

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

**Findings, Conclusions, and Order in the Matter of the
Joe Atkins for State Representative Committee**

Background

The investigation of the Joe Atkins for State Representative Committee (the Committee) was initiated by the Campaign Finance and Public Disclosure Board on October 7, 2015, after a staff review of candidate committees that reported unusually high noncampaign disbursements during the years 2011 through 2014. The purpose of the investigation was to determine whether the Committee's use of the noncampaign disbursement categories provided in Chapter 10A was consistent with the scope of these categories and the requirements of Minnesota Statutes section 211B.12.

The Committee reported noncampaign disbursements totaling \$108,133 during the years 2011 through 2014 that are broken down as follows: \$21,424 in 2011, \$32,401 in 2012, \$22,226 in 2013, and \$32,431 in 2014. Campaign committees are required to maintain records documenting the collection and use of committee funds for four years from the date a report is filed. The Board limited the investigation of the Committee's noncampaign disbursements to the years for which the Committee was required to have records.

The Committee was notified of the investigation by letter dated October 12, 2015. The initial general response on behalf of the Committee by its treasurer was received on October 19, 2015. The response stated that the Committee was under the impression it was reporting all noncampaign disbursements correctly, since it had not previously been notified by the Board of any questions or concerns about the Committee's reports.

Because the investigation required information on the circumstances surrounding specific noncampaign disbursements, all subsequent responses to Board requests for information were provided directly by Rep. Atkins. Rep. Atkins met with staff on two occasions to discuss the investigation, and fully cooperated with the investigation by providing written responses, spreadsheets, and other documentation of committee expenditures. Rep. Atkins also appeared before the Board to answer questions in executive session on April 5, 2016.

Statutory Authority and Related Administrative Rules

Minnesota Statutes section 211B.12 provides that money collected by campaign committees may be used for specific political purposes, or for purposes consistent with the noncampaign disbursements defined in Chapter 10A. In addition, Minnesota Statutes section 211B.12 limits the use of campaign committee funds with a general prohibition that states, "Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use."

The expenses incurred by a candidate's committee are generally categorized as either campaign expenditures made to influence the nomination or election of the candidate, or as noncampaign disbursements, which are a separate category of spending identified in statute. Noncampaign disbursements do not count against the campaign expenditure limit that applies if the candidate voluntarily signed the public subsidy agreement. There are 22 noncampaign disbursements recognized in Minnesota Statutes section 10A.01, subdivision 26. This statute

provides in part, “The board must determine whether an activity involves a noncampaign disbursement within the meaning of this subdivision.”

The Board is also authorized to recognize additional noncampaign disbursements through administrative rule or advisory opinion. In Minnesota Rules 4503.0900 the Board has recognized six additional noncampaign disbursements that are applicable to all candidates.

Noncampaign disbursements must be itemized on a candidate’s campaign finance report if the amount purchased from a vendor over a calendar year exceeds \$200. Itemized noncampaign disbursements must include sufficient information to both identify the goods or services purchased, and to justify the noncampaign disbursement category claimed for the purchase.¹

Many of the noncampaign disbursements provided in statute are specific as to what items may be included in the category, and therefore it is a straightforward matter to determine if a purchase qualifies. However, some of the categories are broadly stated, and campaign committees have asked for clarification regarding these categories in advisory opinion requests to the Board.

Advisory opinions are issued as guidance and are a safe harbor only to the requestor of the opinion. While advisory opinions provide information on the Board’s interpretation of statutory requirements to other committees with similar questions, the opinions are not binding on those committees. If the Board believes that the guidance stated in an advisory opinion should be applicable to more than the requestor the Board must adopt an administrative rule to achieve that end. The process of adopting administrative rules provides an opportunity for the public, the legislature, the Office of Administrative Hearings, and the Governor to evaluate the proposed rules and provide input to improve the content.

This limitation on advisory opinions is specifically noted because in some cases the Committee reported purchases for noncampaign disbursements that were not consistent with the guidance provided by the Board in advisory opinions for similar expenditures. While the Board concludes that the Committee’s use of certain noncampaign disbursement categories is not permitted by statute, it acknowledges that the Committee was not bound by the advisory opinions and that the Board has not adopted administrative rules to make those opinions binding. Therefore, although the Board finds the use of certain noncampaign disbursements to be impermissible under the applicable statutes, it will not impose a civil penalty for those uses nor will it require amendments to the committee’s reports in those cases.

