

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

**Findings in the Matter of the Complaint filed by the Republican Party of
Minnesota against Mayor Raymond Thomas Rybak**

Evidence Used In These Findings

On September 28, 2009, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from Tony Sutton, Republican Party of Minnesota Chairman, and Michael Brodkorb, Republican Party of Minnesota Deputy Chairman, (the Complainants) regarding Minneapolis Mayor Raymond Thomas Rybak. The complaint alleges that Mayor Rybak is a candidate for of the office of Governor, and that as a candidate for that office Mayor Rybak has made expenditures which required the registration of a principal campaign committee with the Board.

A person becomes a candidate for state level office when they meet the definition provided in Minnesota Statutes, section 10A.01, subdivision 10. This definition provides in part that a candidate is, "...an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election."

In support of their allegation that Mayor Rybak is a candidate for the office of Governor the Complainants provided copies of news stories reporting on gubernatorial candidate forums in which Mayor Rybak participated, and news releases for political events in which Mayor Rybak is listed as attending with other candidates for the office of Governor. One of the news stories reported that Mayor Rybak had been endorsed for Governor by the Teamsters Local 120 union. Additionally, the complainants provided a video of Mayor Rybak speaking at one of the gubernatorial candidate forums. On the video Mayor Rybak states that "I will only be elected Governor if we work together."

A person who meets the definition of candidate may or may not be required to register a principal campaign committee depending on the level of their campaign activity and the source of their campaign's funding. Registration with the Board is required no later than 14 days after a candidate has either received contributions of more than \$100, or made expenditures with other than personal funds in excess of \$100. A candidate who self-funds all campaign expenditures is not required to register a committee with the Board. A self-funding candidate is obligated to file periodic reports with the Board that disclose the amount spent on the candidate's campaign. (Minnesota Statutes, sections 10A.105, 10A.14, and 10A.20)

The Complainants supported their allegation that Mayor Rybak had made expenditures in sufficient amounts to require registration of a principal campaign committee in two ways. First, the complaint identified expenditures on the RT for Minneapolis Committee (Mayor Rybak's mayoral re-election campaign committee) for a survey and contributions to two DFL political party units that the Complainants believed would only benefit a campaign for Governor. Second, the Complainants provided calculations that showed that the cost of travel for Mayor Rybak to attend the political events and candidate forums referenced in the complaint would be more than \$100.

Contributions are defined in Minnesota Statutes, section 10A.01, subdivision 11. This definition includes the value of a donation in-kind. A donation in-kind is both a contribution to a campaign, and a type of expenditure by the campaign.

The use of an automobile for campaign purposes, including the candidate's personal car, is a donation in-kind to the campaign. Minnesota Rules, 4503.0500, subpart 8, provides that the use of an automobile shall be valued at the same rate used by the state to reimburse its employees. Currently the state is using the Internal Revenue Service mileage reimbursement rate of 55 cents per mile.

On October 6, 2009, the Complainants supplemented their complaint with additional news stories in which Mayor Rybak is reported to have attended gubernatorial candidate forums and other political events.

The supplement also stated that any expenditures made by the RT for Minneapolis Committee in support of Mayor Rybak's campaign for Governor are contributions from an unregistered association. The RT for Minneapolis Committee is registered with Hennepin County, but is not a registered committee with the Board.

On October 5, 2009, Mayor Rybak was notified of the complaint and provided an opportunity to respond. On October 7, 2009, notification of the supplement to the complaint was provided.

On October 14, 2009, the Complainants further supplemented their complaint against Mayor Rybak by providing their analysis of the cost of all travel conducted by Mayor Rybak to support his alleged campaign for Governor. The Complainants allege that the cost for traveling to gubernatorial candidate forums and other political events outside of Minneapolis is at least \$1,055. On October 15, 2009, Mayor Rybak was notified by the Board of the second supplement to the complaint.

On October 29, 2009, the Board received a response to the complaint from Sarah Duniway, legal representative for Mayor Rybak and the RT for Minneapolis Committee. In response to the allegation that Mayor Rybak is a candidate for the office of Governor Ms. Duniway replies, "There is no dispute that Mayor Rybak has spent time this year talking to people around the state, asking their advice, getting their input, and assessing his potential support. Up until late September, none of these events were for the purpose of seeking nomination or election as Governor; rather, Mayor Rybak's attendance at these

events was for the purpose of influencing his own decision-making about his future.” Ms. Duniway further provided, “By late September, it had become increasingly clear that he had significant support and would almost certainly run. From that point, Mayor Rybak has begun acting like a candidate for Governor, attending Governor’s forums, talking to delegates and potential supporters, attending events that other candidates attend.”

