

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

**Findings in the Matter of the Complaint against the Margaret (Kelliher) for Governor
Committee and the Minnesota Democratic Farmer Labor Party State Central Committee**

Evidence Used In These Findings

On December 11, 2009, the Campaign Finance and Public Disclosure Board (the Board) received a complaint from the Republican Party of Minnesota (RPM) regarding the Margaret (Kelliher) for Governor Committee (the Kelliher Committee). The complaint alleges that the Kelliher Committee collected contributions from individuals on behalf of the Minnesota Democratic Farmer Labor Party State Central Committee (the DFL) with the understanding that the DFL would use the contributions for the benefit of the Kelliher Committee. Specifically, the contributions were allegedly used by the DFL to offset the cost of the Kelliher Committee's use of a voter file known as the Voter Activation Network (the VAN file). The complaint further alleges that the contributions violated the prohibition on earmarking contributions and may have violated individual and aggregate contribution limits. The complaint was supported by newspaper articles about the contributions in question.

Also on December 11, 2009, the Board received a letter from Jamie Tincher, Campaign Manager for the Kelliher Committee. In her letter Ms. Tincher notifies the Board of a possible violation of state campaign finance law by the Kelliher Committee and states, "In August 2009, I had discussions with Andrew O'Leary, Executive Director of the Minnesota DFL Party. In those discussions, I asked if, and Mr. O'Leary affirmed, that the Margaret for Governor campaign could solicit contributions for the DFL Party, and the DFL Party could use those contributions to offset the expense of providing access for the Margaret for Governor campaign to the DFL voter file. ...Based on that information, the campaign informed its supporters that the supporters could pursue this option if they chose." Ms. Tincher also provided that she was now aware that this action was a potential violation of state statute, and that the Kelliher Committee was in the process of making payments to the DFL to replace the contributions that had been credited as payment for access to the VAN file.

On December 15, 2009, the Board received a letter from Andrew O'Leary, Executive Director for the DFL. Mr. O'Leary's letter confirmed that he had informed Ms. Tincher that the Kelliher Committee could, "pay the fee that the DFL Party was charging for access to its voter file by helping the Party raise funds from sources outside the Kelliher campaign, I was operating under the mistaken belief that the Party had received a legal opinion...that such an arrangement was permissible. The Party accordingly credited some such fundraising toward the Kelliher campaign's fee for the voter file." Mr. O'Leary further disclosed that he realized that the arrangement with the Kelliher Committee was a potential violation of campaign statutes when, "A second gubernatorial campaign approached me in December of 2009 about paying its fee for the voter file under a similar arrangement, but asked me for confirmation of the opinion that I believed the Party had received. I could not find any such opinion and, upon consulting legal counsel, learned that the arrangement was not permissible." To correct the situation Mr. O'Leary states that the Kelliher Committee replaced the contributions used as payment for access to the VAN file, and that the DFL had offered to refund to the donors the contributions that had been credited as payment for the VAN file. Of those contributions \$1,500 had been returned to three donors who were aware that the money would be used to pay for the Kelliher Committee's VAN file

access, the remaining contributors declined the refund because they were not aware when they made their contributions that the money would be used for any specific purpose by the DFL.

On December 15, 2009, the Board notified the Kelliher Committee and the DFL of the complaint, and asked for additional information on the actions and contributions described in the letters from Ms. Tincher and Mr. O'Leary. In order to conduct a complete investigation of the complaint the Board asked Ms. Tincher and Mr. O'Leary to provide a deposition under oath on the matter.

In the Executive Session of the January 12, 2009, Board meeting Ms. Tincher appeared before the Board with legal counsel to make statements and answer questions. Mr. Weinblatt, legal counsel for the DFL, appeared to make a statement on behalf of his client.

Testimony Provided by Jaime Tincher

Ms. Tincher voluntarily agreed to provide sworn testimony on December 21, 2009. Legal counsel was provided to Ms. Tincher by Jay Benanav and Jane Prince from Weinblatt and Gaylord PLC.

To develop a background for the investigation Ms. Tincher was asked a series of questions on her relationship to the DFL and the timeline for the actions under investigation. Ms. Tincher provided that she had been employed by the DFL in 2005 to develop and manage the VAN file. Ms. Tincher was supervised by Andrew O'Leary, Executive Director of the DFL. Ms. Tincher left the DFL to accept the position of campaign manager for the Kelliher Committee on August 3, 2009. The Kelliher Committee registered with the Board on August 13, 2009.

