

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

.....  
**May 7, 2013  
Room 225**

**Minnesota Judicial Center**

.....

**MINUTES**

The meeting was called to order by Chair Luger.

Members present: Beck, Luger, Peterson, Scanlon

Member Wiener arrived during the Executive Director Topics.

Member McCullough informed the Executive Director prior to the meeting that he would not be able to attend.

Others present: Goldsmith, Sigurdson, White, Pope, Larson staff; Hartshorn, counsel

**MINUTES** (March 5, 2013)

Member Peterson's motion:                      To approve the March 5, 2013, minutes.

Vote on motion:                                      Unanimously passed (Member Wiener absent).

**CHAIR'S REPORT**

**Board meeting schedule**

The next Board meeting is scheduled for Tuesday, June 4, 2013.

**EXECUTIVE DIRECTOR'S TOPICS**

Executive Director Goldsmith reported on recent Board office operations.

A new board member is in the process of being chosen to replace Member McCullough. Member McCullough will serve until that time.

Staff has hired a network consultant to increase the stability of the network as well as recommend hardware updates.

**2014-15 budget update**

Mr. Goldsmith verbally updated members regarding the 2014-15 budget.

The Board's budget recommendation of \$1,000,000 has not changed in the bill and is expected to pass without any opposition.

This budget amount will allow staff to increase by 1.4 persons as well as invest in our IT infrastructure.

### **2013 Legislative recommendations**

Mr. Goldsmith provided an update on legislative action on the Board's recommendations. With respect to the public integrity law improvements, Mr. Goldsmith explained that the bill would not receive hearings this session, but that he would determine the level of legislative interest during the interim. If legislators are interested, the bill could be taken up during the next session.

With respect to the Board's policy recommendations, Mr. Goldsmith reported that the bill passed out of the Senate Finance Committee to the Senate floor with a recommendation to pass. In the House, the disclosure provisions were stripped out of the bill in the State Government Departments and Veterans Affairs Committee. Without those provisions, the bill had broad support and passed out of the committee to Ways and Means where it was also recommended to pass and sent to the House floor.

Given the differences in the versions of the bill, there will be a conference committee. The Senate author wants to keep the disclosure provisions in the bill and the House author also favored disclosure although he was unable to keep the provisions intact in committee.

Mr. Goldsmith will work to keep the provisions in the bill.

The Board discussed the possibility that the bill would come out of committee without the disclosure provisions and decided to take no formal position as to whether to support such a bill.

### **Discussion of matters where a contribution to a federal committee is deposited in the state committee checking account**

Mr. Goldsmith presented the board with a memorandum which is attached to and made a part of these minutes.

Executive Director Goldsmith explained that occasionally the Board's compliance audits of reports reveal the receipt of contributions from associations not registered with the Board. Typically these contributions are made without the accompanying additional disclosure statement required by section 10A.27, subdivision 13. In most cases these are valid statutory violations without any explanation other than that the recipient was unaware of the law. In those cases the matter is developed into findings which are presented for Board consideration.

However, there are associations, including party units that operate both as a state committee and as a federal political committee. The association maintains separate bank accounts and records for each form of operation and from a legal standpoint are treated as separate entities,

but in most cases the same staff operates both committees and both committees share the same address as well as the same or similar names. Because of the similarity of names and the sharing of an address, a check intended for one committee may be mistakenly deposited into the checking account of the other committee. As a result, it is possible that a check from a legal federal donor is received by the association and mistakenly deposited into the state committee which results in a contribution from an unregistered association without providing the required underlying disclosure.

Mr. Goldsmith presented a draft resolution for Board consideration which, if adopted, would provide for informal resolution of these inadvertent incorrect deposit matters as long as there was not a pattern of the same mistake.

Members discussed the resolution and amended it to state "...the Executive Director must bring the matter..." rather than "...the Executive Director may bring the matter..."

After discussing the following resolution was made:

RESOLVED:

When the following conditions are met:

An association has a state political committee registered with the Board and a federal political committee registered with the Federal Election Commission;

A donation is made to the association that both the donor and the association intend to be a contribution to the federal political committee;

The donation is deposited in error into the state political committee's checking account;

The donation is not returned within the statutory time limit;  
and

The donation is promptly transferred to the correct checking account once the association becomes aware of the error;

In the interest of fairness and efficiency of agency operations:

The Executive Director is directed to document the matter in the file of the political committee into whose account the donation was deposited and to notify the association of the need to exercise care in determining into which account a receipt should be deposited;

The Executive Director may close the file on the matter and no violation will be recognized.

If the Executive Director recognizes a pattern of the above described mistake, the Executive Director must bring the matter to the Board for further consideration, which may conclude with the imposition of any sanctions permitted under Chapter 10A.

Member Luger's motion: To approve the resolution as amended.

Vote on motion: Unanimously passed.

### **ENFORCEMENT REPORT**

The Board considered the monthly enforcement report, presented by Assistant Executive Director Sigurdson. The Board took the following actions related to matters on the enforcement report:

#### **Consent Items**

#### **Confirmation of the administrative termination for the following lobbyist at the request of the lobbyist association:**

Andrew Morrison, general counsel for MN Self-insurers Security Fund, requests the termination of the lobbyist registration of Nicole Kampa who is no longer associated with the fund. The termination is effective as of May 31, 2012.

Melinda Buss, executive director of the Southwest MN EMS Corporation, requests the termination of O'Brien Doyle Jr. who no longer represents the association. The termination is effective as of December 31, 2012.

Shari Augustin, executive director of the American College of Emergency Physicians, MN Chapter, requests the termination of the lobbyist registration for O'Brien Doyle Jr. who no longer represents the association. The termination is effective as of December 31, 2012.

Member Beck's motion: To approve the consent items.

Vote on motion: Unanimously passed.

**Discussion Items**

**A. Waiver Requests**

<u>Name of Candidate or Committee</u>	<u>Reason for Fine</u>	<u>Late Fee Amount</u>	<u>Civil Penalty Amount</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Peter Roess, Lobbyist	Lobbyist Disbursement Report due 1/15/13	\$80	\$0	Mr. Roess was hospitalized at the time the report was due.			
Friends of Nicque Mabrey Schaff	2012 Year-end Report due 1/31/13	\$400	\$0	Ms. Schaff did not run for office in 2012 and had little activity. The committee has terminated.			
Wilkin County RPM	Pre-general Report due 10/29/12	\$250	\$0	Software user. Logged in on 10/28 and performed a download.			
Lake County DFL	Pre-general Report due 10/29/12	\$50	\$0	Software user. The treasurer uploaded the pre-primary report on 10/25. Filed the pre-general report on 10/30.			
Committee to Elect Michael Germain	Pre-primary Report due 7/30/12	\$50	\$0	Pre-primary and pre-general election reports were filed late. The committee submitted the balance of committee funds of \$114 to be applied to the late fees. Committee filed a termination report.			
	Pre-general Report due 10/29/12	\$950	\$0				
NOM Minnesota Marriage Fund	24 hour notice	\$1000	\$0	Software user. Missed reporting one large contribution during pre-general election 24 hour period.			
Minn AFL-CIO Pol Fund	Four 24 hour notices	\$4000/ \$1000 each	\$0	Software user. Upgraded to the latest version for the year-end report. Older version of the software did not prompt political committees or funds to send a 24 hr. notice.			
Protect My Vote	Two 24 hour notices	\$2000 / \$1000 each	\$0	Two contributions received during the 24 hr. notice period. Committee has terminated			
JCA Vote Nop on Photo ID	24 hour notice	\$1000	\$0	Committee had an older version of the software. Terminated with year-end report.			

