

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

.....
**November 7, 2018
St Croix Room
Centennial Office Building**
.....

MINUTES

The meeting was called to order by Chair Flynn.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (arrived during possible legislative recommendations), Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

MINUTES (October 3, 2018)

After discussion, the following motion was made:

Member Leppik's motion: To approve the October 3, 2018, minutes as drafted.

Vote on motion: Motion passed (5 ayes, 1 absent).

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, December 5, 2018.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that 1,028 campaign finance reports were due on October 29, 2018, and that only 25 reports remained outstanding. Mr. Sigurdson also said that during the fall of each year, the chair forms a nomination committee to recommend officers for the next year. Mr. Sigurdson said that the nomination committee traditionally includes the chair and one other Board member of a different political party. Mr. Sigurdson then reviewed the budget process for the next biennium and the two change item requests necessary to maintain current staffing levels and transition to an online reporting system. Mr. Sigurdson finally discussed Minnesota's grade in a report issued by the Coalition for Integrity regarding the state's lobbying, campaign finance, and ethics laws.

POSSIBLE LEGISLATIVE RECOMMENDATIONS

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson also directed members to an email that Clean Elections

Minnesota had submitted for the meeting regarding the proposed legislative recommendations. Mr. Sigurdson said that to be successful, any legislative package would need bipartisan and gubernatorial support and would need to be limited in scope. Mr. Sigurdson explained that if the Board directed staff to develop legislative recommendations, then staff would present draft language for Board approval at the January meeting. Mr. Sigurdson next reviewed the technical and policy proposals in each section of the memorandum.

After discussion, the following motions were made:

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the economic interest program technical proposals as outlined in the executive director's memorandum.

Vote on motion: Unanimously passed.

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the economic interest program policy proposals as outlined in the executive director's memorandum.

Vote on motion: Unanimously passed.

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the campaign finance program technical proposals as outlined in the executive director's memorandum.

Vote on motion: Unanimously passed.

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the campaign finance program policy proposals as outlined in the executive director's memorandum.

Vote on motion: Motion passed (5 ayes, 1 nay).

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the lobbyist program technical proposals as outlined in the executive director's memorandum.

Vote on motion: Unanimously passed.

Member Leppik's motion: To direct staff to move ahead with drafting potential language for the lobbyist program policy proposals as outlined in the executive director's memorandum.

Vote on motion: Unanimously passed.

ENFORCEMENT REPORT

A. Consent item

1. Request for administrative termination of lobbyist registration – Cari-Ann Alleman

Mr. Olson told members that Ms. Alleman’s principal association, the Minnesota Association of Townships (MAT), had notified Board staff that Ms. Alleman was no longer an employee, effective July 18, 2018. Mr. Olson said that MAT was asking the Board to accept an unsigned lobbyist termination statement for Ms. Alleman. Mr. Olson stated that Ms. Alleman’s disbursements had been reported by MAT’s designated lobbyist.

After discussion, the following motion was made:

Member Rosen’s motion: To approve the administrative termination of Cari-Ann Alleman’s lobbyist registration for the Minnesota Association of Townships.

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>
Robert Wright (18391)	\$1,000 LFF \$200 CP	2018 pre-primary	Candidate received and spent only \$100. He registered a committee but thought he did not have to file a report unless he crossed \$750 threshold.	Member Rosen	To waive the late filing fee and civil penalty	Passed unanimously
womenwinning State PAC (40268)	\$1,000 LFF \$500 CP	May 2018	Report was submitted via EveryAction (NGP VAN software) on due date. The committee states that a software glitch led them to believe report had been filed. Committee filed pre-general report on time using NGP VAN software.	Member Rosen	To waive the late filing fee and civil penalty	Motion passed (5 ayes, Flynn abstained)
Raymond Dehn (17318)	\$50 LFF	2018 pre-primary	Attempt was made to submit report via NGP VAN software on due date. However, report was rejected by our server as it was not accompanied by valid committee ID. After being notified that report was not received, they filed it successfully the following day.	Member Rosen	To waive the late filing fee	Passed unanimously
Veterans Party of Minnesota (41178)	Pre-primary: \$1,000 LFF \$400 CP September: \$200 LFF	2018 pre-primary and September	Both treasurer and chair were ordered to active duty military service. Chair provided copies of his orders showing he was on active duty from July 3 through September 28.	Member Rosen	To waive the late filing fees and civil penalty	Passed unanimously

