is an issue not raised by the facts in this advisory opinion and, in any event, is outside of the Board's jurisdiction. The legislature may wish to provide clarification as to how the contribution limits in section 211A.12 would apply in these circumstances.

Issued: January 31, 2017

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

² This opinion does not address the question of whether a candidate is precluded from having more than one committee for a City of Minneapolis office; that question not being before the Board.

³ Minnesota Statutes section 10A.27, subdivision 2.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
January, 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			
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- end Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16				
Jeffrey Hoffman	Yellow Medicine River Water District	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16	12/30/16			
Jeffrey Johnson	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16				

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
Kirsten Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17				
Tim Johnson		Unfiled Economic Interest Statement due June 14, 2016	\$100 LF \$1,000 CP	1/17/17				
Larry Stelmach	West Mississippi Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP	7/7/16	12/30/16			
	West Mississippi Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Unfiled Economic Interest Statement due January 25, 2016	\$100 LF \$1,000 CP					
	Shingle Creek Watershed Mgmt Commission	Late Filing of Economic Interest Statement due July 19, 2015	\$100 LF \$1,000 CP					

CLOSED FILES

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

**FINDINGS, CONCLUSIONS, AND
ORDER**

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 the committees 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. The matter was taken up by the Board on September 7, 2016, for the purpose of determining whether the allegations of the complaint established probable cause sufficient to warrant an investigation. The Board concluded that the complaint did not establish probable cause sufficient to require an investigation of the New Leadership PAC and dismissed the complaint with respect to that respondent.

With respect to the MN Tea Party Alliance, the Board concluded that the complaint was sufficient to establish probable cause as to whether any violations occurred and ordered an investigation.

Allegations of the complaint

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 facts which, if true, could establish that the MN Tea Party Alliance and the Duff committee used the same vendor to produce their election-related communications. Complainant asserts that this joint use of a single vendor defeated the independence of any expenditures made by the political committees. In part, complainant's legal assertion relies on the Board's analysis in Advisory Opinion 410, which will be further discussed below.

The complaint also alleges facts that, if true, could establish that a person named Jake Duesenberg served as a key Duff committee advisor at the same time that he served as the executive director of the MN Tea Party Alliance.

The complaint also alleges that Jake Duesenberg, through an association named Action 4 Liberty, published periodic podcasts and that these podcasts have, on multiple occasions, discussed how Duesenberg and the chair of the MN Tea Party Alliance, Jack Rogers, were working together to help the Duff campaign.

The complaint further alleges that the owner of the printing vendor, Don Niemi, is the treasurer of the MN Tea Party Alliance. The complainant asserts that the relationships between Duesenberg, Rogers, and Niemi, as well as the shared use of the printing vendor by the MN Tea Party Alliance and the Duff committee, preclude any communications produced by the vendor for the MN Tea Party Alliance from being considered independent of the Duff committee.

The responses

In their responses, the Duff committee and the MN Tea Party Alliance admit that they used the same printing vendor but deny cooperation in their communications. In testimony before the Board at the probable cause hearing, candidate Duff acknowledged that Mr. Duesenberg was a committee advisor and an agent of the committee with respect to development and dissemination of committee communications. Neither response addressed the roles that Duesenberg, Rogers, or Niemi played in the design and campaign strategy behind any of the communications.

The investigation

The investigation examined three sets of relationships, the result of which, complainant asserts, the independence of the MN Tea Party Alliance expenditure was defeated: (1) the use of a printing vendor shared between the MN Tea Party Alliance and the Duff committee; (2) the alleged dual roles of Duesenberg as agent of the Duff committee and executive director of the MN Tea Party Alliance; and (3) the political relationship between Duesenberg and Rogers as it related to the 2016 elections and to the Duff committee in particular.

In the course of the investigation, the Board requested and received documentary evidence from the parties including email correspondence, printing orders and invoices, and copies of printed communications. The Board also took the sworn testimony of Jake Duesenberg, Jack Rogers, and Don Niemi.

Analysis

The shared printing vendor

The MN Tea Party Alliance printed one piece of literature related to the Duff election. It was, in part, a negative communication against Duff's opponent but it also included express language urging readers to vote for Duff in the 2016 primary election. The Duff committee produced multiple campaign communications that were used throughout the campaign for various purposes. The respondents acknowledge that they both used Mr. Niemi's company, Veni Graphics, for the printing of their communication pieces.

