

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

**FINDINGS IN THE MATTER OF THE COMPLAINT AGAINST THE 6<sup>th</sup> CONGRESSIONAL  
DISTRICT REPUBLICAN PARTY OF MINNESOTA, THE FRIENDS OF KATHY LOHMER  
COMMITTEE AND THE CITIZENS OF LEE BOHLSSEN COMMITTEE**

**Summary of the Facts**

On October 31, 2008, the Campaign Finance and Public Disclosure Board (the Board) received a complaint filed by Alan Weinblatt, attorney, representing Atheen Johnson, against the 6<sup>th</sup> Congressional District Republican Party of Minnesota (6<sup>th</sup> Congressional RPM), the Friends of Kathy Lohmer Committee (Lohmer Committee) and the Citizens for Lee Bohlsen Committee (Bohlsen Committee). The complaint alleges that the 6<sup>th</sup> Congressional RPM, Lohmer Committee, and Bohlsen Committee, failed to list on their 2008 pre-primary Report of Receipts and Contributions in-kind contributions from the 6<sup>th</sup> Congressional RPM to the Lohmer and Bohlsen Committees. The complaint further alleges that the value of the in-kind contributions is in excess of the maximum contribution amount that may be provided by a political party unit to a candidate for the Minnesota House of Representatives. Additionally, because in-kind contributions are also counted as expenditures by the recipient committee, the complaint alleges that the in-kind contributions caused the Lohmer and Bohlsen Committees to exceed the 2008 campaign expenditure limit.

The complaint is based on two television advertisements; one run in support of Kathy Lohmer and one run in support of Lee Bohlsen. With the complaint the Board was provided a DVD copy of the advertisements and copies of "Contract Data Reports" from Comcast Cable showing the date and times, channel, and total cost billed for the showing of the two advertisements. The client identified on both reports is the "6<sup>th</sup> Congressional Dist". The total cost for showing the advertisement in support of Kathy Lohmer on 76 occasions is listed as \$5,533.30. The total cost for showing the advertisement in support of Lee Bohlsen on 63 occasions is listed as \$4,463. At the end of both advertisements there is a written disclaimer stating that the 6<sup>th</sup> Congressional RPM prepared and paid for the material.

Disclosing on the Report of Receipts and Expenditures all contributions made and received during the report period is required of both a political party unit and the principal campaign committee of a candidate by Minnesota Statutes, section 10A.20. In particular, Minnesota Statutes, Section 10A.20, subdivision 2(j), provides that a political party unit must disclose on the Report of Receipts and Expenditures the name of each candidate to which the political party unit made aggregate contributions in excess of \$100. This statute also provides in subdivision 2(b) that a candidate's principal campaign committee must disclose on the Report of Receipts and Expenditures all contributions, including donation in kind contributions, which in aggregate exceed \$100. A treasurer who certifies a Report of Receipts and Expenditures as true to the Board while knowingly omitting contributions or expenditures is guilty of a gross misdemeanor and subject to a civil penalty of up to \$3,000. A Board staff review of the pre-primary Report of Receipts and Expenditures filed by the 6<sup>th</sup> Congressional RPM, the Bohlsen Committee, and the Lohmer Committee confirmed that the complainant's contention that there are no contributions disclosed from the 6<sup>th</sup> Congressional RPM to the Bohlsen and Lohmer Committees.

A candidate who voluntarily signs the public subsidy agreement provided in Minnesota Statutes, section 10A.322, agrees to limit their principal campaign committee's campaign expenditures. A principal campaign committee that exceeds the campaign expenditure limit is subject to a civil penalty of up to four times the amount by which the expenditures exceeded the limit. Both Kathy Lohmer and Lee Bohlsen signed the public subsidy agreement for the 2008 election cycle.

All state level candidates are bound by the contribution limits found in Minnesota Statutes, section 10A.27. The contribution limits apply to both cash and in kind donations. In 2008 Minnesota House of Representative Candidates were limited to \$5,000 in total aggregate contributions from political party units. A candidate's principal campaign committee that exceeded this limit or a political party unit that made a contribution in excess of the limit is subject to a civil penalty of up to four times the amount of the contribution as provided by Minnesota Statutes, section 10A.28, subdivision 2.