As Campaign Manager, Ms. Tincher acknowledged that she was responsible for knowing the campaign finance regulations as they applied to the Kelliher Committee. Ms. Tincher stated she knew the 2009 individual and aggregate contribution limits for a campaign for Governor. Ms. Tincher provided that the Kelliher Committee reached the aggregate contribution limit of \$95,800 on November 29, 2009.

Ms. Tincher stated that gaining access to VAN file for the Kelliher Committee was a necessary step to run a competitive campaign for Governor. Ms. Tincher stated that she did not recall discussing the need for the campaign to access the VAN file with the candidate or other campaign staff, and that arranging access to the VAN file was a decision within her authority as Campaign Manager. To verify the cost of using the VAN file and to arrange for access Ms. Tincher met with Andrew O'Leary in his office in early August. Ms. Tincher could not recall the exact date of the meeting but believed that it occurred after she was hired on August 3 2009, and no later than the registration date of the Kelliher Committee on August 13, 2009.

In response to a question on content of the meeting with Mr. O'Leary on the VAN file Ms. Tincher stated, "I believe that the way that the conversation went, I confirmed with him the price for the voter file, which was \$13,000. I asked if there was an option; could we pay for that in increments and payment plan. And he said, yes, we could do that. And I asked him if contributors could contribute directly to the Party to pay for our costs for the voter file. And he confirmed that that was an option."

Ms. Tincher did not recall Mr. O'Leary stating that he had a legal opinion or external advice on the question of offsetting the cost of the VAN file with contributions raised for the DFL. Ms. Tincher did not recall any discussion with Mr. O'Leary as to why the Committee would want to pay for the VAN file with donations raised for the DFL rather than paying for the VAN file directly

with money raised by the Kelliher Committee. Other than Mr. O'Leary, Ms. Tincher stated that she did not talk to anyone else about the concept of offsetting the cost of the VAN file with contributions to the DFL. Ms. Tincher stated that no written agreement between the Kelliher Committee and the DFL regulating use of the VAN file or stating the amount and method of payment for access to the file exists. Ms. Tincher did not recall the exact date, but believed that the Kelliher Committee gained access to the VAN file either the day of the meeting with Mr. O'Leary, or very shortly thereafter.

In response to a series of questions on how supporters of the Kelliher Committee were informed that they could benefit the campaign by contributing to the DFL Ms. Tincher responded that there was no mailing or organized telephone effort to direct contributions from donors to the DFL. Ms. Tincher also stated, "I do recall, in a meeting in late August of supporters, I did mention contribution to the DFL as an option. ...And then in limited conversations with individuals, I recall mentioning that was an option that --if they so choose." Ms. Tincher further provided that the Kelliher Committee did not have a list of individuals that it specifically wanted to notify of the option, and that the goal of the fundraising effort was to raise money for the campaign, not the DFL.

In response to a question on why a specific donor was not asked to contribute directly to the Kelliher Committee instead of the DFL Ms. Tincher replied, "I'm sure that I did request that he contribute to the Margaret for Governor campaign. Again, this was an option that I was -- that I believed that was open to donors to do. So I wouldn't have -- because I was under the assumption that this was something that they could do, there would have been no reason for me to not request, if he wanted to be helpful in that way, to do that. ... it wasn't based on whether they had contributed to the campaign or not. It was just, that was an option that I thought was available for people to do."

In response to a question as to why the Kelliher Committee would suggest contributors donate to the DFL when the Committee needed donations Ms. Tincher answered, "It is the case, with the many candidates that are in the race, there are some individuals that do not want to support one particular candidate at this point. And we did, in fact, have two people that that (were) in the scenario. And so in those cases, we let them know that that was another way that they could be helpful to the Committee." Ms. Tincher further elaborated on why individuals would prefer to help the campaign by contributing to the DFL rather than publically supporting the Kelliher Committee, "I mean it's -- particularly in August, there were just a lot of people that, you know, were undecided on candidates. So it wasn't out of the ordinary."

