

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

.....
**September 12, 2018
St Croix Room
Centennial Office Building**

.....
MINUTES

The meeting was called to order by Chair Flynn.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (arrived during request to accept affidavit of contributions), Swanson

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

MINUTES (August 16, 2018)

After discussion, the following motion was made:

Member Leppik's motion: To approve the August 16, 2018, minutes as drafted.

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

CHAIR'S REPORT

A. Meeting schedule

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, October 3, 2018.

REQUEST TO ACCEPT AFFIDAVIT OF CONTRIBUTIONS

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that one of the requirements for a candidate to qualify for public subsidy payments is to file an affidavit of contributions by the deadline for filing the pre-primary report of receipts and expenditures. Mr. Sigurdson said that at the August 16, 2018, meeting, the Board granted a request from a candidate to accept an affidavit of contributions that was filed after the deadline. Mr. Sigurdson said that a second candidate, Rep. Matt Grossell, wanted to address the Board and ask it to accept his affidavit, which also had been filed after the deadline. Mr. Sigurdson stated that the facts underlying Rep. Grossell's request were very similar to the facts underlying the previous request.

Rep. Grossell then appeared before the Board. Rep. Grossell said that he had called Board staff on the day that the pre-primary report was due and had asked if everything for his committee was in. Based on the staff response, Rep. Grossell believed that he had timely filed everything necessary to

qualify for public subsidy. Rep. Grossell therefore asked the Board to accept his affidavit of contributions.

Mr. Sigurdson then clarified that as with the previous request, staff had spoken with Rep. Grossell on the affidavit due date but had believed that Rep. Grossell was asking only whether the committee's pre-primary report had been filed, not the affidavit of contributions.

After discussion, the following motion was made:

Member Leppik's motion: To accept the Grossell affidavit of contributions under the circumstances of this case with Mr. Grossell appearing before the Board.

Vote on motion: Motion passed (4 ayes, 2 nays).

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson gave members information about the number and amount of public subsidy payments that had been made on August 17, 2018. Mr. Sigurdson also said that since the last meeting, staff had been busy responding to questions from regulated parties and the public, preparing for the next campaign finance report due on September 25, 2018, and drafting the lobbyist summary and annual report. Mr. Sigurdson stated that the Department of Revenue soon would be issuing a report on the use of the Political Contribution Refund program. Finally, Mr. Sigurdson introduced the Board's new legal/management analyst, Andrew Olson. Mr. Olson briefly summarized his work history and experience. Members then welcomed Mr. Olson to the agency.

ADVISORY OPINION 448 – LOAN TO CANDIDATE

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson said that this advisory opinion request had been laid over from the August meeting and that it concerned whether a loan made by an individual to a candidate for the purpose of allowing the candidate to campaign full time would be subject to the contribution limits and reporting requirements in Chapter 10A. Mr. Sigurdson discussed the changes that had been made to the draft since the last meeting and said that the revised draft clarified the statutory analysis on which the opinion was based. Mr. Sigurdson said, however, that the revised draft reached the same conclusion as the previous draft, which was that the loan was subject to the reporting requirements and contribution limits in Chapter 10A.

After discussion, the following motion was made:

Member Swanson's motion: To adopt the advisory opinion as drafted.