Complainant argues that the MN Tea Party Alliance and the Duff committee "coordinated expenditures by hiring a shared vendor, Mr. Niemi, of Veni Graphics, Inc., to prepare and deliver campaign material on behalf of Mr. Duff." For its premise that a shared vendor defeats the independence of an otherwise independent expenditure, complainant relies on a portion of the Board's Advisory Opinion 410, which complainant quotes as follows:

If a consultant providing services on messaging and timing of independent expenditures for the IEPC also provides messaging and campaign services to a candidate, the independence of the IEPC's expenditures advocating the election of the candidate are not independent. The Board believes that it is not possible for a single individual to avoid coordination of effort between the two clients even if an attempt to do so is made. The Board has previously discussed the separation required in a consulting firm doing work for both an independent expenditure spender and a potentially affected candidate. See Advisory Opinions 338 and 400. It is not possible to maintain the required degree of separation when all of the work for both clients is handled by the same individual. An individual cannot maintain the required separation of effort.

Complainant's attempt to apply the reasoning of Advisory Opinion 410 to the present facts is misplaced. Advisory Opinion 410, according to its own terms, involved a "consultant" who would provide services "on messaging and timing" of campaign communications to both an independent expenditure spender and a candidate. The investigation of the present matter establishes that Niemi did not, either in his capacity as treasurer of the MN Tea Party Alliance or as owner of Veni Graphics, provide any consulting on messaging, timing of communications, means of distribution, or scope of mailings either for the Duff campaign or the MN Tea Party Alliance.

In Advisory Opinion 410, the relationship between the consultant and the clients could result in the consultant becoming the agent of both the independent expenditure spender and the candidate with respect to message and strategy. Such dual agency would make it impossible to separate the individual's work on behalf of a candidate committee from the work on behalf of the independent expenditure spender because the consultant would be developing plans, strategies, and communications for both at the same time.

In the present matter, both the sworn testimony and the documentary evidence establish that Veni Graphics served solely as a printing vendor. The single communication published by the MN Tea Party Alliance was designed in prototype form by Jack Rogers and put into printable

format without any significant change in its message by an external designer contracted by Veni Graphics. Jake Duesenberg designed all of the Duff committee communications and provided them to Veni Graphics in printable form. There is no evidence to support a finding that Don Niemi served as a “consultant” to either the Duff committee or to the MN Tea Party Alliance in any sense.

The Board concludes that the use of the same printing vendor by an independent expenditure spender and a candidate who is the subject of the spender’s communications does not, without more, constitute a relationship that will defeat the independence of the independent expenditure. That requisite “more” does not exist in the present matter.

The alleged dual roles of Jake Duesenberg as Duff committee agent and executive director of the MN Tea Party Alliance

Alan Duff acknowledged in testimony before the Board at the probable cause hearing that Jake Duesenberg was an agent for the Duff committee. As an agent, it would be possible for Duesenberg’s actions to constitute express or implied consent to an otherwise independent expenditure by an outside association or to constitute cooperation with such an organization in the making of expenditures. The Board’s investigation carefully examined whether any such actions occurred.

To argue that there was a close relationship between Duesenberg and the MN Tea Party Alliance, complainant relies on the assertion that that Duesenberg was listed as the executive director of the MN Tea Party Alliance on its website at least until late July 2016. The Board accepts the assertion that the website listing existed; however, the Board concludes that the listing of Duesenberg as executive director did not reflect his actual role with the committee after January 7, 2016. On that date, the MN Tea Party Alliance filed an amendment to its registration removing Jake Duesenberg as its treasurer and naming Don Niemi as the new treasurer. The amendment form was signed by Niemi and was submitted via email by outgoing treasurer Jake Duesenberg. Niemi filed the 2015 year-end report on January 30, 2016.

Though the filing of this amendment marked a significant change in Duesenberg’s role with the MN Tea Party Alliance, the change was not made clear on the MN Tea Party Alliance website until much later, leading to the complainant’s mistaken assumption that Duesenberg still played a significant role in the operation of the MN Tea Party Alliance.

The MN Tea Party Alliance is a political committee under Chapter 10A. It does not exist in a separate corporate form. As a result, the only officers the Board recognizes are its registered chair, who has been Jack Rogers at all relevant times, and its treasurer, who was Jake Duesenberg until January 7, 2016, and Don Niemi thereafter. Although the committee referred to Jack Rogers as its “president” and to Jake Duesenberg as its “executive director” on its website, these were internal labels conferring no legal status or obligation under Chapter 10A.

With regard to Duesenberg’s role, Jack Rogers testified that Jake Duesenberg carried the title executive director because “He did all the paperwork, you know, keeping it formal and correct, et. cetera.” With respect to maintaining the website (which continued to list Rogers as

“president” and Duesenberg as “executive director” until after the complaint was filed in this matter), Rogers testified that tasks like that were in the province of Duesenberg because he, Rogers, did not have expertise in that area.

