

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

**Findings and Order in the matter of
A Complaint Regarding Senator Michael Jungbauer and the
(Michael) Jungbauer Volunteer Committee**

Summary of the Allegations and Responses

On May 7, 2007, David Day, (“Complainant”) filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) against Senator Michael Jungbauer and the (Michael) Jungbauer Volunteer Committee (“the Committee”), the principal campaign committee of Senator Jungbauer alleging that the Committee violated Minnesota Statutes Chapter 10A.

Complainant alleges that in 2006, the Committee purchased 13 airplane models from a company named Historic Sales at discounts ranging from 40 – 50% off retail prices. Complainant alleges that these discounts were not available to the general public or to others similarly situated and that, as a result, the amount of the discount on each model constituted an in-kind contribution to the Committee. Complainant also alleges that the in-kind contribution would result in the acceptance by the Committee of contributions in excess of the amount permitted from the donor, who Complainant believes is one Greg Herrick.

A review of the invoices submitted by Complainant and of the Historic Sales website indicates that the subject airplane models were fully assembled and decorated die-cast 1/48” replicas of historic and military airplanes. The retail prices in the invoices ranged from \$69.69 to \$149.00. On the website, the prices for the same models ranged from \$59.95 to \$175.00.

Complainant Day also alleges that he raised the issue of in-kind contributions resulting from the discounted sales and questioned Senator Jungbauer about it during a hearing before the Office of Administrative Hearings (“OAH”) on October 17, 2006.

During Senator Jungbauer’s questioning, Mr. Day argued that he was trying to show “that Senator Jungbauer knowingly received special treatment . . .” “. . . that he was getting a 40 to 50 percent discount which they [Historic Sales] do not offer to other people . . .” and “. . . that that is a contribution in kind”.

Complainant relies on this interchange as a basis for his claim that Senator Jungbauer and the Committee were on notice of the requirement to report the in-kind contributions. The Committee’s Reports of Receipts and Expenditures filed before the general election and at the end of the year were the same as the pre-primary-election report with respect to the model purchases. No in-kind contributions were reported and no payment was made to Historic Sales for the discounts that had been given.

Complainant claims that the failure to account for the in-kind contributions on reports subsequent to October 17, 2006, constitutes a violation of Minnesota Statutes, Section 10A.025, subd. 2, which makes it a gross misdemeanor for a person to sign and certify a report to be true knowing that it contains false information or that it omits required information. The offense also carries a civil penalty of up to \$3,000.

In support of his claim that the models were sold to Senator Jungbauer at a discount not available to others, Complainant submitted a transcript of his statements at the OAH hearing. At the hearing, Mr. Day asked Senator Jungbauer:

“Would it surprise you to learn that when I called and tried to buy these same airplanes, I was told that I – if I bought 12 of them, I could get about an eight percent discount, but if I had a store that sold them on a regular basis, the discount would go up to maybe as much as 40 or 50 depending on how many I – would that sound like that might be something that was about right?”

In the transcript, Senator Jungbauer replied that Historic Sales did not explain anything like that to him. He said “I believe that David [the Historic Sales representative] called it a collector discount, that if they bought a certain number, they could give us a collector discount.”

The Board notified Senator Jungbauer and Vicki Jungbauer, the Committee’s treasurer of the complaint and offered them an opportunity to respond.

Senator Jungbauer responded to the complaint by letter received by the Board on June 7, 2007. No separate response was received from the treasurer. In his letter, the Senator points out that he has been an aviation enthusiast all his life and has had connections to the Anoka airport for many years, well before his election to the state senate. He stated that he did not speak with Greg Herrick about the airplane model purchase, but dealt with one David Bollick, a person with whom he had not previously spoken.

According to Senator Jungbauer, the only discussion about discounted pricing was that he asked how many models he would have to purchase to get a decent price break. He says he was told that purchasing the quantity he did put him in a collector pricing category. He stated that he did not expect a better than average deal. He said that he is familiar with the concept of companies giving a wholesale rate for purchases of certain quantities and he believed that his purchase qualified for a wholesale rate.