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

ENFORCEMENT REPORT

A. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
Pilgrim's/JFC LLC dba GNP Co (fka Gold'N Plump Poultry)	\$1,000 LFF, \$700 CP	3/15/2018 principal report	Pilgrim's purchased JFC early in January 2017 and all administrative staff responsible for Minnesota lobbying and principal reports had left the company by June 2017. Pilgrim's therefore did not know of need to file principal's report in March 2018.	Member Leppik	To waive the late filing fee and civil penalty	Motion failed (2 ayes, 3 nays, 1 abstention)
Haley for House	\$100 LFF	2018 pre-primary report	Treasurer attempted to upload report using CFR software and received a message that she believed showed that report had been filed. Treasurer, however, actually had downloaded information from the Board instead of sending report to the Board. When treasurer learned that report had not been filed, she called Board staff and obtained help to upload report.	Member Moilanen	To waive the late filing fee	Passed unanimously
Minn AFL-CIO	\$175 LFF	2018 1 st quarter report	Treasurer attempted to upload report using CFR software and received a message that she believed showed that report had been filed. Treasurer, however, actually had not submitted entire report due to loss of internet connection. Board records show that an attempt to file report had been made on due date. Previous waivers - In 2016, a 24 hr notice LFF was reduced from \$1,000 to \$250. In 2012, four 24 hr notice LFFs were reduced from \$1,000 to \$0 due to notification error in software.	Member Rosen	To waive the late filing fee	Passed unanimously
Kenneth Bush for State Rep	\$350 LFF	2018 pre-primary report	Treasurer thought that she had filed report but she actually had submitted affidavit of contributions. When treasurer learned that report had not been filed, she contacted Board staff and obtained help correcting the negative balance that had prevented report from being filed. Treasurer states that neither she nor candidate received reminder calls or emails.	Member Swanson	To waive the late filing fee	Passed unanimously
Lois Conroy for Judge	\$100 LFF	2018 pre-primary report	Treasurer is asking for a waiver. Committee has had a zero balance since December 31, 2013. Treasurer has filed no-change reports since that date.	Member Leppik	To waive the late filing fee contingent on the committee terminating	Motion passed (5 ayes, Rosen recused)

					after the election	
4 th Senate District DFL	\$250 LFF	2018 pre-primary report	Party unit did not notify Board that it had new treasurer. When former treasurer received report reminder, he sent email saying there had been no changes since last report. When staff notified former treasurer that actual report was needed, he completed and filed no-change report.	Member Leppik	To reduce the late filing fee to \$200	Motion passed (5 ayes, Rosen absent)
MN School Counselors Assn PAC	\$550 LFF	2018 pre-primary report	Treasurer did not see reminder email until he returned from out-of-state trip. Treasurer then filed a no-change report.	Member Leppik	To reduce the late filing fee to \$150	Motion passed (5 ayes, Rosen absent)
Houston County RPM	\$100 LFF	2018 pre-primary report	Treasurer did not file report on time because he needed additional information to ensure that he reported a transaction correctly.	Member Swanson	To waive the late filing fee	Passed unanimously
Power by the People	\$150 LFF	2018 pre-primary report	Treasurer did not check her mail on time. When treasurer checked mail, she immediately filed report.	No motion		

Informational Items

A. Payment of a late filing fee for 2017 year-end report of receipts and expenditures

Bois Forte Political Ed Fund, \$200
 Dennis Smith, \$275
 Unidos Votamos Political Fund, \$1,000
 Wade Fremling, \$500.05

B. Payment of a late filing fee for June 15, 2016, lobbyist disbursement report

Dan McGrath, \$123.19

C. Payment of a late filing fee for June 15, 2018, lobbyist disbursement report

Jason Craig, \$25
 Thomas Keliher, \$300

D. Payment of a late filing fee and civil penalty for 2016 year-end report

Bruce Patterson, \$193.33

E. Payment of a late filing fee for 2017 candidate economic interest statement

Ross Aigner, \$60.94

F. Payment of a civil penalty for 2016 excess party unit contribution

Jerald Loud, \$450

G. Deposit to the General Fund

Amy Dawson, \$329.83

H. Payment of a late filing fee for June 14, 2018, report of receipts and expenditures

MEDPAC Minn Medical PAC, \$50
MN Jobs Coalition Legislative Fund, \$25

I. Payment of a late filing fee for 2016 pre-primary-election report of receipts and expenditures

Lawrence Patwin, \$7.20

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

Abdalla Abdulkadir, \$50
Alarm PAC, \$250
Michael Ford, \$50
Minn. State Bar Assoc. \$50
Pipe Fitters Local 539, \$150
TwinWest Business Advocacy Fund, \$350
TwinWest Chamber of Commerce, \$350
Water is Life, \$100

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn told members that complaints in four matters had been served on September 10, 2018, and that the report would be updated with that information for the next meeting.

