

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

**Findings and Order in the Matter of a Contribution to the 23rd Senate District DFL
from the Maschka, Riedy & Ries Law Firm**

Summary of the Facts

Pursuant to Minnesota Statutes, section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board (the Board) may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure subjects the recipient to a civil penalty of up to four times the amount of the contribution over \$100.

An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes, section 10A.27, subdivision 13(b). Failure to provide the appropriate disclosure with a contribution of more than \$100 subjects the recipient to a civil penalty of up to \$1,000.

An unregistered association that is also a corporation may be prohibited from making a contribution to candidates, political party units, and political committees and funds (other than independent expenditure or ballot question committees and funds) under Minnesota Statutes, section 211B.15. Chapter 211B is not administered or enforced by the Board.

In its 2011 Report of Receipts and Expenditures filed with the Board, the 23rd Senate District DFL disclosed the receipt of \$900 from the Maschka, Riedy & Ries law firm. The \$900 was reported on the miscellaneous income schedule with the explanation of "Burton Dinner". The miscellaneous income schedule is used to report money received by a committee that does not constitute a contribution. Receipts typically disclosed on the miscellaneous income schedule include interest earned on the committee's bank account, or money from the sale of a committee asset. Receipts that qualify as miscellaneous income are not contributions, and therefore not subject to the additional disclosure required in Minnesota Statutes, section 10A.27, subdivision 13, or the corporate prohibitions in Chapter 211B.

Board staff asked the 23rd Senate District DFL for clarification of what "Burton Dinner" meant, and why the receipt from Maschka, Riedy & Ries was included on the miscellaneous income schedule. In a response dated February 27, 2012, Beth Sherrill, treasure for the 23rd Senate District DFL provided that,

The Burton Dinner is the Senate District's annual fundraising dinner. The Senate District also held a private wine reception prior to the dinner. Individual tickets for the Burton Dinner were \$35. Individual tickets to the private wine reception included tickets to the dinner and were \$80. The Senate District also offered table sponsorships for the dinner for \$650, which included tickets to the dinner, signage at the event, acknowledgment in the brochure and during the event, and signage at the table. Additionally, the Senate District offered sponsorship of the private wine reception for \$250,

which included signage during the reception and acknowledgement both at the reception and at the dinner. Maschka, Riedy & Ries sponsored both a table and the wine reception.

By separate mailings Ms. Sherrill also provided a copy of the brochure for the Burton Dinner and a picture of a sign displayed at the wine reception stating that the event was sponsored by Maschka, Riedy & Ries. The brochure for the dinner listed the Maschka, Riedy & Ries law firm as a table sponsor, and also identified two individuals and three registered political committees that also sponsored tables at the event.

Board staff contacted the Maschka, Riedy & Ries law firm for information on the \$900. By letter dated February 23, 2012, James Fleming responded on behalf of the firm. Mr. Fleming confirmed that the firm paid \$650 for a table of eight, and \$250 for a wine reception sponsorship.

Mr. Fleming further explained,

We were told 200 to 225 attendees were expected at this event. The profile of attendees included clients and prospective clients. We were assured those attending the wine reception would know of our sponsorship and our name was prominently displayed with a sign. ...We were also provided assurance that in addition to the publication of our name as the sponsor for the wine reception that purchase of a table would include a statement in the Dinner program and mention by the master of ceremonies that we had sponsored the wine reception and that we had purchased a table. ...Because of the profile of the expected attendees, this was considered to be a worthwhile marketing opportunity for our firm.

This matter was considered by the Board in executive session on July 13, 2012. The Board's decision is based on the correspondence received from Mr. Fleming and Ms. Serrill and on Board records.

Board Analysis

The question for the Board is whether any of the \$900 received by the 23rd Senate District DFL from the Maschka, Riedy & Ries law firm is accurately reported as miscellaneous income. For that determination the money paid for tickets to the fundraiser will be considered separately from the money paid for table and wine reception sponsorship and the benefits supposedly received for those sponsorships.

Tickets to fundraising events are classified and reported as contributions to the committee holding the fundraiser under Minnesota Statutes, section 10A.20, subdivision 3(b). Purchasing a table of tickets, which in this case meant eight tickets, does not change the amount paid for the fundraiser tickets from a contribution into miscellaneous income. This is not a new conclusion for the Board. For years the Board has issued findings that consistently found committees that sold more than \$100 of fundraising tickets (often disclosed as a "table" of tickets) to unregistered associations without the required additional disclosure were in violation of Minnesota Statutes, section 10A.27, subdivision 13. Similarly, unregistered associations

that bought more than \$100 in fundraising tickets without providing the additional disclosure were found in violation of Minnesota Statutes, section 10A.27, subdivision 13 (b). There is no reason to find differently in this case.

The cost of a single ticket to the fundraiser was \$35. The eight tickets Maschka, Riedy & Ries purchased as a part of the table sponsorship would then have a value of \$280, or \$180 over the threshold at which additional disclosure should have been provided.