Board Investigation

Board staff confirmed with the Office of the Secretary of State that Historic Sales is an assumed name of Sky Media, LLC, a Wyoming limited liability company registered and authorized to do business in Minnesota. Although Greg Herrick is apparently a principal of Sky Media, LLC, he is not the seller of the models or the donor of any potential in-kind contribution in this matter. If there is a donation, it is from Sky Media, LLC, doing business as Historic Sales. Sky Media, LLC, is referred to hereinafter using its business name, “Historic Sales”.

The Board conducted interviews to further its investigation of this matter. In a June 13, 2007, interview, Complainant David Day indicated that it was not him but Mike Starr who made the contact with Historic Sales regarding what discounts would be available. Day himself did not have any conversations with Historic Sales regarding their discount structure.

Mike Starr was interviewed on June 15, 2007. He indicated that he made one telephone call to Historic Sales and asked to speak to the manager. He does not know with whom he spoke. Mr. Starr told the manager that he was a retired military man interested in purchasing a quantity of models. Mr. Starr’s recollection of the call was not entirely clear but he reported that he was told that if he bought in the range of 8 to 10 to 15 models he would get a discount of 8 – 10%. He states that he was told that if he was a retailer he would get 20 – 25% discounts.

Senator Michael Jungbauer was interviewed on June 19, 2007, and his testimony before the OAH panel was reviewed. Senator Jungbauer stated that the Committee planned a fundraising event in 2006 that would include a silent auction with replica airplane models included in the items to be sold. He was aware of the Historic Sales company as he had picked up copies of their catalogs over the years at the Anoka Airport or various aviation related meetings. He had not previously purchased any models from Historic Sales. He said he knew that Craig Schiller knew people at Historic sales and volunteered to make the initial call to Historic Sales.

In a subsequent telephone interview, Senator Jungbauer was asked why he did not contact Historic Sales directly regarding the proposed purchase rather than going through Craig Schiller. The senator stated that when Mr. Schiller offered to make the initial call, he didn't really think about it.

Craig Schiller was, at the time, the manager of Greg Herrick's Golden Wings Museum at the Anoka Airport. [Other Board records indicate that the Jungbauer Committee conducted a fundraising event at the Golden Wings Museum in February of 2006 and that Schiller was the contact person for the museum for the site arrangements.]

Craig Schiller was interviewed by telephone on June 25, 2007, and confirmed the following narrative of his interview in a separate telephone conversation on June 29, 2007. Mr. Schiller stated that in the spring of 2006, Mike Jungbauer told him that he wanted to acquire some airplane models for his office. Mr. Schiller made sure that Senator Jungbauer had a current catalog from Historic Sales and volunteered to put in a call and arrange a contact for him at the company. Mr. Schiller knew David Bollick, who was one of the wholesale sales representatives at Historic Sales. Before he got around to calling, Mr. Schiller saw David Bollick at the Historic Sales offices. He gave Mr. Bollick Senator Jungbauer's telephone number and indicated the Senator's interest in buying some airplane models.

According to Mr. Schiller, he told Mr. Bollick who Mike Jungbauer was and about the fact that he was a friend of aviation and a friend of the airport.

David Bollick was interviewed by telephone on June 25, 2007, and confirmed the following narrative of his interview in a separate telephone conversation on June 28, 2007. Mr. Bollick said that he was a wholesale representative at Historic Sales and that Craig Schiller had contacted him on behalf of Mike Jungbauer. Craig had told him that Mike might want to purchase some airplane models.

Mr. Bollick related that Craig Schiller sometimes referred people to him who were contacts at the airport. In the case of Mike Jungbauer, Mr. Schiller explained that he was a state senator and that he was interested in airport issues. He also stated that Mike had been helpful at the legislature on airport issues.

In his contacts with Senator Jungbauer, Mr. Bollick obtained a list of models that the Senator wanted and told the senator that he could help him out on pricing at the wholesale level. Mr. Bollick stated that he does not use the term "collector's discount". The pricing to the senator was simply wholesale pricing. Wholesale pricing for individuals is available at the discretion of Mr. Bollick.