OTHER BUSINESS

Ms. Pope told members that since the last meeting, the chair had dismissed a complaint after determining that it did not state a prima facie violation of Chapter 10A. Ms. Pope presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Ms. Pope stated that the complaint involved a newspaper ad that did not include a disclaimer and that was not reported by the subject candidate or the sponsoring association. Ms. Pope stated that the chair had concluded that because the complaint contained no evidence supporting its allegation that the candidate named in the ad was responsible for it, the complaint did not state a prima facie violation by the candidate of the disclaimer or reporting requirements. The chair further concluded that because the ad did not include words of express advocacy, it was not an independent expenditure under Chapter 10A. The complaint therefore did not state a prima facie violation of the independent expenditure disclaimer or reporting requirements.

There was no other business to report.

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the chair had the following to report into regular session:

Order of dismissal regarding the John Lesch for State Representative committee

Final report for the public subsidy qualifying contributions audit

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

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Memorandum regarding request to accept affidavit of contributions

Memorandum regarding Advisory Opinion 448- Loan to candidates

Draft public advisory opinion 448

Legal report

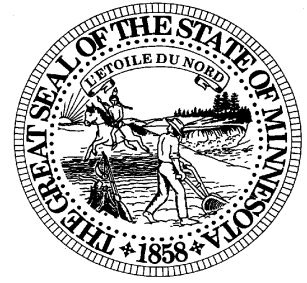
Memorandum regarding prima facie determination finding no violation

Order of dismissal regarding the John Lesch for State Representative committee

Final report for the public subsidy qualifying contributions audit

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 5, 2018

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Request to accept affidavit of contributions after deadline

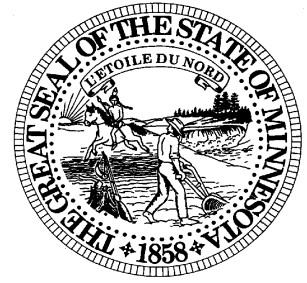
At the August 16, 2018, meeting the Board granted a request from Gary Porter to accept an affidavit of contributions filed on August 1, 2018. The filing of the affidavit of contributions is required by Minnesota Statutes section 10A.323 in order for a candidate to qualify for a public subsidy payment. The affidavit certifies that the principal campaign committee collected a set amount in cash contributions from individuals eligible to vote in Minnesota counting only the first \$50 of a contribution. For the office of state representative, the required amount is at least \$1,500.

On August 13, 2018, staff sent all candidates who had signed a public subsidy agreement but had not filed the affidavit of contributions a letter stating that because the Board had not received an affidavit of contributions from the committee, the candidate would not be paid a public subsidy payment. In response to the letter Matt Grossell, who is a candidate for House District 2A, contacted the executive director. Mr. Grossell had signed the public subsidy agreement, and stated that he believed he had filed all necessary documents to qualify for the public subsidy payment. Very similar to the situation with Mr. Porter, there apparently was confusion between Mr. Grossell and staff as to whether the timely filing of the pre-primary report meant that all required documents had been filed by the committee. The Grossell committee reports show that the committee received sufficient contributions from individuals to qualify for the public subsidy payment.

Mr. Grossell has now filed the affidavit of contributions, and will be present at the September Board meeting to request that the Board accept the affidavit of contributions and issue his committee the public subsidy payment. If authorized, the public subsidy payment to Mr. Grossell's campaign will be \$3,113.

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 5, 2018

To: Board members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory Opinion 448 – Loan to a candidate for the purpose of allowing the candidate to campaign full time.

The Board considered and laid over a draft Advisory Opinion 448 at the August 16, 2018, meeting. This advisory opinion was requested on behalf of a candidate with a registered campaign committee who is running for office this year. The candidate does not wish to make the request public. Therefore, both a public and a nonpublic draft version of the opinion are provided for the Board's review.

The request asks a series of questions all based on the candidate potentially accepting a personal loan from an individual. As provided in the request the loan is being offered so that the candidate will be able to campaign full time.

Staff has rewritten the draft opinion to clarify the statutory analysis on which the opinion is based. However, the draft opinion reaches the same overall conclusion as the draft opinion laid over in August; the proceeds of a loan made to benefit a candidate's campaign must be reported under the provisions of Chapter 10A. The opinion further provides that the loan described in the facts of the opinion request is subject to the applicable contribution limits found in Chapter 10A.

