

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

**FINDINGS AND ORDER IN THE MATTER OF
A COMPLAINT REGARDING PAWLENTY FOR GOVERNOR AND WCCO RADIO**

Facts Used In These Findings

By letter dated February 17, 2006, Jay Benanav, representative for the Minnesota Democratic Farmer Labor Party (DFL) filed a complaint with the Campaign Finance and Public Disclosure Board (the Board). The complaint alleged that the (Tim) Pawlenty for Governor Committee (the Committee) failed to disclose in-kind contributions on the Committee's 2005 Report of Receipts and Expenditures. Mr. Benanav stated "...I have reviewed the 2005 Annual Report of the Pawlenty for Governor Committee...During the course of that review, I was surprised to find that the Pawlenty for Governor Committee did not report, as an in kind contribution, the fair market value of the free air time provided to candidate Pawlenty by WCCO Radio".

Minnesota Statutes section 10A.20, subdivision 3, clause (b), provides that a principal campaign committee (a candidate's committee) must report the name of any association that provides contributions, including donations in kind, that exceed \$100 in value.

Minnesota Statutes section 10A.01, subdivision 10, defines who is a 'candidate' for the purposes of the Ethics in Government Act, which is administered by the Board. In support of the complaints contention that Governor Pawlenty should be viewed as a candidate Mr. Benanav states, "There is no dispute that Tim Pawlenty is a candidate within the meaning Minn. Stat. §10A.01, subd. 10. His Committee is registered with the ...Board. The committee's report for 2005 shows that he received more than \$100 in contributions and has made expenditures in excess of \$100 for the purpose of bringing about his nomination and election as governor in 2006".

Minnesota Statutes section 10A.01, subdivision 11, defines what constitutes a contribution to a candidate's committee. It provides that a contribution may be either money or a donation in kind. Minnesota Statutes section 10A.01, subdivision 13, defines 'donation in kind' to include anything of value other than money or a negotiable instrument.

In support of the complaint's contention that the radio show is an in-kind donation to the Committee Mr. Benanav stated "Mr. Pawlenty has a regularly scheduled one hour radio program on WCCO Radio on Friday mornings...My client's information and belief is that neither Mr. Pawlenty nor his campaign committee pay anything for this air time...A donation in kind means anything of value that is given. In this case, WCCO has given candidate Pawlenty something of value, one hour of free air time on at least 11 radio stations each week".

The complaint also alleges that the fair market value of the air time provided by WCCO Radio exceeds the contribution limit that may be accepted by the Committee. In support of this position Mr. Benanav states, "My client believes that the fair market value of the weekly one

hour of air time on 11 radio stations far exceeds \$500...The fair market value of the contribution would thus appear to be \$12,000 per week just for the WCCO air time”.

Minnesota Statutes section 10A.27, subdivision 1, clause (1), limits contributions, cash or in-kind, to candidates for governor in a non-election year to \$500. Minnesota Statutes section 10A.28, subdivision 2, provides that a candidate’s committee that accepts contributions in excess of the limit is subject to a civil penalty of up to four times the amount by which the contributions exceeded the limit.

Although not referenced in the complaint, Minnesota Statutes section 10A.27, subdivision 13, provides that an unregistered association may not contribute more than \$100 to a candidate’s committee unless the contribution is accompanied with disclosure on the source of the contribution that is equivalent to the disclosure provided by a political committee registered with the Board. Neither WCCO Radio nor its parent Infinity Media Corporation is registered with the Board. Acceptance of a contribution of over \$100 by a candidate’s committee without the required disclosure is punishable by a fine of up to four times the amount of the contribution over \$100. An unregistered association that provides a contribution of over \$100 to a candidate’s committee without the required disclosure is subject to a penalty of up to \$1,000 for each contribution made.

By letter dated February 28, 2006, Alan Weinblatt, legal counsel for the DFL, supplemented the complaint. Mr. Weinblatt stated “Our review of the Board’s action taken last Friday, February 24, 2006 shows that the Board has already determined that Tim Pawlenty is a candidate within the meaning on Minn. Stat. §10A.01 subd. 10...the Board must necessarily have concurred with the complaint of the DFL that Tim Pawlenty was a “candidate” during 2005. As such, contributions to him could not exceed the sum of \$500 in that year. The WCCO in kind contribution appears to have had a value of \$60,000 during that year”.