Given the previous lack of clear guidance on the scope of some noncampaign disbursement categories, the Board will develop and distribute bulletins and training materials on noncampaign disbursements. Additional guidance in statute or the adoption of additional administrative rules by the Board may be needed to provide consistent enforcement of some categories.

Noncampaign Disbursements Reported by the Committee

Many noncampaign disbursements reported by the Committee were consistent with the clear language of the statute or administrative rule used to categorize the purchase. Others were consistent with broader interpretations expressed in advisory opinions issued by the Board. These disbursements were excluded from further review early in the investigation. For example, Rep. Atkins used the Committee’s funds to attend National Conference of State

¹ See Minnesota Statutes section 10A.20, subdivision 3(m), and Minnesota Rules 4503.0900, subpart 3.

Legislatures meetings, and reported the costs as a type of noncampaign disbursement. This is consistent with the Board's longstanding recognition that the cost of attending conferences at which subjects before the legislature are discussed may be paid for with committee funds and reported as a noncampaign disbursement.²

The Committee's use of other noncampaign disbursement categories was not as clear. As part of the investigation the following noncampaign disbursements categories were reviewed. The wording and identifying number of the noncampaign disbursement provided in Minnesota Statutes section 10A.02, subdivision 26, is provided in bold.

(8) Payment for food or a beverage consumed while attending a reception or meeting directly related to legislative duties

During 2011 through 2014 the Committee reimbursed Rep. Atkins \$3,109 for meals or beverages consumed at a meeting or reception directly related to legislative duties. At multiple occasions when meals were purchased using this category the Committee paid for the meal consumed by Rep. Atkins and the cost of meals for other individuals who were at the meeting.

In a finding issued in 2006 the Board concluded that this noncampaign disbursement was available only for the meal consumed by the legislator because only the legislator had "legislative duties." Therefore, this category could not be extended to cover the cost of meals bought for other individuals.³ However, although the finding was published at the time it was issued, the Board did not subsequently publish guidance on the subject or include it in Board training. Rep. Atkins, therefore, will not be required to reimburse the Committee for the meals purchased for other individuals. Additionally, because of a lack of clear guidance on the subject, Rep. Atkins will not be asked to amend the Committee's reports to separate out his meals from the meals for others.

The investigation also suggested that some of the subject meals were not at receptions or meetings as that word might be used in a more formal sense, but represented payment for lunches or dinners with staff or colleagues where legislative work was discussed. Campaign funds are contributions made to a committee, often by individual citizens, to assist in getting the candidate elected. For that reason, the Board concludes that statutes permitting the use of committee funds for purposes not related to getting elected should be applied narrowly. The Board further concludes that the noncampaign disbursement category for food and beverages at a reception or meeting related to legislative duties is limited to organized receptions or meetings and is not available for lunches or dinners with staff or colleagues, even if business is discussed at these meals.⁴ However, because this application of the statute is newly announced in these findings, it will not be given retroactive application.

(10) Payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses

The Committee reported unusually large expenditures for two types of purchases, cell phone plans and mileage reimbursement, which were categorized as costs of serving in office.

Cellphone Plan - During 2011 – 2014 the Committee paid \$14,070 for cellphone plan charges. The plan provided five lines, one for Rep. Atkins and four lines for his family members. The

² See Advisory Opinions 277 and 391 (issue 5).

³ Complaint Against the People for (Gregory) Davids Committee, August 15, 2006

⁴ See Advisory Opinion 354 discussing the payment of food and beverages for legislative staff under other noncampaign disbursement categories.

Committee paid for the entire plan in 2011 and 2012 on the basis that Rep. Atkins had not asked for reimbursement for the cost of large amounts of printing done to benefit the Committee on his personal printer. In 2013 and 2014 Rep. Atkins personally paid \$39.96 a month towards the cell phone plan, which was the cost of having four lines added to the basic plan.