AGC PAC (40098)	\$100 LFF	May 2018	This was new treasurer's first report. He thought report was filed on time. Based on our logs it appears he downloaded files June 14 via CFR but didn't actually upload report until June 18. Please note that we initially sent AGC PAC a letter stating report was never filed, but we later learned report was uploaded June 18 then deleted from our server in error, so amount owed was changed from \$1,700 to \$100.	Member Rosen	To reduce the late filing fee by 50%	Passed unanimously
42nd Senate District DFL (20858)	\$300 LFF	2018 pre- primary	New treasurer had difficulty getting records from old treasurer, new treasurer's computer crashed in June, and new treasurer was dealing with his mother-in-law's health issues and then her death on July 29.	Member Rosen	To reduce the late filing fee by 50%	Passed unanimously
MN Operators of Music and Amusements PAC Fund (30694)	\$600 LFF	2018 pre- primary	This was treasurer's second report. He stated that he has been dealing with medical issues throughout the past year and now has a back-up person in place in case he is out of office.	Member Rosen	To waive the late filing fee	Passed unanimously
Building Trades C1 PAC Fund (30617)	\$1,000 LFF	2018 pre- primary	Relatively new person was made responsible for filing report. She was apparently confused by information contained in notice they received regarding the requirement to file 24-hour notices and thought they didn't need to file pre-primary report unless they gave over \$1,000 in contributions to other committees.	Member Rosen	To reduce the late filing fee to \$100	Passed unanimously
Messerli & Kramer PAC (40786)	\$1,000 LFF	24-hour notice pre- primary	\$2,000 contribution was received 7/30. Treasurer self-reported error and states timing of contribution did not benefit committee. The largest outgoing contribution during the 24-hour reporting period was \$250. All contributions from committee to another committee or candidate during that period totaled \$850 (including \$250 given to local candidate) and committee had enough money to cover those outgoing contributions regardless of contribution received 7/30.	Member Leppik	To reduce the late filing fee to \$250	Motion passed (4 ayes, Rosen and Swanson abstained)
Maiv PAC (41158)	\$1,000 LFF \$100 CP	2018 pre- primary	This was treasurer's second report. She stated that she forgot to put deadline for pre-primary report on her calendar. She states she has entered upcoming deadlines into her personal calendar and calendar used by committee.	Member Leppik	To reduce the late filing fee to \$200 and to reduce the civil penalty to \$50	Passed unanimously
Minneapolis Downtown Council PAC (70017)	\$50 LFF	2018 pre- primary	Treasurer did not have access to her computer on due date and filed report the next day.	No motion		

Informational Items

1. Deposits to the General Fund

Lyndon Carlson, \$30
Alice Mann, \$50

2. Payment of a late filing fee for July 30, 2018, report of receipts and expenditures

3rd CD GPM, \$100
4th CD IPMN, \$100
12th SD DFL, \$100
Matt Bliss, \$50
Omar Fateh, \$400
Sarah Hamlin, \$50
Frank Horstein, \$100
Maplewood City DFL, \$150
MN School Counselors PAC, \$150
MPS PAC, \$50
Precinct 12 DFL, \$50
Wyatt-Yerka, \$50

3. Payment of a civil penalty for lobbyist contribution during 2018 legislative session

Sarah Stoesz, \$75

4. Payment of a civil penalty for political action committee contribution during 2018 legislative session

IUPAT Dist. Council 82, \$75

5. Payment for a late filing fee for 2018 economic interest statement

Doug Wardlow, \$85

6. Payment of a late filing fee and civil penalty for 2018 pre-primary report

7A HD RPM, \$200
MN State Council of UNITE Here, \$200

7. Payment of a late filing fee for 24-hour report of large contribution - 2018 pre-primary

Cindy Yang, \$300

8. Payment of a civil penalty for July 30, 2018, report of receipt and expenditures.

Jen Kader, \$100

PRIMA FACIE DETERMINATIONS FINDING NO VIOLATIONS

Mr. Olson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Olson told members that since the last meeting, the chair had dismissed two complaints that did not state prima facie violations. Mr. Olson said that the first complaint was filed by Julie Westerlund and alleged that the Cindy (Pugh) for Minnesota committee had not included a disclaimer on an internet banner ad. The complaint, however, did not address whether the ad satisfied the disclaimer requirement by linking directly to a webpage that included the disclaimer. Mr. Olson said that the chair therefore concluded that the complaint did not state a prima facie violation of the disclaimer requirements.

Mr. Olson stated that the second complaint was filed by Bill Holm regarding the Keith Ellison for Attorney General committee. Mr. Olson said that the chair concluded that this complaint did not state a prima facie violation of any statute under the Board's jurisdiction.

