

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF JAMES SANBORN (COMPLAINANT) REGARDING THE BOB FREY MN COMMITTEE (RESPONDENT):

This matter came before the Board in executive session at its meeting of November 18, 2014, for a probable cause determination. Both parties were notified of their right to appear before the Board at this meeting. Complainant submitted a written communication in support of his complaint on October 7, 2014. Respondent also submitted a statement on November 3, 2014.

The complaint alleges that on June 2, 2014, the Bob Frey MN Committee accepted a personal loan of \$9,000 from the candidate, Bob Frey, and that the loan was in excess of the statutory limit. Respondent does not deny the acceptance of the loan but disputes the allegation that the loan violated applicable statutes and rules.

In support of his complaint, Complainant argues that Minnesota statutes section 10A.27, subdivision 8, provides that “[a] candidate must not permit the candidate’s principal campaign committee to accept a loan from other than a financial institution for an amount in excess of the contribution limits imposed by this section.” Complainant also argues that the contribution limit for House of Representatives candidates who sign a public subsidy agreement is \$5,000 for the 2013-2014 election segment. Board records indicate that Mr. Frey signed a public subsidy agreement for the 2013-2014 election cycle.

Respondent does not dispute the fact that the candidate contribution limit applicable to the committee for the 2013-2014 segment is \$5,000. However, Respondent relies on Minnesota Rules part 4503.1500, subpart 2, which provides that the unpaid balance of a loan must not exceed the applicable limit *at the end of the calendar year*. On the basis of this rule, Respondent argues that an excessive loan during the calendar year is not a violation if the loan balance is reduced to the statutory limit by December 31.

The Board recognizes, consistent with Respondent's argument, that the cited rule has historically been interpreted by the Board to mean that an outstanding loan balance that exceeds the applicable limit during the calendar year is not a violation of the statutory excess loan provision unless the loan amount still exceeds the limit after December 31 of the two-year segment during which the limit applies.

Findings of fact:

1. The Board concluded on September 29, 2014, that the complaint stated a prima facie violation and the matter was scheduled for a probable cause determination on November 18, 2014. The parties were duly notified and given an opportunity to appear

before the Board during the probable cause determination.

2. State representative candidate Bob Frey loaned his principal campaign committee, Bob Frey MN, \$9,000 on June 2, 2014, as reported on the committee's 2014 pre-primary-election Report of Receipts and Expenditures.
3. Candidate Bob Frey signed a public subsidy agreement for the election cycle ending December 31, 2014.

Conclusions:

1. For state representative candidates who sign a public subsidy agreement, section 10A.27 prohibits a loan of more than \$5,000 from the candidate to the candidate's principal campaign committee during the election segment.
2. Minnesota Rules part 4503.1500, subpart 2, provides that the balance due on a loan to a principal campaign committee may not exceed the applicable limit at the end of the calendar year.
3. The Board has interpreted Minnesota Rules part 4503, subpart 2, to permit loans to exceed the statutory limit during the calendar year as long as the balance of the loan is within the limit by the end of the year.
4. Complainant's contention that the Board's interpretation of the rule is inconsistent with the statutory requirements supports a finding of probable cause to believe that a violation exists, which the Board hereby makes.
5. Because the Board has given advice based on Rule 4503, subpart 2 in the past and during the current election cycle, the Board would not impose a penalty or require repayment of the loan prior to December 31, 2014, even if a formal investigation was ordered. As a result, there is no public benefit to be obtained by further proceedings in this matter.

Order

The complaint is dismissed and the matter is closed.

Comment

If the committee's year-end report shows that the balance of Mr. Frey's loan has not been reduced to \$5,000 or less, the Board's routine compliance testing will recognize the violation and will trigger an investigation of the matter.

/s/ Deanna Wiener

11/18/2014

Deanna Wiener, Chair
Campaign Finance and Public Disclosure Board

Dated: _____