In response to questions on the method contributions raised for the DFL were attributed to the Kelliher Committee Ms. Tincher provided that members of the Kelliher Committee hand delivered a total of seven checks to the DFL. All seven of the checks were made payable to the DFL, and were then used by the DFL to offset the cost of the Kelliher Committee using the VAN file. The total amount of the seven checks was \$7,500.

Ms. Tincher was asked how she became aware that using contributions to the DFL to offset the cost of accessing the VAN file may violate state statute. Ms. Tincher replied, "December 1st, I believe, I received a phone call from Andy O'Leary. And he informed me at that point that he had checked with his lawyer, and that we actually were not allowed to do that. So at that point, we started taking steps to figure out what we needed to do to correct the situation. With the three checks... it was our understanding that those were directed to go to the voter file; that that was what the intention of those individuals was. So we felt like we needed to -- that the Party

should reimburse or refund that money. There were four other contributions that...the campaign had conversations with them...But at that time those four individuals made it very clear that their contributions - that they did not want a refund, that their contributions were intended for the DFL Party to use as it sees fit.”

To correct the error Ms. Tincher stated that the Kelliher Committee returned two of the three contributions received from the donors who contributed to the DFL with the knowledge that their contribution would be used to pay for access to the VAN file. The two contributions were refunded within 60 days of being received by the Kelliher Committee. One contribution was not refunded because it was over 60 days from the date it was received by the Kelliher Committee and therefore under Minnesota Statute is deemed accepted by the campaign. Contributions raised by the Kelliher Committee from the four donors who did not know that their contribution to the DFL would be used to pay for access to the VAN file were not refunded. Ms. Tincher also stated that the Kelliher Committee has paid the DFL the full \$13,000 for the use of the VAN file with committee funds.

In response to an opportunity to add to her deposition Ms. Tincher stated, “Again, it was a mistake. It was not something that from August to December, we knew that we shouldn’t do. As soon as we found out about it, we did seek to correct the situation.” On behalf of his client Mr. Benanav stated, “I just want to put in a little context. Clearly, there was a mistake made here. I think we all recognize that. But I would classify it as a blunder. ...There was no intent here to evade the law. This was not secretive. ...this was an option given to other people, frankly, based on faulty advice. If either one of them had called a lawyer, they would have gotten different advice. They didn’t. It was a mistake. I think they recognize that.”

Testimony and Evidence Provided by Andrew O’Leary

Mr. O’Leary voluntarily agreed to provide sworn testimony on December 22, 2009. Legal counsel was provided to Mr. O’Leary by Alan Weinblatt from Weinblatt and Gaylord PLC.

During the deposition Mr. O’Leary confirmed that he met with Ms. Tincher in early August to discuss the Kelliher Committee gaining access to the VAN file, although he could not specify the exact date. Mr. O’Leary also confirmed that the price charged to the Kelliher Committee for accessing the VAN file was \$13,000.

In response to a question as to what Ms. Tincher said at the meeting Mr. O’Leary responded, “As it relates to the voter file, she informed me that they wanted to, in fact, purchase access to the voter file. She knew, from her employment with us, that the price was \$13,000. She then asked if it was possible for her to send donors our way to cover the cost, which at the time I believed was permissible. So I said yes.”

When asked to elaborate on his understanding of what Ms. Tincher meant when she asked if the Kelliher Committee could use donations to the DFL to cover the cost of the VAN file Mr. O’Leary answered, “We have – obviously, a lot of our candidates and elected officials fundraise for the Party. In her role as Speaker, the Speaker had done that in the past as well. So I took it to mean that they were going to fundraise from donors into the Minnesota DFL Party, and then that would offset the cost of her voter file fee.”

When asked on what basis he advised Ms. Tincher that such an arrangement was permissible Mr. O’Leary replied, “I was under the now-mistaken impression that I had a legal opinion from

2006 saying that it was. It turned out that I did not.” Mr. O’Leary further explained, “The voter file, in its current form, was created in 2006. We were -- we, the Party, were investing tens of thousands of dollars into the development of this voter file, as well as paying tens of thousands of dollars in salaries. So I believe it was the first time that the DFL Party was going to be charging large amounts of money for access to the voter file. So I had asked for an opinion -- or I thought I had asked for an opinion, so that when I went to candidates to let them know how expensive it was going to be, to give them options on how to pay for it.” During his testimony Mr. O’Leary acknowledged that he was aware that there are statutory limits on the amount that an individual may contribute to a candidate, including gubernatorial candidates.