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn told members that the complaint in the Klabunde matter had been served on November 2, 2018, and that the report would be updated with that information for the next meeting.

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 had the following to report into regular session:

Findings, conclusions, and order regarding the Wazlawik (Ami) Volunteer Committee

Probable cause determination for the complaint of Chris Evans regarding the Dennis Smith for State House committee

The chair also reported that Member Rosen had agreed to serve on the nomination committee with her and that the committee would make its report at the next meeting.

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

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Attachments:

Memorandum regarding executive director's report

Memorandum regarding possible legislative recommendations

Memorandum regarding prima facie determinations finding no violation

Legal report

Findings, conclusions, and order regarding the Wazlawik (Ami) Volunteer Committee

Probable cause determination for the complaint of Chris Evans regarding the Dennis Smith for State House committee



MINNESOTA CAMPAIGN FINANCE BOARD

Date: October 31, 2018

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations

Program Updates

Campaign Finance Program

The pre-general election report of receipts and expenditures was due on October 29, 2018. Reports were expected from 295 candidates, 415 political committees and funds, and 318 political party units. Staff mailed a notification of the need to file the report to all affected treasurers, and then followed up with an e-mail reminder and finally a telephone call to all treasurers who had not yet filed a report by October 29th.

Nomination Committee

Each year the chair forms a nomination committee consisting of the chair and one other Board member of a different political party. The nomination committee creates a slate of candidates for the positions of chair and vice chair; and then contacts the nominated members to verify that they would be willing to serve in the positions. The full Board then votes on the nominations at the December Board meeting.

Development of Fiscal Years 2020 – 2021 Biennial Budget

The governor's initial biennial budget recommendations for fiscal years 2010-2021 must be developed and delivered to the legislature by February 19, 2019. This deadline requires the governor to develop a proposed budget regardless of the upcoming transition to a new administration. As part of that process all agencies and boards prepare and submit a base budget request and requested change items to that budget for consideration by the governor. The deadline for required budget documents was October 15, 2018.

As I discussed with the Board at the July and October meetings a change item to the base budget is needed to maintain current operations and a staff of nine FTE. The change item request for operations is \$75,000 per fiscal year. The last request for an increase in the operating budget for the Board was in 2013.

A second change item request for funding to support the development of a web based campaign finance reporting system has also been submitted. The funding requested in this

change item is much lower than I had anticipated in July. After reviewing the project thoroughly with IT staff it became clear to me that an additional full-time IT position is not needed, and that the work already done on the project is far enough along that a one-time appropriation of \$50,000 should be sufficient to complete the project in time for the 2020 election.

Whether Governor Dayton will incorporate either change request into his budget is unknown, and of course, the next governor may very well have different budgetary priorities. A copy of both change item requests are attached for your reference.

Coalition for Integrity Report

Periodically good government organizations release evaluations of state laws on lobbying, campaign finance, and ethics. In October, the Coalition for Integrity released an index of states with anti-corruption measures for public officials (S.W.A.M.P. Index). This particular index combined a review of select campaign finance laws on independent expenditures, gift prohibitions for public officials, and conflict of interest disclosure, with a review of the enforcement authority of the agencies responsible for those laws.

Minnesota did not fare particularly well in this index, ranking 33rd of the 50 states and the District of Columbia. Minnesota received a score of 46%, based on the Coalition's evaluation of Minnesota's laws that passed its test. The Coalition's grading is fairly stringent as no state finished with a score higher than 78%, and only five states and the District of Columbia scored higher than 70%.

It is also important to note that the score is for the state, not necessarily for statutes regulated by the Board. For example, Minnesota is marked down in the index because the legislature conducts investigations of the ethics of its members through its legislative ethics committee. Another area where the score for Minnesota loses points is the lack of a separate agency to monitor conflict of interest and ethics for all executive branch employees, not just public officials. Regardless as to whether that is a good idea or not, there are over 37,000 executive branch employees in Minnesota. Collecting disclosure from that many individuals and establishing one agency with the authority to dismiss employees for ethical violations (another scoring area where Minnesota lost points) would be a significant policy decision outside of the Board's jurisdiction. If you hold these two areas out of the scoring matrix for all states, the relative ranking for Minnesota improves from 33rd to 24th.

The rest of the scoring areas used to create the index are primarily regulated under Chapter 10A. The following is a list measures used for the index where Minnesota scored low.

- Does the ethics agency have authority to hold public hearings? To receive a positive score investigations must be public at least after a probable cause determination has been made that an investigation is warranted.
- Does the ethics agency have authority to enjoin covered officials who commit ethical violations? To receive a positive score an agency must be able to issue an injunction to prohibit a public official from performing a particular action.
- Does the ethics agency have authority to impose fines on covered officials who commit ethical violations? To receive a positive score an agency must be able to issue a civil penalty for a violation of conflict of interest provisions.