Mr. Bollick said that if an unknown person was to call, that person would not get wholesale pricing. Senator Jungbauer was given the discount due to the initial contact by Craig Schiller explaining who Mike Jungbauer was and his relationship as a friend of Mr. Schiller's. According to Mr. Bollick, the wholesale pricing was not conditioned on Senator Jungbauer purchasing any

particular number of models, but was offered based on his relationship to Mr. Schiller. The transaction was the result of a favor for “a friend of a friend”.

It was Mr. Bollick’s understanding with Mike Jungbauer that at the wholesale price level, some of the models may be customer returns or not in mint condition and boxes may be open. He does not have a record of whether any of the models delivered actually fell into this category, but his recollection is that some of them did.

It was also Mr. Bollick’s understanding that the sale was to Mike Jungbauer, individually, for use in his office, although Mr. Bollick did not know what particular office that would be. He did not know that the sale might be to the Jungbauer Volunteer Committee. The invoice was made out to “Senator Mike Jungbauer” although the checks paying for the models were from the Committee.

The retail value of the subject models as reflected by invoices issued to Senator Jungbauer was \$1,273.75. The net paid by the committee was \$741.39, resulting in a discount of \$532.86.

Board Analysis

Complainant alleges two statutory violations: (1) that of an excess contribution from Greg Herrick and (2) the certification of a report to be true with the knowledge that it omitted required information. During the investigation, the Board recognized an additional possible violation: the acceptance of an in-kind contribution of more than \$100 from an association not registered with the Board without the statutorily required disclosure, in violation of Minnesota Statutes, Section 10A.27, subd. 13.

The Board turns first to the allegation of an excessive contribution from Greg Herrick. With regard to this allegation, the evidence is conclusive that any in-kind donation that arises from the transactions is attributable to Sky Media, LLC, doing business as Historic Sales and not to Greg Herrick. Thus there is no support for Complainant’s allegation of an excessive contribution from Mr. Herrick.

The Board next examines the issue of a contribution from an association not registered with the Board.

The statements of David Bollick make it clear that the discount given to the Committee was not available to most people. In fact, the discount was based on the fact that Senator Jungbauer was “a friend of a friend” of David Bollick’s.

An item donated to a principal campaign committee is an in-kind donation which must be reported to the Board at its fair market value. Minn. Stat. Sections 10A.01, subds. 11 and 13; 10A.20, subd. 3. If the subject airplane models had been given without charge, their full value would be a contribution to the Jungbauer Volunteer Committee. In this case, the models were sold at a discounted price not available to the general public or other principal campaign committees. The Board has consistently held that under these circumstances, the difference between the fair market value of the items and the price paid by the recipient is an in-kind contribution of goods.

In the immediate case, the seller of the goods was Historic Sales, an association not registered with the Board. Thus, the contribution that results from the discount is subject to the provisions of Minnesota Statutes, Section 10A.27, subd. 13, which prohibits donations of more than \$100 from unregistered associations to principal campaign committees unless the donation is accompanied by specified financial disclosure about the donor. No such disclosure was provided.

The unique facts of this matter indicate that Historic Sales did not understand that the Jungbauer Volunteer Committee was a party to the sales transaction. Although principal campaign committee checks were used to pay for the models, the invoices were made out to Senator Mike Jungbauer; the sales associate was told that the models were for Senator Jungbauer's office; and he dealt only with Senator Jungbauer individually. Historic Sales had no intent to contribute to the Committee and no understanding that the transaction might result in a contribution to the Committee.

Finally, the Board considers the allegation of certifying the Committee's pre-general-election and year-end Reports of Receipts and Expenditures to be true knowing that they omitted required information. The evidence related to allegation is more complex and demands thorough examination.

To support a finding of a probable violation of Minnesota Statutes, Section 10A.025, subd. 2, two facts must be found to be probable:

- (1) that the requisite person knew that a discount was given on the models that was not available to the general public and
- (2) that the discount resulted in a reportable in-kind contribution and corresponding in-kind expenditure.

