

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

**Revised Findings and Order in the Matter of the Complaint of Steven Timmer Regarding
Representative Ernest Leidiger and Steven Nielsen**

Background

This matter was originally decided by the Board at its meeting of April 2, 2012. In the original findings, the Board concluded that a letter sent to the Board by Steven Nielsen, treasurer, constituted an amendment to the subject. The amendment would have reclassified as a campaign expenditure a speeding ticket that was improperly reported as a noncampaign disbursement. Subsequent to the publication of the findings, Mr. Nielsen notified the Board that it was not his intent that the letter constitute an amendment. Therefore, the report is still inaccurate in that it reports the cost of the speeding ticket as a noncampaign disbursement. These revised findings order Mr. Nielsen to amend the report to properly classify the payment of the speeding ticket.

The Allegations in the Complaint

On March 2, 2012, Steven Timmer filed a complaint and an amendment with the Campaign Finance and Public Disclosure Board. The complaint alleges that Representative Ernest Leidiger and Steven Nielsen, the treasurer of the Citizens for Leidiger committee, violated the provisions in Minnesota statutes and rules requiring principal campaign committee expenditures to be described correctly and fully on reports to the Board.

The complaint specifically cites a \$178 noncampaign disbursement listed on the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures. The year-end report states that this payment was made to Hennepin County for “[t]ransportation.” The \$178 payment, however, actually was made to pay the fine for a speeding ticket that Representative Leidiger received in March, 2011. The complaint maintains that a traffic ticket fine is not an allowable noncampaign disbursement. The complaint also argues that by labeling this payment as a transportation expense, Representative Leidiger and Mr. Nielsen violated the statutes and rules requiring noncampaign disbursements to be accurately described on reports to the Board.

The complaint claims that calling the fine a transportation expense was a “knowing attempt to deceive the Board, and by extension the public, by both Rep. Leidiger and Mr. Nielsen.” It is a violation of Minnesota Statutes, section 10A.025, subdivision 2, for a treasurer to sign and certify as true a report with the knowledge that the report contains false information or with the knowledge that the report omits required information. The Board investigated this aspect of the complaint as a potential violation of the prohibition on filing a report with the knowledge that it does not include all required information.

The Response to the Complaint

Mr. Nielsen signed the 2011 year-end Report of Receipts and Expenditures for the Citizens for Leidiger committee and certified that report as true. The instructions for the noncampaign disbursement schedule state that the report must include the "specific purpose of the disbursement." In an interview with staff, Mr. Nielsen acknowledged that when he certified the 2011 report, he was aware of this requirement.

In late February, various internet sites noted the transaction that is the subject of this investigation and indicated that the payment appeared to be for a speeding ticket. On March 2, 2012, just hours before the complaint in this matter was filed, Mr. Nielsen sent a letter to the Board. The Board concluded that this letter was an amendment to the year-end report that reclassified the speeding ticket payment as a noncampaign disbursement. Mr. Nielsen also submitted another letter in response to the complaint and gave a statement to Board staff. Copies of Mr. Nielsen's first letter and the response letter are attached to and made a part of these findings.

After the original findings in this matter were issued, Mr. Nielsen notified the Board that it was not his intent to amend the year-end report to reclassify that expense.

The responses to the complaint show that Representative Leidiger was on his way home from a late session of the legislature when he received a speeding ticket. Representative Leidiger therefore rationalized that the fine could be characterized as an expense for serving in public office, which is an allowed noncampaign disbursement. Although Mr. Nielsen did not initially agree with Representative Leidiger, Representative Leidiger ultimately persuaded Mr. Nielsen that this characterization was justified.

Representative Leidiger and Mr. Nielsen then discussed how to describe the payment on the year-end report. According to Mr. Nielsen's statement, Representative Leidiger did not want to call the payment a speeding ticket because he did not want to draw attention to the fact that he had paid this expense with campaign funds. Representative Leidiger eventually convinced Mr. Nielsen that they should use the word "transportation" to describe the payment on the year-end report.

Mr. Nielsen states that, in hindsight, it was poor judgment to call the expense "transportation." But Mr. Nielsen argues that the year-end report itself shows that there was no intent to deceive anyone because the report correctly identifies the payee as Hennepin County and lists the court's address. Mr. Nielsen also claims that because he and Representative Leidiger believed that the fine was a legitimate noncampaign disbursement under the law, they could not have had any intent to deceive. Finally, Mr. Nielsen points out that Representative Leidiger subsequently reimbursed the committee for the expense.

