

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

**PROBABLE CAUSE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF JOHN PERSELL REGARDING THE EICHORN (JUSTIN) FOR MN SENATE CAMPAIGN COMMITTEE

On May 9, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by John Persell regarding the Eichorn (Justin) for MN Senate Campaign Committee. The Eichorn (Justin) for MN Senate Campaign Committee is the principal campaign committee of Senator Justin Eichorn.

The complaint alleges that the Eichorn committee violated Minnesota Statutes section 10A.20, subdivision 3, by failing to report any in-kind contributions or expenditures within the 2021 calendar year related to two billboards. The complaint provides the location and photographs of the billboards on which the allegations are based. The complaint states that posters with the text "EICHORN FOR STATE SENATE" were added to the billboards approximately eight weeks prior to the 2020 general election and remained displayed until the end of March 2022. The complaint estimates that based on current rates, the value of the display of the billboard posters in 2021 was \$8,125. The complaint includes documentation of current advertising rates for billboards in the same area. The complaint notes that within its 2020 year-end report of receipts and expenditures, the Eichorn committee reported an in-kind contribution and corresponding in-kind expenditure valued at \$900, which appears to account for the value of the billboards during that year. While the 2020 year-end report states that the \$900 in-kind contribution was made by Adam Arnold, it appears to state that the corresponding in-kind expenditure was made to "Franklin Graphics LLC."

The complaint also alleges that the Eichorn committee violated Minnesota Statutes section 211B.04, subdivision 1, by failing to include a campaign disclaimer on the billboard posters. The complaint includes photographs of the two billboards that do not appear to contain a campaign disclaimer.

On May 23, 2022, the Board chair determined that the complaint states prima facie violations of Minnesota Statutes sections 10A.20, subdivision 3, and 211B.04. The Eichorn committee retained counsel and on June 24, 2022, Board staff received a response from counsel. The Eichorn committee's response requests that the complaint be dismissed because the billboard signs were not in the control of the candidate committee after the 2020 election and because, with respect to the 2021 calendar year, the "signs are valueless or, at best, of such *de minimus* value as to not require reporting." The Eichorn committee stated that the signs are "private property, owned and exclusively controlled by" the individual contributor, Adam Arnold. The Eichorn committee stated that:

Mr. Arnold was responsible for causing the signs to be put up, and Mr. Arnold was exclusively in control of removing them at his leisure. Mr. Arnold understood that the signs were for the 2020 election, and his sole decision to remove them after 2021 was based solely on when doing so was most convenient for him. Mr. Arnold had no explicit or tacit agreement . . . to leave the signs up for the whole of 2021.”

The Eichorn committee’s response argues that there was no value to the signs in 2021 because there was not an election in 2021, 2022 was a redistricting year, and Senator Eichorn could not have known if he was running for office in 2022 or even if the signs would remain located in his new legislative district where he might be running for office.

On June 27, 2022, Board staff received information from counsel regarding the allegation that the Eichorn signs did not contain a disclaimer. The Eichorn committee stated that the image used for the billboard posters included the disclaimer; however, when the billboard posters were wrapped onto the billboards, the disclaimer was tucked underneath and was not visible. The Eichorn committee stated that this was a “constructive” disclaimer and that the public was not confused about the signs because they included the campaign’s branding. The Eichorn committee provided a copy of the image used for the billboard, and the image did contain a disclaimer.

On June 28, 2022, Board staff requested more information from counsel. Board staff requested information about how the in-kind value of the contribution from Adam Arnold was determined, if there was any written documentation about this in-kind contribution, and any information about whether the Eichorn committee requested the signs to be taken down. Board staff received a quick response from counsel that stated that the \$900 in-kind value was based on the costs of the sign printing and putting the sign up, there was nothing in writing about the in-kind contribution, and there was verbal communication regarding taking down the signs after the 2020 election. At the July 6, 2022, Board meeting, Board staff requested that the matter be laid over to the August meeting to allow for Board staff to seek more information. The Board granted the request to lay the matter over to the August meeting.

On July 15, 2022, Board staff requested more details regarding how the value of the in-kind contribution was determined, any information regarding documentation between the Eichorn committee and Mr. Arnold about the in-kind contribution, and any other information regarding communications about taking the signs down. On August 1, 2022, the Eichorn committee responded to the Board request for more information adding that there was verbal communication with Mr. Arnold about taking down the signs but no definite date was given. The Eichorn committee restated that the removal of the signage was outside of the physical control of the Eichorn committee and that the signs were left up after the 2020 election and therefore had no value.

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.

Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires candidate committees to report all contributions received and expenditures made on their campaign finance reports, including in-kind contributions that exceed \$20. The complaint alleges and contains evidence that the billboard signs were displayed from 2020 through March of 2022, and were valued at \$900 by the Eichorn committee on the 2020 year-end report. The Board's records reflect that the Eichorn committee did not report receiving any in-kind contributions in 2021 and did not report making any expenditures in 2021 that would account for the value of the billboards. The Eichorn response agreed that the committee did not account for the value of the billboards, but stated that the billboards had no value in 2021 because it was not an election year. The Eichorn committee also argued that with redistricting occurring in 2022 there was no value to the billboard because it was possible that the billboards would not remain in Senator Eichorn's district or that he would not run for office in 2022.

