

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE COMPLAINT OF DONAVON INDOVINO CAWLEY REGARDING THE VOTE
DUCKWORTH (ZACH) COMMITTEE

Background

On October 30, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Donavon Indovino Cawley regarding the Vote Duckworth (Zach) committee. Vote Duckworth (Zach) is the principal campaign committee of Zach Duckworth, a candidate for Minnesota Senate District 58.

The complaint alleged that the Duckworth committee ran a Facebook advertisement supporting Seth Lewis, an Illinois House of Representatives candidate, which was a contribution made in violation of Minnesota Statutes section 10A.27, subdivision 9. The complaint included a screenshot indicating that the advertisement began running on October 26, 2020, and included the language “Paid for by Vote Duckworth” in the disclaimer. The advertisement consisted of a 15-second video featuring Mr. Lewis that appears to have been prepared by Mr. Lewis’s campaign committee, Citizens for Seth Lewis.¹

The complaint next alleged that the Duckworth committee failed to disclose several expenditures or noncampaign disbursements including the cost of Facebook advertisements for the Duckworth committee, Mr. Duckworth’s filing fee, food and beverages served at two campaign events, and materials used to display the committee’s campaign signs. The complaint alleged that those failures were violations of Minnesota Statutes section 10A.13, which requires that a treasurer keep accounting records for each expenditure.

Lastly, the complaint alleged that the Duckworth committee failed to timely disclose the cost of its website because it disclosed an expenditure dated August 17, 2020, but the website had been available for several months prior to that date. The complaint alleged that the failure to timely disclose the cost of the website was a violation of Minnesota Statutes section 10A.18, which states that a vendor owed money by a principal campaign committee must promptly render a bill or invoice.

On November 10, 2020, the Board chair determined that the complaint stated prima facie violations of the prohibition on making a contribution to a candidate in another state under Minnesota Statutes section 10A.27, subdivision 9, paragraph (d), and the reporting requirements under Minnesota Statutes section 10A.20, subdivision 3, with respect to the Duckworth committee’s Facebook advertisements and website and the cost of Mr. Duckworth’s

¹ [facebook.com/ads/library/?id=393677601668834](https://www.facebook.com/ads/library/?id=393677601668834)

filing fee. The Board chair determined that the complaint did not state a prima facie violation of the reporting requirements with respect to the cost of food and beverages served at campaign events or materials used to display the committee's campaign signs, because those allegations required speculation to support the assertion that a violation occurred. The Board chair dismissed the alleged violation of Minnesota Statutes section 10A.13 because the complaint did not allege that the Duckworth committee failed to keep any accounting records required by that statute. The Board chair also dismissed the alleged violation of Minnesota Statutes section 10A.18 because that provision does not impose any obligation on a principal campaign committee and the complaint did not allege that any vendor failed to timely bill the Duckworth committee for goods or services.

The Board received a written response from Mr. Duckworth to the complaint and prima facie determination on the evening of December 1, 2020. With respect to the Facebook advertisement supporting a candidate in another state, Mr. Duckworth explained that his committee did not request or approve the advertisement. Instead, it was created in error by a vendor that manages advertising for multiple candidates throughout the country and no expenditure by the Duckworth committee occurred. Mr. Duckworth stated that an expenditure of \$2,500 dated October 15, 2020, which was paid to MW Political and disclosed on the Duckworth committee's 2020 pre-general report of receipts and expenditures, included the cost of Facebook advertisements for the Duckworth committee. Mr. Duckworth acknowledged that the committee did not report the cost of his filing fee and said that an amended report would be filed to address that error. With respect to the cost of the committee's website, Mr. Duckworth stated that the committee accurately disclosed that it paid \$700 to NationBuilder in August 2020 for that website.

At its meeting on December 2, 2020, the Board considered the probable cause determination in this matter. The Board determined that there was probable cause to believe that the Duckworth committee made a contribution to a candidate in another state in violation of Minnesota Statutes section 10A.27, subdivision 9, paragraph (d). Publicly available information provided by Facebook indicated that some amount of money had been paid for the advertisement supporting the candidate in another state. Although the Duckworth committee claimed that it had not paid for this advertisement, there was not enough time between the receipt of the committee's response and the Board meeting to confirm this claim.

The Board also determined that there was probable cause to believe that the Duckworth committee violated the reporting requirements under Minnesota Statutes section 10A.20, subdivision 3, with respect to the committee's Facebook advertisements and website and the cost of Mr. Duckworth's filing fee. Publicly available information provided by Facebook indicated that despite the disclosure of \$2,500 paid to MW Political and \$699.99 paid directly to Facebook, at least \$1,200 in Facebook advertisements for the Duckworth committee that ran during the time period covered by the 2020 pre-general report were not disclosed.² Also, the response provided by Mr. Duckworth did not explain why the committee did not disclose any

² [facebook.com/ads/library/?view_all_page_id=897840073747223](https://www.facebook.com/ads/library/?view_all_page_id=897840073747223)

expenditures for its website during the months prior to August 2020. The Board ordered an investigation of the matter. Board staff then sent a letter to the Duckworth committee asking for information regarding its Facebook advertisements and the cost of its website. On December 18, 2020, Board staff also notified the Duckworth committee that it needed to file an amended 2020 pre-general report within 10 days pursuant to Minnesota Statutes section 10A.025, subdivision 4.

On December 29, 2020, the Board received a written response from Mr. Duckworth to the staff letter and the probable cause determination. Mr. Duckworth provided confirmation from MW Political that the Duckworth committee had not paid for the Facebook advertisement supporting the candidate in another state. With respect to the committee's website Mr. Duckworth explained that his committee recently had discovered that starting in January 2020, the monthly fee for its website was billed to Mr. Duckworth's personal credit card rather than the committee's debit card. Mr. Duckworth stated his committee would reimburse him for those payments and file an amended report.

