

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

**FINDINGS IN THE MATTER OF A COMPLAINT REGARDING GOVERNOR TIM
PAWLENTY AND THE (TIM) PAWLENTY FOR GOVERNOR COMMITTEE**

Procedural Background

On July 25, 2003, Mike Erlandson, Chair, Democratic-Farmer-Labor Party of Minnesota, filed a complaint with the Campaign Finance and Public Disclosure Board (“the Board”) against Governor Tim Pawlenty relating to events occurring when he was a candidate for governor (“Candidate Pawlenty”) and the (Tim) Pawlenty for Governor Committee (“the Pawlenty Committee”).

Mr. Erlandson alleged that Candidate Pawlenty failed to disclose compensation received from BAMCO and Associates LLC (“BAMCO”) on his Original Statement of Economic Interest when he filed for office in 2002. Mr. Erlandson requested that the Board determine if Candidate Pawlenty knowingly filed a false report with the Board in violation of Minn. Stat. §10A.025, subd. 2, and to determine if the compensation that BAMCO received was an attempt to circumvent the contribution limits in violation of Minn. Stat. §10A.29. Additionally, Mr. Erlandson alleged that payments from Access Anywhere LLC to BAMCO were corporate contributions to the Pawlenty Committee that violated Minn. Stat. §211B.15.

On August 20, 2003, Julie Risser, Edina Green Party and Rhessa Schwartz, St. Louis Park Green Party filed a complaint regarding this matter. Ms. Risser and Ms. Schwartz also alleged that Candidate Pawlenty violated Minn. Stat. §10A.09, subd. 5, by failing to accurately report the nature of his association with BAMCO, and Minn. Stat. §10A.20, subd. 3, by failing to report to the Board payments that BAMCO received from Access Anywhere LLC as a contribution to the Pawlenty Committee. Ms. Risser and Ms. Schwartz also alleged that both then Candidate Pawlenty and Access Anywhere LLC violated Minn. Stat. §10A.27, when BAMCO accepted payments from Access Anywhere LLC in excess of the contribution limits for candidates.

The purpose of the Board’s investigation into this matter was to determine if Candidate Pawlenty violated provisions of Minnesota Statutes, Chapter 10A. The Board’s authority to investigate violations is limited to the provisions of Chapter 10A by Minn. Stat. §10A.02, subds. 10 and 11. The Board did not investigate allegations of violations outside the scope of Minnesota Statutes, Chapter 10A, including the allegations that Access Anywhere LLC and Candidate Pawlenty violated Minn. Stat. §211B.15.

On July 22, 2003, prior to being notified of the complaint, Governor Pawlenty amended his Original Statement of Economic Interest filed in July of 2002 to disclose that BAMCO was a source of compensation from June of 2001 through July of 2002. BAMCO had been listed on the Original Statement of Economic Interest as an investment.

On July 28, 2003, the Board requested information from Governor Pawlenty regarding his Original Statement of Economic Interest, and the subsequent amendment. Board review of the Reports of Receipts and Expenditures for calendar year 2002 for the Pawlenty Committee determined that the Pawlenty Committee reported no cash or in-kind contributions from Pawlenty in 2002. Because there were no contributions from the personal funds of the Candidate Pawlenty to the Pawlenty Committee there appears to be no connection between the payments from Access Anywhere LLC to BAMCO and the Pawlenty Committee. Therefore, circumvention of the contribution limits as prohibited in Minn. Stats. §§10A.27 and 10A.29 could not have occurred.

On August 14, 2003, attorney Christopher Dietzen, responded on behalf of Governor Pawlenty, and asserted that then Candidate Pawlenty was not required to disclose his interests in BAMCO, a single-member limited liability company. Mr. Dietzen noted that Minn. Stat. §10A.09, subd. 5, requires public officials to disclose income from any associated business. In his response, Mr. Dietzen cited the statutory definitions of “associated business” and “association” and stated “given the plain statutory language, it is obvious that the Governor had no responsibility to report the income he received from BAMCO. Because BAMCO consisted of only one person—the Governor—BAMCO simply is not an association as that term is defined.” Mr. Dietzen further stated “the Governor complied with both the letter and the spirit of the reporting requirements...Nonetheless, he went beyond the requirements to disclose his interest in BAMCO.”