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IBEW MN State Council PAC	24 hour notice	\$1000	\$0	Software user. Had the older version of the software that did not prompt user to file notice.			
Lockridge Grindal Nauen State Pol Fund	Four 24 hour notice	\$4000 / \$1000 each	\$0	Four contributions of \$1,100 received on July 26 were included on the Sept 24 report. Version of the software did not prompt a 24 hour report.			
Keith MacDonald for State Rep	24 hour notice	\$1000	\$0	Contribution from the candidate during the 24 hour notice period. Committee intends to terminate.			
<p>Waiver requests by Peter Roess through Keith MacDonald for State Rep were considered as one motion. Member Luger's motion: To waive the late fees for the committees and for Keith MacDonald for State Rep waiver of the fee is contingent on the termination of the committee. Vote on motion: Unanimously passed.</p>							
Logan Campa for MN House of Rep	24 hour notice	\$1000	\$0	Treasurer misunderstood the requirement for contributions received from political committees and party units.			
Travis Reimche for House	Two 24 hour notices	\$2000 / \$1000 each	\$0	Mr. Reimche provided a copy of a screen shot of the entry of the contributions that were filed within 24 hours. Staff could not find activity in the upload log that shows the submission of the 24 hour notice.			
People for Tom Anzelc	24 hour notice	\$200	\$0	Notice was filed 4 days late.			
Laurie Halverson for Minn House	Two 24 hour notices	\$2000 / \$1000 each	\$0	Two notices of contributions received during pre-general election 24 hour period were filed in January.			
IUPAT	Two 24 hour notices	\$2000 / \$1000 each	\$0	The fund received two transfers from two supporting associations during the 24 hour notice period.			
<p>Waiver requests by the Logan Campa for MN House of Rep through IUPAT, were considered as one motion. Member Peterson's motion: To reduce the late fees to \$250 for the Logan Campa, Travis Reimche, Laurie Halverson and IUPAT committees and reduce the fee to \$50 for the Tom Anzelc committee. Vote on motion: Unanimously passed.</p>							
MPA Political Action Comm	Pre-general Report due 10/29/12	\$300	\$0	There was a change in treasurers at the time the pre-general election report was due. The previous treasurer had received the reminder notices.	*Wiener	Reduce late fee to \$150.	Unanimous
Big Stone RPM	2012 Year-end Report due 1/31/13	\$100	\$0	Staff spoke to the treasurer on Feb 6 and he said he had mailed the report. The report was received by fax on Feb 6, but no mailed copy has been received.	No Motion		

Burnsville Chamber PAC	2012 Year-end Report due 1/31/13	\$25	\$0	Treasurer had switched computers and had trouble filing on the new computer. Filed one day late.	No Motion		
Chaz Johnson Volunteer Committee	2012 Year-end Report due 1/31/13	\$275	\$0	Mike Kennedy, treasurer, thought that the candidate had filed the report. The candidate thought the treasurer had filed the report. Staff called and left a message for the treasurer on Feb 4 and 13.	No Motion		
Natl Assn of Settlement Purchasers	Lobbyist Principal Report due 3/15/2013	\$40	\$0	The notice that is routinely sent to associations was addressed to Jack Kelly who was the contact submitted on the lobbyist registration form. Earl Nesbitt states he is the correct contact person and received the forwarded documents. Staff sends a reminder email on the due date and makes call to associations that have not filed.	No Motion		

\* Member Luger's motion to reduce the late fee to \$250. Motion withdrawn.

**B. Authorization for referral to the Office of the Attorney General for failure to file a 2012 Report of Receipts and Expenditure due January 31, 2013. One certified letter and a first class letter were set. Staff contacted or attempted to contact the individual by phone:**

Minnesotans for Benjamin Kruse  
 Tom Ladwig Jr. for the People  
 Branden Peterson for State House  
 Steve Smith Volunteer Committee

Member Peterson's motion: To authorize staff to refer the above committees to the Office of the Attorney General for failure to file their year-end Report of Receipt and Expenditures due January 31, 2013.

Vote on motion: Unanimously passed.

**Informational Items**

**A. Payment of a late filing fee for the July 30, 2012, pre-primary election report:**

Roseau County DFL, \$400

**B. Payment of a late filing fee for October 29, 10-day pre-general-election report:**

5<sup>th</sup> Congressional District RPM, \$50  
 5<sup>th</sup> Congressional District IPMN, \$100  
 7<sup>th</sup> Congressional District IPMN, \$100  
 Benton County RPM, \$150

MN Family Council, \$25  
Precinct 12 DFL, \$550  
Republican Liberty Caucus, \$50  
Voter ID for MN, \$50  
Winona County DFL, \$100

David Arvidson 4MN, \$50  
Jeff Hayden for Senate, \$150  
David Holman Committee, \$200  
Tom Huntley Volunteer Committee, \$150  
Larry Johnson Campaign Fund, \$150  
Koenen Senate Campaign, \$100  
Citizens for Ernie Leidiger, \$50  
Joe McDonald for State Representative, \$50  
Volunteers for Andrew Ojeda, \$50  
Paul Scofield for Senate, \$100

**C. Payment of a late filing fee for January 31, 2013, year-end report:**

Jim Arlt for Representative, \$25  
Cal for Congress, \$75  
Citizens for Kirstin Beach, \$125  
Jill Clark for Justice, \$75  
Friends of Frank Crusing for MN Senate, \$50  
Ray Daniels Campaign Fund, \$25  
Joe Gimse for Senate, \$75  
Jeff Gunness for House, \$75  
David Holman Committee, \$25  
Sue Jeffers for Governor, \$50  
Julie Johnson Volunteer Committee, \$100  
Dan Mathias for Senate, \$50  
Ed Matthews for Ramsey County Judge, \$175  
Volunteers for Mary Jo McGuire, \$25  
Geoff Michel for Senate, \$75  
Citizens for Lisa Murphy, \$200  
Nienow (Sean) Volunteer Committee, \$100  
Anne Nolan Campaign, \$25  
Committee to Elect Alan Oberloh, \$25  
Judy Rogosheske for Senate, \$50  
Paul Sandman for District 4B, \$25  
Bev Scalze Volunteer Committee, \$25  
Donna Swanson for St Paul, \$25  
Harley Swarm for Governor, \$50

38<sup>th</sup> Senate District DFL, \$50  
Carlton County DFL, \$125  
CWA Minn State Council, \$25  
East Central Taxpayers, \$50  
Leech Lake PAC, \$75



Minn Farm Credit Services, \$100  
Minn Funeral Services PAC, \$25  
Minn Service Station Association, \$50  
Precinct 12 DFL, \$175  
Rural Minnesota Preservation, \$150  
Sierra Club Political Committee, \$75

**D. Payment of late filing fee for 24-hour pre-election notice:**

Minnesota for Marriage, \$50  
Minnesotans United for All Families, \$50

**E. Payment of a late filing fee for 19A Special Election Pre-general election Report:**

Robin Courier for House of Representatives 19A, \$250

**F. Payment of a late filing fee for January 15, 2013 Lobbyist Disbursement Report:**

Aaron Doolittle, Residential Subcontractors Assn, \$15  
Joshua Winters, MPIRG, \$30

**G. Payment of a late filing fee for the 2012 Annual Report of Lobbyist Principal:**

International Code Council, \$10  
MN Creditors Rights Association, \$15  
MN Fish and Bait Farmers, \$30  
MN Hearing Healthcare, \$25  
MN Rural Counties Caucus, \$15  
MN Visiting Nurse Agency, \$10  
Qwest, \$15  
Town Hall Brewery, \$25

**H. Deposit to the General Fund, State Elections Campaign Fund:**

DFL House Caucus, \$130 anonymous contributions  
Dean Barkley for Justice, \$275 anonymous contributions

**I. Return of Public Subsidy 2012:**

Travis Burton for House, \$3,829.14  
Citizens for Devin GawneMark, \$2,621.69  
Green Party of Minnesota, \$253.80

**J. Payment of a civil penalty for making a contribution without a registration number:**

Randall Sampson, \$200

**K. Payment of a civil penalty for excess special source contributions:**

**Kent Eken for Senate District 4, \$189.** During 2012, the Committee accepted \$13,789 in

contributions from special sources. The total amount of these contributions exceeded by \$189 the applicable limit on aggregate contributions from special sources, which for a state senate candidate is \$13,600. Senator Eken entered into a conciliation agreement on March 8, 2013.