In discussing the resignation of Jake Duesenberg as treasurer, Jack Rogers’s testimony was not precise, but he understood that there was a significant change. He stated that “Jake wanted to do some other things than – nothing in particular, but he wanted to be more formal and make it bigger, et. cetera, and I – you know, I kind of focused on what I got to do with it.” He testified that Jake had his hands full with these other activities and that they agreed that Jake would resign as “secretary” and that Don Niemi would take over Jake’s role.

Jake Duesenberg’s testimony, taken subsequent to that of Rogers, clarified the motivation behind the January 2016 change in relationships.

During the preceding years, another association named Action 4 Liberty existed both as a corporate entity and as a political committee, both of which became inactive. Because of changing names, the identities of Action 4 Liberty and the MN Tea Party Alliance were in a state of some confusion in the public perception prior to October 2015. Duesenberg’s goal was to sort out the identities so that there was a clear distinction between the MN Tea Party Alliance, a political committee, and Action 4 Liberty, a nonprofit corporation. This process was completed on November 3, 2015, at which time a corporation named “MN Tea Party Alliance” (not legally related to the registered political committee of the same name) changed its name to Action 4 Liberty. At that point, the identities and names of Action 4 Liberty, which was a 501(c)(4) nonprofit corporation, and the MN Tea Party Alliance, which was a general purpose registered political committee, were clearly separated. Duesenberg held the position of president of the Action 4 Liberty corporation.

Duesenberg testified that he did not want to continue to work on the MN Tea Party Alliance “project” anymore once he had the advocacy corporation to run. He stated, “[A]bout December of 2015 is when I handed over the treasury to Don Niemi and, you know, washed myself of any kind of decision-making or financial control of the MN Tea Party Alliance. So what my role is, is I’m the president of the nonprofit organization Action 4 Liberty.” Action 4 Liberty has no formal relationship to the MN Tea Party Alliance, though the associations may have members in common and their members likely agree on some of their political philosophies.

Duesenberg further explained that because he was not doing anything for the MN Tea Party Alliance, the website remained essentially unchanged. The evidence suggests that the fact that Duesenberg continued to be listed as the MN Tea Party Alliance executive director for a time after January 2016 is likely because of his retreat from that role rather than because he was still doing all the work he had previously undertaken to keep the committee operating.

The evidence supports a conclusion that after December 2015 Duesenberg had at best a very limited role in the MN Tea Party Alliance, possibly doing minor tasks to help Jack Rogers, such as eventually removing the officers page from the MN Tea Party Alliance website. Because he had no significant ongoing role in the operation of the MN Tea Party Alliance after December

2015, the allegations of the complaint that depend on a finding of Duesenberg's significant involvement in the MN Tea Party Alliance during 2016 cannot be sustained.

Even if Duesenberg did not have a significant ongoing role in the operations of the MN Tea Party Alliance, it is theoretically possible that there was *actual* express or implied consent or cooperation between Duesenberg and Rogers in the publication of the subject MN Tea Party Alliance independent expenditure. However, the investigation provided no evidence to support such a theoretical conclusion. Rogers produced the prototype draft of the independent expenditure communication and sent it on to the printer without the knowledge of Duesenberg and without any input from him. The printer simply carried out Rogers's instructions in printing the piece and delivering it to the mail house.

The political relationship between Jack Rogers and Jake Duesenberg.

There is no question that Jack Rogers and Jake Duesenberg shared at least some political philosophies, although Duesenberg characterized himself as a "libertarian" and characterized Rogers as a "conservative." During the relevant time period, the two regularly participated in a series of live podcasts under the name "Living Free Podcast," which were a production of the nonprofit corporation, Action 4 Liberty.

Complainant explains, accurately, that in some of the podcasts, Rogers and Duesenberg discussed Alan Duff and his campaign. In one podcast, Duff was a guest. In one podcast, Rogers notes how valuable Veni Graphics and Don Niemi have been to the campaigns.

Examined in some detail, the testimony clarifies that there were actually two primary election campaigns in which Rogers and Duesenberg were separately involved. Rogers was involved in the campaign of Cal Bahr, who was running against the incumbent in Rogers's district. Duesenberg, on the other hand, was a key volunteer in the Alan Duff committee in Duff's primary run against the incumbent in a different district. The evidence shows that there was little or no overlap between the efforts on behalf of the two campaigns, with each of the two individuals, Rogers and Duesenberg, wholly involved with the campaign on which he was working.

While the podcasts show that Rogers and Duesenberg supported each other's candidates and that they both talked favorably about Duff and negatively about his opponent, mere alignment of political interests is not sufficient to defeat the independence of an otherwise independent expenditure.

To convert an expenditure from an independent expenditure to an approved expenditure, some action or relationship relevant to the particular expenditure itself is required. An expenditure that fails the requirements for independence typically becomes an approved expenditure, which is defined in terms that are the converse of those used to define independent expenditures. An expenditure is an approved expenditure

if the expenditure is made 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, the candidate's principal campaign committee, or the candidate's agent.