Mr. O’Leary explained that checks delivered to the DFL by the Kelliher Committee were credited to the cost of the VAN file. In response to a question about whether other DFL staff members were aware of how the Kelliher Committee was paying for the VAN file Mr. O’Leary answered, “I do not recall specific conversations, but I do believe that I did inform other members of staff that this was how the Speaker was going to be paying her voter file fees.” Mr. O’Leary confirmed that in total seven donations to the DFL were credited to the Kelliher Committee. Mr. O’Leary provided photocopies of the seven checks to the Board at the deposition.

Mr. O’Leary was then asked to recall how he became aware that the arrangement with the Kelliher Committee might be a problem and what actions then transpired. Mr. O’Leary answered, “Brian Melendez received an e-mail from ... the Rukavina for Governor campaign. And he had some campaign finance questions. Brian forwarded the e-mail to me; asked me to handle. I called [the representative of the Rukavina Campaign]. He asked about this -- he asked about the way that we had set up for the Speaker to pay for her voter file, and asked me why I thought it was legal. And I told him. And I told him that I thought that I had a legal opinion, at which point he said he would like to see the legal opinion so that the Rukavina campaign could do the same thing. ...I called Alan Weinblatt, our attorney, after looking through my 2006 file of opinions...I called Alan and asked him. We discussed it. At that point, he advised me that this was not permissible. So I immediately called Brian Melendez, the chair, told him what had happened. I then called the Kelliher campaign, and told them that it appeared that the way that we were funding the voter file was not legal. And Jaime and I set up a follow-up phone call.And then on the morning of December 2, I contacted the Rukavina campaign to let them know that it appeared that this was not permissible.”

Mr. O’Leary was then asked if he advised the Kelliher Committee of any steps to take based on his new understanding of the statutory requirements. Mr. O’Leary replied, “... yes, I did. I told them that we were going to have to uncredit any checks that they had brought in for the voter file, and they were going to need to replace that with money directly from their campaign account.” During his testimony Mr. O’Leary stated that the Kelliher Committee finished paying the \$13,000 price for the VAN file with campaign funds on December 14, 2009.

In response to a series of questions Mr. O’Leary provided the process used to contact the seven contributors whose checks had been credited for payment for the VAN file, “We informed them that their contributions to the DFL was a part of this, and then asked them their intention with that contribution. ...there were three donors who felt that their donation was specifically to offset the Speaker’s voter file fees. ...Those are the three donations that we refunded. The other four donors indicated that their checks were for the Party, for unrestricted general Party use. And those are the four donations we decided to keep.” Mr. O’Leary provided the Board with photocopies of the checks used to return the three contributions to the donors who expected their donation to be used for purchasing the VAN file.

In response to an opportunity to add to his deposition Mr. O’Leary stated, “This was... solely a mistake on my part. I broke probably my second most important rule in politics, which was giving legal advice without talking to legal counsel, which was my mistake.” In response to a question from Mr. Weinblatt on whether Ms. Tincher relied on his opinion in making the arrangements to have donors contribute directly to the DFL, Mr. O’Leary replied, “Yes, I believe so.”

Contributions

The timing and amount of contributions received by the Kelliher Committee and the DFL from each of the seven donors is listed in the table below. The maximum 2009 contribution to a gubernatorial candidate from an individual was \$500. Each of the donors gave the maximum contribution amount to the Kelliher Committee. Three of the seven made the maximum contribution to the Kelliher Committee prior to making a contribution to the DFL. The Kelliher Committee returned two of the contributions from individuals who also donated to the DFL knowing that the contribution would be used for the VAN file. The DFL returned all three contributions from individuals who knew their contribution to the DFL would be used for the VAN file. Neither the Kelliher Committee nor the DFL returned the contributions from individuals who did not know that their DFL contribution would be used for the VAN file.