**L. Payment of a civil penalty for commingling funds:**

Michael Boguszewski, \$2,000

**Payment of a civil penalty for exceeding the contribution limit:**

Teamsters Local 120 DRIVE, \$500. During calendar year 2012 the contribution limit from a political fund to a principal campaign committee of a state senate candidate was \$500 as provided in Minnesota Statutes section 10A.27, subdivision 1(a)(3). In 2012 the Teamsters Local 120 DRIVE Fund (the Fund) made two \$500 contributions to the Jeff Hayden for Senate Committee. The contributions totaling \$1,000 exceeded by \$500 the applicable contribution limit. T. Rhys Ledger, treasurer, entered into a conciliation agreement on April 15, 2013.

**ADVISORY OPINION REQUEST**

**Advisory Opinion #434 – Application of Chapter 10A to online fundraising business that charges contributors a fee to make a contribution to a candidate**

Advisory Opinion 434 is public data pursuant to consent for release of information signed by the requestor. The request was received by the Board on March 27, 2013.

The request asks whether a company's plan to provide internet-based contribution processing and delivery services for a fee paid by the contributor violates any provision of Chapter 10A or requires any registration or reporting under Chapter 10A. Other than providing services to those who pay for them, the company will not act to influence elections in any manner or advocate the election or defeat of any particular candidate or group of candidates.

In previous advisory opinions, the Board has determined that providing internet-based contribution processing services to candidates for a fee did not result in the contributions being attributed to the processor. The draft opinion states that charging contributors the fee for the contribution processing services does not change the application of Chapter 10A to the transactions.

After discussion, the following motion was made:

Member Scanlon's motion: To approve Advisory Opinion #434.

Vote on motion: Unanimously passed.

**LEGAL COUNSEL'S REPORT**

Board members reviewed a memo from Counsel Hartshorn outlining the status of cases that have been turned over to the Attorney General's office. The Legal Counsel's Report is made a part of these minutes by reference.

Board members asked staff to review the matters and to return to the Board at the next meeting with options to close the pending matters.

### **EXECUTIVE SESSION**

The Chair recessed the regular session of the meeting and called to order the Executive Session. Upon completion of the Executive Session, the regular session of the meeting was called back to order and the following items were reported from the Executive Session:

#### **Findings and Order in the Matter of contributions to the Gazelka (Paul) Volunteer Committee from the Minnesota Young Republicans Local Club CD #8**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

#### **Findings and Order in the Matter of contributions to the Campaign for Ron Kresha (House) Committee from the Minnesota Young Republicans Local Club CD #8**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

#### **Findings and Order in the Matter of contributions to the DFL House Caucus from Burke & Thomas, PLLP**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

#### **Findings and Order in the Matter of a contribution made by the Tom Emmer for Governor Committee to a candidate seeking local office**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

#### **Findings and Order in the Matter of the investigation of Brandon Anderson and the Brandon D. Anderson for SD6 Committee**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

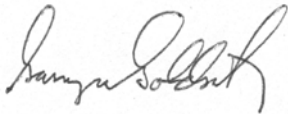
**Findings and Order in the Matter of the investigation of the Report of Receipts and Expenditures of the Republican Party of Minnesota**

The Chair reported that in its executive session, the Board made findings and issued an order in the above matter. See Findings and Order which are attached to and made a part of these minutes.

**OTHER BUSINESS**

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

Respectfully submitted,



Gary Goldsmith  
Executive Director

Attachments:

April 25, 2013, memorandum regarding contributions deposited into incorrect account in error  
Advisory Opinion #434

Findings and Order in the Matter of contributions to the Gazelka (Paul) Volunteer Committee from  
the Minnesota Young Republicans Local Club CD #8

Findings and Order in the Matter of contributions to the Campaign for Ron Kresha (House)  
Committee from the Minnesota Young Republicans Local Club CD #8

Findings and Order in the Matter of contributions to the DFL House Caucus from Burke &  
Thomas, PLLP

Findings and Order in the Matter of a contribution made by the Tom Emmer for Governor  
Committee to a candidate seeking local office

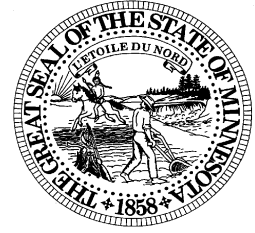
Findings and Order in the Matter of the investigation of Brandon Anderson and the Brandon D.  
Anderson for SD6 Committee

Findings and Order in the Matter of the investigation of the Report of Receipts and Expenditures  
of the Republican Party of Minnesota

Minnesota

# *Campaign Finance and Public Disclosure Board*

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**Date:** April 25, 2013

**To:** Board members

**From:** Gary Goldsmith, Executive Director

**Telephone:** 651-539-1190

**Re:** Contributions deposited into incorrect account in error

Occasionally our compliance audits of reports reveal the receipt of contributions from associations not registered with the Board. Typically these contributions are made without the accompanying additional disclosure statement required by section 10A.27, subdivision 13. In most cases, these are valid statutory violations without any explanation other than that the recipient was unaware of the law. In those cases the matter is developed into findings which are presented for Board consideration.

In some cases, however, the matter is more complicated. There are associations, including party units, that operate both as a state committee registered with the Board and as a federal political committee registered with the Federal Election Committee. This form of dual operation is permitted under both federal and state law. In practice, the association maintains separate bank accounts and records for each form of operation. From a legal standpoint, they are treated as separate entities. However, in most cases the same staff operates both committees and both committees share the same address.

When this dual registration exists, it is often the case that the two registered entities have names that are the same or similar. Because of the similarity of names and the sharing of an address, a check intended for one committee may be mistakenly deposited into the checking account of the other committee. The universe of legal donors to a federal political committee is different than the universe of legal donors to a state committee. As a result, it is possible that a check from a legal federal donor is received by the association and mistakenly deposited into the state committee checking account.

A committee has 60 days (increased to 90 days under the Board's policy bill) to return a contribution without penalty. If the return is made within that 60 days, the matter does not reach the Board as there is no violation. However, in some cases, the committee may not recognize the problem until it is notified by the Board, which will often be more than 60 days after the check was deposited.

If a violation is to be recognized in this situation, it would be the acceptance of a contribution without the underlying disclosure required by section 10A.27, subdivision 13.

The issue for Board consideration is:

Assuming that after a staff inquiry the Executive Director concludes that a state political committee, fund, or party unit mistakenly deposited into its account a check that was intended for its federal account;  
and further assuming that the recipient transfers the money from the state account to the federal account promptly after recognizing or being made aware of the mistake;

May the Executive Director close the matter after documenting the transactions in the file, or should the Executive Director treat the matter as an investigation and present it to the Board in the form of findings?

### **Possible Board action**

Adoption of one of the versions of the following resolution, selected by adopting Option A or Option B, would provide the necessary direction to staff:

### **RESOLVED:**

When the following conditions are met:

An association has a state political committee registered with the Board and a federal political committee registered with the Federal Election Commission;

A donation is made to the association that both the donor and the association intend to be a contribution to the federal political committee;

The donation is deposited in error into the state political committee's checking account;

The donation is not returned within the statutory time limit; and

The donation is promptly transferred to the correct checking account once the association becomes aware of the error;

### **Option A**

#### In the interest of fairness and efficiency of agency operations:

The Executive Director is directed to document the matter in the file of the political committee into whose account the donation was deposited and to notify the association of the need to exercise care in determining into which account a receipt should be deposited;

The Executive Director may close the file on the matter and no violation will be recognized.