Board Analysis

The Board has the authority to investigate all reports filed with it under Minnesota Statutes, Chapter 10A. When the Board accepts a complaint, it exercises that authority to investigate all possible violations of Chapter 10A that might arise from the conduct alleged in the complaint or from the reports under review regardless of whether the complainant clearly and specifically raised those violations in the complaint.

Here, the facts alleged in the complaint raise three issues. First, whether the fine for the speeding ticket was accurately and specifically described on the committee's year-end report; second, whether the transaction was properly categorized as a noncampaign disbursement; and, third, whether Mr. Nielsen signed the year-end report knowing that it omitted required information.

The purpose of Minnesota Statutes, Chapter 10A, is to promote accurate disclosure of a principal campaign committee's financial transactions so that the public can know how the committee is spending its funds. To further this goal, Minnesota Statutes, section 10A.20, subdivision 3, clauses (g) and (l), require a principal campaign committee to describe the purpose of every campaign expenditure and noncampaign disbursement in excess of \$100 on the reports of receipts and expenditures that it files with the Board. All spending done by a principal campaign committee must be classified as either a campaign expenditure or a noncampaign disbursement. Unless an item fits within the limited definition of a noncampaign disbursement, it must be reported as a campaign expenditure. Minnesota Rules, part 4503.0900, requires that the report include sufficient information to justify classifying a transaction as a noncampaign disbursement. Minnesota Rules, part 4503.1800, requires that expenditures include "a description of the service or item purchased."

The description of an expenditure must be accurate and must be specific enough to allow citizens to understand what was actually purchased with the money.

In the present case, the Citizens for Leidiger year-end report stated that the purpose of the \$178 expenditure was "transportation." This description violates the rule that transactions include a description of the service or item purchased. The committee did not purchase transportation or transportation services from Hennepin County. Reporting the transaction as being for "transportation" also violates the rule that for a noncampaign disbursement, the description must include sufficient information to justify the classification. In general, costs of transportation are not noncampaign disbursements.

Finally, the description is insufficient to meet the core disclosure purposes of Chapter 10A because citizens would not interpret the description "transportation" to include payment of a fine for a speeding ticket. Identifying the payee as Hennepin County did not help to clarify that the expense was a speeding ticket fine. As a result of this analysis, the Board concludes that the evidence supports a finding of probable cause that the Citizens for Leidiger year-end report did not sufficiently and accurately describe the purpose of the \$178 expenditure.

With regard to the second issue, Mr. Nielsen states that the committee "did some rationalizing" and concluded that the cost of the speeding ticket could be classified as a noncampaign disbursement for costs of serving in office because Representative Leidiger was on the way home from a late session when he got the ticket.

Minnesota Statutes, section 10A.01, subdivision 26, clause (10), provides that noncampaign disbursements include payments made by a principal campaign committee for the candidate's expenses for serving in public office. In its advisory opinions, the Board has clarified that these expenses are limited to the ordinary and reasonable costs associated with activities that are expected or required of a public official. See, e.g., Advisory Opinions 314, 411. A speeding ticket is not an activity expected or required of a public official. Payment of a candidate's fine for a speeding ticket therefore is not an expense for serving in public office and, thus, not a noncampaign disbursement. Consequently, there is probable cause to find that Citizens for Leidiger improperly reported the \$178 payment for the fine as a noncampaign disbursement.

A principal campaign committee can remedy violations of the statutory reporting requirements by amending its report within 14 days of receiving notice of the violation. Here, the fact that Representative Leidiger repaid the \$178 expenditure does not resolve the reporting violation because all committee spending must be reported as either a campaign expenditure or a noncampaign disbursement. To resolve the violation, Citizen's for Leidiger must amend its report to properly characterize the \$178 expenditure.

The final issue raised by the complaint is whether Mr. Nielsen signed the Citizens for Leidiger year-end report knowing that it omitted required information. Minnesota Statutes, section 10A.025, subdivision 2, states that anyone who signs and certifies a report as true knowing that it contains false information or who knowingly omits required information is subject to a civil penalty of up to \$3,000 and to possible criminal charges.

The standard for finding that an individual knowingly filed a false or incomplete report is higher than establishing that a report was inaccurate. To determine whether an individual knowingly filed a false or incomplete report, the Board first looks for evidence that the individual was aware of the transactions in question and, second, that the individual certified the report knowing that the report omitted or incorrectly stated the transactions.