- Are elected and appointed executive branch officials and legislators prohibited from accepting gifts from persons other than high-risk sources in an aggregate of \$250 or more? A high-risk source is defined as a lobbyist or principal. To receive a positive score state laws must prohibit gifts of \$250 or more from any source.
- Are elected and appointed executive branch officials and legislators required to publicly disclose gifts that they receive? To receive a positive score a state must require public officials to disclose gifts. It is unclear if this requirement applies to all gifts, only gifts from high-risk sources, or only to gifts above a certain value.
- Does the state require reporting of the beneficial owners of LLCs that contribute to groups that make independent expenditures? To receive a positive score a state must require the disclosure of individuals who enjoy the benefits of ownership of an LLC even though title to the LLC is in another name. I understand it also can mean any individual, or group of individuals, who, either directly or indirectly, has the power to influence the transaction decisions of the LLC. In the scoring matrix used for the index no state received full credit for this issue, and only two states and the District of Columbia received partial credit.
- Do legislators have to disclose client names as part of their financial disclosure reports? To receive a positive score state legislators must list clients for their business or occupation on the EIS statement.

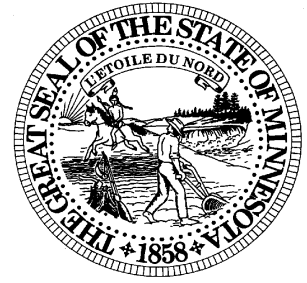
A copy of the full report is attached for members to review. The scoring matrix for the index is contained in a spreadsheet of all 50 states. If a member is interested in reviewing the scoring matrix let me know and I will e-mail a copy out. The policy recommendations of the Coalition for Integrity are found on page six of the report. If members are interested in one or more of the Coalition's policy recommendations staff can develop draft language for inclusion with the Board's legislative recommendations.

Attachment

Biennial budget change items
S.W.A.M.P. Report

Minnesota

Campaign Finance and Public Disclosure Board



Date: October 31, 2018

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Possible Legislative Recommendations

If the Board is interested in providing legislative recommendations in 2019, then it is appropriate for the Board to identify subject areas now so that staff can begin the process of drafting specific language for introduction. This memo provides topics identified by staff for Board consideration. Board members should of course feel free to bring forth other ideas at the meeting. Draft statutory language for recommendations will be brought back to the Board in January for approval before forwarding any recommendations to the legislature.

The possible recommendations in this memo are grouped by program area, and then technical changes are listed separately from policy recommendations. If the Board decides to offer recommendations, it may be advisable to split the technical issues into a separate bill.

Members will recall from 2018 that the legislative process is not particularly predictable. Some of the Board's recommendations were enacted; some were never heard in committee. I believe that there are three precursors for success in seeing any potential recommendations passed.

- **Bipartisan support.** If authors and co-authors from both parties in both the Senate and House will not sign on to the legislation prior to introduction, then I strongly recommend that the Board not actively pursue passage of the legislation. There are long run ramifications for the Board in pressing for legislation that is supported by members of only one party. In order to secure bipartisan support it may be necessary to drop one or more recommendations from the bill. For example, last year the Board's recommendation for a two-tier disclosure system for the economic interest statement was simply a nonstarter in one body.
- **Support of the incoming governor.** As this memo is written I have no idea who will be the next governor, or if the new administration will have any particular interest in Chapter 10A. The new governor must be in agreement with, or at least not in opposition to, the recommendations. Regardless of party legislators often tell me that they are not willing to support or work on legislation if the governor has concerns on proposed legislation.
- **The recommendations should be limited in scope.** I do not mean that significant policy issues are to be avoided. However, there is only so much time and attention that the legislature has to dedicate to Chapter 10A in any given year. If the Board does wish to move forward with recommendations, it will also

need to prioritize which issues are of greatest concern, and realize that some issues may need to wait until another year.

Economic interest statement program.