The Board first addresses the question of who is "the requisite person" that must have the required knowledge.

Minnesota Statutes, Section 10A.025, subd. 2, puts the burden of truthful certification on "the individual required to file the report". With respect to Reports of Receipts and Expenditures, the treasurer usually is the person required to file the report. However, in the absence of a treasurer, the Candidate files and in every case, pursuant to Minn. Rules Section 4503.0200, subp. 2, "The candidate is ultimately responsible for the principal campaign committee's compliance with Minnesota Statutes, Chapter 10A".

Vicki Jungbauer was the nominal treasurer of the Jungbauer Volunteer Committee, but appears not to have been responsible for the ordinary duties of a principal campaign committee treasurer. In his OAH testimony, Senator Jungbauer referred to Ms. Jungbauer as "the designated treasurer" and explained that she was not involved in things such as bookkeeping or creating bank deposit slips.

Senator Jungbauer testified that he had signed and certified the 2004 report himself but that since then he had not physically signed the reports. The Board notes that the Committee uses the Campaign Finance Reporter software which implements an electronic signature for certification of reports. Senator Jungbauer testified at the OAH hearing that even though he didn't physically sign the reports he ". . . accept[s] 100 percent responsibility for what's on the reports".

At the OAH Hearing the Committee's treasurer, Vicki Jungbauer, testified that she had never prepared or signed a Report of Receipts and Expenditures filed with the Board. A judge on the panel asked for clarification and Ms. Jungbauer reiterated that over the years she had never signed any of the campaign reports even though she was the treasurer. When asked who she understood would do that, she said that she understood that it was Senator Jungbauer.

Senator Jungbauer may have certified his principal campaign committee reports under delegation of authority from the treasurer; or because he was, in fact, the treasurer, although not registered

with the Board as such; or in his capacity as the candidate who has overall responsibility to file reports with the Board and to certify their accuracy. In any of these cases, the Senator became the person responsible for filing and certifying reports to the Board.

Based on the above analysis, the Board concludes that it is the knowledge of Senator Jungbauer that will determine whether there is a violation of Minnesota Statutes, Section 10A.025, subd. 2.

The first element of the violation that must be found to be probable is that Senator Jungbauer knew that the discount he received on the sale of the models was not available to the general public and, thus, not to other principal campaign committees. On this issue, the evidence is conflicting. The statement of David Bollick provides support for a finding that the Senator knew that the discount was unique to him. Mr. Bollick says that there was no discussion of any particular quantity of models that had to be purchased and that he did not refer to a "collector's discount", a term which he does not use. He says that he told Senator Jungbauer that he could help him out with wholesale pricing.

The Board also notes that rather than contact Historic Sales directly, Senator Jungbauer used Craig Schiller as his initial contact. Senator Jungbauer knew Mr. Schiller as the manager of the Golden Wings Museum, Greg Herrick's facility at the Anoka Airport where the Jungbauer Volunteer Committee held a fundraising event. He also knew that Craig Schiller knew people at Historic Sales. Mr. Schiller made the initial contact with his friend David Bollick, informing Mr. Bollick that Mike Jungbauer was a senator and of his relationship with the Anoka airport and aviation issues.

Additionally, the interchange between Mr. Day and Mr. Jungbauer at the OAH hearing put Senator Jungbauer on notice that the discounts he received were not generally available to an ordinary customer calling Historic Sales.

The evidence that Senator Jungbauer did not know that he was receiving a discount not available to others is his testimony at the OAH hearing and his reply to the allegations of this complaint. At the OAH hearing he stated that he thought he was getting a "collector's discount" and that he had to purchase a specific number of models to get the best discount. His reply to the complaint, a part of the files of this investigation, essentially reiterates this position.

The second element of the violation that must be found to be probable is that Senator Jungbauer knew that a purchase of goods at a reduced price results in a reportable in-kind contribution. This concept is not new and has been the subject of consistent Board enforcement actions over the years.

