

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MARJORIE J. HOLSTEN REGARDING THE MINNESOTANS FOR JULIE BLAHA COMMITTEE

On September 6, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Marjorie J. Holsten regarding State Auditor Julie Blaha, in her role as a candidate for Minnesota State Auditor. Minnesotans for Julie Blaha is the principal campaign committee of State Auditor Blaha.

The complaint alleges that the Blaha committee and State Auditor Blaha participated in the dissemination of campaign materials that did not have the correct disclaimer required by Minnesota Statutes section 211B.04. The complaint alleges that State Auditor Blaha and her campaign committee used a color two-sided brochure for a door-knocking event that did not have the Blaha committee disclaimer, but instead had a disclaimer that states “This is an independent expenditure prepared and paid for by the MN DFL Party, 255 E. Plato Blvd., St. Paul, MN 55107. It is not coordinated with or approved by any candidate nor is any candidate responsible for it.” The complaint provides photographs of both sides of the brochure and a close-up photograph of the disclaimer. The complaint provides a screenshot of a tweet from the Blaha committee’s Twitter account dated August 13, 2022, stating “We’re less than 90 days away from Election Day, which means it is time to mobilize and organize! Auditor Blaha joined volunteers in the Fifth Congressional District to talk to voters and get DFLers elected this fall. To join us for a knock, click below: blahaforauditor.org/pageg”. The complaint also provides a screenshot of a Facebook event page advertising a door-knocking event scheduled for September 10, 2022, in Senate District 35, titled “Doorknock for Education with State Auditor Julie Blaha”.

The complaint provides as evidence three photographs included in the August 13 tweet. In two of the photographs State Auditor Blaha appears to be holding the brochure identified in the complaint as an independent expenditure by the DFL Party. The other photograph is a picture of the brochure placed in a door handle.

The complaint alleges that the Blaha committee coordinated with the DFL Party in the production of the brochure because the brochure states, “Join our campaign at: www.blahaforauditor.com”. The complaint also alleges that the Blaha committee violated Minnesota Statutes sections 10A.17 and 10A.27, which pertain to expenditures and contribution limits, respectively. The complaint references Advisory Opinion 437 issued by the Board in 2014 as the basis for concluding that the brochure “violates the prohibition on independent expenditures in 10A” and that it “must be disclosed as a coordinated expenditure.”

On September 19, 2022, the Board’s chair determined that the complaint stated a prima facie violation of Minnesota Statutes section 211B.04 and dismissed the allegations regarding Minnesota Statutes sections 10A.17 and 10A.27. The Board’s chair also determined that Board staff would notify the DFL party of the complaint to allow the DFL party an opportunity to provide

information regarding this matter. On September 26, 2022, David Zoll, counsel for both the Blaha committee and the DFL party, submitted a response to the complaint. Mr. Zoll appeared before the Board in executive session on October 5, 2022, to address the complaint and answer questions from Board members.

The response from the Blaha committee and DFL party stated that the brochure in question was an independent expenditure because 1.) the DFL “made an expenditure for the design and printing” of the brochure; 2.) the brochure “expressly advocates for the re-election of Julie Blaha as the State Auditor”; and 3.) the brochure “was designed and produced without any involvement or coordination, or approval, whether express or implied, of the Blaha committee.” The response states that the brochure in question was used in a door knocking event organized by the DFL for several DFL candidates. The response also states that at the door knocking event State Auditor Blaha knocked on doors at approximately twenty residences and delivered the brochure to those residences.

The response further states that the expenditures related to the distribution of the brochure at the door knocking event are not contributions to the Blaha committee, as the only expenditure associated with the distribution of the brochure at the door knocking event was the expense of DFL party staff that organized for several candidates and would be categorized as a multicandidate political party expenditure under Minnesota Statutes section 10A.275. The response requests that the Board dismiss the complaint.

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.

If the Board finds that probable cause exists, the Board is required to determine whether the alleged violation warrants a formal investigation, considering the type and magnitude of the alleged violation, the knowledge of the respondents, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. If the Board finds that probable cause exists but does not order a formal investigation, the Board is required to either dismiss the complaint or order a staff review. Minn. R. 4525.0210, subp. 6.

Generally, Minnesota Statutes section 211B.04 requires campaign material to contain a disclaimer that identifies the person or campaign committee that prepared or disseminated the material. Here, the DFL party and Blaha committee agree that the brochure disseminated by State Auditor Blaha during the door knocking event to approximately twenty residences was an independent expenditure brochure produced by the DFL. While the brochure was produced and paid for as an independent expenditure by the DFL Party, the dissemination of the brochure by the State Auditor at the door knocking event made the disclaimer incorrect for the literature distributed by State

Auditor Blaha. Minnesota Statutes section 10A.176, subdivision 7 states that “[a]n expenditure is a coordinated expenditure if the expenditure is made with the candidate’s participation in . . . any of the processes required for the . . . distribution of the final product.” Once State Auditor Blaha distributed the brochure to the approximately twenty residences at the door knocking event, the disclaimer was no longer correct because the brochure was no longer an independent expenditure. For the foregoing reasons the Board concludes that there is probable cause to believe that the Blaha committee disseminated approximately twenty brochures with incorrect disclaimers in violation of Minnesota Statutes section 211B.04.

The cost to produce the approximately twenty brochures in question was likely minimal. The Blaha committee has been registered with the Board since 2017. The Blaha committee does not have any history of past violations of the disclaimer statute. The Board has limited resources and it is not clear that there would be any benefit to be gained from formal findings rather than informal resolution of the matter. Considering those factors, the Board concludes that a formal investigation is not warranted.

The Minnesota DFL State Central Committee’s September 2022 report of receipts and expenditures, filed September 27, 2022, does not include any independent expenditures in favor of State Auditor Blaha. The complaint and response both indicate that the brochure was disseminated in August of 2022, and therefore, any expenditures related to the brochure should be included on the report, which covered the period from January 1 through September 20, 2022. Minnesota Statutes section 10A.025, subdivision 4 requires that when a report filed with the Board does not accurately include all of a party unit’s financial transactions, then the party unit must file an amended report within 10 days of learning of the error.

Order:

1. Although probable cause exists to believe that the Blaha committee disseminated a brochure with an improper disclaimer in violation of Minnesota Statutes section 211B.04, a formal investigation is not warranted.
2. The Board’s executive director is directed to initiate a staff review regarding this matter pursuant to Minnesota Rules 4525.0320 for the purpose of concluding the investigation by conciliation agreement with the Blaha committee. If the investigation cannot be resolved by conciliation agreement, the executive director is directed to prepare findings to resolve this matter.



Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: October 5, 2022