Attachments:

Advisory opinion request

Nonpublic version of draft advisory opinion

Public version of draft advisory opinion

**State of Minnesota
Campaign Finance & Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY THE
REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

ADVISORY OPINION 448

SUMMARY

A principal campaign committee is the vehicle for depositing and reporting a loan made to benefit a candidate's campaign. A loan to a principal campaign committee from an individual is subject to the applicable reporting requirements and limits found in Chapter 10A.

Facts

As a representative of a candidate with a registered principal campaign committee, you ask the Campaign Finance and Public Disclosure Board for an advisory opinion on behalf of the candidate based on the following facts:

1. The candidate has filed for a state-level office and will appear on the ballot for that office this year. The candidate wishes to devote his or her full time to the campaign, but does not have the financial resources to campaign full time.
2. An individual who has no role in the candidate's campaign is willing to make a loan to the candidate so that the candidate may campaign full time. The funds for the loan will not come from a corporation or a financial institution. The individual who is willing to make the loan would use only his or her personal funds for the loan.
3. The loan would be made with a written agreement that would provide for repayment of the loan over a set number of years, and a market value interest rate would apply to the loan.
4. The loan agreement would contain the following provisions:
 - a) None of the proceeds of the loan will be used for political purposes in any way;
 - b) The proceeds of the loan will not be intermingled with the candidate's principal campaign committee funds;
 - c) The loan must be repaid from the candidate's personal funds; and
 - d) The intent of the loan is to cover personal living expenses that would ordinarily be covered by the candidate's personal income.
5. For the purposes of issue number 5, the Board may assume that the individual making the loan is aware that providing information on a planned independent expenditure to the candidate, or any agent of the candidate, would defeat the independence of the expenditure.

Issue One

Is the loan subject to any reporting requirements under Minnesota Statutes Chapter 10A?

Opinion One

Yes. The loan is to an individual who is a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10. As required by Minnesota Statutes section 10A.105, subdivision 1, the candidate has formed and has registered a principal campaign committee for the office sought. The principal campaign committee is the mechanism for making and reporting all financial activity related to the candidate's campaign.

Chapter 10A does not distinguish contributions made to the candidate from contributions made to the candidate's principal campaign committee, or provide a way to exempt contributions made directly to the candidate from the reporting requirements. To insure that the reports of the principal campaign committee disclose all contributions made to benefit the campaign, Minnesota Statutes section 10A.15, subdivision 3, provides in part that "[a]ll contributions received by or on behalf of a candidate ... must be deposited in an account designated "Campaign Fund of (name of candidate...)."

Indeed, the compliance requirements of Chapter 10A apply to the candidate, with the principal campaign committee providing the disclosure to ensure that the candidate meets those requirements. For example, the voluntary campaign spending limits apply to the candidate who signs the public subsidy agreement. Minn. Stat. § 10A.25, subd. 1. Further, the contribution limits in Chapter 10A are applied to the candidate for a given office, with the direction that "a candidate must not permit the candidate's principal campaign committee to accept" contributions in excess of those limits. Minn. Stat. § 10A.27, subd. 1. Minnesota Statutes section 10A.20 then specifies the timing and contents of the reports that the candidate's principal campaign committee must file with the Board to disclose those contributions and expenditures.

Therefore, the loan, while made to the candidate, is reportable under Chapter 10A if it is a contribution to the candidate's campaign. The requester states that the loan agreement will provide that none of the loan proceeds will be used for political purposes in any way, and because of this the funds from the loan will not be deposited in the principal campaign committee account. By themselves, these facts could lead to the conclusion that the loan is not a contribution to the candidate's committee. However, the requester's statement stands in contradiction to the stated purpose of the loan. As stated in the facts of the opinion request, the individual who is offering to make the loan is doing so knowing that the funds will be used to allow the candidate to campaign full time. That is the only stated reason the loan is being offered, or would be accepted.