Technical

- **Ensure that Minnesota State Colleges and Universities trustees and its chancellor continue to file EIS statements.** MNSCU trustees and chancellor are currently filing EIS statements as public officials. However, it appears that a 2002 change in the definition of public official inadvertently excluded the MNSCU trustees and chancellor from the requirement to file the EIS statement, and from the gift prohibition. In other words, their disclosure is being provided voluntarily. Given that the MNSCU Board makes decisions regarding the expenditure of millions of dollars in public funds it would be advisable to make the EIS disclosure required.
- **Eliminate requirement that local governments provide a notice of appointment for local officials to the Board.** Minnesota Statutes section 10A.09, subdivision 2, requires local governments to notify the Board whenever they hire or accept an affidavit of candidacy from a local official who is required to file a statement of economic interest with that local entity. The notice must include the name of the local official and the date of the employment or filing. The Board, however, never uses this information because local officials do not file with the Board. Therefore, most local governments do not bother to file the notice.
- **Enterprise Minnesota, Inc. contribution statement.** Minnesota Statutes section 116O.03, subdivision 9, and section 116O.04, subdivision 3, require members of the Enterprise Minnesota, Inc. Board of Directors and its president to file statements with the Campaign Finance Board showing contributions to any public official, political committee or fund, or political party unit. These statements must cover the four years prior to the person's appointment and must be updated annually. The information on these statements, however, is already reported by the recipients to the Campaign Finance Board or, for county commissioners, to the county auditor. This disclosure therefore is repetitive and not helpful to the public. Staff is also not sure why this disclosure is required only of members of the Enterprise Minnesota, Inc. Board of Directors and its president.
- **Clarify economic interest statement reporting periods.** Minnesota Statutes section 10A.09, subdivision 6, clearly spells out the reporting period for an annual statement. There is no such language defining the reporting period for an original statement. This creates confusion among filers and, in some cases, inconsistent disclosure between public officials. Additionally, EIS forms are divided into five disclosure schedules, none of which have the same reporting period for an original statement. A standardization of the reporting period requirement would simplify completing the statement.

Policy

- **Establish a two-tiered disclosure system.** Disclosure required for soil and water conservation district supervisors, members of watershed districts and watershed management organizations, and perhaps some other public officials with very limited authority would not include financial investments. A higher level of disclosure would remain for other public officials. The Board made this recommendation in 2018, but it was not included in the legislation that passed.
- **New disclosure.** Require public officials to disclose direct or indirect interests in government contracts. Require public officials to list all fiduciary duty obligations.
- **Disclosure for spouse.** Increase disclosure on the EIS to include the occupation and investments of the public official's spouse. The Board made this recommendation in 2018, but it was not included in the legislation that passed. Some legislators said that they would be willing to reconsider the issue in 2019.

Campaign finance program

Technical

- **Affidavit of contribution deadline.** Minnesota Statutes section 10A.323 provides that the affidavit of contributions required to qualify for a public subsidy payment must be submitted "by the deadline for reporting of receipts and expenditures before a primary under section 10A.20, subdivision 4." The cross-reference to section 10A.20, subdivision 4, is incorrect as the deadline for submitting the pre-primary report is set in section 10A.20, subdivision 2.
- **Update multicandidate political party expenditures.** Minnesota Statutes section 10A.275 provides five specific ways that a political party may spend money that does not constitute a contribution to a candidate. The list includes funds spent for a phone bank as long as the call includes the name of three or more individuals who will appear on the ballot. This provision could be updated to include direct text message service, direct voice mail services, and e-mails that meet the same standard.

In addition, Minnesota Statutes section 10A.275 cross-references Minnesota Statutes section 10A.20, subdivision 3, paragraph (g), for a reporting standard. However, section 10A.20, subdivision 3, was renumbered in 2013, and the correct reference is actually paragraph (h).

- **Eliminate disclosure requirement for shared expenditures incurred by federal and state committees of same political party.** The federal committee of a state political party unit is an unregistered association under Chapter 10A. Under federal law, the federal committee must initially pay for expenditures that are shared with the state committee. For example, if the federal committee for the RPM and the state central committee for the RPM share office space or staff costs, the federal committee must pay for the costs, at least initially. This creates a contribution to the state RPM from an unregistered association, which in turn triggers significant disclosure requirements with little or no practical benefit to the public. The unique relationship between national and state party units is already

recognized in Minnesota Statutes section 10.27, subdivision 13, paragraph (d), which exempts a national political party from providing the disclosure statement required of unregistered associations when the national party makes a contribution to the state central committee of the same party. Expanding the exception to include contributions from the federal committee of a state party unit would eliminate this problem.

- **Accept a web address for the disclosure required with contributions from unregistered associations.** An unregistered association that provides a contribution of over \$200 to a committee registered with the Board (excluding independent expenditure committees and funds) must provide a disclosure statement with the contribution equivalent to the report of receipts and expenditures required in Chapter 10A. The committee that accepts the contribution then forwards the disclosure from the unregistered association to the Board, where it is kept on file in our office. In many cases, the unregistered association is a federal committee, and the disclosure statement is an FEC report which may be hundreds of pages long.