If the Executive Director recognizes a pattern of the above described mistake, the Executive Director may bring the matter to the Board for further consideration, which may conclude with ~~a result different than that authorized in this resolution~~ the imposition of any sanctions permitted under Chapter 10A.

### **Option B**

The Executive Director is directed to notify the association that the matter will be considered by the Board as the investigation of a contribution from an association not registered with the Board;

The Executive Director must develop the matter as with all investigations based on filed reports;

The matter must be presented for Board decision at the next meeting following the date that the matter is ready for Board consideration.

State of Minnesota  
**Campaign Finance & Public Disclosure Board**  
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN55155-1603

**THIS ADVISORY OPINION IS PUBLIC DATA**  
pursuant to a consent for release of information signed by the requester

Issued to: Trevor Potter  
Bryson B. Morgan  
Caplin & Drysdale, Chtd.  
One Thomas Circle NW, Suite 1100  
Washington, DC 20005

**ADVISORY OPINION 434**

**SUMMARY**

A company that provides internet-based contribution processing and delivery services for a fee paid by visitors who use the company's website to make contributions to candidates is not, through that service activity, making a contribution to the recipient candidates. As a result, the registration requirements of Chapter 10A and the restrictions on contributions from associations not registered with the Board do not apply to the company.

**FACTS**

On behalf of your client, Democracy.com, you have asked the Campaign Finance and Public Disclosure Board for an advisory opinion related to a business venture planned by the company. Your request is based on the following relevant hypothetical facts which you have provided.

Democracy Ventures, Inc. (d.b.a. Democracy.com) is a nonpartisan, for-profit corporation. Democracy.com plans to operate a website that will serve as an online national directory of federal, state, and local candidates for elected public office.

To establish its website, Democracy.com will create a separate web page, referred to as a "profile page," for each federal, state, and local candidate, including Minnesota state-level candidates. These web pages will only include publicly available information submitted by the candidates to the Minnesota Secretary of State on their affidavits of candidacy or to the Board on their principal campaign committee registration forms. For a fee, equal to the fair market value of the services provided, a visitor to the site may make a contribution to any included candidate.<sup>1</sup>

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<sup>1</sup> Democracy.com states that it will limit such contributions pursuant to the applicable Minnesota election-year and non-election year contribution limits and source prohibitions and that it will notify contributors of the laws governing disclosure of their contributions and will gather all necessary information from the contributors (full name, complete address, employer name or occupation if applicable, and lobbyist or committee registration number if applicable). The webpage also will require contributors to click a checkbox attesting, among other things, that they are eligible to make contributions under Minnesota law. While these features will likely be beneficial to a treasurer, they are not a requirement for the conclusions reached in this opinion. Regardless of Democracy.com's efforts, the obligation to obtain all required disclosure information and to comply with limits, source restrictions, and other requirements of Chapter 10A remains with the treasurer of the principal campaign committee.

Democracy.com will also allow candidates to take control of their Democracy.com web pages in exchange for payment of a fee that represents the fair market value of the services provided. In the case of a web page that has been taken over by a candidate, Democracy.com will act as a vendor to the candidate and will provide contribution processing and delivery services in exchange for payment by the candidate's principal campaign committee of transaction and processing fees representing the fair market value of the services provided.<sup>2</sup>

Other than providing services to those who pay for them, Democracy.com will not act to influence elections in any manner and will not advocate the election or defeat of any particular candidate, group of candidates, or political party. Democracy.com also will not promote the web page of any particular candidate or the web pages of any particular group of candidates or feature any particular candidate or group of candidates more prominently than another in the promotion of its website.

Democracy.com intends to transmit contributions to recipient candidates via check or direct deposit on a weekly basis. When a contribution is made to a candidate using one of Democracy.com's profile pages (and for those pages that candidates have taken control of if the candidates so agree), Democracy.com will deduct its transaction and processing fees from the total contribution amount before transferring the net amount to the recipient.

Other than the deduction of its fees, Democracy.com will not exercise any discretion or control over contributed funds. While funds processed by Democracy.com will be temporarily held in a Democracy.com merchant account, the funds will not be commingled with the treasury funds of Democracy.com and shall be required, pursuant to an agreement with the contributor, to be delivered promptly to the recipient candidate selected by the contributor. If for any reason the contribution cannot be transmitted or is not accepted by the recipient candidate, the entire contribution amount, including transaction and processing fees, will be promptly refunded to the contributor.

### **Question**

Does Democracy.com's plan to process and deliver contributions to Minnesota state-level candidates through a fee-based service provided to visitors to its website violate any provision of Chapter 10A or require any registration or reporting under Chapter 10A?

### **Opinion**

The registration and reporting requirements of Chapter 10A are triggered by making expenditures to influence the nomination or election of candidates or to promote or defeat a ballot question or by making contributions to candidates, party units, or political committees or funds.

Minnesota Statutes section 10A.27, subdivision 13, provides that an association that is not registered with the Board (which includes Democracy.com) may not contribute more than \$100 to a candidate

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<sup>2</sup> Democracy.com states that it understands that in Advisory Opinions 319 and 369, the Board concluded that a business model in which a company provided internet services, including contribution collection and processing services, to principal campaign committees for a fee did not result in a contribution by an unregistered association or a registration or reporting requirement under Chapter 10A. Based on its understanding of these opinions, Democracy.com has not specifically asked the Board to review its status with respect to the part of its business plan that calls for providing services directly to principal campaign committees. With respect to these services, the Board finds no significant differences between the Democracy.com business model and those described in Advisory Opinions 319 and 369. Thus, the Board concurs with Democracy.com's conclusion that its provision of services to candidates will not result in a contribution by an unregistered association or a requirement that it register as a political committee or fund or report to the Board.



unless the contribution is accompanied by a statement that meets the disclosure requirements of Chapter 10A.

The stated facts indicate that Democracy.com will not engage in any activity to influence the nomination or election of candidates or to promote or defeat a ballot question. Thus, by definition, it does not make expenditures that would trigger a registration requirement. As a result, Democracy.com is brought under the jurisdiction of Chapter 10A only if the transfers facilitated by its website constitute contributions made by Democracy.com itself to the recipient candidates.

In previous advisory opinions, the Board has concluded that providing contribution processing services to candidates for a fee does not result in the contributions being attributed to the processor. See Advisory Opinions 319 and 369. The present request differs from past Board opinions on the subject only in the fact that the fees for processing contributions are to be paid by the contributor rather than by the recipient. Democracy.com seeks guidance on whether this change in the payment relationships results in a different conclusion with respect to the application of Chapter 10A than was reached in previous advisory opinions.

The component of Democracy.com's business plan under review allows people who want to contribute to candidates to do so through Democracy.com's website. Under this plan, the contributor will pay a fee to cover the costs of collecting, processing, and distributing the contribution. This fee will reflect the fair market value of those services. The contribution sent to the candidate will be the net amount of the transaction after the fee has been deducted from the amount the contributor entered into the system.

In this case, Democracy.com will act as a vendor to the individual contributors, providing processing and delivery services. Because there is no business relationship between Democracy.com and the recipient candidate, the amount of the contribution to the candidate is the net amount actually received by the candidate. The fees paid by the contributor are the costs of a business transaction between the contributor and Democracy.com and do not involve the candidate.

The business model that changes the obligation for payment of its services from the candidate to the contributor does not affect the analysis of the transactions for Chapter 10A purposes.

The contributions described are contributions from the various contributors who use Democracy.com's website. They are not contributions from Democracy.com and, thus, do not trigger the disclosure requirements of Minnesota Statutes section 10A.27, subdivision 13.

Because Democracy.com, itself, makes no contributions and, according to the stated facts, engages in no activities to influence the nomination or election of candidates or to promote or defeat a ballot question, it is not required to register as a political committee or fund.