The Board concludes that both approaches resulted in an impermissible personal benefit to Rep. Atkins. Not paying any portion of the phone plan in 2011 and 2012 based on expenditures by Rep. Atkins that were not submitted for reimbursement is problematic on several levels. That is particularly the case when the value of the printing was based on rough estimates of the number of copies made on the personal printer which may or may not have been sufficient to cover the cost of the phone plan.

Starting in 2013 Rep. Atkins did pay for the extra lines added for family members. However, paying for only the cost to add additional lines to the plan did not consider the value of the data, text, and phone calls provided to family members as part of the cost of the basic plan. In 2013 and 2014 the cost of additional data use over the basic plan was also paid for by the Committee without considering which phone lines were creating the data overage.

The best practice for committees with respect to cell phone plans and use is to have a separate account for the candidate's phone. However, if a legislator uses committee funds to pay for a family cell phone plan, then the amount the committee pays must reflect only the use attributable to the legislator.

To avoid a conversion of committee funds to personal use a campaign committee may either (1) track the data, text, and phone calls used each month by each phone on the plan to determine the portion of the plan cost that should be allocated to the legislators phone for that month and then add that amount to the line cost for the legislator's phone, or (2) use a pro-rata division of the entire monthly bill (the total cost divided by the number of phones on the plan). The latter approach, although not as precise as the former, is sufficient to ensure that no significant personal benefit is being paid for with campaign funds, and the pro-rata approach has the benefit of being easy to calculate for a treasurer.

Rep. Atkins agreed to use option 2 above to reimburse the Committee 80% of the cellphone plan costs for 2011 through 2014, which amounts to \$11,256.28.

Although Committee expenditures in 2015 are not a part of this investigation, the Committee should also examine the payments made for the cellphone plan in 2015 to insure they comply with one of the two calculations provided above. If a payment for the cellphone plan from Rep. Atkins to the Committee is required it should be reported on the Committee's 2016 report.

Mileage to Capitol - During 2011 through 2014 the Committee reimbursed Rep. Atkins \$10,616 for mileage categorized as a cost of serving in office. Rep. Atkins provided the Board with a copy of the mileage log used as documentation for reimbursements. A significant portion of the mileage claimed is permitted by statute; typically the travel by Rep. Atkins is to a location to give a presentation or appear on a panel because he is a legislator. Rep. Atkins was also reimbursed by the Committee for the mileage from his home to the Capitol, from his home to his business office if he met there with constituents on a legislative issue, and from his business office to the Capitol.

Board advisory opinions on the costs of serving in office have been consistent in informing committees that this category does not apply broadly to any and all expenses that may relate to

being a legislator⁵. Rather, the Board has recognized that this category is appropriate only for expenditures that would not have been incurred if the individual was not specifically a legislator.

The mileage reimbursements reported by the Committee would extend this category to include the cost of driving to work at the Capitol, or to a private office if legislative work is conducted at the office. The noncampaign disbursement category for costs of serving in office specifically states that the costs are "other than for personal uses." The Board concludes that the cost of getting to work is a personal expense for almost every employed person; not a cost unique to serving in the legislature.

Because the Board has not previously addressed the specific question of costs of commuting to work, Rep. Atkins did not have specific guidance on the subject. Thus, although the Board concludes that costs of commuting to work are not a permitted expense, it will not require the Committee to amend its reports to segregate out such costs nor will it require Rep. Atkins to reimburse the committee for these costs.

(6) Services for a constituent by a member of the legislature or a constitutional officer in the executive branch, including the costs of preparing and distributing a suggestion or idea solicitation to constituents, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held, and half the cost of services for a constituent by a member of the legislature or a constitutional officer in the executive branch performed from adjournment sine die to 60 days after adjournment sine die;

The noncampaign disbursement category for constituent services is often used for sessional wrap-ups which inform constituents about the issues before the legislature and often highlight legislation introduced or supported by the legislator. The category may also be used for idea solicitations or surveys that are sent to constituents of the legislator. A constituent services piece may not advocate for the re-election of the legislator or solicit campaign contributions.

