

State of Minnesota
Campaign Finance and Public Disclosure Board

Probable Cause Determination

In the matter of the complaint of the Republican Party of Minnesota, regarding the Minnesota DFL State Central Committee, the DFL House Caucus, the DFL Senate Caucus, and various candidates:

On May 9, 2016, the Minnesota Campaign Finance and Public Disclosure Board received a complaint submitted by Keith Downey, Chair of the Republican Party of Minnesota, regarding the Minnesota DFL State Central Committee, the DFL House and Senate Caucuses, Mark Dayton for a Better Minnesota, and multiple DFL endorsed candidates for House and Senate, some of whom were named and some not.

The complaint alleges that respondents violated Minnesota Statutes section 10A.27, subdivision 2, a section limiting the amount of contributions that a principal campaign committee may accept from political party units, and section 10A.20, subdivision 3, a section detailing the information required to be contained in reports filed with the Board.

The complaint alleges that the respondents violated the aforementioned statutes because the Minnesota DFL State Central Committee (the DFL) hired and paid for certain individuals' employment, each of whom worked for the benefit of one or two individual candidates. The complaint argues that because the individuals worked for the benefit of fewer than three candidates, the payments made to the individuals do not qualify as multicandidate political party unit expenditures pursuant to Minnesota Statutes section 10A.275, subdivision 1(5), and, thus, constitute in-kind contributions from the DFL to the various candidates' committees.

The complaint further alleges that the reports filed with the Board by the DFL and the candidates' committees do not disclose the alleged in-kind contributions and that, in some instances, these in-kind contributions caused committees to exceed the limit on contributions from political party units.

At the prima facie determination stage, the Board Chair concluded that the complaint was sufficient to state a prima facie violation of Chapter 10A with respect to the Minnesota DFL State Central Committee, Mark Dayton for a Better Minnesota, and the various legislative candidate committees. The Chair concluded that the complaint did not state a prima facie violation with respect to the DFL Senate Caucus or the DFL House Caucus.

Relevant Statutes

Section 10A.022, subdivision 3(2), provides that when the Board Chair makes a finding that a complaint raises a prima facie violation, the full Board must consider whether the complaint establishes probable cause to believe that the alleged violation(s) occurred. In the present matter, the alleged violations occur if, as alleged, the expenditures by the DFL are not multicandidate expenditures but, rather, constitute contributions to the various candidates.

An expenditure qualifies as a multi-candidate expenditure, which is not a contribution to the benefitted candidates, if the expenditure is for party unit staff services that benefit three or more candidates. Minn. Stat. § 10A.275, subd. 1 (5).

Thus, if the subject expenditures benefited only one or two candidates, as complainant asserts, they will not be multi-candidate expenditures, resulting in reporting violations and possible contribution limits violations.

In considering matters involving application of statutes, the Board applies the language of the statute using its plain meaning and such interpretations as may be required to carry out the legislative intent in enacting the provision. With regard to the plain language of the statute, the Board notes that the statute does *not* require that the staff member "work for" three candidates or "support" three candidates. Rather, the language requires that the services provided by the staff member "benefit" three or more candidates. The plain language permits multi-candidate expenditure classification based on staff services that may not directly support a particular candidate but, nevertheless, benefit that candidate.

The Board assumes that the "benefit" to the candidate may be either a direct or an indirect benefit. The benefit need not be so specific that an exact monetary value can be assigned to it. However, the benefit must not be so esoteric that it cannot be described.

The Board also recognizes its longstanding approach to multi-candidate expenditures, under which each individual service by a staff member need not benefit all three candidates simultaneously nor must the benefit of the services be substantially equal between the candidates. The Board finds no reason to deviate from its previous understanding that party units have a fairly wide latitude within which staff services will meet the three-or-more-candidate benefit requirement.

The complaint acknowledges the statutory requirements for multi-candidate expenditures and alleges that the work of the subject employees did not meet the requirement that it benefit three or more candidates. In support of this position, complainant alleges that the subject employees "publicly claim to have directly benefited one or two candidates and not the required three."

With respect to the above statement, the Board makes two observations. First, the fact that a person posts on a social media page that the person worked for one or two candidates does not establish that the services did not also benefit others. Second, the complainant states that the employees claim to have "directly benefited one or two candidates and not the required three." To the extent that complainant is relying on a statutory requirement that the multi-candidate expenditure exception requires the employee's work to "directly benefit" three or more candidates, that reliance is misplaced, as the statute does not include the word "directly."

The probable cause standard

At the prima facie determination stage, the Chair viewed the complaint in the light most favorable to the complainant and accepted all inferences that were not entirely unreasonable. Applying that standard, the Chair found that the complaint alleged prima facie violations.