Issued: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

## Relevant Statutes

**Minn. Stat. § 10A.14, subd. 1. First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100, or by the end of the next business day after it has received a loan or contribution that must be reported under section 10A.20, subdivision 5, whichever is earlier.

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

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

**Findings and Order in the Matter of Contributions to the Gazelka (Paul) Volunteer  
Committee from the Minnesota Young Republicans Local Club CD #8**

**Summary of the Facts**

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100. A candidate has 60 days to return a contribution after which time the contribution is deemed to be accepted. Minn. Stat. 10A.15, subd. 3.

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

On the 2012 year-end Report of Receipts and Expenditures filed with the Board, the Gazelka (Paul) Volunteer Committee disclosed receipt of a contribution on November 8, 2012, in the amount of \$170 from the Minnesota Young Republicans Local Club CD #8 (MNYR CD #8). MNYR CD #8 is not registered with the Board. As an unregistered association, MNYR CD #8 was required to provide the appropriate disclosure with its contribution to the Gazelka Committee. No disclosure statement was provided with the contribution.

In an email dated February 28, 2013, Representative Gazelka stated, "It is true I collected a check for \$170 from Mn Young Republicans."

In response to Board notice of the potential violation, Jeffrey Peil, the treasurer of the Minnesota Young Republicans, stated that the MNYR CD #8 was one of eight local clubs established by the Minnesota Young Republicans. Mr. Peil said that "the local clubs are their own independent units" but he had access to each club's financial documents. Mr. Peil confirmed that the MNYR CD #8 issued a check for \$170 to the Gazelka Committee, which was cashed on November 8, 2012. Mr. Peil also provided that the MNYR CD #8 had dissolved in November 2012, and its checking account had been closed with a zero balance on March 1, 2013. Mr. Peil stated that the Gazelka Committee was willing to return the contribution but because the MNYR CD #8 had disbanded, Mr. Peil was not sure if it was appropriate to accept the funds.

This matter was considered by the Board in executive session on May 7, 2013. The Board's decision is based on the correspondence and information received from Representative Gazelka and Jeffrey Peil and on Board records.

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

### **Findings Concerning Probable Cause**

1. There is probable cause to believe that the Gazelka (Paul) Volunteer Committee violated Minnesota Statutes section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that the Minnesota Young Republicans Local Club CD #8 violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 to the Gazelka (Paul) Volunteer Committee without providing the required disclosure with the contribution.
3. There is no probable cause to believe that the violations by the Gazelka (Paul) Volunteer Committee or the Minnesota Young Republicans Local Club CD #8 were intentional or were done with the intent to circumvent the provisions of Chapter 10A.

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

#### **ORDER**

1. The Board imposes a civil penalty of \$70, one times the amount by which the contribution exceeded \$100, on the Gazelka (Paul) Volunteer Committee for accepting a contribution from an unregistered association without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The Gazelka (Paul) 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 thirty days of receipt of this order.
3. The Gazelka (Paul) Volunteer Committee also is directed to forward \$70, the amount of the excess contribution, to the Board in lieu of returning this contribution to the Minnesota Young Republicans Local Club CD #8, which no longer exists. The money should be sent by check or money order payable to the State of Minnesota within thirty days of receipt of this order for deposit into the state general fund. This payment also will constitute payment of the \$70 civil penalty incurred by the Minnesota Young Republicans Local Club CD #8.
4. If the Gazelka (Paul) 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 for the remedies available under Minnesota Statutes section 10A.34.
5. 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 receipt of the excess contribution and payment of the civil penalty imposed herein, this matter is concluded.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

### Relevant Statute

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

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

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

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

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

**Findings and Order in the Matter of Contributions to the Campaign for Ron Kresha  
(House) Committee from the Minnesota Young Republicans Local Club CD #8**

**Summary of the Facts**

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100. A candidate has 60 days to return a contribution after which time the contribution is deemed to be accepted. Minn. Stat. 10A.15, subd. 3.

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

On the 2012 year-end Report of Receipts and Expenditures filed with the Board, the Campaign for Ron Kresha (House) Committee disclosed receipt of a contribution on October 17, 2012, in the amount of \$170 from the Republican Party of Minnesota. This contribution actually was made by the Minnesota Young Republicans Local Club CD #8 (MNYR CD #8). MNYR CD #8 is not registered with the Board. As an unregistered association, MNYR CD #8 was required to provide the appropriate disclosure with its contribution to the Kresha Committee. No disclosure statement was provided with the contribution.

In a letter dated April 23, 2013, Representative Kresha stated that his committee had "incorrectly associated the contribution with the Republican Party of Minnesota." Consequently, the committee "did not realize that the \$170 contribution exceeded the \$100 limit for unregistered clubs."

In response to Board notice of the potential violation, Jeffrey Peil, the treasurer of the Minnesota Young Republicans, stated that the MNYR CD #8 was one of eight local clubs established by the Minnesota Young Republicans. Mr. Peil said that "the local clubs are their own independent units" but he had access to each club's financial documents. Mr. Peil confirmed that the MNYR CD #8 issued a check for \$170 to the Kresha Committee, which was cashed on November 29, 2012. Mr. Peil also provided that the MNYR CD #8 had dissolved in November 2012, and its checking account had been closed with a zero balance on March 1, 2013. Mr. Peil stated that the Kresha Committee was willing to return the contribution but because the MNYR CD #8 had disbanded, Mr. Peil was not sure if it was appropriate to accept the funds.

This matter was considered by the Board in executive session on May 7, 2013. The Board's decision is based on the correspondence and information received from Representative Kresha and Jeffrey Peil and on Board records.

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

### **Findings Concerning Probable Cause**

1. There is probable cause to believe that the Campaign for Ron Kresha (House) Committee violated Minnesota Statutes section 10A.27, subdivision 13, when it accepted a contribution in excess of \$100 from an unregistered association without receiving the appropriate disclosure with the contribution.
2. There is probable cause to believe that the Minnesota Young Republicans Local Club CD #8 violated Minnesota Statutes section 10A.27, subdivision 13 (b), when it made a contribution in excess of \$100 to the Campaign for Ron Kresha (House) Committee without providing the required disclosure with the contribution.
3. There is no probable cause to believe that the violations by the Campaign for Ron Kresha (House) Committee or the Minnesota Young Republicans Local Club CD #8 were intentional or were done with the intent to circumvent the provisions of Chapter 10A.

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

#### **ORDER**

1. The Board imposes a civil penalty of \$70, one times the amount by which the contribution exceeded \$100, on the Campaign for Ron Kresha (House) Committee for accepting a contribution from an unregistered association without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The Campaign for Ron Kresha (House) 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 thirty days of receipt of this order.
3. The Campaign for Ron Kresha (House) Committee also is directed to forward \$70, the amount of the excess contribution, to the Board in lieu of returning this contribution to the Minnesota Young Republicans Local Club CD #8, which no longer exists. The money should be sent by check or money order payable to the State of Minnesota within thirty days of receipt of this order for deposit into the state general fund. This payment also will constitute payment of the \$70 civil penalty incurred by the Minnesota Young Republicans Local Club CD #8.
4. If the Campaign for Ron Kresha (House) Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes section 10A.34.
5. 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 receipt of the excess contribution and payment of the civil penalty imposed herein, this matter is concluded.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

### Relevant Statute

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

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

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

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



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

**Findings and Order in the Matter of Contributions to the DFL House Caucus  
from Burke & Thomas, PLLP**

**Summary of the Facts**

Pursuant to Minnesota Statutes section 10A.27, subdivision 13, candidates, political party units, and political committees registered with the Campaign Finance and Public Disclosure Board may not accept a contribution in excess of \$100 from an association that is not registered with the Board unless the contribution is accompanied by financial disclosure of the donating association's receipts and expenditures in the form specified by statute. Acceptance of a contribution in excess of \$100 without the required disclosure is punishable by civil penalty of up to four times the amount of the contribution over \$100. A party unit has 60 days to return a contribution after which time the contribution is considered to be accepted. Minn. Stat. 10A.15, subd. 3.