Minnesota Statutes section 10A.01, subdivision 13, defines the term donation in kind to mean "anything of value that is given, other than money or negotiable instruments. An approved expenditure is a donation in kind." There is some value in having a billboard displaying the candidate's name, even in a non-election year prior to redistricting. Therefore, the Board concludes that there is probable cause to believe that the Eichorn committee failed to accurately report the value of the billboards in 2021 and three months early in 2022 in violation of Minnesota Statutes section 10A.20, subdivision 3. The value of displaying the signs in 2021 and 2022, and the responsibility for taking down the signs, will be determined in the Board investigation.

Additionally, the Eichorn committee's response states that the \$900 in-kind value of the billboards was based solely on the cost of producing and putting the billboard signs up. The Eichorn committee did not include the value of displaying the billboard signs. "A donation in kind must be disclosed at its fair market value," pursuant to Minnesota Statutes section 10A.20, subdivision 3, paragraph (c). Minnesota Rules 4503.0100, subpart 3a, defines the phrase fair market value to mean "the amount that an individual would pay to purchase the same or similar service or item on the open market." The billboards appeared near highways and were visible to vehicles passing by. The complaint alleges and provides evidence that a media company has similar billboards near the billboards in question and the rate for those billboards is \$625 for four weeks, not including the cost of production. The complaint alleges that based on that rate, the Eichorn committee should have reported expenditures totaling \$8,125 accounting for the value of the billboards for the entire year of 2021. Based on that rate, the value provided to the Bliss committee in 2020 exceeded the value of \$900 that was listed on the committee's 2020 year-end report. Therefore, the Board concludes that there is probable cause to believe that the Eichorn committee failed to accurately report the value of the billboards in 2020 in violation of Minnesota Statutes section 10A.20, subdivision 3.

Scope of Investigation

The Board may consider potential violations not alleged in a complaint as provided in Minnesota Statutes section 10A.022, subdivision 3 (b), which states:

(b) When the board investigates the allegations made in a written complaint and the investigation reveals other potential violations that were not included in the complaint, the board may investigate the potential violations not alleged in the complaint only after making a determination under paragraph (d) that probable cause exists to believe a violation that warrants a formal investigation has occurred.

Here the Board must consider whether the scope of the investigation should be expanded to include potential violations of the contribution limit for donors, and the requirement to obtain written authorization for an approved expenditure made on behalf of a principal campaign committee.

Individual Contribution Limit

Minnesota Statutes section 10A.27, subdivision 1, states that during a two-year election segment, a candidate for state senator "must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, political fund, or association not registered with the board in excess of" \$1,000. Based on the foregoing analysis including the advertising rates referenced in the complaint, the Board concludes that there is probable cause to believe that the Eichorn committee accepted a contribution in excess of the limit imposed by Minnesota Statutes section 10A.27, subdivision 1.

Approved Expenditures in Writing

Minnesota Statutes section 10A.01, subdivision 9, defines the term expenditure, in relevant part, to mean “a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.” Minnesota Statutes section 10A.01, subdivision 4, defines the term approved expenditure as:

an expenditure made on behalf of a candidate or a local candidate by an entity other than the candidate's principal campaign committee or the local candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate or local candidate, the candidate's principal campaign committee, or the candidate's or local candidate's agent. An approved expenditure is a contribution to that candidate or local candidate.

Minnesota Statutes section 10A.17 requires that expenditures made by principal campaign committees be authorized by the treasurer. Minnesota Statutes section 10.17, subdivision 2, prohibits individuals from making “approved expenditures of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure.” Written authorization is an important safeguard for the committee because it provides protection if an individual or committee spends more on the approved expenditure than the amount agreed to in the written authorization. Here, the Eichorn committee admits that there was not written authorization by the treasurer for the approved expenditure involving the billboards, and therefore no documentation that the donor had agreed to take down the signs after the 2020 election. The Board concludes that there is probable cause to believe that the Eichorn committee violated the requirement for written authorization for approved expenditures in Minnesota Statutes section 10A.17.

Disclaimer

Minnesota Statutes section 211B.04 requires campaign material to include a disclaimer in the form specified in the statute. The complaint alleges and contains evidence that the Eichorn committee’s billboard posters did not include a disclaimer. While the image used to produce the posters may have included a disclaimer, the disclaimer was not visible on the signs. Therefore, the Board concludes that there is probable cause to believe that the Eichorn committee violated the disclaimer requirement in Minnesota Statutes section 211B.04.

Order:

1. Probable cause exists to believe that the Eichorn (Justin) for MN Senate Campaign Committee violated the reporting requirements of Minnesota Statutes section 10A.20.

2. Probable cause exists to believe that the Eichorn committee violated Minnesota Statutes section 10A.27, subdivision 1.
3. Probable cause exists to believe that there was not written authorization for the approved expenditure involving the billboards in violation of Minnesota Statutes section 10A.17.
4. Probable cause exists to believe that the Eichorn committee violated Minnesota Statutes section 211B.04.
5. A formal investigation is ordered.

/s/ Faris Rashid
Faris Rashid, Chair
Campaign Finance and Public Disclosure Board

Date: August 15, 2022