In response to the allegation that Mayor Rybak was required to register a principal campaign committee for the office of Governor Ms. Duniway provides, “Importantly, no funds have been raised or spent in connection with these recent activities aimed specifically at the Governor’s race, other than the use of Mayor Rybak’s personal vehicle.” Ms. Duniway further provided, “Although he has attended events in the last two months specifically aimed at the gubernatorial campaign, the only expenses for attending these events was the use of his personal vehicle which does not rise to the level of contributions or expenditures causing an individual to be a “candidate” within the meaning of Section 10A.01 or to have to register a campaign committee under Section 10A.105.”

In a review of the news stories provided by the Complainants as evidence that Mayor Rybak is a candidate for Governor, Ms. Duniway provides that Mayor Rybak did not complete a screening interview or questionnaire prior to receiving the endorsement of Teamsters Local 120, and therefore did not request or expend funds to receive the endorsement. Further, Ms. Duniway maintains that the events attended by Mayor Rybak prior to September of 2009 were to “further his [Mayor Rybak’s] consideration of running for Governor.” ...“The purpose of attending...was not to influence the nomination of election of Mayor Rybak for Governor.”

In response to the allegation that the expenditure by the RT for Minneapolis Committee for a survey was to support a gubernatorial bid Ms. Duniway states, “The expenditure to Greenbery Quinlan Rosner Research was for a survey conducted to influence the outcome of Mayor Rybak’s re-election and not the nomination or election in the race for Governor.” Ms. Duniway then described the size of the survey and why it included individuals who did not live in Minneapolis, “Approximately 600 metro-area voters were called as part of the polling. Calls extended to individuals outside the city of Minneapolis to the greater metro area because the campaign expected that it would use paid broadcast media in the fall to communicate about Mayor Rybak’s re-election. Because Minneapolis media markets reach beyond the city limits, the campaign wanted to be sure that the messages it employed would reinforce positive views of Minneapolis and Mayor Rybak among other metro residents likely to be exposed to the campaign’s advertising, in addition to influencing voters within the city limits.”

In response to a Board request Ms. Duniway provided a copy of the questions asked in the survey with her response on behalf of Mayor Rybak. A copy of the questions is attached and made a part of these findings.

Ms. Duniway further provided that the contributions to the political party units specified in the complaint were to, “support a DFL party event celebrating the leadership of Paul and Sheila Wellstone...” and “...to support DFL party organizing generally.”

Board Analysis

As discussed in the evidence section of these Findings an individual is deemed a candidate under Chapter 10A if the individual has given implicit or explicit consent for any other person to make expenditures in excess of \$100 for the purpose of bringing about the individual's nomination or election for a state level office. After reviewing the available information, the Board concludes this standard was met when the RT for Mayor Committee authorized a survey that was conducted in May, 2009, by Greenbery Quinlan Rosner Research. After a thorough review of the survey, the Board has reached the conclusion that the survey was designed to gather information that would benefit Mayor Rybak in a gubernatorial campaign.

The response on behalf of Mayor Rybak contends that the survey was to support a re-election bid for Mayor of Minneapolis. But this response does not persuasively explain why a survey to support the Mayor's re-election would have a geographic calling area that included metro area residents that are not eligible to vote in Minneapolis.

Further, some of the specific questions in the survey have little relevance to running for office in Minneapolis, but would be of great interest to a candidate designing a campaign strategy for Governor. As an example, the survey asks if the respondent voted in 2006, (the last time the office of Governor was on the ballot), and if the respondent intends to vote in 2010. The office of Governor is on the ballot in 2010, the office of Mayor of Minneapolis is on the ballot in odd numbered years (2005 and 2009).

A second set of questions in the survey asks the respondent to rate as favorable or unfavorable their impression of a number of elected officials. Included in the list of officials are four current or former DFL office holders who are candidates for Governor. This set of questions also provides data regarding name recognition for the listed officials, including Mayor Rybak.

The survey also contains a series of twelve questions that asks the respondent to react to statements that describe the accomplishments of Mayor Rybak and his policy plans for the future. Of the twelve questions, five describe plans that are outside the scope of the Mayor of Minneapolis's authority. For example, one question describes how the crime rate has been reduced in Minneapolis, and then states "Rybak will fight to make sure all of our communities' streets are safe..." Another question reviews Mayor Rybak's policy of using electric and hybrid vehicles in Minneapolis and then states, "He will expand the use of energy efficient technologies beyond Minneapolis to other parts of the metro area and will offer tax incentives for businesses and families that buy energy efficient vehicles and appliances." Respondents are also asked to respond to the statements, "Rybak will work to bring the same fiscal discipline to local and state government throughout Minnesota...", and "Rybak will continue to fight to reform how government does business across Minnesota."