By letter dated March 8, 2006, Mr. Weinblatt provided a further supplement to the complaint. Mr. Weinblatt request that the Board review Advisory Opinion 365 (Issued by the Board on February 22, 2005) when it considered the complaint. In summary Advisory Opinion 365 provides that when a political party unit contributes time on a local cable TV program to a candidate, the political party unit is making an in-kind contribution to the candidate.

By separate letter dated March 8, 2005, Mr. Weinblatt stated, “I must...bring to the Board’s attention a conflict of interest... It is my understanding that Board member Felicia Boyd’s law firm represents WCCO radio. My client does not believe that its complaint can get a fair hearing as long as Ms. Boyd participates in the process which analyzes the conduct of a client of her law firm”. Mr. Weinblatt asked that Ms. Boyd not participate in the Board’s deliberation of the complaint.

Minnesota Statutes section 10A.07, provides standards for determining if a conflict of interest exists for a public official and what actions are required is a conflict of interest does exist. The statute provides that a conflict of interest exists if as a part of their official duties a public official takes action or makes a decision that substantially affects the official’s financial interests or those of an associated business. The effect on the public official would have to be greater than

on other members of the public official's business profession. As a member of the Board, Ms. Boyd is a public official. At the time the complaint was filed Ms. Boyd verified that her law firm had no open matters with WCCO Radio, and that the law firm had declined to represent WCCO Radio in the matter of the complaint.

By letters dated February 17, March 1, and March 9, 2006, the Board notified the Committee and WCCO Radio of the complaint, subsequent supplements to the complaint, and offered each party an opportunity to respond.

By letter dated March 1, 2006, Richard G. Morgan, legal counsel for the Committee, responded to the complaint. In response to the allegation that the Committee failed to report in-kind donations from WCCO Radio Mr. Morgan states, "The Committee has not accepted or failed to report air time from WCCO Radio as an in-kind donation, because WCCO Radio has never given any air time to the Committee. The air time is provided under contract to the State and the air time is unrelated to any effort to influence the nomination or election of the Governor... Thus, the Committee is obligated to report any in-kind donations it receives, but the Committee has no obligation to report donations to other entities, such as the State of Minnesota or the Office of the Governor".

In support of his contention that the air time is not provided to the Committee, Mr. Morgan submitted as evidence copies of two State of Minnesota Professional and Technical Services Contracts. The first contract had an effective date of January 31, 2003, and an expiration date of January 31, 2004. The second contract has an effective date of February 1, 2004, and an expiration date of February 1, 2007. Both contracts are between the State of Minnesota, acting through the Office of the Governor, and Infinity Media Corporation, d/b/a WCCO Radio. Both contracts provide for the same list of twenty-six contractor duties to be provided by WCCO Radio during the life of the contract. Included in the duties is the requirement that WCCO Radio provides the Office of the Governor one hour of radio broadcast time each week for the duration of the contract, and provides equipment and technical support necessary for the show.

For compensation both contracts provide, "The State and the Contractor agree that there is no monetary consideration related to this contract. The Contractor is receiving access to a broadcast opportunity and the State is receiving access to an opportunity to communicate with the citizens of Minnesota". The first contract is signed on behalf of the State of Minnesota by representatives of the Office of the Governor, the Department of Administration, and the Office of the Attorney General. The second contract is signed on behalf of the State of Minnesota by representatives of the Office of the Governor and the Department of Administration. Both contracts are signed by an officer of WCCO Radio.

In his response Mr. Morgan does not dispute the complaint's statement that Governor Pawlenty is a candidate for the purposes of Minnesota Statutes Chapter 10A. Mr. Morgan does note that the Federal Communication Commission has "confirmed" that WCCO Radio may permit the Governor to host a radio program without providing other candidates similar opportunities until July of 2006. Mr. Morgan provides, "...the program is not broadcast for the purpose of bringing about the nomination or election of the Governor, and no evidence demonstrates such a purpose or intent... No instance of an effort to influence the nomination or election of the Governor in the

context of the radio program is cited, because no such effort exists in the part of the State or WCCO Radio...”