Contributor Knew DFL Donation Would be Used for VAN File	Donation to Kelliher Committee		Donation to DFL	
	Date	Amt	Date	Amt
Yes	August 20, 2009	\$500	September 10, 2009	\$500
Yes	November, 2009	\$500	September 10, 2009	\$500
Yes	November, 2009	\$500	August 5, 2009	\$500
No	August 25, 2009	\$500	September 9, 2009	\$1,000
No	September 24, 2009	\$500	September 20, 2009	\$2,000
No	August 11, 2009	\$500	September 24, 2009	\$1,000
No	August 25, 2009	\$500	August 24, 2009	\$2,000
	Total	\$3,500	Total	\$7,500

Board Analysis

There is no doubt from the testimony and correspondence provided during the investigation that the activity alleged in the RPM complaint did occur. Namely, seven donations to the DFL raised by the Kelliher Committee were credited to help pay off an obligation of the Kelliher Committee. Depending on various factors, this activity could have resulted in violations of (1) the prohibition of earmarked contributions; (2) the prohibition of circumvention of the provisions of Minnesota Statutes Chapter 10A by directing contributions through another association; (3) the limit on the amount of contributions that a principal campaign committee may accept from an individual; and (4) the limit on the aggregate amount of contributions that a principal campaign committee may

accept from special sources, which include political committees or funds, lobbyists, and those giving more than \$250 to a gubernatorial committee in 2009. Each of the above potential violations was considered by the Board.

Earmarking of Contributions

Minnesota Statutes, Section 10A.16 prohibits the “earmarking” of contributions. Specifically, the statute states that:

“An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.”

The Board has consistently interpreted the phrase “directed to a particular candidate” as being the equivalent of “used for the benefit of a particular candidate”. (See Advisory Opinion 370; Advisory Opinion 356).

The testimony is clear that the DFL violated the prohibition on earmarking contributions when it accepted the seven contributions with the express condition that they be used to benefit the Kelliher Committee. For the DFL it is irrelevant that four of the donors were not aware that their donation to the DFL would be used to benefit the Kelliher Committee. The “condition” that the contributions be used to benefit a particular candidate was imposed by the express agreement between the DFL and the Kelliher Committee and did not require the knowledge of the original donor. Therefore, the total amount of earmarked contributions accepted by the DFL in this matter is \$7,500.

However, the knowledge of the donor as to how the contribution would be used by the DFL is relevant when considering if the actions of the Kelliher Committee violated the prohibition on earmarked contributions, and if so, whether the violation may result in a civil penalty. In response to the solicitation of the Kelliher Committee three donors each made a contribution to the DFL intending that it would be used to pay for the VAN file. The contributions were earmarked by the donors prior to delivery to the Kelliher Committee. The Kelliher Committee then accepted the contributions on behalf of the DFL, in violation of the earmarking prohibition. The total amount of the contributions earmarked by the donors and accepted by the Kelliher Committee is \$1,500.

With respect to the other four contributions delivered to the DFL by the Kelliher Committee there is no reason to believe that any conditions were placed on the donations by the original donors. Each of those donors believed they were making a general contribution to the DFL. Although the Kelliher Committee had an agreement with the DFL that the contributions would be used for the direct benefit of the Committee, there was no knowledge of that agreement by the donors. Therefore, the statutory standard that a contribution is “earmarked” when there is an “express or implied condition” that the contribution is used to benefit a particular candidate at the time the contribution is solicited or received is not met. The Board concludes that the Kelliher Committee did not violate the earmarking provision in soliciting \$6,000 in contributions to the DFL from the four donors.

Although the statutes permit a penalty of up to \$3,000 for each earmarked contribution, the Board's usual policy is to base penalties on the amount of the violation. Accordingly, the order in these Findings will impose a penalty of \$7,500 against the DFL and \$1,500 against the Kelliher Committee for the acceptance of earmarked contributions.

Circumvention of Minnesota Statutes Chapter 10A.

Minnesota Statutes, Section 10A.29 prohibits circumvention of Chapter 10A. Specifically the statute states:

“An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.”

There are no court cases to provide legal definitions of the word “circumvention” in the specific context in which it is used in Chapter 10A. However, statutes are to be construed using the common meaning of their words, if possible. Generally, to circumvent something means to get around or avoid it. Circumvention generally includes a strategy or plan. See, e.g., Oxford English Dictionary, Second Edition “to evade or find a way around (a difficulty, obstacle, etc.)”; Miriam-Webster Dictionary: “to manage to get around, especially by ingenuity or stratagem”.