The Board concludes that the primary purpose of the survey was to gather information on how respondents reacted to the campaign platform of a gubernatorial candidate, and to provide feedback on which statements about Mayor Rybak gathered the most favorable response from voters who are likely to vote in the 2010 state elections. Therefore, the Board concludes that the \$26,500 expenditure for the survey was for the purpose of supporting Mayor Rybak's nomination or election as Governor.

The survey was conducted May 19 through May 21, 2009. The provisions of Minnesota Statutes, section 10A.14, required registration of a principal campaign committee with the Board within 14 days of the RT for Minneapolis Committee becoming obligated to expend more than \$100 for the cost of the survey. This statute does not provide a penalty for failure to register until after the Board provides notice to the individual of the requirement to register, and the individual has had ten business days to correct the error. The fact that Mayor Rybak's principal campaign committee will register late does not affect the timeframe that must be included on the committee's first Report of Receipts and Expenditures. That time frame begins on the date that the first transaction requiring registration occurred. In this case, that is the date that the RT for Minneapolis Committee contracted for the survey.

The allegation that the contributions by the RT for Minneapolis Committee to DFL political party units were made to support a gubernatorial campaign by Mayor Rybak is not supported. Contributions to political party units are permitted under Chapter 10A. A contribution by a candidate to a party unit would not, without more, be considered an expenditure to influence that candidate's election to statewide office. In the immediate case, there is no evidence that the contributions were for any purpose other than to assist the political party units.

The Complainants contend that the expenditure for the survey by the RT for Minneapolis Committee is a contribution to the gubernatorial campaign of Mayor Rybak from an unregistered association. As the survey was used for the purpose of influencing the nomination or election of Mayor Rybak to the office of Governor, the survey is an in-kind contribution to a gubernatorial campaign. Usually a contribution from an association not registered with the Board is permissible only if the contributor provides additional disclosure to the recipient with the contribution. However, under the provisions of Minnesota Rules, 4503.0500, subpart 5, a political committee registered with Hennepin County under the provisions of Minnesota Statutes, sections 383B.041 to 383B.058, may make contributions of over \$100 to Chapter 10A candidates without providing additional disclosure. The RT for Minneapolis Committee is registered in Hennepin County, therefore this allegation is not supported.

Although not referenced in the complaint, state level campaigns are not allowed to accept contributions from the political committees of municipal candidates. (Minnesota Statutes, section 10A.27, subdivision 9(d)). Minnesota Statutes, section 211A.13, which is not enforced by the Board, prohibits contributions from a municipal candidate to a state level candidate. Chapter 10A does not provide a civil penalty for accepting a contribution from

the committee of a municipal candidate, but the contribution may not be retained by the principal campaign committee.

The Complainants provided a series of news stories and press releases which reported on gubernatorial candidate forums and other political events around the state in which Mayor Rybak participated. The complaint uses the news stories as evidence that Mayor Rybak is a candidate for Governor, and as a basis for calculating the travel costs associated with attending the events as a candidate for Governor.

The response by Ms. Duniway states that some of events were to influence the re-election of Mayor Rybak, and that volunteers accompanied the Mayor and distributed campaign literature for the RT for Minneapolis Committee. Ms. Duniway does concede that Mayor Rybak attended candidate forums held in September and October that were specifically aimed at the gubernatorial campaign.

Having already determined that Mayor Rybak became a candidate for Governor at the time that the RT for Minneapolis Committee purchased the survey, the Board does not need to evaluate the purpose of Mayor Rybak's participation in each of the events listed in the complaint. The Board does not believe that attendance at any event outside the city limits of Minneapolis is automatically an expenditure that must be reported by the gubernatorial campaign. Nonetheless, Mayor Rybak's travel expenses to participate in gubernatorial candidate forums, including travel provided by others, were clearly for the purpose of influencing his nomination or election as governor, and must be reported by the principal campaign committee.

When Mayor Rybak registers a principal campaign committee with the Board the committee will become the mechanism for reporting all campaign expenditures made by Mayor Rybak (including the use of his personal car), the RT for Minneapolis Committee, and any other individual in support of the gubernatorial campaign. The 2009 year-end Report of Receipts and Expenditures will disclose the appropriate travel expenses as either an in-kind contribution to the committee, a cost that is reimbursed by the committee, or an unpaid bill that is carried into 2010. The cost of the survey will either be reported by the principal campaign committee as a reimbursement to the RT for Minneapolis Committee, or an unpaid bill owed to the mayoral committee.

The 2009 year-end Report of Receipts and Expenditures is due on February 1, 2010.

This matter was considered by the Board in executive session on October 6, and November 5, 2009.