While contributions from political party units to a Minnesota House of Representative Candidate are limited there are no limits on the amount that may be spent on independent expenditures either in support of or in opposition to a candidate. An independent expenditure must be made without the authorization or expressed or implied consent of, and not in cooperation or in concert with, or at the request or suggestion of a candidate, an agent of the candidate, or any member of the candidates committee. So that the public may understand that an independent expenditure is not an in-kind contribution to a candidate the advertisement must contain a statement that the piece is an independent expenditure and that the candidate is not responsible for its content. A political party unit that knowingly fails to identify an independent expenditure with the required disclaimer is guilty of a gross misdemeanor and subject to a civil penalty if up to \$3,000 per violation under the provisions of Minnesota Statutes, section 10A.17, subdivision 5.

Independent expenditures are reported to the Board on an Affidavit and Report of Independent Expenditures, and the cost of the independent expenditures is included in the summary of the Report of Receipts and Expenditures. The reporting of independent expenditures is provided for in Minnesota Statutes, section 10A.20, subdivision 6a.

In the complaint Mr. Weinblatt contends that the advertisements are approved expenditures, a type of in-kind contribution, and not independent expenditures. In support of this contention Mr. Weinblatt states, "These two ads are not independent expenditures because neither of them contain the disclaimer required by Minn. Stat. §10A.17, subd. 4. Likewise, the 6<sup>th</sup> Congressional District RPM did not file the statement of independence required by Minn. Stat. §10A.20, subd. 6a...Finally, the 6<sup>th</sup> Congressional District RPM report for the period ended October 20, 2008 does not show any independent expenditures either on the summary page or elsewhere."

Board records confirm that the 6<sup>th</sup> Congressional RPM did not file an Affidavit and Report of Independent Expenditures with either the pre-primary or pre-general Report of Receipts and Expenditures. However, under general expenditures the 6<sup>th</sup> Congressional RPM did list a payment of \$9,000 to Capitol Communications for television advertisements run on Comcast Cable.

A review of the video provided with the complaint confirmed that the advertisements do not have the type of disclaimer required of independent expenditures.

The Board notified the 6<sup>th</sup> Congressional RPM, Lohmer Committee, and Bohlsen Committee of the complaint by letter dated November 3, 2008, and provided the committees an opportunity to respond to the allegations.

In a letter received by the Board on November 17, 2008, Lee Bohlsen replied to the complaint on behalf of the Bohlsen Committee. Ms. Bohlsen denied that the television commercial was a contribution to the Bohlsen Committee. Ms. Bohlsen states, "Neither I, nor anyone else on my campaign, gave consent or participated in the commercial that the 6<sup>th</sup> Congressional District Republican Party conducted. Since I, nor anyone else on my campaign, had any contact with the 6<sup>th</sup> Congressional District Republican Party concerning this or any other work toward my campaign, this is not considered an in-kind contribution."

In a letter received by the Board on November 21, 2008, Kathy Lohmer replied to the complaint on behalf of the Lohmer Committee. Ms. Lohmer also denied that the television commercial was a contribution to her committee. In reference to the television advertisement Ms. Lohmer states, "My campaign never authorized, approved, consented to or requested any of the aforementioned. These were evidently produced and paid for by an outside group – and I personally don't even know who that was."

By letter dated November 21, 2008, Mark Swanson, Chair of the 6<sup>th</sup> Congressional RPM, responded to the complaint and specific questions asked by Board staff. Mr. Swanson contends that the television advertisements are independent expenditures and states, "I consider the expenditures for the television ads that are the subject of the complaint to be independent expenditures. ...There was no request or suggestion either expressly or through implied consent, authorization or cooperation to any member of the 6<sup>th</sup> District committee from Kathy Lohmer, Lee Bohlsen, any member of their committee or any agent for their committee."

In response to a question on the purpose of the \$9,000 expenditure to Capitol Communications disclosed on the pre-general Report of Receipts and Expenditures Mr. Swanson states, "...the expenditure to Capitol Communications were for partial payment for airtime on Comcast Cable for the advertisements listed (in the complaint)"

In response to a question on if the production costs for the television advertisements were reported by the 6<sup>th</sup> Congressional RPM Mr. Swanson replies, "No. The costs for producing the television advertisements are not listed on the pre-general election Report of Receipts and Expenditures. As of the pre-general election report the cost of production had not been paid and therefore the report did not list this cost."