By letter dated March 6, 2006, Douglas A. Kelley, legal counsel for WCCO Radio, responded to the complaint. Mr. Kelley also provided copies of the State of Minnesota Professional and Technical Services Contracts between the Office of the Governor and Infinity Media Corporation, d/b/a WCCO Radio. In addition, Mr. Kelley provided a copy of WCCO Radio’s 2005 4th Quarter Public File Report which lists all programs that meet the FCC requirement for radio stations to provide programs that offer “significant treatment of community issues”. The Report lists the program “Good Morning Minnesota”, the radio program referenced in the complaint.

In response to the complaints allegation that WCCO Radio provided an in-kind donation to the Committee Mr. Kelley states, “...the complaint mistakenly contends that the Committee should have reported the fair market value of “free air time provided to candidate Pawlenty by WCCO Radio.” As its contract with the State demonstrates, however, WCCO has not provided any donation to “candidate Pawlenty.”...The Contract is between the State of Minnesota, the Office of the Governor, and WCCO’s parent company. WCCO did not, and never would, contract with a candidate’s campaign committee for such a show”.

Mr. Kelley further provides, “Minnesota law requires political committees to file annual reports listing all donations in kind and expenditures in the reporting period in which they are received...reportable campaign expenditures include the fair market value of donations in kind so long as they are “made or incurred for the purpose of influencing the nomination or election of a candidate.”...Here, Governor Pawlenty does not use, nor would WCCO permit him to use, the Program as a mechanism to campaign for reelection or to promote or defeat the candidacy of any other individual”.

In response to the complaint’s statement that Governor Pawlenty is a candidate Mr. Kelley states, “...we believe there is a serious question as to whether Governor Pawlenty can be deemed a legally qualified candidate for purposes of the foregoing statutes. As least insofar as §211B.15 is concerned, Governor Pawlenty is not presently a candidate for state office”.

By letter dated March 10, 2006, Mr. Kelley responded to the March 8, 2006, letter from Alan Weinblatt that recommended that the Board use Advisory Opinion 365 as a standard to follow when considering the complaint. Mr. Kelley stated, “Advisory Opinion 365 involved a situation in which a political party unit produced cable television programs to help elect its candidates... Political party units are in the business of influencing elections to elect candidates. WCCO is not in the business of influencing elections to elect candidates... WCCO radio airs “Good Morning Minnesota” to fulfill its requirements as a broadcast licensee to carry programs to serve the public interest. This clearly identifiable difference in the purpose of airing the program renders Advisory Opinion 365 inapplicable to our situation.”

By letter dated March 8, 2006, Karen A. Janisch, General Counsel for the Office of the Governor, submitted information to the Board. Ms. Janisch stated, “I am providing the Board with information on behalf of the Governor because the issues raised in the complaint relate to

the Governor's actions as Governor of the State of Minnesota and not actions related to his campaign committee". With her statement Ms. Janisch also submitted copies of the State of Minnesota Professional and Technical Services Contracts between the Office of the Governor and Infinity Media Corporation, d/b/a WCCO Radio, an Affidavit by Ms. Janisch that details Ms. Janisch's knowledge of the contracts, and a copy of an e-mail between Ms. Janisch and staff at the Office of the Attorney General.

In reference to the contracts Ms. Janisch states, "Following a request for proposal process, WCCO was selected by the State for the contract to air the governor's weekly radio address. The 2003 and 2004 contracts entered by the State were based on the contract previously negotiated between the State and WCCO in relation to Governor Ventura's lunchtime radio address. The contracts were negotiated between the Governor's Office and WCCO with the input and assistance of the Attorney General's Office...Each party to the contract receives benefits and assumes obligations. The Governor's Office receives a forum for the Governor to communicate to Minnesotans...WCCO obtains a program that it can air and during which it can sell advertising time...Content of the weekly program is determined solely by the Governor's Office, subject to the provisions of the contract".

In response to the complaint's allegation that the radio show is an in-kind donation Ms. Janisch states, "Under the express language of Chapter 10A, the radio address is not a contribution because... The contract does not reflect that anything of value was "given" by WCCO without WCCO obtaining something of equal or greater value from the State... A provision of services pursuant to a contract that reflects arms-length negotiation is not a "donation in kind".

Ms. Janisch further states, "...even if something was "given" it was given to the state, not (the Committee)...the contract is solely between the state and WCCO. The (Committee) is not a party to the contract, does not participate in the radio address, and does not receive anything from WCCO under the contract".

