

STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

PRIMA FACIE DETERMINATION

IN THE MATTER OF THE COMPLAINT OF KEN MARTIN REGARDING THE REPUBLICAN PARTY OF MINNESOTA (RPM) AND THE HOUSE REPUBLICAN CAMPAIGN COMMITTEE (HRCC)

On October 13, 2016, the Campaign Finance and Public Disclosure Board received a complaint submitted by Ken Martin, chair of the Minnesota DFL Party, regarding the Republican Party of Minnesota (RPM) and the House Republican Campaign Committee (HRCC). Both the RPM and the HRCC are party units registered with the Board.

The complaint concerns the disclaimers printed on six independent-expenditure pieces stating that the communications were "prepared and paid for by the [RPM] and the [HRCC]." Although the pieces show that they were mailed using the RPM's bulk postage permit, the complaint maintains that the RPM did not actually prepare or pay for these communications because (a) an RPM official published a "tweet" that read, in part, "not a @mngop mailer," and (b) RPM did not disclose any independent expenditures on its September report of receipts and expenditures. The complaint alleges that if the RPM did not prepare or pay for the independent expenditure pieces, the disclaimers attributing them to the RPM were false and violated Minnesota Statutes section 211B.04.

The complaint alternatively alleges that if the RPM did participate in the preparation or dissemination of the independent expenditures, the party unit violated the reporting requirements in Minnesota Statutes section 10A.20 by not disclosing those expenditures on its September report. The complaint does not make an allegation that any of the independent expenditure pieces were mailed during the reporting period applicable to the September reports. The RPM's September report discloses miscellaneous income from the HRCC for the use of the RPM's bulk mail permit. The RPM's September report does not include a September expenditure for postage.

Determination:

1. Minnesota Statutes section 211B.04 requires that a disclaimer identify each committee that "participates in the preparation or dissemination of campaign material." The complaint provides exhibits that show the RPM's postal permit was used in the dissemination of the material described in the complaint. A political party's use of its postal permit in the dissemination of campaign material may constitute participation in the dissemination of that material and the identification in the disclaimer of the party providing the postal permit is not a violation of Minnesota Statutes section 211B.04. Accordingly, to the extent that the complaint alleges that the inclusion of the RPM in the disclaimer was a violation of Minnesota Statutes section 211B.04, the complaint does not state a prima facie allegation of a violation.
2. Where, as here, a party participates in the dissemination of campaign material, Minnesota Statutes section 211B.04 provides the specific language to be used in the disclaimers required by that statute. The complaint included exhibits showing that the disclaimer language contained in the material was the specific language provided in section 211B.04. The complaint alleges that use of that language to describe the RPM's role was unlawful because, the complaint alleges, the RPM did not bear the cost of the dissemination, despite the use of its postal permit. Section

211B.04, however, does not provide for alternative language to be used where the role of one or more of the parties to be identified in the disclaimer was (a) less or different than the role described in the disclaimer, but (b) still a role for which the statute requires inclusion in the disclaimer (e.g., where a political party participated in the dissemination of the material, but did not pay for the dissemination). Accordingly, the use of the statutorily-provided language by a party obligated to publish a disclaimer is not a violation of the statute. (The statute provides an exception where the material is "produced and disseminated without cost." Here, however, the complaint does not allege that the material was produced or disseminated without cost. To the contrary, the complaint includes allegations of cost.) Accordingly, to the extent that the complaint alleges that the inclusion of the RPM in the disclaimer language provided for in Minnesota Statutes section 211B.04 was unlawful, the complaint fails to state a prima facie allegation of a violation.

3. The complaint alleges in the alternative that the RPM was obligated to list, in its report for the period ending September 20, 2016, postage expenses for the various mailings described in the complaint. The only specific date of mailing alleged in the complaint was October 3, a date after the relevant reporting period. Other mailings, the complaint alleges, occurred "in September," without more specificity. The RPM report for the period ending September 20, 2016, specifically disclosed that it received payment from HRCC for the use of its postage permit. Expenditures for postage for mailing that occurred on October 3 or any other date after September 20 would be required to be included in reports for which the due date has not yet passed. Accordingly, the complaint fails to state a prima facie allegation of a violation of Minn.Stat. Section 10A.20.

Based on the above analysis, the Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice. Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (1), this prima facie determination is made by a single Board member and not by any vote of the entire Board.



Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: 10-27-16