The expected direct result of the loan is to increase the candidate's availability to campaign for office. The Board does not find a way to reconcile that result with the statement that the funds from the loan will not be used for a political purpose. Chapter 10A does not attempt to delineate all the ways in which money is used for a political purpose, but it does define reportable campaign expenditures broadly to include expenditures "...made for or incurred for the purpose of influencing the nomination or election of a candidate...". Minn. Stat. § 10A.01, subd. 9.

With the stated purpose of the loan so clearly tied to the candidate's campaign for office, the Board concludes that the loan is a contribution to the candidate, and if made must be reported by the principal campaign committee as required in Minnesota Statutes section 10A.20, subdivision 3 (e).

If the Board were to recognize a way for individuals to make loans to candidates to benefit the campaign outside of the reporting requirements of Chapter 10A, then the individual making the loan could avoid applicable contribution limits. Additionally the individual making the loan would have anonymity not available to other principal campaign committee contributors. The end result would be a circumvention of the contribution limits and disclosure requirements of Chapter 10A.

Issue Two

Would this loan constitute a contribution from the individual who wishes to make the loan to the candidate or the candidate's principal campaign committee?

Opinion Two

As explained in Issue One, the loan must be reported by the candidate's principal campaign committee. A loan may become a contribution under the circumstances described in Minnesota Statutes, section 10A.01, subdivision 11 (b):

(b) "Contribution" includes a loan or advance of credit to a political committee, political fund, principal campaign committee, or party unit, if the loan or advance of credit is: (1) forgiven; or (2) repaid by an individual or an association other than the political committee, political fund, principal campaign committee, or party unit to which the loan or advance of credit was made. If an advance of credit or a loan is forgiven or repaid as provided in this paragraph, it is a contribution in the year in which the loan or advance of credit was made.

Because a loan may become a contribution, a loan from an individual may not be in an amount greater than the contribution limit for the office sought. Further, the loan may not be endorsed for an amount greater than the applicable contribution limit of the individual who endorses the loan, as provided in Minnesota Statutes section 10A.27, subdivision 8.

Issue Three

Does this loan constitute an approved expenditure on behalf of the candidate?

Opinion Three

No. An approved expenditure is a type of in-kind contribution in which goods or services are purchased by an entity or individual on behalf of the principal campaign committee. Minn. Stat. § 10A.01, subd. 4. As provided in the facts of this opinion the loan will provide funds for the candidate's use.

Issue Four

If the individual who is willing to make the loan has already given the maximum allowed contribution to the candidate's principal campaign committee, would the individual still be allowed to make the loan?

Opinion Four

No. Outstanding loans either made or endorsed by an individual are included in the aggregation of contributions counted towards the contribution limit of the individual, as provided in Minnesota Rules, part 4503.0700, subpart 1.

Issue Five

Is the legality of the loan impacted if the individual making the loan is also a board member of an association that makes independent expenditures in support of the candidate's campaign?

Opinion Five

No. The scenario presented in the request does not suggest that the independent expenditures were discussed with the candidate or any agent of the candidate. Therefore, the scenario does not present any opportunity for actions that would defeat the independence of the expenditures.

Additionally, Minnesota Laws 2018, chapter 119, section 24 (to be codified as Minnesota Statutes section 10A.177) provides that a donation to a candidate from an individual or entity that makes independent expenditures does not by itself compromise independent expenditures made on behalf of the candidate.

Issue Six

Are the answers to any of the prior opinions changed depending on whether the candidate signed or did not sign the public subsidy agreement for the election cycle?

Opinion Six

No. None of the opinions provided are reliant on the candidate signing the public subsidy agreement.

A candidate who does not sign the public subsidy agreement is not limited in the amount of funds donated or loaned to his or her own principal campaign committee, and such a candidate would also be free to endorse a loan from a financial institution to the committee in any amount.