The Jungbauer Volunteer Committee has specific experience with this concept as the result of a 2006 Board proceeding resulting from a complaint wherein it was alleged that the Committee had accepted free use of a facility and equipment for a fundraising event and had not reported the resulting in-kind contribution and expenditure. The Committee was required to determine the fair market value of the services and report them. In its findings, the Board said:

"In-kind contributions to committees are to be recorded and reported at their fair market value. That value may be established by the price for which the same services are available from the vendor to the general public or to all principal campaign committees."

While the previous complaint involved an in-kind contribution resulting from free services, the Committee understood that it could pay for part of the services and record an in-kind contribution for the amount of the discount taken. In the previous matter, the Committee took a \$500 discount

on the fair market value of the services and reported the discount as an in-kind contribution from the individual who donated the services. The committee paid for the remainder of the costs because the fair market value of the services exceeded the individual's contribution limit.

The Board also takes notice that the requirement of reporting the in-kind contribution resulting from the discounted sale of the specific models in question was brought to Senator Jungbauer's attention by Mr. Day at the October hearing before an OAH panel.

Based on the evidence before it, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to believe that the Committee accepted contributions from Greg Herrick in an amount that exceeded the individual contribution limit.
2. There is probable cause to believe that the sale of the subject airplane models by Historic Sales to the Jungbauer Volunteer Committee was at a reduced price not available to other principal campaign committees.
3. There is probable cause to believe that Senator Michael Jungbauer was aware of the fact that he was receiving a discount not available to others.
4. There is probable cause to believe that the price paid for the models was \$741.39 and that the fair market value was \$1,273.75, resulting in a discount of \$532.36.
5. There is probable cause to believe that Senator Jungbauer knew that the purchase of an item at a discounted price not available to others resulted in an in-kind contribution to the principal campaign committee that purchased the items, and that such a contribution must be reported on the committee's Reports of Receipts and Expenditures.
6. There is probable cause to believe that Senator Jungbauer was the person charged with filing reports of the Jungbauer Volunteer Committee and certifying those reports to be true and, as the candidate, that he was ultimately responsible for the Committee's compliance with Minnesota Statutes Chapter 10A.
7. There is probable cause to believe that Senator Jungbauer, having the aforementioned knowledge, failed to report the in-kind contribution related to the airplane models on the Committee's pre-general-election report or on its year-end report resulting in a violation of Minnesota Statutes, Section 10A.025, subd. 2.
8. There is probable cause to believe that the in-kind contribution was from an association not registered with the Board, and that the required financial disclosure was not provided with the contribution, resulting in a violation of Minnesota Statutes, Section 10A.27, subd. 13.
9. There is no probable cause to believe that the seller had any intent to make a contribution to the Jungbauer Volunteer Committee or had any understanding that a sale at the discounted rate could result in an in-kind contribution.
10. There is probable cause to believe that the seller understood and believed that the sale of the subject models was to Senator Michael Jungbauer, as an individual.

Relevant Statutes

Statutes

Minnesota Statutes, Chapter 10A

10A.025 FILING REQUIREMENTS.

Subdivision 1. **Filing date.** If a scheduled filing date under this chapter falls on a Saturday, Sunday, or legal holiday, the filing date is the next regular business day.

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

10A.20 Campaign reports.

Subd. 3. **Contents of report.**

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity . . . A donation in kind must be disclosed at its fair market value.

(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.

Subd. 13. **Third-party reimbursement.** An individual or association filing a report disclosing an expenditure or noncampaign disbursement that must be reported and itemized under subdivision 3, paragraph (g) or (l), that is a reimbursement to a third party must report the purpose of each expenditure or disbursement for which the third party is being reimbursed. An expenditure or disbursement is a reimbursement to a third party if it is for goods or services that were not directly provided by the individual or association to whom the expenditure or disbursement is made. Third-party reimbursements include payments to credit card companies and reimbursement of individuals for expenses they have incurred.

10A.27 Contribution limits.

Subdivision 1. **Contribution limits.** (a) Except as provided in subdivision 2, a candidate must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

- (4) to a candidate for state senator, \$500 in an election year for the office sought and \$100 in other years; and

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.

- (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.