On August 26, 2003, Mr. Dietzen responded on behalf of Governor Pawlenty to the complaint filed by Ms. Risser and Ms. Schwartz. In response to Ms. Risser and Ms. Schwartz’s allegations that the Pawlenty Committee failed to report contributions from Access Anywhere LLC that were in excess of the contribution limit Mr. Dietzen stated, “this allegation ignores the fact that neither Governor Tim Pawlenty, BAMCO, nor Access Anywhere made any contributions to the Pawlenty for Governor Committee. Making a contribution to the Committee is expressly required to state a claim for violation of Minn. Stat. §10A.20 and 10A.27.”

On August 26, 2003, James Moore, Chair, Independence Party of Minnesota, submitted a letter supporting Ms. Risser and Ms. Schwartz’s complaint.

On August 27, 2003, Mr. Erlandson submitted a second letter alleging that by accepting payments from Elam Baer of Access Anywhere LLC, Candidate Pawlenty exceeded the campaign expenditure limits set forth in Minn. Stat. §10A.25, subd.2.

The Board considered both complaints in executive session at its meeting on August 27, 2003. The Board’s decision was based upon the complaints, the response, records obtained from the Minnesota Secretary of State’s Office and Board records.

Based on the record before it, the Board issues the following:

EVIDENTIARY FINDINGS

1. Minn. Stat. §10A.09, subd. 5, requires that an individual filing a statement of economic interest disclose income received from “each associated business.”

2. Minn. Stat §10A.01, subd. 5, defines an “associated business” as “an association from which the individual receives compensation in excess of \$50, except for actual and reasonable expenses, in any month as a director, officer, owner, member, partner, employer, or employee, or whose securities the individual holds worth \$2,500 or more at fair market value.
3. Minn. Stat. §10A.01, subd. 6 defines an association as “a group of two or more persons, who are not all members of an immediate family, acting in concert.”
4. Governor Pawlenty was the sole member of BAMCO, a limited liability company.
5. The Pawlenty Committee reported no contributions from Candidate Pawlenty, Access Anywhere LLC or BAMCO during calendar year 2002.

Based on the above Statement of the Evidence, the Board makes the following:

FINDINGS CONCERNING PROBABLE CAUSE

1. There is no probable cause to believe that Candidate Pawlenty was required to disclose the compensation received from BAMCO, and thus no probable cause to believe that any reporting violation ever existed.
2. Given that Candidate Pawlenty was not required to disclose the compensation received from BAMCO, there is no probable cause to believe that Candidate Pawlenty knowingly filed a false report with the Board.
3. Given that Candidate Pawlenty made no contributions to his own campaign in calendar year 2002, there is no probable cause to believe payments from Elam Baer and Access Anywhere to BAMCO were used to make contributions to the Pawlenty Committee.
4. The Board does not have the authority to determine if Candidate Pawlenty or Access Anywhere violated Minn. Stat. §211B.15 by giving or accepting a corporate contribution.

Based on the above Findings, the Board issues the following:

ORDER

1. The complaints alleging that Candidate Pawlenty violated Minn. Stat. §10A.025, by knowingly filing a false report are dismissed in their entirety.
2. The complaint alleging that Candidate Pawlenty violated Minn. Stat. §10A.09, by failing to disclose his interest in BAMCO is dismissed in its entirety.

3. The complaint alleging that Candidate Pawlenty violated Minn. Stat. §10A.20, by failing to report to the Board payments made by Access Anywhere LLC to BAMCO is dismissed in its entirety.
4. The complaint alleging that Candidate Pawlenty violated Minn. Stat. §10A.25, subd. 2, by exceeding expenditure limits is dismissed in its entirety.
5. The complaint alleging that both Access Anywhere LLC and Candidate Pawlenty, violated Minn. Stat. §10A.27, when BAMCO accepted payments from Access Anywhere LLC is dismissed in its entirety.
6. The complaint alleging that Candidate Pawlenty violated Minn. Stat. §10A.29, when BAMCO accepted payment from Access Anywhere LLC is dismissed in its entirety.
7. Because the Board does not have the authority to make a determination if a violation of Minn. Stat. §211B.15 occurred, the Board directs the Executive Director to refer this matter to the Dakota County Attorney for review.
8. The record in this matter and all correspondence is hereby entered into public record in accordance with Minn. Stat. §10A.02, subd. 11. Board staff shall provide copies of these Findings to Governor Pawlenty, Mr. Erlandson, Mr. Moore, Ms. Risser and Ms. Schwartz.

Dated: August 27, 2003

Wil Fluegel, Vice Chair
Campaign Finance and Public Disclosure Board