Minnesota Statutes, Section 10A.29 not only requires circumvention before it is applicable, but it also specifies the stratagem: “redirecting a contribution through . . . another . . . association”. With respect to contributions, the provisions of Minnesota Statutes Chapter 10A that might be circumvented by a candidate's committee redirecting a contribution through another association are contribution limits and disclosure requirements.

In practical application, the prohibition of Minnesota Statutes, Section 10A.29 could be restated as follows:

An association may not attempt to avoid contribution limits or disclosure requirements by redirecting contributions through an association other than the ultimate beneficiary.

Violation of the statute requires an act: the redirection of contributions; and a purpose: the avoidance of Chapter 10A requirements, usually those relating to limits or disclosure.

An act, such as the act of redirection will usually be demonstrated by the evidence about what happened surrounding the transactions. The purpose, on the other hand, will not often be the subject of direct evidence (although in the immediate matter, a purpose of avoiding disclosure is acknowledged). In most cases, purpose can only be determined by viewing all of the evidence.

In considering the matter of circumvention, it is important to recognize that if the act of redirection and the purpose of avoiding limits or disclosure requirements both exist, a violation has occurred. It is not necessary that the participants knew that what they were doing was prohibited. A violation of Section 10A.29 may occur even if the participants believed that their course of conduct was permitted under Chapter 10A.

The testimony shows that the Kelliher Committee staff knew and understood the limit on contributions that it could accept from a single individual as well as the limit on aggregate special source contributions. The staff also knew that there were some donors who had already

contributed their limit to the Committee. Ms. Tincher testified that having donors give to the DFL for the benefit of the Committee was merely to provide another option for donors. Mr. O'Leary also testified that he was aware that there are limits as to how much an individual may contribute to a gubernatorial candidate. Mr. O'Leary explained that he thought that using contributions to the DFL to pay for a candidate's use of the VAN file was an option available because of the high cost of using the file. However, by providing that "option" the Kelliher Committee and the DFL formed a means to circumvent the individual contribution limits and disclosure provisions of Minnesota Statutes Chapter 10A.

Of the seven contributions made to the DFL that were credited for the Kelliher Committee four were facially in excess of the amount that could be accepted by a gubernatorial campaign in 2009. Additionally, two of those four donors had already contributed their limit to the Kelliher Committee. One of the remaining three contributions to the DFL was made after the donor had already made the maximum contribution to the Kelliher Committee.

Ms. Tincher also testified that the other two donors were willing to financially support the Committee, but were not ready to publicly commit to a particular candidate. The redirection of their contributions to the DFL would allow the donors and the Committee to avoid, and therefore circumvent, the disclosure requirements of Minnesota Statutes Chapter 10A by masking their support of a particular candidate as a contribution to the DFL Party.

The Board notes that both the Kelliher Committee and the DFL were cooperative in providing information to the Board during this investigation. Nonetheless, members of the DFL staff and the Kelliher Committee were aware of the contribution limits and disclosure obligations of Chapter 10A, and put in place an option for donors that rendered ineffective those statutory provisions. The evidence supports a conclusion that avoidance of these provisions was the underlying purpose of the option.

Therefore, all seven contributions constitute a prohibited circumvention of the provisions of Chapter 10A by the DFL and the Kelliher Committee. Although the statutes permit a penalty of up to \$3,000 for each instance of circumvention, the Board's usual policy is to base penalties on the amount of the violation. Accordingly, the order in this Finding will impose a penalty of \$7,500 against the DFL and \$7,500 against the Kelliher Committee for violating the provisions on circumvention.

Individual and Aggregate Contribution Limits Violations

Minnesota Statutes, Section 10A.27 provides contribution limits for candidates regulated by Chapter 10A. The statute provides a limit on the amount of a contribution from an individual, and an overall limit on the amount of contributions that a candidate may receive from lobbyists, political committees and funds, and individuals who make large contributions. The overall limit is commonly referred to as the aggregate or special source limit. The 2009 individual contribution limit for a gubernatorial candidate was \$500. The aggregate limit in 2009 for a gubernatorial candidate was \$98,500. As a political party the DFL is not regulated by this statute and does not have individual or aggregate contribution limits.