Issued September 12, 2018

Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

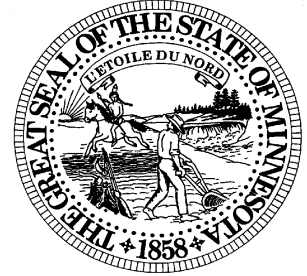
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
September, 2018

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$1,000 LF \$1,000 CP \$50 LF	3/6/18				
Roxana Bruins	Roxana Bruins for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17	8/17/18	8/20/18	
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Hold by Board
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18				
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Placed on hold by Board

Minnesota

*Campaign Finance and
Public Disclosure Board*



Date: September 10, 2018

To: Board members

From: Jodi Pope, Legal/Management Analyst

Telephone: 651-539-1183

Re: Prima facie determination finding no violation

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

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

Complaint regarding Dario Anselmo and State of Great MN

On August 10, 2018, the Board received a complaint from Richard Novack regarding Dario Anselmo and State of Great MN. The complaint included pictures of an advertisement printed in a local newspaper that referred to Rep. Anselmo, tax provisions passed in 2017 by the Minnesota legislature, and an organization called State of Great MN. The complaint first alleged that Rep. Anselmo's committee was responsible for the ad but had failed to include the required disclaimer and to disclose the expenditure on its pre-primary report. The complaint alternatively alleged that State of Great MN was responsible for the ad and that State of Great MN and its sponsoring organizations had failed to include the required independent expenditure disclaimer and to disclose the expenditure on campaign finance reports.

The chair concluded that because the complaint contained no information supporting its allegation that Rep. Anselmo was responsible for or cooperated with the ad, the complaint did not state a prima facie violation by Rep. Anselmo or his committee of the disclaimer or reporting requirements. The chair next concluded that because the ad did not contain any words of express advocacy, it was not an independent expenditure under Chapter 10A. The chair therefore determined that the complaint did not state a prima facie violation by State of Great MN or its sponsoring organizations of the independent expenditure disclaimer or reporting requirements.

Attachments:

Prima facie determination
Complaint

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

**IN THE MATTER OF THE STAFF REVIEW
OF THE JOHN LESCH FOR STATE REPRESENTATIVE COMMITTEE**

ORDER OF DISMISSAL

Under Minnesota Statutes section 10A.27, subdivision 10, a legislative candidate who signs the public subsidy agreement may not contribute more than \$5,000 of personal funds to the candidate's own campaign committee during a two-year election segment. Minnesota Rules, part 4503.0700 provides that contribution limits apply to the aggregate of money, donations in-kind, and outstanding loans. Minnesota Rules, part 4503.1400, subpart 3, provides that a candidate who signs the public subsidy agreement after the first year of the election cycle is agreeing to abide by spending and contribution limits for the entire election cycle. The candidate is therefore subject to the same remedies for spending or contribution violations that occurred in the first year of the election cycle prior to signing the public subsidy agreement as would apply during the second year of the election cycle after the public subsidy agreement was signed.

The John Lesch for State Representative committee is the principal campaign committee of Representative John Lesch. During 2017, Representative Lesch did not sign the public subsidy agreement. The committee's 2017 year-end report disclosed that Representative Lesch loaned his committee \$9,250 during the year, the full amount being outstanding as of December 31, 2018. A candidate who does not sign the public subsidy agreement is not limited in the amount of personal contributions or loans made to the candidate's own committee, therefore the aggregate loan amount reported in 2017 was not a violation of Chapter 10A.

The Board received a signed public subsidy agreement for the 2017 - 2018 election cycle from Representative Lesch on April 14, 2018. Consequently, effective on that date, the outstanding loans from Representative Lesch to his committee were in violation of Minnesota Statutes section 10A.27, subdivision 10. However, the Board's computerized compliance checks are not run on a committee's data until a report is filed with the Board. The next report received from the committee was the 2018 pre-primary report filed on July 30, 2018.

The pre-primary report disclosed that in 2018, Representative Lesch loaned his committee an additional \$2,500 and that the loans made in 2017 were still outstanding. In total, the outstanding personal loans from Representative Lesch to his committee during the 2017 - 2018 election cycle came to \$11,750. This amount exceeds the \$5,000 limit for candidates who have signed the public subsidy agreement by \$6,750.

The committee's treasurer e-mailed Board staff on August 2, 2018, to ask for assistance in resolving errors on the committee's pre-primary report. In discussions with the treasurer and Representative Lesch on August 3, 2018, it was determined that the cumulative amount of the loans generated compliance warnings from the reporting software when the report was filed.