The constituent services category is unique in that there is a timing component that requires the material to be distributed before the legislative session adjourns sine die in order to fully qualify as a noncampaign disbursement. The cost of a constituent service provided during the 60 days after adjournment sine die⁶ is allocated 50% noncampaign disbursement and 50% campaign expenditure. Starting 61 days after adjournment sine die the entire cost of the purchase is a campaign expenditure.

During the investigation the Board reviewed the following noncampaign disbursements for constituent services reported by the Committee.

Cost of Hosting a Website – The Committee's method of reporting the cost of hosting a website for Rep. Atkins varied over the four years of reports examined by the Board. In 2011 and 2012 the cost was reported as a campaign expenditure. In 2013 the cost for the site was reported as a campaign expenditure and a noncampaign disbursement in equal amounts. In 2014 the cost was reported totally as a noncampaign disbursement. An examination of the website showed that the content included information consistent with a constituent service sessional wrap-up or idea survey. However, the website also contained an online method of donating to the campaign committee.

⁵ See also, Matter of the Complaint of Steve Timmer regarding Ernest Leidiger and Steve Nielsen, May 1, 2012, disallowing payment of a speeding ticket as a cost of serving in office.

⁶ The Board notes that the allocation requirement applies after adjournment sine die only in an election year in which the candidate's office is on the ballot.

After reviewing the content of the website and the timing requirements for services to a constituent Rep. Atkins has agreed that the Committee will amend the year-end reports of receipts and expenditures for 2013 and 2014 to show the entire cost of hosting the website as a campaign expenditure.

Sessional Wrap-Up - As stated above, the cost of surveys, legislative updates, and similar communications are considered constituent services if circulated prior to adjournment sine die, and partially so for 60 days after. The timing of when material is circulated to constituents is critical, as material that is printed during the legislative session but not distributed until more than sixty days after adjournment sine die is counted as campaign material regardless of the content of the material.

In response to this investigation the Committee reviewed constituent service publications paid for and distributed during the four years under review. The Committee self-identified to the Board a payment of \$7,751.50 for the printing of what was intended to be a sessional wrap-up and survey. However, upon examining Committee records it was determined that the material was not distributed until after more than 60 days past adjournment sine die, which resulted in the expenditure for printing being a campaign expenditure.

The Board requested and received examples of printed materials distributed by the Committee. The content of two letters to constituents contained solicitations for contributions to the Committee, and were therefore campaign literature. After reviewing the reporting categories and the purpose of the literature Rep. Atkins has decided to view all of the material produced on his home printer as campaign literature⁷. Rep. Atkins will amend the reports for 2011 – 2014 to add the literature printed on his home printer as an in-kind contribution from him to his committee and to report the in-kind expenditure of the printing done as campaign expenditures.

(7) Payment for food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities

During the years 2011 through 2014 the Committee categorized a total of \$6,457.03 in purchases of food and beverages as noncampaign disbursements because the items were provided to volunteers while campaigning. In some cases, however, the food and beverages were provided to volunteers who were distributing literature that had been identified as a constituent service.

Volunteers distributing constituent service publications are by definition not campaigning for the legislator; rather, they are performing constituent services. Consequently, the Committee's use of this category of noncampaign disbursement was questioned by the Board. However, as discussed in the previous section, the Committee is now reporting the material distributed by the volunteers as campaign literature. Based on this reporting change the Board concludes that the Committee's use of this noncampaign disbursement category for literature distributed for Rep. Atkins within his district was consistent with the statutory scope of the noncampaign disbursement.

In 2012 and 2014 the Committee also classified as noncampaign disbursements \$2,077 for the cost of providing transportation and food to volunteers who were door knocking and doing literature drops for other legislative candidates in their districts. Rep. Atkins viewed the

⁷ The Board recognizes that some printed communications may be properly categorized as either a campaign expenditure or a noncampaign disbursement, at the committee's option. This is true in the case of informational updates and newsletters such as those re-categorized by Rep. Atkins.

canvassing for other candidates as part of his duties as DFL House Caucus Finance Chair to see personally how the election in key districts was going. Rep Atkins also campaigned for the other candidates at the events, and brought volunteers with him to support the effort.