In explaining the process used to select candidates and authorize the television advertisements Mr. Swanson states, "The expenditure for the ads were authorized by the 6<sup>th</sup> Congressional District Republican Party Executive Committee with Brad Biers (a member of the committee) acting as our agent. The process used by the 6<sup>th</sup> Congressional District was through discussion of our political plan. Our plan was to use our resources to support Minnesota House candidates and since the incumbents in HD56A and HD56B were first term incumbents and in an area we felt should lean Republican the committee voted to expend the money to purchase cable advertising in those two districts in support of the Republican candidates."

In response to a question on who wrote and produced the advertisements Mr. Swanson responds, "The script and the production were the responsibility of Brad Biers. Brad Biers acted as the agent for the 6<sup>th</sup> Congressional District RPM to approve the broadcast."

In response to a question on why, if the advertisements were independent expenditures, they did not contain the required disclosure statement Mr. Swanson provided, "As to the lack of the disclaimer required by Minnesota Statutes, section 10A.17, subdivision 4; the disclaimer that was included at the bottom of the screen at the end of the ad was per Minnesota statute 211B.04, section (c) which was thought to meet the disclaimer requirement. The lack of inclusion of the requirements of section 10A.17, subdivision 4 was an inadvertent oversight."

On November 25, 2008, John Lemke, Treasurer for the 6<sup>th</sup> Congressional RPM, submitted an amended pre-general election Report of Receipts and Expenditures. The amended report includes an Affidavit and Report of Independent Expenditures. Included in the report are an independent expenditure for Lee Bohlsen in the amount of \$5,463 and for Kathleen Lohmer in the amount of \$6,533.30.

Mr. Weinblatt and Mr. Biers appeared before the Board in Executive Session on December 2, 2008 to provide statements and answer Board questions.

This matter was considered by the Board in executive session on October 21, and December 2, 2008. The Board's decision was based upon the evidence provided in the complaint, correspondence from Mark Swanson, Kathy Lohmer, and Lee Bohlsen, the statements before the Board by Alan Weinblatt and Brad Biers, and Board records.

### **Board Analysis**

The complaint correctly recognized that the television advertisements in support of Ms. Lohmer and Ms. Bohlsen by the 6<sup>th</sup> Congressional RPM lacked the disclaimer required of independent expenditures. The complaint is also correct when it states that the 6<sup>th</sup> Congressional RPM did not file an Affidavit and Report of Independent Expenditures with the Board. From those facts the complaint reaches the conclusion that the cost of the television advertisements must therefore be in-kind contributions from the 6<sup>th</sup> Congressional RPM to the Lohmer and Bohlsen Committees. The Board's investigation of the complaint does not support that conclusion.

The 6<sup>th</sup> Congressional District RPM, Lohmer Committee, and Bohlsen Committee all provided to the Board that the television advertisements were independent expenditures. Incorrectly reporting an independent expenditure, or failing to use a disclaimer that identifies the expenditure as independent, does not transform an independent expenditure into a contribution to a candidate. Neither the complaint nor the Board's investigation provide any reason to believe that the Lohmer or Bohlsen campaigns had any knowledge of the 6<sup>th</sup> Congressional RPM expenditure on television advertisements prior to the advertisements appearance on television.

If the television advertisements are independent expenditures then they are not in-kind contributions to the Lohmer or Bohlsen Committees. As independent expenditures the costs of the television advertisements do not count against the political party unit contribution limit, and do not count as campaign expenditures. The Board's investigation found no evidence that either the Lohmer Committee or the Bohlsen Committee exceeded the contribution or campaign expenditure limits in 2008.

The reporting requirements in Chapter 10A are thorough and designed to provide the public with meaningful disclosure. The 6<sup>th</sup> Congressional RPM made multiple mistakes in reporting the costs of the television advertisements. All costs related to the advertisements should have

been reported on an Affidavit and Report of Independent Expenditures, not as a general expenditure. Additionally, the costs reported should have included production costs for the advertisements and the full amount owed to Comcast for the running of the advertisements. Mr. Swanson is mistaken when he states that the production costs were properly not reported because the cost had not been paid by the 6<sup>th</sup> Congressional RPM. Expenditures, including independent expenditures, are reportable when an obligation is incurred. Therefore production and broadcast costs that had not been paid at the time of the pre-general Report of Receipts and Expenditures should have been listed as unpaid bills.