In explaining the need for the loans to staff, Representative Lesch stated that the funds were necessary to pay a \$5,000 civil penalty imposed on the committee by the Board in 2017, and to pay legal fees related to the investigation that resulted in the civil penalty. Based on the committee's reports, and staff discussions with Representative Lesch, the executive director opened a staff review of the matter.

The committee's 2017 year-end report shows that without the loans the committee would have had insufficient funds to pay the legal fees and the civil penalty. The first loan from Representative Lesch to the committee in 2017 was in the amount of \$5,000, and was made in August, the same month that the committee paid a \$5,000 civil penalty to the Board. Representative Lesch also made three loans for \$1,375 each to the committee in October, November, and December. This corresponds to the committee's payments of \$1,375 to the law firm Lockridge Grindal & Nauen in October and December of 2017, and an earlier payment of \$1,500 in May of 2017. Lockridge Grindal & Nauen is the law firm of record that represented the committee during the Board investigation. The committee's payments to the law firm and the civil penalty total \$9,250, which is the same amount loaned to the committee by Representative Lesch in 2017.

In 2018, Representative Lesch loaned his committee an additional \$2,500. In March of 2018, the committee paid Meyer Njus Tanick \$2,500 as a retainer for legal services. In this case, all the loans from Representative Lesch to his committee in excess of the \$5,000 limit were directly related to the payment of legal fees incurred by the committee in 2017 and 2018.

Representative Lesch told staff that he believed that outstanding legal fees had to be paid through the committee, and therefore he loaned the committee sufficient funds to pay its legal fee obligations. A committee may use its funds to pay legal fees incurred by the committee, and report the costs as a noncampaign disbursement. However, the Board has also long recognized that a committee's legal fees may be paid by a legal defense fund that was established separate from the committee, and not registered with the Board.¹

The information gathered during the staff review shows that if Representative Lesch had known that he could pay the legal fees directly, he would not have needed to make, nor would he have made, the loans to the committee in excess of the \$5,000 limit. In this case, the excess contribution violation resulted solely from unnecessarily routing payments through the committee for costs that Representative Lesch could have paid directly. Further, the legal fees were incurred during a Board investigation of the committee that resulted in significant civil penalties on the committee and on Representative Lesch personally. For these reasons, the Board declines to further penalize the committee, and instead directs the committee to file amended 2017 and 2018 reports that remove the loans used for payment of legal fees, and the noncampaign disbursements for the legal fees, from the committee's financial activity.

¹ Advisory Opinion 101, issued in July of 1989, provides that a candidate may establish a legal defense fund to pay for legal services to defend the committee against charges filed under the Fair Campaign Practices Act. The fund did not need to register or report to the Board. https://cfb.mn.gov/pdf/advisory_opinions/AO101.pdf

Advisory Opinion 242, issued in July of 1996, assumed as a given that a legal defense fund could be established to pay for legal fees of a candidate's committee. The opinion provided that a lobbyist or principal could not contribute to the defense fund because of the gift prohibition in Minnesota Statutes Section 10A.071. https://cfb.mn.gov/pdf/advisory_opinions/AO242.pdf

In 2010, Board members reviewed and concurred with staff advice that the concept of a legal defense fund may be extended to include the establishment of a fund to pay for legal fees and other costs related to an election recount.

Order

Upon receipt of amended reports for 2017 and 2018 from the John Lesch for State Representative committee, the staff review of this matter is dismissed and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.02, subdivision 11.

/s/ Carolyn Flynn

Date: September 12, 2018

Carolyn Flynn
Chair, Campaign Finance and Public Disclosure Board

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

FINAL AUDIT REPORT

2018 AUDIT OF ELIGIBILITY FOR PUBLIC SUBSIDY PAYMENTS:

A candidate must do the following to be eligible for public subsidy payments: (1) sign a public subsidy agreement in which the candidate agrees, among other requirements, to be bound by a spending limit; (2) raise a statutorily-specified amount in qualifying contributions from individuals, (3) file a notarized affidavit of contributions with the Board verifying that the candidate has raised the required amount in qualifying contributions, and (4) appear on the general election ballot.