This recommendation would allow the unregistered association to provide either a written statement or a web address where the disclosure report may be viewed online. This change would still provide the same information currently required, but would provide a way to reduce paper filings and also provide better access to the disclosure.

- **Clarify procedures used for Board investigations.** The current process of evaluating a complaint with a prima facie determination, and then a probable cause hearing, is generally working well. However, the statute could provide direction on the following situations:
 - When multiple complaints are filed on the same issue. Currently separate prima facie and probable cause determinations are required for each complaint. Clarify that the Board may consolidate similar complaints.
 - When a complaint is filed on an issue already under investigation by the Board. Currently the Board must issue another prima facie determination and hold another probable cause determination even though it is already investigating an issue.
 - When a complaint is filed on a reporting issue. For example, a complaint could be filed for the failure to file a report on time. The late report is already accruing late fees and possible civil penalties. Is the Board required to accept a complaint on a late report already being penalized as provided in statute?

Policy

- **Express advocacy – functional equivalent.** To be classified as an independent expenditure a communication must use words of express advocacy (vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat, and reject). The words of express advocacy test is based on the Buckley v. Valeo Supreme Court decision in 1976. In subsequent cases, (McConnell v. Federal Election Commission in 2003 and Federal Election Commission v.

Wisconsin Right to Life, Inc. in 2007) the Supreme Court has adopted a functional equivalent of express advocacy standard that recognizes that communications can easily convey support for or opposition to a candidate while avoiding use of the “magic words.” A possible recommendation would be to amend the definition of independent expenditure to include both words of express advocacy and their functional equivalent.

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

Lobbying program

Technical

- **Limit receptions allowed as an exception to the gift prohibition to events held outside of the Capitol.** Minnesota Statutes section 10A.071, subdivision 3, provides exceptions to the general prohibition on gifts from lobbyists or principals to public officials. Among the listed exceptions is “the recipient is a member or employee of the legislature and an invitation to attend the reception, meal, or meeting was provided to all members of the legislature at least five days prior to the date of the event.” In 2018, a principal provided a meal at the Capitol during session using this exception. The public perception of the event was not good as staff received several inquiries from concerned citizens about the propriety of the event.

Policy

- **Major rewrite of the reporting requirements for lobbyists.** The information required in disbursement reports submitted by lobbyists is focused on the operational costs of lobbying. For example, Minnesota Statutes section 10A.04, subdivision 4, requires the lobbyist to report the amount spent on postage, travel, telephone and telegraph, and other similar expenses. Frankly, I would suggest that much of the disclosure provided on disbursement reports is irrelevant to understanding lobbying in Minnesota, which could explain the lack of media or public interest in lobbying disbursement reports.

In place of the current disclosure, the Board recommendation would instead focus on disclosure of the specific legislation on which lobbying occurred. The disclosure would provide the subjects, and if applicable the bill numbers, that the lobbyist worked on during the reporting period. This would provide a better understanding of what issues are important to the over 1,400 principals represented in the state, and insight into the effort made by these organizations to influence public policy.



MINNESOTA CAMPAIGN FINANCE BOARD

DATE: October 31, 2018
TO: Board Members
FROM: Andrew Olson, Legal/Management Analyst **TELEPHONE:** (651) 539-1190
RE: Prima facie determinations finding no violation

Complaints filed with the Board are subject to a prima facie determination made by the Board chair in consultation with staff. If the Board chair determines that a complaint states a violation of Chapter 10A or the provisions of Chapter 211B under the Board's jurisdiction, the complaint moves forward to a probable cause determination by the full Board.

If, however, the chair determines that a complaint does not state a prima facie violation, the Chair must dismiss the complaint without prejudice. When a complaint is dismissed, the complaint and the prima facie determination become public data. The following complaints were dismissed by the chair and the prima facie determinations are provided here as an informational item to the other board members. No further action of the Board is required.

Complaint regarding Cindy (Pugh) for Minnesota committee

On October 1, 2018, the Board received a complaint submitted by Julie Westerlund regarding an internet campaign advertisement for Rep. Cindy Pugh, a candidate for Minnesota House of Representatives District 33B. The complaint alleged that the internet advertisement lacked a disclaimer in violation of Minnesota Statutes section 211B.04.