Here, when Mr. Nielsen signed the 2011 year-end report, he knew that the \$178 payment was for a speeding ticket fine. He was also aware of the requirement that the report must include a specific statement of the purpose of a noncampaign disbursement transaction. With that knowledge, Mr. Nielsen nevertheless listed the transaction as being for "transportation." In fact, Mr. Nielsen acknowledges that he and Representative Leidiger discussed how to describe the transaction. In his amendment, Mr. Nielsen states that "[a]t the time it just did not seem right to call it a speeding ticket." In an interview with Board staff, Mr. Nielsen acknowledged that Representative Leidiger did not want to report the transaction as being for a speeding ticket fine because he did not want to point that fact out to the public. Although they debated the point, the

treasurer ultimately accepted the candidate's position resulting in the vague and inaccurate description on the year-end report.

Minnesota Rules, part 4503.0200, subpart 2, provides that the candidate is ultimately responsible for the principal campaign committee's compliance with Chapter 10A. Minnesota Statutes, section 10A.025, subdivision 2, however, provides false certification penalties only against the person who actually signed the committee report. Consequently, although Representative Leidiger made the decision here to characterize the fine as a transportation expense, the campaign finance laws provide no penalty for his acts.

In this matter, the treasurer, at the candidate's urging, intentionally omitted details and provided a camouflaged description of an expenditure so that the public would not easily recognize the actual purpose of the transaction. The facts mandate a finding that this course of conduct constitutes a violation of Minnesota Statutes, section 10A.025, subdivision 2.

Based on the evidence before it and the above analysis the Board makes the following:

Findings Concerning Probable Cause

1. There is probable cause to believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures did not accurately or specifically state the purpose of the \$178 payment to Hennepin County. However, a specific description was provided by the committee and no violation remains.
2. There is probable cause to believe that the Citizens for Leidiger 2011 year-end Report of Receipts and Expenditures improperly reported the \$178 payment to Hennepin County as a noncampaign disbursement.
3. There is probable cause to believe that when Steven Nielsen certified the Citizens for Leidiger 2011 year-end report, he did so knowing that it omitted required information.

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

ORDER

1. Within 14 days, Citizens for Leidiger must amend its 2011 year-end Report of Receipts and Expenditures to properly classify the speeding ticket fine.
2. Within 30 days of the date of this order, Steven Nielsen must pay a civil penalty of \$300 for knowingly certifying as true a report that omitted required information by sending or delivering to the Board a check payable to the State of Minnesota.

Dated: May 1, 2012

/s/ Greg McCullough

Greg McCullough, Chair
Campaign Finance and Public Disclosure Board

Relevant Statutes

Minn. Stat. § 10A.20, su bd. 3. Contents of report. (g) The report must disclose the name and address of each individual or association to whom aggregate expenditures, including approved expenditures, have been made by or on behalf of the reporting entity within the year in excess of \$100, together with the amount, date, and purpose of each expenditure and the name and address of, and office sought by, each candidate on whose behalf the expenditure was made, identification of the ballot question that the expenditure was intended to promote or defeat, and in the case of independent expenditures made in opposition to a candidate, the candidate's name, address, and office sought. A reporting entity making an expenditure on behalf of more than one candidate for state or legislative office must allocate the expenditure among the candidates on a reasonable cost basis and report the allocation for each candidate.

. . . .

(l) The report must disclose the name and address of each individual or association to whom noncampaign disbursements have been made that aggregate in excess of \$100 within the year by or on behalf of the reporting entity and the amount, date, and purpose of each noncampaign disbursement.

Minn. Stat. § 10A.025 Subd. 2. Penalty for false statements. A report or statement required to be filed under this chapter must be signed and certified as true by the individual required to file the report. The signature may be an electronic signature consisting of a password assigned by the board. An individual who signs and certifies to be true a report or statement knowing it contains false information or who knowingly omits required information is guilty of a gross misdemeanor and subject to a civil penalty imposed by the board of up to \$3,000.

Minn. R. 9503.0900, subp. 3. Reporting purpose of noncampaign disbursements. Itemization of an expense which is classified as a noncampaign disbursement must include sufficient information to justify the classification.

Minn. R. 9503.1800, subp. 2. Expenditures and noncampaign disbursements. Legislative, statewide, and judicial candidates, party units, political committees and funds, and committees to promote or defeat a ballot question must itemize expenditures and noncampaign disbursements that in aggregate exceed \$100 in a calendar year on reports submitted to the board. The itemization must include the date on which the committee made or became obligated to make the expenditure or disbursement, the name and address of the vendor that provided the service or item purchased, and a description of the service or item purchased. Expenditures and noncampaign disbursements must be listed on the report alphabetically by vendor.