The probable cause determination, which is now undertaken by the full Board, requires a deeper examination of the complaint and a higher standard for assertions that may be accepted. Additionally, at the probable cause determination stage, the respondent has the opportunity to submit arguments against the determination. In this matter, the respondent DFL Party submitted both legal and factual information; including offers of the facts that respondent expects to prove if an investigation is undertaken. Although complainants are permitted to provide an additional submission at the probable cause determination stage, complainant in this matter did not do so.

A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation. A probable cause finding requires something more than mere suspicion but less than actual proof.

It is up to the complainant to establish probable cause. Failure to do so will result in dismissal of any alleged violations for which probable cause is not established. In deciding whether probable cause is established, the Board may apply its own experience and perspective regarding campaign finance law and the operation of campaigns.

Respondent DFL submissions

The DFL submitted a declaration from David Zoll indicating that he is an attorney with the law firm of Lockridge Grindal Nauen and that the firm presented training sessions for DFL staff members on June 4 and June 30, 2014. He states that he prepared the materials for the presentations and participated in the presentations. According to Mr. Zoll, the training sessions covered the topic of multi-candidate expenditures and the characteristics necessary to make a staff activity a multi-candidate expenditure.

Although Mr. Zoll's declaration states that the training was provided "for DFL party staff," the declaration does not affirmatively state that each employee whose actions are the subject of the complaint attended the training.

Mr. Zoll also indicates that the DFL provided a memorandum from the party chair to each employee performing multi-candidate expenditures explaining what multi-candidate expenditures are and requiring that the employee perform work in a way that meets the requirements to classify the work as a multi-candidate expenditure.

According to the memorandum the party's multi-candidate expenditure effort to support its endorsed candidates was referred to as the "coordinated campaign." The party's response acknowledges that this coordinated campaign was an effort that used the multi-candidate

expenditure concept of funding, which permits party unit staff efforts to be undertaken in coordination with the benefitted candidates.

According to Mr. Zoll, each employee working in the multi-candidate expenditure program was required to acknowledge receipt and understanding of the chair's memorandum. Copies of memos relating to some of the staff members involved in this matter were provided.¹

The DFL also submitted various declarations of staff members. The Board considers these declarations to be offers of the proof that the DFL intends to provide should an investigation be undertaken. As such, they have a weight similar to allegations of the complaint. The declarations, their attachments, and the analysis memorandum submitted by the DFL are a part of the record of this matter.

The declarations of Alexandra Kopel and Alyssa Siems Roberson related to their work specifically, but also to the general way that the DFL operates its multi-candidate expenditure program. As such, these declarations bear on all of the allegations of the complaint. These declarations, considered in the context of the attachments and the analysis provided by the DFL suggest that the DFL fully understood the nature of and limitations on multi-candidate expenditures. In order to maintain the multi-candidate expenditure status of its staff services, the DFL indicates that its employees and the volunteers they recruited always mentioned other candidates on the DFL ticket in door-knock or telephoning activities.

The DFL response, taken as a whole, asserts that in both legislative races and constitutional office races, the DFL took steps to make sure that its employees knew what the requirements for multi-candidate expenditures were and developed programs to ensure that people working on the coordinated campaign understood what multi-candidate expenditures were and were mindful of the requirement that their work must benefit three or more candidates.

The response materials assert that in voter interactions, the employees mentioned other candidates whose names would be on the ballot. The response also indicates that field organizers oversaw the installation and management of lawn signs, which benefitted three or more candidates.

In general, the DFL asserts that its multi-candidate expenditure operation at the legislative level worked from the legislative candidate up to constitutional office candidates, ensuring that whatever legislative candidate was the primary beneficiary of staff services, other candidates seeking higher offices also benefitted. The DFL further asserts that when the primary beneficiary was a constitutional officer, the party included legislative candidates in its efforts

¹ Memos acknowledging their understanding of multi-candidate expenditures and agreeing to ensure that their work qualified under the multi-candidate expenditure standard were provide for Jaime Makepeace, Christopher Vaaler, Maxwell Hall, Megan Nelson, Jennie Maes, Kyle Olson, Jamel Lundy, Julian Dahlquist, and Alexandra Kopel. The Board notes that the acknowledgment signed by Mr. Dahlquist post-dates his activity in 2012. In addition to the evidentiary value of these acknowledgments with respect to the employee's work, they serve as evidence that the DFL understood the multi-candidate expenditure concept and intended that the employees working under the multi-candidate expenditure model performed services that qualified as multi-candidate expenditures.

based on where the constitutional office effort was being undertaken. These assertions are supported by offers of proof in the form of various declarations.

Because the response materials will be a part of the public record supporting this probable cause determination, each submission will not be individually discussed in this document.

Board analysis

In reviewing the complaint as a whole, the Board recognizes that each allegation follows the same pattern. With respect to each named employee, the complaint refers to one or more statements posted on a social media or web page (or in one case in an employment notice) by a DFL staff member. In each case, the posting identifies some limited number of campaigns, candidates, or districts for which the person provided services. In each case, the number is fewer than three.² For each employee, complainant concludes that the statement of the staff member supports a conclusion that the individual provided services that benefited *only* the specific candidates or candidates in the specific districts mentioned.