Minnesota Statutes section 211B.04 generally requires that campaign material contain a disclaimer identifying the name and address of the person or committee that caused the campaign material to be prepared or disseminated. However, the disclaimer requirement does not apply to "online banner ads and similar electronic communications that link directly to an online page that includes the disclaimer." The complaint included a screenshot of the advertisement; however, the complaint did not suggest that the advertisement did not link directly to the website for the Pugh committee that contains the required disclaimer. On October 3, 2018, the chair therefore concluded that the complaint did not state a prima facie violation of Minnesota Statutes section 211B.04, subdivision 1.

Complaint regarding Keith Ellison for Attorney General committee

On October 25, 2018, the Board received a complaint submitted by Bill Holm regarding U.S. Rep. Keith Ellison, a candidate for Minnesota Attorney General. The complaint consists of over 30 pages of allegations regarding U.S. Rep. Ellison and argument as to why he is unfit to serve as Attorney General. The complaint states that contributions have been made by several out-

of-state individuals and groups to Ellison's principal campaign committee and to independent expenditure political committees supporting U.S. Rep. Ellison's candidacy.

While difficult to understand, the complaint appears to argue that because of the out-of-state nature and timing of these contributions, it is reasonable to conclude that the contributions were promised in advance of and were conditioned upon U.S. Rep. Ellison announcing his campaign for Attorney General. The complaint appears to argue that such a conditional promise of campaign contributions violates Minnesota Statutes section 211B.10, subdivision 1, which prohibits rewarding or promising to reward someone for becoming, declining to become, or withdrawing as, a candidate. While it is not clear which of the complaint's many factual assertions are made in support of this claim, the complaint also alleges that U.S. Rep. Ellison is campaigning under false pretenses and has thereby violated Minnesota Statutes section 211B.06, which prohibits false campaign material. Lastly, the complaint contains the assertion that there has been a violation of Minnesota Statutes chapter 211A "regarding campaign contribution limits and campaign finance reporting" but there are no factual assertions within the complaint that appear to support any alleged violation of contribution limits or reporting requirements.

The Board is authorized to investigate alleged or potential violations of Minnesota Statutes chapter 10A as well as Minnesota Statutes sections 211B.04, 211B.12, and 211B.15. On October 29, 2018, the chair concluded that because the Board does not have jurisdiction over the statutes that might give rise to the violations alleged in the complaint, the complaint did not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Attachments

Pugh Complaint:

Complaint

Prima facie determination

Ellison Complaint:

Complaint

Prima facie determination

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
November, 2018**

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
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP \$50 LF	3/6/18	8/10/18			
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Hold by Board
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			
Bryan Klabunde	Klabunde for MN House	Unfiled 2017 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	9/4/18				
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Placed on hold by Board

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
Kaying Thao	Friends of Kaying	2017 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/10/18	8/10/18			
Sean White	Committee to Elect Sean White	2017 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/10/18	8/10/18			

CLOSED 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
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17	8/17/18	8/20/18	No appeal filed. Closed

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE WAZLAWIK (AMI) VOLUNTEER COMMITTEE

On October 2, 2016, the Campaign Finance and Public Disclosure Board received a phone call from Ami Wazlawik regarding an advertisement produced for the Wazlawik (Ami) Volunteer Committee. The Wazlawik (Ami) Volunteer Committee is the principal campaign committee of Ami Wazlawik, a candidate for Minnesota House of Representatives district 38B.

Ms. Wazlawik self-reported that her committee did not include the required disclaimer in an advertisement placed in the Women's Press magazine. Ms. Wazlawik reported that she was able to add the required disclaimer to the online edition of the Women's Press, but was unable to add the disclaimer to the printed copies of the Women's Press magazine. On October 3, 2018, Ms. Wazlawik submitted additional information to the Board regarding the failure to include the required disclaimer in her advertisement. On October 12, 2018, Board staff began a staff review.

Analysis

Minnesota Statutes section 211B.04, subdivision 1, requires candidates to include a disclaimer on campaign material that prominently states "Prepared and paid for by the . . . committee, . . . (address)". Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media." The copies of the advertisements provided by the Wazlawik committee show that they promoted Ms. Wazlawik's candidacy and were disseminated for the purpose of influencing voting at the upcoming election. The advertisements therefore were campaign material that required a disclaimer.

Ms. Wazlawik states that the Wazlawik committee paid \$455 for the design work and advertisement that was in the Women's Press magazine. Ms. Wazlawik notes that the Women's Press reports that it prints 35,000 copies of each issue of the magazine. Ms. Wazlawik states that she is very sorry about the error, and worked to quickly correct the error for the online version of the magazine. The online circulation for the magazine is estimated to be 45,000.

