

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MARC ASCH REGARDING THE REPUBLICAN PARTY OF MINNESOTA

On September 1, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Marc Asch regarding The Republican Party of Minnesota. The Republican Party of Minnesota (RPM) is the state central committee of the political party of the same name.

The complaint states that the RPM operates a booth at the Minnesota State Fair that sells merchandise, including t-shirts and hats. The complaint states that individuals purchasing merchandise at the booth were not informed that their purchase was a political contribution to the RPM. The complaint provided photos of the booth operated by the RPM during the 2022 Minnesota State Fair. The photographs show that there was a notice that appears to state “Contributions to the Republican Party of Minnesota will be used in connection with federal elections and are subject to the limitations and prohibitions of federal law . . . State Law requires us to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed . . . per calendar year.” The threshold amount requiring itemized reporting cannot clearly be determined based upon the pictures provided. The notice was posted on a wall behind where staff would stand and process transactions. Customers making purchases appear to have been several feet from the notice as there was a counter between the customer and the sales personnel, space for the sales staff, and a counter with additional merchandise between the sales staff and the wall. The notice was printed upon what appears to be a standard 8.5-inch by 11-inch piece of office paper. The complaint asserts that the notice was “virtually impossible to read from the point of sale and often totally blocked from view by the sales personnel behind the counter.” The complaint alleges that the RPM violated Minnesota Statutes section 10A.271 due to the failure to disclose to potential customers that the proceeds from purchases were political contributions by either verbally informing them or through the prominent display of a sign.

The complaint further states, “A review of the 2021 reports shows no reported contributions . . . matching the amounts of the items they have been selling. A photo of the booth’s pricing sign is included. Every hat, \$35, and every t-shirt, \$30, is priced at a point requiring collecting personal information required by Minnesota Statute and Campaign Finance regulations.” Mr. Asch provided a photograph purporting to show the 2022 pricing. While not explicitly alleging a violation of Minnesota Statutes sections 10A.13 or 10A.20, based upon the language of the complaint and the documentation provided, a violation of these sections appears to be alleged.

On September 19, 2022, the Board chair determined that the complaint alleged prima facie violations of the requirements in Minnesota Statutes sections 10A.271 and 10A.13, but dismissed the allegations related to Minnesota Statutes section 10A.20.

On October 24, 2022, Mr. Asch provided a statement further explaining the allegations in the complaint. Mr. Asch said that he visited the RPM's booth at the Minnesota State Fair in 2018, 2019, 2021, and 2022. Mr. Asch said that in 2018 he spoke with "one of the sales people at the Republican booth and noted their sign was not in compliance."

The RPM responded to the complaint on October 28, 2022. The response included two attachments, one with the text of the full notice depicted in the complaint, and one with instructions for staff related to sales at the fair. The instructions explain who may make a contribution and the requirement to collect certain information for contributions over \$20. The notice states:

Contributions to the Republican Party of Minnesota will be used in connection with federal elections and are subject to the limitations and prohibitions of federal law. The maximum an individual may contribute is \$10,000 per calendar year. Corporate and foreign national contributions are not permitted under federal law. Funds received in excess of federal contribution limits will be allocated to our state fund. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 per election cycle. In addition, State Law requires us to collect and report the name, mailing address, occupation and employer of individuals whose contributions exceed \$200 per calendar year. Political contributions are not deductible as charitable contributions for federal income tax purposes.

Analysis

When the Board chair makes a finding that a complaint raises a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). 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.

In 2018, the legislature adopted Minnesota Statutes section 10A.271 to help ensure that people purchasing items from party units, political committees and funds, and principal campaign committees realize that their purchases are political contributions. Minnesota Statutes section 10A.271, subdivision 1, provides that "[a] . . . political party unit . . . that raises funds through the sale of goods or services must disclose to potential customers that the proceeds from the purchase are a political contribution and to whom the contribution is made. The notice may be provided verbally at the time of purchase, or through the prominent display of a sign providing the notice in immediate proximity to the point of sale at the location where the goods or services are sold." Minnesota Statutes section 10A.271, subdivision 3, states that "[a] . . . political party unit . . . that knowingly violates this section is subject to a civil penalty imposed by the board of up to \$1,000."

To determine whether a sign with the notice is prominent, the Board must consider the totality of the display, including factors such as whether the notice was printed by itself or with other information, the nature of any other information printed with the notice and the font size and style of that information relative to the font size and style of the notice, and the location of the notice relative to other signs in the vicinity.

The RPM has not asserted that verbal notice was given, so this determination will focus on the notice provided via the sign depicted in the complaint and the response. The written notice was displayed behind where sales staff stood, which was several feet from where customers would have stood. The notice was printed in 20-point font.

The notice was not provided “in immediate proximity to the point of sale” as required by statutes. The notice should have been closer to the point of sale, such as by being placed on the sales counter or attached to the computer that processes payments. Also, while the notice provided explained the federal and state disclosure requirements for contributions to the RPM, the notice did not clearly state that each purchase at the booth was a contribution to the RPM. Based on the foregoing analysis, there is probable cause to believe that a violation of the notice requirement occurred.

However, the RPM apparently believed it was in compliance with the statute when it posted the notice behind the sales counter. Minnesota Statutes section 10A.271 is intended to prevent consumers from unknowingly making political contributions. Due to the very nature of the booth, being that of the RPM, and primarily selling items clearly supporting the RPM or Republican candidates, it is unlikely that individuals made contributions without knowledge that their money would be used to support the RPM. Further, a civil penalty cannot be assessed under Minnesota Statutes section 10A.271 unless the violation was knowing. Given all of the evidence, the record does not establish probable cause to believe that a knowing violation of the notice requirement occurred.

In relevant part, Minnesota Statutes section 10A.13 requires the treasurer of a party unit to keep an account of, “the name and address of each source of a contribution made to the committee, fund, or party unit in excess of \$20, together with the date and amount of each.” Minnesota Statutes section 10A.13 further states, “Any individual who knowingly violates this subdivision is subject to a civil penalty imposed by the board of up to \$1,000.”

The complaint provided evidence the Republican Party sold hats costing \$35 and t-shirts costing \$30. The sale of either item alone would require recording the date of each sale along with the name and address of the purchaser. The Republican Party also sold numerous items for less than \$20, which, if purchased together, could equal more than \$20 and trigger the record keeping requirements. However, the complainant has not provided evidence the Republican Party failed to collect the required information. Further, the Republican Party provided evidence that it instructed staff of the requirement to collect information from contributors.

The Board has limited resources. In part because a civil penalty cannot be imposed under Minnesota Statutes section 10A.271 absent a knowing violation, it is unlikely that there is any benefit to be gained from a formal investigation. Based on those and other factors referenced in the analysis above, the Board concludes that a formal investigation is not warranted.

Order:

1. Although probable cause exists to believe that the RPM sold merchandise without a proper notice in violation of Minnesota Statutes section 10A.271, there is not sufficient evidence for probable cause to believe that there was a knowing violation, and a formal investigation is not warranted.
2. The allegation that the RPM sold merchandise without collecting required information from contributors in violation of Minnesota Statutes section 10A.13, subdivision 1, is dismissed without prejudice because there is not probable cause to believe that this violation occurred.
3. The Board instructs the Executive Director to provide the RPM with information regarding placement and example wording for the notice required by Minnesota Statutes section 10A.271.
4. Pursuant to Minnesota Rules 4525.0210, the complaint is dismissed without prejudice.

/s/ Faris Rashid
Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: November 14, 2022