A volunteer's time is not a contribution to any candidate. But the costs of transporting the volunteers to the other legislative districts, and the cost of providing food and beverages to the volunteers while they were campaigning for other candidates, were in-kind contributions to those candidates. As provided in Minnesota Statutes section 10A.27, subdivision 9, a candidate's campaign committee may only make a contribution to another state candidate when the contributing committee terminates within twelve months of the contribution.

Rep. Atkins has agreed to personally reimburse the Committee \$2,077 for the transportation and food costs. The reimbursement will, in effect, turn the contribution from the Committee to the other candidates into a personal contribution from Rep. Atkins.

Minnesota Statutes section 10A.27, subdivision 9, also prohibits a candidate's committee from accepting in-kind contributions from another state level committee without receiving a written confirmation from the contributing committee that it intends to terminate within twelve months. There is no civil penalty prescribed for a candidate's committee that accepts a contribution from another candidate's committee that does not terminate. The nature of the transportation and food in-kind contributions provided by the Committee makes it possible that the recipient candidate committees were not aware of the contributions, or did not realize that the food and transportation were from the Committee rather than from Rep. Atkins directly. In view of these facts and of the fact that Rep. Atkins has reimbursed his Committee for these costs, making them his own personal costs, the Board declines to extend the investigation of this issue to include the candidate committees that benefited from the transportation and food provided to volunteers.

Other Issues Identified by the Investigation

The Board's investigation of the noncampaign disbursements reported by the Committee required Rep. Atkins to review many expenditures reported by the Committee. During the course of this review Rep. Atkins self-identified two meals that were paid for by the Committee in error. Additionally, the review of disbursements determined that in 2011 the Committee contributed \$158.30 to a charity, which exceeded the \$100 limit on charitable contributions provided in Minnesota Statutes section 211B.12. To rectify these errors Rep. Atkins will reimburse the Committee the price of the meals and the amount that the contribution to the charity exceeded the limit.

To resolve the issues raised in this investigation, Rep. Atkins decided to personally reimburse the Committee \$13,660.88. Rep. Atkins has provided the Board with a copy of a check dated March 29, 2016, written on his personal account that was used to make the reimbursement.

Campaign Expenditure Limit Violation

As detailed above, a number of purchases that the Committee reported as noncampaign disbursements will be re-categorized and reported as campaign expenditures. In addition, the home printing done by Rep. Atkins will be added to the reports as additional campaign expenditures. Rep. Atkins signed the public subsidy agreement for the years 2011 through 2014. The Committee spent close to the expenditure limit in 2011, 2012, and during the 2013 – 2014 election cycle.

After filing amended reports that classify some of the previously reported noncampaign disbursements as campaign expenditures and that include the previously unreported campaign expenditures, the Committee will exceed the campaign expenditure limit for 2011 by \$469.24, for 2012 by \$296.28, and for the 2013 – 2014 election cycle by \$9,767.12. In total the Committee exceeded the applicable contribution limits by \$10,532.64. The Committee has not previously exceeded the campaign expenditure limit.

Based on its investigation, the Board makes the following:

Findings of Fact

1. The Joe Atkins for State Representative Committee is the principal campaign committee of Rep. Joe Atkins.
2. During the years 2011 through 2014 the Committee paid \$14,070 for a cellphone plan that provided service to Rep. Atkins and other individuals. A pro-rata allocation of the total cellphone plan costs across all lines on the plan limits the amount that may be paid for with Committee funds to \$2,814.07.
3. During the years 2011 through 2014 the Committee's reports of receipts and expenditures did not report home printing done by Rep. Atkins on behalf of the Committee as an in-kind contribution or as an in-kind campaign expenditure by the Committee.
4. During the years 2011 through 2014 the Committee's reports of receipts and expenditures included as noncampaign disbursements for costs of serving in office the cost of travel to and from the candidate's places of employment.
5. During the years 2011 through 2014 the Committee's reports of receipts and expenditures included the cost of meals for persons other than the legislator under the noncampaign disbursement category for costs of food and beverages at meetings related to legislative duties.
6. During the years 2013 and 2014 the Committee's reports of receipts and expenditures incorrectly listed the costs of hosting the Committee's website in whole or in part as a noncampaign disbursement.
7. In 2013 the Committee incorrectly reported as a noncampaign disbursement \$7,751.50 for printing of material that, because it was distributed more than 60 days after adjournment sine die of the 2014 legislative session, was campaign literature.
8. During the years 2012 and 2014 the Committee incorrectly reported \$2,077 in transportation and food and beverages provided to volunteers canvassing for legislative candidates as noncampaign disbursements.
9. During the years 2013 and 2014 the Committee mistakenly reported two personal meals as noncampaign disbursements.
10. During 2011 the Committee contributed \$158.30 to a single charity.
11. Rep. Atkins signed a public subsidy agreement for 2011, 2012, and the 2013-2014 election cycle. During 2011, 2012, and the 2013 – 2014 election cycle, the Committee spent a total of \$10,532.64 in excess of the campaign expenditure limits applicable to candidates who

