

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF ANDREW SCHMITZ REGARDING BEST FAIR FOODS

On March 4, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Andrew Schmitz regarding Best Fair Foods. Best Fair Foods is a political fund registered with the Board. Best Fair Foods operates a mini donut stand at the Minnesota State Fair. Proceeds from the sale of donuts at the booth are contributions to the Best Fair Foods political fund.

The complaint states that the individuals purchasing mini donuts at the stand were not informed that their purchase was a political contribution. The complaint from Mr. Schmitz provided photos of the mini donut stand operated by Best Fair Foods during the 2019 Minnesota State Fair, and also included videos of four individuals who stated that they were not verbally informed that they were making a political contribution when they purchased their mini donuts. The photos provided show that there was a notice that stated “[p]ursuant to Minn. Stat. § 10A.271 proceeds from the purchase of these products are a political contribution to the Best Fair Foods Committee, which donates profits to better Ramsey County.” The notice was at the bottom of an approximately 8 1/2 by 11-inch piece of paper that also included the ingredient list of the mini donuts in larger font above the notice. The notice was posted by each of the payment windows of the booth. The complaint alleges that Best Fair Foods violated Minnesota Statutes section 10A.271 due to the failure to disclose to potential customers that the proceeds from the purchase were a political contribution and to whom the contribution was made.

On March 6, 2020, the Board chair determined that the complaint alleged a prima facie violation of the requirements in Minnesota Statutes section 10A.271. The Board intended to consider the probable cause determination in this matter at the April 1, 2020, Board meeting. On March 16, 2020, counsel for Best Fair Foods requested that the Board consider the probable cause determination at the May 6, 2020, meeting due to counsel needing more time to respond due to the COVID-19 pandemic. At the April 1, 2020, meeting the Board laid over the probable cause determination until the May 6, 2020, meeting.

Best Fair Foods responded to the complaint on April 17, 2020. In its response, Best Fair Foods stated that the “disclosure sign was printed in 16 point font on the same sign that notifies customers of the donut ingredients list” and “was placed immediately to the right of each register and was in the plain view of all potential purchasers of donuts.” The response also stated that Minnesota Statutes section 10A.271 was enacted only two years ago and that the Board had not provided any guidance on the meaning of the term “prominent” in the statute.

Best Fair Foods’ response also stated that the Board provided a summary of the 2018 legislative changes. However, the summary “noted the requirement to provide a notice, but failed to offer any commentary on what might be required to satisfy the ‘prominent’

requirement.” Best Fair Foods notes in its response that the Board took care to provide detail in the summary of 2018 legislative changes about the “disclaimer requirements contained in Section 211B.04, noting that the disclaimer requirements will generally be satisfied if the disclaimer is printed in 8 point font.” Best Fair Foods acknowledged that it could not rely on the requirements of a different statute, but noted that Best Fair Foods was aware of the 8 point font requirement and therefore, “intentionally printed its notice in a font that was two times the size as what is required by Chapter 211B.” Best Fair Foods stated that its notice complied with Minnesota Statutes section 10A.271 and requested that the complaint be dismissed.

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 (d). 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.

In 2018, the legislature adopted Minnesota Statutes section 10A.271 to ensure that people purchasing items from political committees and funds realized that their purchases were political contributions. Minnesota Statutes section 10A.271, subdivision 1, specifically provides that “[a] . . . political fund . . . that raises funds through the sale of goods or services must disclose to potential customers that the proceeds from the purchase are a political contribution and to whom the contribution is made. The notice may be provided verbally at the time of purchase, or through the prominent display of a sign providing the notice in immediate proximity to the point of sale at the location where the goods or services are sold.” The statute includes exceptions for goods or services sold at fund-raising events that require the purchase of a ticket to attend or at events where the main purpose is fundraising. Minnesota Statutes section 10A.271, subdivision 3, states that “[a] . . . political fund . . . that knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000.”

To determine whether a sign with the notice is prominently displayed, the Board cannot rely solely on the font size used for the notice. Instead, the Board must consider the totality of the display to make this determination, including factors such as whether the notice was printed by itself or with other information, the nature of any other information printed with the notice and the font size and style of that information relative to the font size and style of the notice, and the location of the notice relative to other signs in the vicinity.

In this matter, the complaint provided evidence, and Best Fair Foods confirmed, that verbal notice was not given to customers of the mini donut stand at the time of purchase. The complaint also included evidence that the written notice provided was printed at the bottom of the ingredient list for the mini donuts in a smaller font than the ingredient information. The notice, however, was printed in 16 point font. The pictures also show that the notice was posted next to each cash register at the booth and was readable by someone standing at that register to buy mini donuts. It

also is clear from the record that Best Fair Foods was aware of the requirements of Minnesota Statutes section 10A.271, and believed it was complying with the statute.

Some of the factors listed above show that the notice was not as prominent as the Board would have preferred under these specific circumstances. For example, the notice should have been printed by itself instead of at the bottom of the ingredient list and in a font size similar to the other information near the point of sale. However, a civil penalty cannot be assessed under Minnesota Statutes section 10A.271 unless the violation was knowing. Here, it is clear that Best Fair Foods attempted to comply with the statute and did not knowingly fail to provide the notice. Therefore, given all of the evidence, the record does not establish probable cause to believe a violation that warrants a formal investigation has occurred.

Order:

1. The allegation that Best Fair Foods failed to provide notice that the purchase of the mini donuts was a political contribution in violation of Minnesota Statutes section 10A.271, is dismissed because there is insufficient probable cause to believe a violation that warrants a formal investigation has occurred.

/s/ Robert Moilanen
Robert Moilanen, Chair
Campaign Finance and Public Disclosure Board

Date: May 6, 2020