Minnesota Statutes section 10A.01, subdivision 6, defines an association as "a group of two or more persons, who are not all members of an immediate family, acting in concert." An unregistered association that makes a contribution of more than \$100 without the required disclosure is in violation of Minnesota Statutes section 10A.27, subdivision 13 (b). Failure to provide the appropriate disclosure with a contribution of more than \$100 is punishable by civil penalty of up to \$1,000.

On the 2012 pre-general-election Report of Receipts and Expenditures filed with the Board, the DFL House Caucus disclosed receipt of a contribution on September 11, 2012, in the amount of \$300 from Burke & Thomas, PLLP. Burke & Thomas is a law firm organized as a partnership under Minnesota Statutes chapter 322. Burke & Thomas is not registered with the Board. As an unregistered association, Burke & Thomas was required to provide the appropriate disclosure with its contribution to the DFL House Caucus. No disclosure statement was provided with the contribution.

In a letter dated December 21, 2012, David Zoll, attorney for the DFL House Caucus, stated that the party unit "was working with the contributor to collect the additional information relating to the \$300 contribution to determine what additional disclosures, if any, would be required pursuant to Minnesota Statutes, Section 10A.27, subd. 13." In a subsequent letter dated February 19, 2013, Mr. Zoll stated, "The DFL House Caucus did not obtain the necessary information prior to the deadline for filing its 2012 year-end report. Accordingly, because it could not confirm that all necessary disclosures were provided, the DFL House Caucus refunded the contribution on January 22, 2013."

In response to Board notice of the potential violation, John Burke, a partner in Burke & Thomas, stated that the firm did not believe that it was an association under Minnesota law. Mr. Burke further stated that it was the firm's "understanding that partnerships, like individuals, are able to make political contributions within the limitation of the law" and that the firm had made its contribution in good faith. Mr. Burke concluded by stating, "If we are mistaken in our understanding of these requirements we will make arrangement to have the contribution returned."

This matter was considered by the Board in executive session on May 7, 2013. The Board's decision is based on the correspondence and information received from David Zoll and John Burke and on Board records.

### **Board Analysis**

An association that is not registered with the Board may not make a contribution over \$100 to a party unit, and a party unit may not accept such a contribution, unless the contribution is accompanied by the disclosure statement required by Minnesota Statutes section 10A.27, subdivision 13. Minnesota Statutes section 10A.01, subdivision 6, defines an association as "a group of two or more persons, who are not all members of an immediate family, acting in concert."

In the present case, Burke & Thomas states that it is not an association under Chapter 10A because it is organized as a partnership. Before 1999, the term "association" was defined as a "business, corporation, firm, partnership, committee, labor organization, club, or any other group of two or more persons, which includes more than an immediate family, acting in concert." In 1999, the legislature eliminated the list of specific types of business organizations in the definition of association but retained the broad definition of this term. 1999 Minn. Laws, ch. 220, § 1. The legislative history of the amendment shows that Minnesota was recognizing many new types of business entities at this time and the legislature was afraid that the specific list of entities in the definition of association would not keep pace with these changes. The legislature therefore created a broad definition of association to ensure that this term would include all types of business entities.

Under the current definition, Burke & Thomas is an association because it is "a group of two or more persons, who are not all members of an immediate family, acting in concert." As an unregistered association, Burke & Thomas was required to provide a disclosure statement with its \$300 contribution to the DFL House Caucus and the DFL House Caucus was required to obtain this statement before accepting the contribution. Because the disclosure statement was not provided or obtained, both Burke & Thomas and the DFL House Caucus violated Minnesota Statutes section 10A.27, subdivision 13.

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

### **Findings Concerning Probable Cause**

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

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

## ORDER

1. The Board imposes a civil penalty of \$200, one times the amount by which the contribution exceeded \$100, on the DFL House Caucus for accepting a contribution from an unregistered association without the disclosure required by Minnesota Statutes section 10A.27, subdivision 13.
2. The DFL House Caucus is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
3. The DFL House Caucus is directed to forward to the Board a copy of the check used to return the excess contribution to Burke & Thomas, PLLP, within thirty days of receipt of this order.
4. The Board imposes a civil penalty of \$200, one times the amount that the contribution exceeded \$100, on Burke & Thomas, PLLP, for making a contribution in excess of \$100 without providing the disclosure required by Minnesota Statutes section 10A.27, subdivision 13 (b).
5. Burke & Thomas, PLLP, is directed to forward to the Board payment of the civil penalty by check or money order payable to the State of Minnesota within thirty days of receipt of this order.
6. If the DFL House Caucus or Burke & Thomas, PLLP, does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action for the remedies available under Minnesota Statutes section 10A.34.
7. The Board investigation of this matter is hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11, and upon receipt of the copy of the check used to return the excess contribution and payment of the civil penalties imposed herein, this matter is concluded.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

### Relevant Statutes

**Minnesota Statutes section 10A.01, subdivision 6. Association.** “Association” means a group of two or more persons, who are not all members of an immediate family, acting in concert.

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

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

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

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

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

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

**Findings and Order in the Matter of a Contribution made by  
The Tom Emmer for Governor Committee  
To a Candidate Seeking Local Office**

**Summary of the Facts**

Minnesota Statutes section 10A.27, subdivision 9, clause (d), prohibits contributions from a principal campaign committee to a person who seeks nomination or election to a federal or local political subdivision office. There is no civil penalty provided for a principal campaign committee that violates this statute, but the amount of a prohibited contribution must be returned to the principal campaign committee.

The 2012 year-end Report of Receipts and Expenditures filed by the Tom Emmer for Governor Committee reported a contribution of \$300 to the Sue Jeffers for Ramsey County Commissioner campaign committee.

By letter dated March 13, 2013, Board staff notified Tom Emmer Sr., treasurer, of the potential violation. In a response dated April 12, 2013, Mr. Emmer confirmed the committee made the contribution.

The matter was considered by the Board in executive session on May 7, 2013. The Board's decision was based on the correspondence received from Tom Emmer Sr. and on Board records.

**Based on the above Summary of Facts and the Relevant Statute, the Board makes the following:**

**Findings Concerning Probable Cause**

1. There is probable cause to believe that the Tom Emmer for Governor Committee contributed \$300 to a candidate seeking a local political subdivision office in violation of Minnesota Statutes section 10A.27, subdivision 9, clause (d).
2. There is no probable cause to believe that this violation was committed with the intent to violate the requirements of Minnesota Statutes Chapter 10A.

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

**ORDER**

1. Tom Emmer Sr. is ordered to recover the contribution from the Sue Jeffers for Ramsey County Commissioner committee and deposit the funds into the account of the Tom Emmer for Governor Committee. Mr. Emmer shall forward to the Board a copy of the check received from the Sue Jeffers for Ramsey County Commissioner committee and confirmation of deposit within 30 days from receipt of this order.

2. The record in this matter and all correspondence is hereby entered into the public record in accordance with Minnesota Statutes section 10A.02, subdivision 11, and upon payment of the funds specified herein, and receipt of the copy of the check used to return the contribution, this matter is closed.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

**Relevant Statute**

**Minnesota Statutes section 10A.27, subdivision 9, clause (d)** ...A candidate or the treasurer of a candidate's principal campaign committee must not make a contribution from the principal campaign committee to a candidate for political subdivision office in any state.

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

**Findings and Order in the Matter of the Investigation of Brandon Anderson and the  
Brandon D. Anderson for SD6 committee.**

**The Allegations**

In July 2012, the Campaign Finance and Public Disclosure Board received notice of a stream of email messages that originated with Brandon Anderson, the Republican candidate for the legislative seat in Senate District 6. In the emails, Mr. Anderson proposed a plan to obtain the contributions necessary to qualify for public subsidy. The exact nature of Mr. Anderson's plan was not clear in the emails. It appeared that Mr. Anderson was proposing to reimburse individual candidates who donated to his committee or suggesting that he and the other candidates make equivalent contributions to each other's committees.