That the persons named in the complaint were employees of the DFL is not in dispute. Neither is it disputed that the employees made the social media postings alleged in the complaint. The question before the Board, then, is not whether these facts are true, but whether, in the context of the record, they support the inference that the various employees' services benefited *only* the candidates they specifically referenced.

The Board notes that the social media postings are high-level statements lacking any significant detail about what was actually done by the employees. Even a cursory examination of the postings suggests that the employees were more interested in providing a biographical snapshot of their activities than in describing technical-legal nuances of their employment and work.

Even if the information posted is generally accurate as far as it goes, the social media statements do not say that the employee's services benefited *only* those candidates specifically named. While this inference, which complainant urges the Board to accept, may have been minimally sufficient to withstand a prima facie determination, it is not likely sufficient to support the more rigorous probable cause determination.³

In addition to the conclusions to be drawn from the totality of the DFL response, a few items merit specific comment.

In support of its allegations regarding the work of Julian Dahlquist, complainant submitted an online posting for DFL jobs which indicated that the successful candidate would execute a field plan for a specific Senate candidate. However, this statement does not rule out a determination

² Copies of the various social media or other web pages were submitted with the complaint as exhibits B through M. Because they will become a part of the public record of this determination, they are not explained in detail in this document.

³ Because the DFL submitted a response in this matter, it is not necessary for the Board to decide whether the complaint, in the absence of a response, would support a finding of probable cause.

that the employee performed services that also benefitted other candidates or, for that matter, that the field plan itself incorporated activities that benefitted the associated House candidates.

In fact, the declaration of Alyssa Siems Roberson states that each Senate field organizer was assigned to a senate district. She states that the voter contact done by and under the direction of the field organizer was "done on behalf of the entire DFL ticket." She also states that each field organizer worked with both of the House candidates and the Senate candidate in the district to organize door knocking and telephoning activities "to identify voters' preferences and to persuade voters to support DFL-endorsed candidates."

The complaint also alleged that the services of three individuals, identified as "Political Director" or "Regional Political Director" for the Mark Dayton for a Better Minnesota committee were in-kind contributions rather than multi-candidate expenditures, using the same social media model and urging the same inference as it did for its other allegations.

The overall DFL response rebuts the inference that the individuals supporting the Governor's committee benefitted only the Governor. The declaration of Jaime Makepeace is directly relevant to her activities in the position of political director and to the activities of the two individuals who identified themselves as regional political directors for the Dayton campaign.

Makepeace's declaration asserts that her duties included coordinating efforts of the Governor's committee with other candidates' committees so as to leverage the Governor's profile in assistance to these other candidates. The regional directors, whom she supervised, assisted in these same duties, which benefitted both the Governor's committee and the various legislative candidates in the regions.

In the present matter, the stated facts are not in dispute. The sole question is whether the inference urged by complainant; that the social media postings are sufficient to raise a real question as to whether the various staff services benefitted three or more candidates; raises a significant question of material fact that should be resolved through an investigation. The Board concludes that the inference is not reasonable in the context of the full record and that no issue requiring an investigation is raised.

Based on the above analysis, the Board makes the following:

Findings of fact

1. The complaint is based on social media postings of various DFL employees in which each employee indicates that he or she provided services for certain named candidates or in certain specified districts.
2. The complaint alleges that the services of these employees were in-kind contributions from the DFL to the supported candidates because they did not fall within the multi-candidate expenditure exception for services that benefit three or more candidates.

3. To reach its conclusion that violations occurred, complainant draws the inference that the naming of specific candidates or districts on an employee's social media page supports a conclusion that the employee provided services that benefitted *only* the named candidates or candidates running in the named districts.
4. Respondent DFL provided offers of proof tending to establish the services of the employees benefitted three or more candidates.
5. The offer of proof by the DFL did not contradict the facts offered by complainant; rather, they contradicted the asserted inference.

Based on the analysis and facts, the Board makes the following:

Conclusions of law

1. The complaint, when viewed in the context of the record before the Board, does not give rise to any significant question of material fact.
2. The inference that would be required to support a finding of violations, namely that an employee's listing of specific beneficiaries of the employees services means that the employee's services did not also benefit other candidates, is insufficient to raise a significant question of material fact when considered in the context of the complete record.
3. The complaint fails to establish probable cause to believe that the alleged violations occurred.

Based on the analysis, findings of fact, and conclusions of law, the Board issues the following:

Order

The complaint of the Republican Party of Minnesota regarding the Minnesota DFL State Central Committee and several of its candidates is dismissed.

/s/ Christian M. Sande

July 5, 2016

Dated: _____

Christian M. Sande, Chair
Campaign Finance and Public Disclosure Board