By letter dated March 10, 2006, Ms. Janisch responded to the March 8, 2006, letter from Alan Weinblatt that recommended that the Board use Advisory Opinion 365 as a standard to follow when considering the complaint. Ms. Janisch stated, "Advisory Opinion 365 is not applicable in this matter... Opinion 365 involved a donation in kind from a political party to a campaign committee. It did not address the broadcast company's provision of "air time" to the political party... The political purpose of the program was the basis for the Board's decision. There is no evidence that WCCO's purpose in broadcasting the governor's weekly radio address is to advance any specific candidate in relation to an election."

The Board in executive sessions considered the matter on February 24, and March 13, 2006. The Board's decision was based upon the complaint, the supplements to the complaint, responses from Mr. Morgan, Mr. Kelley, Ms. Janisch and Board records.

Relevant Statutes

Minnesota Statutes, section 10A.01, subdivision 10. Candidate. “Candidate” means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given the implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual’s nomination or election. A candidate remains a candidate until the candidate’s principal campaign committee is dissolved as provided in section 10A.24.

Minnesota Statutes, section 10A.01, subdivision 11. Contribution. "Contribution" means money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or party unit.

Minnesota Statutes, section 10A.01, subdivision 13. Donation in kind. "Donation in kind" means anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind.

Minnesota Statutes, section 10A.07. Conflicts of interest.

Subdivision 1. **Disclosure of potential conflicts.** A public official or a local official elected to or appointed by a metropolitan governmental unit who in the discharge of official duties would be required to take an action or make a decision that would substantially affect the official's financial interests or those of an associated business, unless the effect on the official is no greater than on other members of the official's business classification, profession, or occupation, must take the following actions:

- (1) prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest;
- (2) deliver copies of the statement to the official's immediate superior, if any; and
- (3) if a member of the legislature or of the governing body of a metropolitan governmental unit, deliver a copy of the statement to the presiding officer of the body of service.

If a potential conflict of interest presents itself and there is insufficient time to comply with clauses (1) to (3), the public or local official must orally inform the superior or the official body of service or committee of the body of the potential conflict.

Subd. 2. **Required actions.** If the official is not a member of the legislature or of the governing body of a metropolitan governmental unit, the superior must assign the matter, if

possible, to another employee who does not have a potential conflict of interest. If there is no immediate superior, the official must abstain, if possible, in a manner prescribed by the board from influence over the action or decision in question. If the official is a member of the legislature, the house of service may, at the member's request, excuse the member from taking part in the action or decision in question. If the official is not permitted or is otherwise unable to abstain from action in connection with the matter, the official must file a statement describing the potential conflict and the action taken. A public official must file the statement with the board and a local official must file the statement with the governing body of the official's political subdivision. The statement must be filed within a week of the action taken.

Minnesota Statutes, section 10A.20, subdivision 3 (b). Contents of report.

(b) The report must disclose the name, address, and employer, or occupation if self-employed, of each individual or association that has made one or more contributions to the reporting entity, including the purchase of tickets for a fund-raising effort, that in aggregate within the year exceed \$100 for legislative or statewide candidates or ballot questions, together with the amount and date of each contribution, and the aggregate amount of contributions within the year from each source so disclosed. A donation in kind must be disclosed at its fair market value. An approved expenditure must be listed as a donation in kind. A donation in kind is considered consumed in the reporting period in which it is received. The name of contributors must be listed in alphabetical order. Contributions from the same contributor must be listed under the same name. When a contribution received from a contributor in a reporting period is added to previously reported unitemized contributions from the same contributor and the aggregate exceeds the disclosure threshold of this paragraph, the name, address, and employer, or occupation if self-employed, of the contributor must then be listed on the report.

Minnesota Statutes, section 10A.27, subdivision 1. Contribution limits. “(a) Except as provided in subdivision 2, a candidate must not permit the candidate’s principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, or political fund in excess of the following:

(1) to candidates for governor and lieutenant governor running together, \$2,000 in an election year for the office sought and \$500 in other years;”

Minnesota Statutes, section 10A.27, subdivision 13. Unregistered association limit; statement; penalty. (a) The treasurer of a political committee, political fund, principal campaign committee, or party unit must not accept a contribution of more than \$100 from an association not registered under this chapter unless the contribution is accompanied by a written statement that meets the disclosure and reporting period requirements imposed by section 10A.20. This statement must be certified as true and correct by an officer of the contributing association. The committee, fund, or party unit that accepts the contribution must include a copy of the statement with the report that discloses the contribution to the board. This subdivision does not apply when a national political party contributes money to its affiliate in this state.