This definition depends on the existence of some particular characteristic of the expenditure itself. That is, with respect to the expenditure itself, there must be consent, cooperation, or one of the other factors listed in the definition. Sharing support for a candidate, or even talking about that shared support, does not defeat the independence of an independent expenditure when the subject of the possible expenditure is never discussed expressly or by implication (or under the facts of the present matter, never even suggested).

The independent expenditure disclaimer

Having concluded that the MN Tea Party Alliance expenditure was, in fact, an independent expenditure, the Board considers the allegation that the MN Tea Party Alliance violated the independent expenditure disclaimer requirement of Minnesota Statutes section 10A.17, subdivision 4. This subdivision requires an independent expenditure communication to include a specific form of statement indicating that the communication was made independently of the candidate. The MN Tea Party Alliance independent expenditure did not include this statement, resulting in a violation of the statutory requirement.

However, before a civil penalty may be imposed for an independent expenditure disclaimer violation, the Board must conclude that the violation was “knowingly” made. In the present context, that would require that at the time he authorized the communication, Jack Rogers knew that it constituted an independent expenditure and, nevertheless, omitted the disclaimer.

The literature piece related to a proposed increase on automobile license fees. The evidence shows that Jack Rogers had made opposition to this increase a cause of the MN Tea Party Alliance. In his testimony, when asked about the subject communication, which the examiner had referred to as “a campaign ad” supporting Duff and opposing his opponent, Mr. Rogers testified that this characterization of the ad was incorrect:

Because it's the end piece of a campaign going back to prior to the state convention when we objected to the increase in budget and spending and we produced a piece we took to the state convention and it was a follow-up on that.

Although the subject communication clearly meets the definition of an independent expenditure and was later reported by the MN Tea Party Alliance's treasurer as such, the Board concludes that at the time the communication was made, Jack Rogers did not have the requisite understanding of its legal status to “knowingly” violate the independent expenditure disclaimer requirement.

Conclusion

When the facts of a matter are unclear, but are sufficient to raise the real possibility of a violation, the Board will investigate. The purpose of an investigation is to clarify the facts. As a result of that clarification, a respondent may be found to have violated Minnesota statutes or

may be exonerated of one or more alleged violation. In the present matter, the latter result is reached. While the allegations of the complaint were sufficient to raise a legal question, they are not borne out by the actual facts and, as a result, the complaint must be dismissed.

Findings or fact:

1. Jake Duesenberg was treasurer of the MN Tea Party Alliance political committee until January 7, 2016. During the time he was treasurer, he was also considered to be the “executive director” of the political committee; an internal title not recognized in Minnesota statutes.
2. After he resigned as treasurer of the MN Tea Party Alliance, Duesenberg became more involved in the nonprofit corporation Action 4 Liberty and later in the primary election campaign of Alan Duff. At the same time, he essentially discontinued his involvement with the MN Tea Party Alliance.
3. Prior to the 2016 primary election, the MN Tea Party Alliance made an expenditure for a communication that criticized Alan Duff’s opponent and called on voters to vote for Duff in the upcoming primary.
4. The MN Tea Party Alliance communication was designed by political committee chair Jack Rogers and printed to his specification by Veni Graphics.
5. Jake Duesenberg, who served as an advisor and agent of the Duff committee, was not aware that Rogers was going to do an expenditure related to the Duff election. He had no involvement in any aspect of the development and publication of the communication.
6. Don Niemi served as a printing vendor to both the MN Tea Party Alliance and the Duff Committee. However, he did not provide consulting on campaign messaging or strategy to either committee and was not the agent of the Duff committee for any purpose that could defeat the independence of an independent expenditure. He simply accepted print jobs from each customer and printed them to order.
7. While Jake Duesenberg and Jack Rogers shared some political views, including the opinion that Alan Duff should be selected in the 2016 primary election, they had no relationship and no communication that would destroy the independence of the subject MN Tea Party Alliance expenditure.
8. The subject communication did not include the statutorily-required independent expenditure disclaimer.
9. Jack Rogers, who was responsible for publication of the communication, understood it to be a continuation of the MN Tea Party Alliance’s campaign against proposed license fee increases.

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

Conclusions of law

1. The expenditure by the MN Tea Party Alliance that is the subject of this matter met the requirements of Minnesota Statutes Chapter 10A to constitute an independent expenditure.
2. The relationships between the individuals and associations subject to this investigation did not defeat the independence of the expenditure.
3. The subject communication did not include the required independent expenditure disclaimer, in violation of Minnesota Statutes section 10A.17, subdivision 4. However, the violation was not knowingly made and, as a result, no civil penalty is provided by statute.

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

Order

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

Date: January 31, 2017