The contributions grid, included above, shows that the Kelliher Committee did not accept directly into its account a contribution from the seven donors that exceeded the individual donor limit. According to the testimony of Ms. Tincher, the Kelliher Committee tracked the aggregate limit, and was aware it had reached that limit on November 29, 2009.

The Board has jurisdiction to determine whether the Committee's participation in the earmarking of contributions justifies a conclusion that the seven earmarked contributions should also be treated as contributions to the Committee as well as to the DFL. Such a conclusion would result in additional penalties to the Kelliher Committee.

In view of the Board's imposition of significant penalties for violation of the earmarking and circumvention statutes, the Board declines to use this matter to make the determination of whether earmarked contributions should also be counted against a principal campaign committee's individual contribution limits.

Based on the evidence, it is unclear whether earmarked contributions to the DFL would have put the Committee over its limit on contributions from special sources if those earmarked contributions were also considered contributions to the Committee. For the reasons stated above, the Board declines to determine if the Kelliher Committee exceeded the 2009 aggregate contribution limit as a result of these transactions.

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 the Kelliher Committee violated the prohibition on soliciting and accepting earmarked contributions found in Minnesota Statutes, section 10A.16, when it solicited, accepted and transferred contributions to the DFL for the purpose of benefiting the Kelliher Committee.
2. There is probable cause to believe that the DFL violated the prohibition on accepting earmarked contributions found in Minnesota Statutes, section 10A.16, when it accepted contributions for the purpose of benefiting the Kelliher Committee.
3. There is probable cause to believe that the Kelliher Committee and the DFL Party violated the prohibition on circumvention of the provisions of Chapter 10A found in Minnesota Statutes, section 10A.29, when contributions to benefit the Kelliher Committee were redirected through the DFL.

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

Order

1. The Board imposes a civil penalty of \$1,500 against the Margaret (Kelliher) for Governor Committee for accepting earmarked contributions in violation of Minnesota Statutes, section 10A.16, and a further civil penalty of \$7,500 for circumvention of the provisions on Chapter 10A as prohibited in Minnesota Statutes, section 10A.29.
2. The Margaret (Kelliher) for Governor Committee is directed to forward payment of the \$9,000 in civil penalties to the Board by check or money order made payable to the State of Minnesota, within 30 days of receipt of this order.

3. The Board imposes a civil penalty of \$7,500 against the Minnesota Democratic Farmer Labor Party State Central Committee for accepting earmarked contributions in violation of Minnesota Statutes, section 10A.16, and a further civil penalty of \$7,500 for circumvention of the provisions on Chapter 10A as prohibited in Minnesota Statutes, section 10A.29.
4. The Minnesota Democratic Farmer Labor Party State Central Committee is directed to forward payment of the \$15,000 in civil penalties to the Board by check or money order made payable to the State of Minnesota, within 30 days of receipt of this order.
5. If the Margaret (Kelliher) for Governor Committee and the Minnesota Democratic Farmer Labor Party State Central Committee do 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.
6. 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 penalty imposed herein, this matter is concluded.

Signed: January 12, 2010

A handwritten signature in cursive script, reading "A. Hilda Bettermann", written over a horizontal line.

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

Relevant Statutes

10A.16 EARMARKING CONTRIBUTIONS PROHIBITED.

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

10A.27 CONTRIBUTION LIMITS.

Subdivision 1. **Contribution limits.** (a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

- (1) to candidates for governor and lieutenant governor running together, \$2,000 in an election year for the office sought and \$500 in other years;

...Subd. 11. **Contributions from certain types of contributors.** A candidate must not permit the candidate's principal campaign committee to accept a contribution from a political committee, political fund, lobbyist, or large contributor, if the contribution will cause the aggregate contributions from those types of contributors to exceed an amount equal to 20 percent of the expenditure limits for the office sought by the candidate, provided that the 20 percent limit must be rounded to the nearest \$100. For purposes of this subdivision, "large contributor" means an individual, other than the candidate, who contributes an amount that is more than \$100 and more than one-half the amount an individual may contribute.

10A.29 CIRCUMVENTION PROHIBITED.

An individual or association that attempts to circumvent this chapter by redirecting a contribution through, or making a contribution on behalf of, another individual or association is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.