Based on the above Statement of the Evidence, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that Mayor Rybak became a candidate for Governor as defined in Minnesota Statutes, section 10A.01, subdivision 10, when

the RT for Minneapolis Committee commissioned a survey that provided support to a gubernatorial campaign by Mayor Rybak.

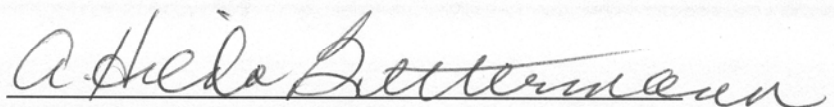
2. There is probable cause to believe that the cost of the survey paid for by the RT for Minneapolis Committee is an in-kind donation to the gubernatorial campaign of Mayor Rybak. There is no probable cause to believe that the donation from the RT for Minneapolis Committee is a prohibited contribution from an unregistered association as defined in Minnesota Statutes 10A.27, subdivision 13 and interpreted in Minnesota Rules 4503.0500, subp. 5.
3. There is probable cause to believe that the in-kind donation of the survey is a prohibited contribution from a municipal level candidate committee as provided by Minnesota Statutes, section 10A.27, subdivision 9(d).
4. There is probable cause to believe that Mayor Rybak was required to register a principal campaign committee for the office of Governor within fourteen days of the date that the cost of the survey became an obligation to the RT for Minneapolis Committee.
5. There is probable cause to believe that Mayor Rybak incurred travel expenses in support of his candidacy for Governor, and that the amount of the expenses should be reported as provided in Minnesota Statutes 10A.20.

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

Order

1. Mayor Rybak must submit a registration for a principal campaign committee for the office of Governor within 14 business days of the date of this Finding. The registration will be retroactive to May 19, 2009.
2. The principal campaign committee registered with the Board must reimburse the RT for Minneapolis committee \$26,500 for the cost of the survey conducted by Greenbery Quinlan Rosner Research and include the status of the reimbursement on the first Report of Receipts and Expenditures filed with the Board.
3. The Board investigation of this matter is hereby closed and made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 11.

Signed: November 5, 2009



A. Hilda Bettermann, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes and Administrative Rules

Minnesota Statutes 10A.01, Subd. 9. Campaign expenditure. "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services. An expenditure made for the purpose of defeating a candidate is considered made for the purpose of influencing the nomination or election of that candidate or any opponent of that candidate.

Except as provided in clause (1), "expenditure" includes the dollar value of a donation in-kind.

"Expenditure" does not include:

- (1) noncampaign disbursements as defined in subdivision 26;
- (2) services provided without compensation by an individual volunteering personal time on behalf of a candidate, ballot question, political committee, political fund, principal campaign committee, or party unit; or
- (3) the publishing or broadcasting of news items or editorial comments by the news media.

Minnesota Statutes 10A.01, Subd. 10. Candidate. "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24.

Minnesota Statutes 10A.105, Subd. 1, Principal Campaign Committee. A candidate must not accept contributions from a source, other than self, in aggregate in excess of \$100 or accept a public subsidy unless the candidate designates and causes to be formed a single principal campaign committee for each office sought. A candidate may not authorize, designate, or cause to be formed any other political committee bearing the candidate's name or title or otherwise operating under the direct or indirect control of

the candidate. However, a candidate may be involved in the direct or indirect control of a party unit.

Minnesota Statutes 10A.14, Subd. 1, First registration. The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.

Minnesota Statutes 10A.20, Subd. 6. Report when no committee. A candidate who does not designate and cause to be formed a principal campaign committee and an individual who makes independent expenditures or expenditures expressly advocating the approval or defeat of a ballot question in aggregate in excess of \$100 in a year must file with the board a report containing the information required by subdivision 3. Reports required by this subdivision must be filed on the dates on which reports by committees, funds, and party units are filed.

Minnesota Rules 4503.0500, Subp. 5. Contributions from Hennepin County registered associations. In lieu of registration with the board, an association registered with the Hennepin County filing officer under Minnesota Statutes, sections 383B.041 to 383B.058, that makes contributions of more than \$100 to a committee or fund in a calendar year may notify the recipient committee of its registration with Hennepin County, including its registration number, and instruct the recipient committee to include the notice when the recipient committee discloses receipt of the contribution.

Minnesota Rules 4503.0500, Subp. 8. Value of contributions of automobile use. Automobile use provided to a committee by an individual may be valued at the lowest rate used by the state to reimburse its employees for automobile use. 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. The use of an automobile that exceeds \$20 in value a day is either an expenditure that must be reimbursed or a donation in-kind from the individual who provided the use of the automobile. An automobile provided by an association must be valued at the fair market value for renting an equivalent automobile.