On July 26, 2012, the Board received a formal complaint regarding Mr. Anderson and the Brandon D. Anderson for SD6 committee. The complaint alleged that the fundraising scheme described in the emails was an attempt to defraud the taxpayers by obtaining public subsidy without actually raising the required contributions.

The Board's Executive Director reviewed the complaint and determined that it did not identify any provision in Chapter 10A that may have been violated. The Executive Director therefore declined to accept the complaint for investigation.

The Executive Director, however, brought the matter to the Board's attention at its August 7, 2012, meeting at which time the Board initiated its own investigation into Mr. Anderson's actions. The purpose of the investigation was to determine whether Mr. Anderson's fundraising mechanism violated the provisions of Chapter 10A or disqualified him from receiving public subsidy.

**The Investigation**

During its investigation, the Board obtained copies of Mr. Anderson's initial email message and the email responses to that message. Mr. Anderson and the seven candidates who contributed to the Anderson committee also responded to written questions sent to them by the Board. The following narrative is taken from those documents and Board records.

To qualify for public subsidy, the Brandon D. Anderson for SD 6 committee had to receive at least \$3,000 in contributions from people eligible to vote in Minnesota. The deadline to receive those contributions was July 23, 2012. Only the first \$50 of an individual's contribution could be counted toward the \$3,000 threshold.

On July 17, 2012, Mr. Anderson sent an email to the other Republican candidates for the state senate. Mr. Anderson began his email as follows, "Send me \$50 and I'll send you \$50. Simple. I am prepared to do such. I have the personal funds available."

Mr. Anderson explained that he was still \$800 short of the \$3,000 threshold needed to qualify for public subsidy and, due to personal and work commitments, he would not have the time necessary to raise those funds before the deadline. Mr. Anderson said that he got the idea to solicit donations from the other Republican candidates because they either were, or had been at some point, first-time candidates like himself and they all had a vested interest in electing other Republican legislators. Mr. Anderson then said, "So, send me \$50 and I'll send you \$50. Or if you have a spouse, go ahead and send \$100 and I'll return the same." Mr. Anderson concluded by saying "Checks or cash to 'Brandon D. Anderson for SD6'" and giving the address of his campaign committee.

Between July 17 and July 21, 2012, seven Republican candidates and five of their spouses made \$50 contributions to the Brandon D. Anderson for SD6 committee using personal funds. Mr. Anderson had made a \$50 personal contribution to one of these donors prior to his July 17 email and did not make any additional contributions to this donor. However, Mr. Anderson made contributions using personal funds to the principal campaign committees of five of the seven donors after his committee received their contributions in response to his email. Mr. Anderson's contribution to each of these principal campaign committees matched the amount that the candidate and that candidate's spouse had given to the Anderson committee.

Three of the five candidate committees promptly returned Mr. Anderson's contribution. One candidate committee kept Mr. Anderson's \$50 donation; the other kept Mr. Anderson's \$100 donation. There is no evidence that Mr. Anderson reimbursed any individual for a donation to the Anderson committee.

Board staff routinely conducts targeted audits of the contribution records of candidates who raised only 10% more in cash contributions from individuals than the amount required to qualify for public subsidy. The audit threshold for a state senate candidate is \$3,300. The Brandon D. Anderson for SD6 committee reported raising \$3,058.53 in cash contributions from individuals. The Board therefore audited the Anderson committee's contribution records prior to this investigation. After examining the committee's financial records, Board staff concluded that the Anderson committee had raised the contributions necessary to qualify for public subsidy.

### **Board Analysis**

The Board has the authority under Minnesota Statutes section 10A.02, subdivision 10, to investigate any matter related to the statements and reports that must be filed with it under Chapter 10A. The first issue raised by Mr. Anderson's fundraising mechanism is whether the donations that the Anderson committee received from the other candidates can be counted toward the contribution threshold needed to qualify for public subsidy.



Minnesota Statutes section 10A.323 provides that to be eligible to receive public subsidy,

a candidate or the candidate's treasurer must file an affidavit with the Board stating that between January 1 of the previous year and the cutoff date for transactions included in the report of receipts and expenditures due before the primary election the candidate has accumulated contributions from persons eligible to vote in this state in at least the amount indicated for the office sought, counting only the first \$50 received from each contributor.

The amount required to qualify for public subsidy for a state senate candidate is \$3,000.

In the present case, the Anderson committee received \$600 of the required \$3,000 threshold amount from the personal funds of other candidates or their spouses. Nothing in Minnesota Statutes section 10A.323 prohibits a candidate from counting a contribution from another candidate or a candidate's spouse toward the threshold required to qualify for public subsidy. Instead, the only requirement in the statute is that the contribution be from a person eligible to vote in Minnesota. There is nothing in the record that suggests that any of the donating candidates or their spouses were not eligible to vote in this state. Consequently, Mr. Anderson did not violate section 10A.323 by counting donations from other candidates or their spouses toward the contribution threshold needed to qualify for public subsidy.

Chapter 10A requires a candidate to raise a specified amount through small contributions from eligible voters in order to qualify for public subsidy. The purpose of this requirement is to ensure that a candidate has at least a minimal amount of voter support before state public subsidy money will be provided to assist in that candidate's election effort. Although an exchange of contributions between candidates does not violate Chapter 10A, it is inconsistent with this purpose. Nevertheless, if such contributions are to be excluded from those that qualify a candidate for public subsidy, it would be up to the legislature to implement a statutory change.

The second issue raised by Mr. Anderson's fundraising mechanism is whether this scheme circumvented any provisions in Chapter 10A. Minnesota Statutes section 10A.29 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."

If the facts in this case had shown that Mr. Anderson had given money to any individual in return for that individual's contribution to the Anderson campaign, that reimbursement would have been circumvention in violation of section 10A.29 because Mr. Anderson would have been redirecting his own money to his own committee through a third-party contributor.

Instead of returning money to the individual who contributed to the Anderson campaign, however, Mr. Anderson contributed money to that individual's campaign committee. The recipient campaign committee is an entity closely aligned with the contributing candidate and Mr. Anderson's contribution arguably provided an indirect benefit to that individual candidate.

Under Minnesota Statutes section 211B.12, however, money given to a candidate's committee can be used only for purposes reasonably related to the conduct of an election campaign or for a noncampaign disbursement as defined in Chapter 10A. Because this statute strictly limits how the candidate's committee could use Mr. Anderson's contribution, that contribution cannot be considered a return of contribution to the contributing individual, or a redirection of a contribution through that individual. Mr. Anderson's fundraising mechanism therefore did not constitute circumvention under section 10A.29.

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

**Finding Concerning Probable Cause**

There is no probable cause to find that Brandon Anderson or the Brandon D. Anderson for SD6 committee violated Minnesota Statutes sections 10A.29 or 10A.323.

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

**ORDER**

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.02, subdivision 11.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

**Relevant Statutes**

**Minn. Stat. § 10A.029 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.

**Minn. Stat. § 10A.323 Affidavit of Contributions.** In addition to the requirements of section 10A.322, to be eligible to receive a public subsidy under section 10A.31 a candidate or the candidate's treasurer must file an affidavit with the board stating that between January 1 of the previous year and the cutoff date for transactions included in the report of receipts and expenditures due before the primary election the candidate has accumulated contributions from persons eligible to vote in this state in at least the amount indicated for the office sought, counting only the first \$50 received from each contributor:

....

(4) candidates for the senate, \$3,000; . . .

....

The affidavit must state the total amount of contributions that have been received from persons eligible to vote in this state, disregarding the portion of any contribution in excess of \$50.

....