Mr. Duckworth contends that his committee did not have any unpaid bills for Facebook advertisements at the end of the reporting period covered by the 2020 pre-general report, which was October 19, 2020. Mr. Duckworth explained that the committee's Facebook advertisements were created and managed by MW Political, the committee paid MW Political for its services rather than paying Facebook directly, and the committee "disclosed all payments made regarding Facebook advertisements and MW Political during the reporting period in question." Mr. Duckworth states that his committee:

incurred expenses owed to MW Political upon receipt of invoices due to MW Political – that is a different and separate timeline than when ads were or were not run by MW Political. MW Political continued running Facebook ads on behalf of the Vote Duckworth Committee, but did not invoice the committee until after the filing period in question – therefore, the Vote Duckworth Committee had no unpaid bills, or knowledge of incurred expenses, to report at the time of filing. It would be impossible for the Vote Duckworth Committee to record unpaid bills or incurred expenses on a report for which it had no knowledge.

Analysis

Contribution to a candidate in another state

Minnesota Statutes section 10A.27, subdivision 9, paragraph (d), states that a "candidate or the treasurer of a candidate's principal campaign committee must not make a contribution from the principal campaign committee to a candidate for political subdivision office in any state." For purposes of that provision, payment of the cost of disseminating an advertisement prepared by another candidate is a contribution to that candidate. In this matter, however, the investigation showed that the Duckworth committee did not pay for the advertisement supporting Mr. Lewis. Because no expenditure occurred, no contribution was made by the Duckworth committee.

Reporting

Pursuant to Minnesota Statutes section 10A.20, subdivision 3, reports of receipts and expenditures must contain itemized and summary information disclosing contributions received and expenditures and noncampaign disbursements made during each reporting period. In-kind contributions and corresponding in-kind expenditures or noncampaign disbursements must be reported in accordance with their fair market value if that value exceeds \$20. An expenditure or noncampaign disbursement is considered to occur at the time when an obligation to pay that expense is incurred. Pursuant to Minnesota Statutes section 10A.01, subdivision 9, an expenditure includes an advance of credit. Minnesota Rules 4503.0100, subpart 8, provides that an unpaid bill “means an advance of credit for which payment has not been made. An advance of credit is an unpaid bill from the time it is incurred, regardless of when an actual invoice is received.” Therefore, an expenditure or noncampaign disbursement that has been incurred but has not yet been paid must be reported as an unpaid bill.

Mr. Duckworth argues that it was impossible for his committee to report the value of unpaid bills related to his committee’s Facebook advertisements because those advertisements were managed by a third-party vendor that did not invoice the committee until after the end of the reporting period covered by the 2020 pre-general report. However, the committee could have asked its vendor for the approximate total of non-invoiced services provided to the committee through October 19, 2020, and then included that total as an unpaid bill when filing its 2020 pre-general report. The committee then would correct the amount, if needed, on the report covering the date when the bill was paid. If committees were allowed to avoid reporting unpaid bills for the reasons set forth by the Duckworth committee, committees would be able to avoid disclosing a significant portion of their spending until after a general election had occurred, which would undermine the purpose of the reporting provisions in Minnesota Statutes section 10A.20.

The Duckworth committee has acknowledged that it mistakenly failed to report the payment of Mr. Duckworth’s filing fee and expenditures for the committee’s website prior to August 2020. Despite being advised of the need to do so, the Duckworth committee has failed to promptly file an amended 2020 pre-general report to address those issues.

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. A Facebook advertisement supporting Seth Lewis, an Illinois House of Representatives candidate, was disseminated via the Facebook account of the Vote Duckworth (Zach) committee. The Duckworth committee did not request, approve, or pay for the advertisement, which was created in error by a vendor.
2. The Duckworth committee did not disclose the amount paid for Mr. Duckworth’s filing fee on its 2020 pre-primary and pre-general reports of receipts and expenditures.

3. The Duckworth committee did not disclose some of its expenditures related to Facebook advertisements that ran during the time period covered by its 2020 pre-general report.
4. The Duckworth committee did not disclose expenditures related to its website prior to August 2020 on its 2020 pre-primary and pre-general reports. That expense was paid for by Mr. Duckworth.
5. The Duckworth committee was notified that it needed to amend its 2020 pre-general report but has not yet filed that amendment.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. The Vote Duckworth (Zach) committee did not make a contribution to a candidate in another state as alleged in the complaint.
2. The Duckworth committee violated Minnesota Statutes section 10A.20, subdivision 3, when it failed to disclose some of the expenditures made for its Facebook advertisements and website and the noncampaign disbursement for Mr. Duckworth's filing fee.
3. The Duckworth committee violated Minnesota Statutes section 10A.025, subdivision 4, when it failed to file an amended 2020 pre-general report within 10 days of being notified of inaccuracies within that report.

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. The Vote Duckworth (Zach) committee must file an amended 2020 pre-general report within 10 days of the date of this order. The amended report must include a noncampaign disbursement for the payment of Mr. Duckworth's filing fee. The amended report must also include campaign expenditures related to the committee's Facebook advertisements and website, as well as any other expenditures, that remained unpaid as of October 19, 2020.
2. If an amended 2020 pre-general report addressing the issues listed in paragraph 1 above is not filed within 10 days, on the 11th day, the Duckworth committee will begin to incur a late filing fee of \$25 per day up to a maximum of \$1,000 pursuant to Minnesota Statutes section 10A.025, subdivision 4.

3. If the Duckworth 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.
4. 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.

/s/ Gary Haugen
Gary Haugen, Chair
Campaign Finance and Public Disclosure Board

Date: January 8, 2021