sign the public subsidy agreement. This is the Committee's first violation of the campaign expenditure limits.

Based on the Findings of Fact, the Board makes the following:

Conclusions of Law

1. The expenditures by the Joe Atkins for State Representative Committee for cellphone service resulted in an impermissible use of Committee funds under Minnesota Statutes section 10A.01, subdivision 26 (10), and Minnesota Statutes section 211B.12.
2. The Joe Atkins for State Representative Committee submitted reports of receipts and expenditures in the years 2011 through 2014 that did not meet the disclosure requirements of Minnesota Statutes section 10A.20, subdivision 3, because they failed to disclose all in-kind contributions received and all in-kind campaign expenditures made, incorrectly reported some campaign expenditures as noncampaign disbursements, and mistakenly listed two personal expenditures by Rep. Atkins as noncampaign disbursements.
3. The Joe Atkins for State Representative Committee improperly classified costs of travel to the candidate's places of employment as costs of serving in office. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.
4. The Joe Atkins for State Representative Committee improperly classified the payment of meals for persons other than the candidate as costs of food and beverages at meetings related to legislative duties. This classification, although improper, was made in good faith and without any intent to improperly use Committee funds.
5. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 10A.27, subdivision 9, in 2012 and 2014 when it made in-kind contributions to other state candidates at a time when it did not intend to terminate its registration and did not, in fact, terminate its registration within twelve months.
6. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 211B.12 when it contributed over \$100 to a single charity in 2011.
7. The Joe Atkins for State Representative Committee violated Minnesota Statutes section 10A.28, subdivision 1, in 2011, 2012, and the 2013 – 2014 election cycle when the Committee's campaign expenditures exceeded the limit for candidates who signed a public subsidy agreement.

**Based on the preceding Findings of Fact and Conclusions of Law,
the Board issues the following:**

Order

1. A civil penalty in the amount of \$10,532.64 is assessed against the Joe Atkins for State Representative Committee for exceeding the campaign expenditure limit in 2011, 2012, and the 2013 – 2014 election cycle. This amount is one times the amount by which the Committee exceeded the spending limit.

2. The Joe Atkins for State Representative Committee is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. Rep. Atkins must and has personally reimbursed the Committee \$13,660.88. This payment reimburses the Committee for the campaign funds that were used for purposes not permitted by statute, the campaign funds that were contributed to charity in excess of the statutory limit, the campaign funds that were used to pay for the two personal meals, and the campaign funds that were used to pay for contributions to other state candidates. Rep. Atkins has made the reimbursement required in this order. The Committee must provide documentation within 30 days of receipt of this order showing the deposit of the funds into the Committee's account.
4. The Joe Atkins for State Representative Committee is directed to submit amended year-end reports of receipts and expenditures for 2011 through 2014 to resolve the reporting errors and omissions identified in these findings. The amended reports must be submitted within 45 days of the date of this order.
5. If the Joe Atkins for State Representative Committee does not comply with the provisions of this order, the Board's Executive Director may request that the Attorney General bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
6. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5 (a).

Dated: May 27, 2016

/s/ Christian Sande

Christian Sande, Chair
Campaign Finance and Public Disclosure Board