The failure of the 6<sup>th</sup> Congressional RPM to include the independent expenditure disclaimer in the television advertisements is a violation of Chapter 10A. Minnesota Statutes, section 10A.17, subdivision 5 provides a civil penalty on any person who “knowingly violates” the requirement to use the proper disclaimer on independent expenditures. The standard for finding that an individual knowingly violated a statute is higher than finding that some act did or did not occur. To knowingly violate a statute requires that the individual knew of the specific requirement, or of the existence of statutes regulating the activity. The 6<sup>th</sup> Congressional District, and in particular Mr. Biers, apparently was only aware of the disclaimer requirement found in Chapter 211B, and had no knowledge of the disclaimer found in Chapter 10A. The Board views the 6<sup>th</sup> Congressional District RPM as now fully educated on the disclaimer requirements for independent expenditures.

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

**Finding Concerning Probable Cause**

1. There is no probable cause to believe that the subject television advertisements are in-kind donations to either the Friends of Kathy Lohmer Committee or the Citizens of Lee Bohlsen Committee.
2. There is no probable cause to believe that either the Friends of Kathy Lohmer Committee or the Citizens for Lee Bohlsen Committee exceeded the contribution limit from political party units.
3. There is no probable cause to believe that either the Friends of Kathy Lohmer Committee or the Citizens for Lee Bohlsen Committee exceeded the 2008 campaign expenditure limit for House of Representative Candidates.
4. There is probable cause to believe that the television advertisements were independent expenditures by the 6<sup>th</sup> Congressional District RPM in support of the Lohmer and Bohlsen campaigns.

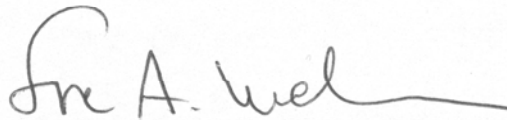
5. There is probable cause to believe that the 6<sup>th</sup> Congressional District RPM initially failed to report independent expenditures for television advertisements in support of the Kathy Lohmer, and Lee Bohlsen campaigns on an Affidavit and Report of Independent Expenditures.
6. There is probable cause to believe that the 6<sup>th</sup> Congressional District RPM initially failed to report expenditures for the cost of producing the television advertisements, and the full cost of running the advertisements on Comcast Cable.
7. There is probable cause to believe that the 6<sup>th</sup> Congressional District RPM failed to place the independent expenditure disclaimer required in Minnesota Statutes, section 10A.17, on the television advertisements.
8. There is probable cause to believe that the reporting errors by the 6<sup>th</sup> Congressional District RPM related to the independent expenditures on behalf of Kathy Lohmer and Lee Bohlsen no longer exist in the amended Report of Receipts and Expenditures.
9. There is no probable cause to believe that these violations were intentional or done with knowledge that statutory requirements were not met.

**Based on the above Finding Concerning Probable Cause, the Board issues the following:**

**ORDER**

1. The Board investigation of this matter is entered into the public record in accordance with Minnesota Statutes, section 10A.02, subdivision 11. The matter is concluded.

Dated: December 2, 2008



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Sven A. Wehrwein, Chair  
Campaign Finance and Public Disclosure Board

## Relevant Statutes

### **10A.17 EXPENDITURES.**

Subdivision 1. **Authorization.** A political committee, political fund, principal campaign committee, or party unit may not expend money unless the expenditure is authorized by the treasurer or deputy treasurer of that committee, fund, or party unit.

Subd. 2. **Written authorization.** An individual or association may not make an approved expenditure of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.

Subd. 3. **Petty cash.** The treasurer or deputy treasurer of a political committee, principal campaign committee, or party unit may sign vouchers for petty cash of up to \$100 per week for statewide elections or \$20 per week for legislative elections, to be used for miscellaneous expenditures.

Subd. 3a. **Personal loans.** A principal campaign committee, political committee, political fund, or party unit may not lend money it has raised to anyone for purposes not related to the conduct of a campaign.

Subd. 4. **Independent expenditures.** 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 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 conspicuous type 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 on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

Subd. 5. **Penalty.** A person who violates subdivision 2 is subject to a civil penalty imposed by the board of up to \$1,000. A person who knowingly violates subdivision 3a or 4 or falsely claims that an expenditure was an independent expenditure is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.