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

**Findings and Order in the Matter of the Investigation of the Reports of Receipts and Expenditures of the Republican Party of Minnesota**

**The Allegations**

On January 4, 2012, the Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota (CCM) regarding the Republican Party of Minnesota (RPM). The complaint arose out of the 2010 gubernatorial election recount and its financing and out of revelations made by the RPM in 2011 that it had unpaid obligations that had not previously been reported to its executive committee or to federal and state disclosure authorities. The RPM subsequently filed amended year-end reports of receipts and expenditures for 2009 and 2010 with the Board.

On July 13, 2012, the Board issued findings and an order resolving the allegations in the CCM complaint. In its decision, the Board determined that the RPM's initial 2009 and 2010 reports of receipts and expenditures did not disclose all of the party's unpaid obligations as required by Minnesota Statutes Chapter 10A. The Board also stated that given the disarray in the RPM's financial records, it could not be confident that the amended reports of receipts and expenditures that the RPM had filed with the Board properly disclosed all of the party's financial transactions. The Board therefore instructed the Executive Director to continue the Board's investigation of the RPM to determine whether the amended reports were accurate.

**The Investigation**

In its order resolving the CCM complaint, the Board concluded that the RPM had most of the invoices, receipts, and payment records documenting its financial activities. Those records, however, were in disarray and the RPM had not maintained sufficient worksheets or other statements to explain the relationship between its internal financial reports and the reports that it was required to file with the Board.

Bron Scherer, the RPM's current treasurer, gave a sworn statement to the Board during the investigation of the CCM complaint. Mr. Scherer is a certified public accountant. In his statement, Mr. Scherer described the actions that the RPM had taken to ensure the accuracy of its internal and external financial reports.

Mr. Scherer stated that when he assumed the office of treasurer in January 2012, he looked at every invoice that had been received by the RPM since the beginning of 2009. Bob Wyant, the RPM's in-house accountant, and Mike Vekich, a certified public accountant who was helping with the RPM's internal audit, also looked at every invoice received during the relevant years. Together, the three men organized the invoices, determined whether each expenditure was for

a state or federal purpose, and made sure that all of the expenditures were recorded in the RPM general ledger and accounts payable system.

Mr. Scherer and Mr. Wyant also contacted vendors directly to ask whether the RPM still owed them money and, if it did, to obtain the current amount of the outstanding debt. Mr. Scherer then randomly chose two quarters in 2011 and verified that all invoices and receipts applicable to that time period actually had been entered accurately into the RPM's financial records system. Based on the actions described above and the amount of time that had passed since the RPM had received any bills from unknown creditors, Mr. Scherer concluded that the RPM had discovered all of its unpaid obligations.

After the review of the RPM's financial documents was complete, Mr. Scherer prepared amendments to the RPM's 2009 and 2010 reports of receipts and expenditures and filed those amended reports with the Board. Mr. Scherer also prepared an amended 2011 report that reflected the changes that had been made to the 2009 and 2010 reports.

Mr. Scherer also provided information on the system of internal financial controls that the RPM instituted in January 2012. Under this system, the RPM has an official budget that is approved by the executive and state central committees. The RPM chairman and treasurer both sign off on all expenditures and outside contracts. The party also created a financial controls and review committee. This committee developed and documented procedures for the internal handling of receipts and expenditures. Under the new procedures, all invoices are entered into the RPM's general ledger and accounts payable system when they are received. In addition, the finance director now reports directly to the treasurer to ensure that the treasurer has oversight and control over the finance director's activities. The executive committee also receives regular and comprehensive financial statements to ensure that this committee has the information necessary to actively review and oversee the party's financial activities.

To confirm the accuracy of the RPM's reports of receipts and expenditures, the Board examined the RPM's current accounts payable aging reports and the invoices and worksheets supporting the amounts listed on those reports. The Board also surveyed a sample of the vendors listed on the RPM's year-end reports. The Board asked each vendor how much the RPM had bought from that vendor during each reporting year, how much the RPM had paid that vendor during each year, and how much the RPM owed to that vendor at the end of each year. The Board compared the financial information listed above to the RPM's amended reports of receipts and expenditures for 2009, 2010, and 2011 and to the RPM's 2012 year-end report. This comparison did not reveal any discrepancies between the RPM's financial records and the reports that it had filed with the Board.

At the Board's request, the RPM also reconciled the balance on its December 31, 2012, bank statement with the balance on its 2012 year-end report of receipts and expenditures. This reconciliation did not reveal any discrepancies between the RPM's financial records and the reports filed with the Board.

## Board Analysis

The Board has the authority under Minnesota Statutes section 10A.02, subdivision 10, to investigate any matter related to the statements and reports that must be filed with it under Chapter 10A. Minnesota Statutes section 10A.20, subdivision 3, requires political parties to file with the Board periodic reports showing all their expenditures. An expenditure is made on the date that the political party incurs the obligation to pay that expense and includes advances of credit to the party. See Minn. Stat. § 10A.01, subd. 9 (defining expenditure). Both paid and unpaid expenses therefore must be disclosed on the party's reports. In addition, all expenditures to the same vendor that exceed \$100 in the aggregate must be itemized and the purpose for these expenditures must be disclosed. Minn. Stat. § 10A.20, subd. 3.

In the present case, there is no dispute that the 2009, 2010, and 2011 reports of receipts and expenditures that the RPM initially filed with the Board were inaccurate because they did not list all of the RPM's unpaid expenditures. A political party, however, can remedy violations of the statutory reporting requirements by accurately amending its reports. In this case, the RPM has submitted amended reports for 2009, 2010, and 2011.

Before these amended reports were submitted, three financial professionals repeatedly examined all of the party's financial documents for the relevant years. These professionals also contacted vendors directly to discover missing obligations and waited for unknown creditors to submit bills. The Board's examination of the RPM's financial documents and its survey of the RPM's vendors did not reveal any discrepancies between the RPM's financial records and the amended reports that the party filed with the Board. Given this evidence, there is no probable cause to conclude that the RPM's amended reports for 2009, 2010, and 2011 do not accurately disclose all of the party's financial transactions for those years.

In addition, in 2012, the RPM instituted a system of financial controls to ensure that all expenditures are disclosed in accordance with Chapter 10A on future reports filed with the Board. The Board's examination of the RPM's financial documents and its survey of the RPM's vendors did not reveal any discrepancies between the RPM's financial records and the 2012 year-end report filed with the Board. Finally, the RPM was able to reconcile the balance on its December 31, 2012, bank statement with the balance on its 2012 year-end report of receipts and expenditures. Consequently, there is no probable cause to conclude that the RPM's 2012 year-end report does not accurately disclose the party's financial transactions for that year.

Based on the efforts of the RPM to file accurate amended reports, and the controls established by the party in 2012, the Board concludes that no further investigation into the RPM financial records is required or warranted.

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

**Finding**

The Board finds that the Republican Party of Minnesota has filed amended year-end Report of Receipts and Expenditures for 2009, 2010, and 2011, that accurately disclose the party's financial transactions during those years.

**Based on the above Finding, the Board issues the following:**

**ORDER**

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.02, subdivision 11.

Dated: May 7, 2013

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Andrew M. Luger, Chair  
Campaign Finance and Public Disclosure Board

**Relevant Statutes**

**Minn. Stat. § 10A.01, subd. 9. Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

An expenditure is considered to be made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

. . . .

**Minn. Stat. § 10A.20, subd. 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.

(h) The report must disclose the sum of all expenditures made by or on behalf of the reporting entity during the reporting period.

(i) The report must disclose the amount and nature of an advance of credit incurred by the reporting entity, continuously reported until paid or forgiven. If an advance of credit incurred by the principal campaign committee of a candidate is forgiven by the creditor or paid by an entity other than that principal campaign committee, it must be reported as a donation in kind for the year in which the advance of credit was made.

. . . .