The remaining \$620 of the \$900 paid for the table sponsorship and wine reception (\$900 - \$280) is represented as the value of being listed as a sponsor for the fundraising events. Mr. Fleming states that the law firm believed that the various acknowledgements provided for sponsoring a table and the wine reception were of value in marketing the firm to current and potential clients. Ms. Serrill's response documents that acknowledgements were provided to the Maschka, Riedy & Ries law firm for its role in paying for the cost of the dinner and wine reception. The various acknowledgements are apparently seen by the party unit as a service sold to the law firm, and therefore listed as miscellaneous income. However, the Board notes that the full amount paid by the other individuals and registered committees that sponsored tables at the Burton Dinner are reported as contributions, not as miscellaneous income, by the 23rd Senate District DFL.

In a past enforcement action¹ the Board did allow a committee holding a fundraiser to categorize that portion of a table sponsorship above the standard cost of buying tickets as the value gained for acknowledgement as a table sponsor. The committee was directed to report the money received for sponsorship beyond the cost of tickets as miscellaneous income.

Since its recognition of table sponsorship fees as income rather than as contributions, the Board has noted an increase in the use of this mechanism to avoid classifying money received as a contribution. The present matter advances the concept further by expanding it beyond table sponsorships to event sponsorships. To prohibit potential abuse of the sponsorship concept, the Board uses this matter to announce that it will no longer permit the use of the miscellaneous income category as a means of accepting money under the premise that the money is for the purchase of some advertising or public relations benefit. A table or an event may still be sponsored, but the fees for such sponsorship must be reported as contributions and are subject to all statutory provisions governing contributions.

Using sponsorship as a means to classify money received as something other than a contribution creates two significant problems. First, it opens an avenue for corporations and other unregistered associations to avoid the disclosure required for contributions by Minnesota Statutes, section 10A.27, subdivision 13. It is important to note that this provision of Chapter 10A does not prohibit any association from directly sponsoring any portion of a fundraiser, or from paying a premium above the normal cost of fundraiser tickets for special acknowledgement as a sponsor. Instead, it serves only to insure that all unregistered associations provide additional disclosure when a contribution exceeds \$100.

Second, while there are no limits on the amount of a contribution made to a political party unit there are contribution limits for candidates. Allowing a candidate to classify money received for sponsorship as miscellaneous income would provide an easy means to defeat contribution limits.

There may be unique factual situations that could justify reporting the cost of the sponsorship as the sale of advertising or promotional value on the miscellaneous income schedule. However,

¹ See Findings issued to the 4th Congressional District DFL on May 16, 2008

unless the Board promulgates administrative rules defining those situations or an association obtains an advisory opinion from the Board that permits use of the miscellaneous income category for proceeds from the sale of sponsorships, all proceeds received for sponsorship related to a fundraising event must be reported as a contribution to the committee holding the event.

Because the conclusion regarding sponsorship reached in these findings is different from at least one past enforcement action the Board will not impose a civil penalty on either the acceptance or contribution of \$620 from an unregistered association without the required additional disclosure. However, because the required additional disclosure was not provided, the \$620 was, and remains, a prohibited contribution which must be returned to the Maschka, Riedy & Ries law firm.

Based on the information outlined in the above Summary of the Facts and Relevant Statutes, the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that the 23rd Senate District DFL violated Minnesota Statutes, section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that the Maschka, Riedy & Ries law firm violated Minnesota Statutes, section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 without providing the required disclosure.
3. There is no probable cause to believe that the violations by the 23rd Senate District DFL or the Maschka, Riedy & Ries law firm were intentional, or were done with the intent to circumvent the provisions of Chapter 10A.

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

ORDER

1. The Board imposes a civil penalty of \$180, or one times the amount by which the fundraising tickets purchased by the Maschka, Riedy & Ries law firm exceeded \$100, on the 23rd Senate District DFL for accepting and depositing a contribution from an unregistered association without the disclosure required by Minnesota Statutes, section 10A.27, subdivision 13.
2. The 23rd Senate District DFL is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
3. The 23rd Senate District DFL is directed to refund \$800 to the Maschka, Riedy & Ries law firm and forward to the Board a copy of the check used to return the excess contribution within thirty days of receipt of this order. The amount of \$800 is derived by subtracting \$100 from the total of \$900 contributed by the Maschka, Riedy & Ries law firm. Under the provisions of Minnesota Statutes section 10A.27, subdivision 13, up to \$100 in contributions from an unregistered association may be accepted without

additional disclosure. Whether the first \$100 of a contribution from a corporation may be kept by a political party unit under the provisions of Minnesota Statutes section 211B.15 is a determination outside of the Board's jurisdiction.

4. The Board imposes a civil penalty of \$180 on the Maschka, Riedy & Ries law firm for making a contribution in excess of \$100 to a political party unit without the disclosure required by Minnesota Statutes, section 10A.27, subdivision 13 (b).
5. The Maschka, Riedy & Ries law firm is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
6. If either the Maschka, Riedy & Ries law firm or the 23rd Senate District DFL does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes, section 10A.34.
7. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes, section 10A.02, subdivision 11, and upon payment by the civil penalties imposed herein, this matter is concluded.

Dated: July 13, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

10A.27, subdivision 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.