(b) An unregistered association may provide the written statement required by this subdivision to no more than three committees, funds, or party units in a calendar year. Each statement must cover at least the 30 days immediately preceding and including the date on which the contribution was made. An unregistered association or an officer of it is subject to a civil penalty imposed by the board of up to \$1,000, if the association or its officer:

(1) fails to provide a written statement as required by this subdivision; or

(2) fails to register after giving the written statement required by this subdivision to more than three committees, funds, or party units in a calendar year.

(c) The treasurer of a political committee, political fund, principal campaign committee, or party unit who accepts a contribution in excess of \$100 from an unregistered association without the required written disclosure statement is subject to a civil penalty up to four times the amount in excess of \$100.

Minnesota Statutes, section 10A.28, subdivision 2. Exceeding contribution limits. “The following are subject to a civil penalty of up to four times the amount by which a contribution exceeds the applicable limits;

(4) a candidate who permits the candidate’s principal campaign committee to accept contributions in excess of the limits imposed by section 10A.27.”

Based on the above Statement of the Facts and Relevant Statutes, the Board makes the following:

Findings Of Probable Cause

1. There is evidence that the Pawlenty for Governor Committee received contributions and made disbursements of over \$100 in 2005, and that the Committee did not terminate its registration with the Board in 2005. The Board finds that Governor Pawlenty is a candidate for the registration and reporting purposes of Minnesota Statutes Chapter 10A. The Board has no jurisdiction to find whether Governor Pawlenty is a candidate for the purposes of Minnesota Statutes 211B or any provision of federal law that regulates communications.
2. There is evidence that the radio show hosted by Governor Pawlenty on WCCO Radio is a service provided under the terms of a State of Minnesota Professional and Technical Services Contract. There is evidence that the contract(s) is between the State of Minnesota, acting through the Office of the Governor, and WCCO Radio. There is no evidence that the Pawlenty for Governor Committee is a party to the contract. There is no

evidence that the Pawlenty for Governor Committee has provided content for the radio show or benefited from the content of the radio show. The Board finds that the radio show is provided to the State of Minnesota, and is not an in-kind donation to the Pawlenty for Governor Committee.

3. There is no evidence that the Pawlenty for Governor Committee has received any in-kind donation from WCCO Radio. The Board finds that there is no evidence to show that the Pawlenty for Governor Committee accepted contributions in excess of the contribution limit from WCCO Radio in 2005. The Board finds that the 2005 Report of Receipts and Expenditures filed by the Pawlenty for Governor Committee does not need to be amended to show contributions from WCCO Radio or its parent corporation.
4. There is no evidence that Ms. Boyd or her law firm represented WCCO Radio in this matter, or were engaged in other matters with WCCO Radio that would represent a conflict of interest as provided in Minnesota Statutes, section 10A.07. The Board finds that Ms. Boyd acted impartially and without prejudice in this matter and was not required to abstain from Board discussions and actions.

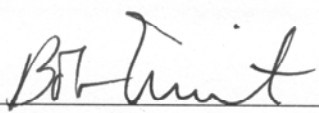
Based on the above Findings, the Board issues the following:

Order

1. The allegation that the Pawlenty for Governor Committee failed to disclose on its 2005 Report of Receipts and Expenditures in-kind donations for the radio show provided by WCCO Radio to the Office of the Governor is dismissed in its entirety.
2. The allegation that during 2005 the Pawlenty for Governor Committee received in kind donations from WCCO Radio in excess of the contribution limit is dismissed in its entirety.
3. The record in this matter and all correspondence is hereby entered into the public record in accordance with Minnesota Statutes, section 10A.02, subd. 11.

Board staff shall provide copies of these Findings to Jay Benanav and Alan Weinblatt (Minnesota Democratic Farmer Labor Party), Richard G. Morgan (Pawlenty for Governor Committee), Douglas A. Kelley (WCCO Radio), and Karen A. Janisch (Office of the Governor).

Dated: March 13, 2006



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board