To ensure eligibility for public subsidy payments, the Board audited the qualifying contributions of candidates seeking public subsidy payments who did not use the Campaign Finance Reporter software to submit their affidavits of contributions and whose total reported individual contributions were less than the audit threshold. The audit threshold was set at twice the amount a candidate was required to raise in qualifying contributions. For example, the required amount of qualifying contributions for a house candidate is \$1,500. This amount must be raised between January 1 of the previous odd-numbered year and the cutoff date for transactions included in the pre-primary-election report. Consequently, a candidate for house was subject to audit if the candidate was seeking public subsidy funds and reported receiving \$3,000 or less in individual contributions between January 1, 2017, and July 23, 2018.

The following audit thresholds were used for the other offices being contested in 2018:

Office	Threshold
Governor/Lt Governor	\$70,000
Attorney General	\$30,000
Secretary of State/State Auditor	\$12,000
Senate District 13 – special election	\$6,000

Applying the audit criteria to candidates who were seeking public subsidy resulted in an audit of 15 house candidates. Attachment A lists the candidates who were subject to the audit.

Reporting individual contributions less than the audit threshold had no effect on a candidate's eligibility for public subsidy payments. It simply determined which candidates would be subject to an audit by the Board to ensure that their certified affidavits of contributions were, in fact, correct and that the candidates actually had raised the required amount in qualifying contributions.

The Board asked each candidate subject to the audit to provide a list of the individual contributions that had been included in the amount required to qualify for public subsidy along with each contributor's name and address. To be included in the qualifying amount, a contribution had to have been made by an individual eligible to vote in Minnesota. In addition, only the first \$50 from each contributor could be included in the qualifying amount and in-kind contributions could not be considered.

Board staff reviewed the lists of individual contributors provided by the candidates against the criteria for eligible qualifying contributions. Jeff Sigurdson, executive director to the Board, was the individual primarily responsible for the audit. Mr. Sigurdson was supported in evaluating the candidates' responses by Melissa Stevens, compliance officer, and Jodi Pope, legal analyst.

Audit finding:

All 15 committees subject to the audit raised the required amount in qualifying contributions.

Responsible Staff Person:

/s/ Jeff Sigurdson
Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

Date: September 12, 2018

/s/ Carolyn Flynn
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

Date: September 12, 2018

Attachment A: House candidates who initially reported individual contributions under the required threshold

Reg. No.	Committee name	Party	2017 contributions	2018 contributions	Total contributions
18362	Vince (Beaudette) for State House	RPM	\$0.00	\$2,931.41	\$2,931.41
18315	Brown (Bradley) for MN House	DFL	\$0.00	\$2,910.00	\$2,910.00
17921	Fogarty (Kevin) for House	DFL	\$0.00	\$2,550.00	\$2,550.00
12682	(Tom) Hackbarth Volunteer Committee	RPM	\$0.00	\$2,150.00	\$2,150.00
18037	Sarah (Hamlin) for House	DFL	\$0.00	\$2,350.00	\$2,350.00
12313	Hausman (Alice) Volunteer Committee	DFL	\$460.00	\$2,130.00	\$2,590.00
17790	Heyer (Jon) 4 House	RPM	\$700.00	\$1,275.00	\$1,975.00
18386	Reid Johnson for House	RPM	\$0.00	\$1,635.00	\$1,635.00
18059	Committee to elect Sue Larson	DFL	\$0.00	\$1,930.00	\$1,930.00
18338	Robert Marvin for House	RPM	\$0.00	\$2,224.88	\$2,224.88
18329	Steve Merriman for MN House	RPM	\$0.00	\$1,845.00	\$1,845.00
18324	Pafko (Frank) for House	RPM	\$0.00	\$2,290.85	\$2,290.85
18398	Steck (Joe) for House	RPM	\$0.00	\$2,245.00	\$2,245.00
18298	Turk (Fred) For House 67B 2018	RPM	\$0.00	\$1,700.00	\$1,700.00
18323	BeBoldVoteVold (Justin Vold)	DFL	\$0.00	\$2,931.25	\$2,931.25