Based on the above analysis, the Board makes the following:

Findings of Fact

1. The Wazlawik (Ami) Volunteer Committee prepared an advertisement promoting Ms. Wazlawik's candidacy for the Minnesota House of Representatives and disseminated that advertisement to influence voting at the November election.
2. The advertisement did not include the required disclaimer for campaign material.

3. The advertisement was disseminated in 35,000 print copies of a magazine and in an online magazine that has a circulation estimated to be 45,000.
4. The cost of the design work and advertisement was a total of \$455.
5. The Wazlawik committee added a disclaimer to the online advertisement when the error was identified, but the print version of the advertisement was circulated without the required disclaimer.
6. The Wazlawik committee self-reported the issue to the Board.

Based on the analysis and the findings of fact, the Board makes the following:

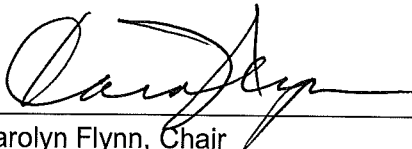
Conclusions of Law

1. The advertisement prepared by the Wazlawik (Ami) Volunteer Committee was campaign material under Minnesota Statutes section 211B.01, subdivision 2.
2. The Wazlawik (Ami) Volunteer Committee violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared campaign material without the required disclaimer for publication in the Women's Press magazine.

Based on the above Findings of Fact and Conclusions of Law, the Board issues the following:

Order

1. A civil penalty in the amount of \$200 is assessed against the Wazlawik (Ami) Volunteer Committee for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Wazlawik (Ami) Volunteer Committee is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. If the Wazlawik (Ami) Volunteer Committee does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.



Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

Date: 11/7/2018

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF CHRIS EVANS REGARDING THE DENNIS SMITH FOR STATE HOUSE COMMITTEE:

On October 2, 2018, the Campaign Finance and Public Disclosure Board received a complaint submitted by Chris Evans regarding the report of receipts and expenditures filed July 30, 2018, by the Dennis Smith for State House committee. Dennis Smith for State House is the principal campaign committee of Rep. Dennis Smith, a candidate for Minnesota House of Representatives District 34B.

The complaint stated that the report did not include any campaign expenditures or contributions for the time period covered by the report, which was January 1, 2018, through July 23, 2018. The complaint alleged that Rep. Smith marched in the Maple Grove Days parade on July 12, 2018. The complaint included a photo from Rep. Smith's Twitter page depicting him wearing a shirt promoting his candidacy, with a caption indicating that Rep. Smith marched in the parade. The complaint alleged that the organizer of the parade, the Maple Grove Community Organization, charges political candidates an entry fee to participate. The complaint argued that the committee failed to disclose an expenditure for the parade's entry fee on the report filed July 30, 2018, in violation of Minnesota Statutes section 10A.20.

On October 9, 2018, the Board chair determined that the complaint alleged a prima facie violation of Minnesota Statutes section 10A.20. On October 24, 2018, Rep. Smith responded to the complaint and filed an amended pre-primary report of receipts and expenditures for the Smith committee. Rep. Smith states that his campaign had a transition with a new treasurer. Rep. Smith also states that he was having a complicated issue with the Campaign Finance Reporter software that involved working for a significant amount of time with a Board staff member to resolve. The Smith committee's amended pre-primary report of receipts and expenditures is now corrected to include the expenditures for the Maple Grove Days parade.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (2). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

Minnesota Statutes section 10A.20 requires principal campaign committees to file reports of receipts and expenditures. Pursuant to Minnesota Statutes section 10A.20, subdivision 3, those

reports must contain itemized and summary information on contributions received and expenditures made during the reporting period.

The complaint alleged that the Smith committee violated Minnesota Statutes section 10A.20, subdivision 3, by not disclosing the expenditure for participating in the Maple Grove Days parade, which Rep. Smith marched in, on his pre-primary report of receipts and expenditures. The Smith committee's pre-primary report did not disclose any campaign expenditures. Consequently, there is probable cause to believe that a violation of the reporting requirements has occurred. The Smith committee, however, filed an amended report within the timeline requested by Board staff that disclosed all of the committee's transactions from January 1, 2018, through July 23, 2018. It should be noted that the only itemized campaign expenditure on the Smith committee's amended pre-primary report is the fee for the Maple Grove Days parade, which was \$350. Because the reporting violation has been cured by a timely amendment, it does not warrant further investigation.

Order:

1. The allegation that the Dennis Smith for State House committee violated the reporting requirements in Minnesota Statutes section 10A.20, subdivision 3, is dismissed because although there is probable cause to believe that this violation occurred, no further investigation is warranted due to the committee's filing of an amended report.



Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

Date: 11/7/2018