

**State of Minnesota
Campaign Finance and Public Disclosure Board**

Findings, Conclusions, and Order in the Matter of the Complaint of Erwin Rud regarding the Committee to Elect Mike Moore; Michael Moore; and Ed Lavelle

On July 27, 2016, the Minnesota Campaign Finance and Public Disclosure Board received a complaint submitted by Erwin Rud regarding the Committee to Elect Mike Moore; candidate Michael Moore; and committee treasurer Ed Lavelle.

The complaint contained the following allegations: 1) the committee accepted office space and staff services from a corporation in violation of Minnesota Statutes section 211B.15; 2) the committee failed to report its expenditures on its pre-primary-report as required by section 10A.20; 3) the committee failed to include the required disclaimer on its campaign material in violation of section 211B.04; and 4) Mr. Moore and Mr. Lavelle, in their capacities as owner and editor, respectively, of a newspaper, charged higher rates for political advertising for some candidates in violation of Minnesota Statutes section 211B.05, subdivision 2.

The chair dismissed the advertising rate allegation at the prima facie determination stage because the Board does not have jurisdiction over violations of Minnesota Statutes section 211B.05, subdivision 2.

On September 7, 2016, the Board issued a probable cause determination in the matter. In that decision, the Board dismissed the corporate contribution allegations for lack of probable cause on the grounds that the office space was donated by an individual and the corporation charged the committee for the staff services. The Board found probable cause to believe that the reporting and disclaimer violations had occurred. The Board determined, however, that the reporting violations had been remedied by the filing of an amended report that included the missing contributions and expenditures and dismissed the reporting allegations. An investigation was ordered into the disclaimer allegations.

Analysis

Minnesota Statutes section 211B.04 requires a candidate committee to prominently include a disclaimer with the committee's name and address on any campaign material that it causes to be prepared or disseminated. Campaign material is any material whose purpose is to influence voting at an election. Minn. Stat. § 211B.01, subd. 2. The Board may impose a civil penalty of up to \$3,000 for a violation of the disclaimer requirement. Minn. Stat. § 10A.34, subd. 4.

The Moore committee prepared four banners, 1,000 lawn signs, and 1,000 copies of a literature piece that was used as a handout and a mailer. The banners, lawn signs, and literature pieces were campaign material because their purpose was to influence voting at an election. The committee acknowledges that it should have included a disclaimer on the banners and the lawn signs.

The committee, however, argues that the literature piece fell into an exception for “personal letters . . . clearly being distributed by the candidate” and therefore was not required to have a disclaimer. The literature piece was not addressed to individual recipients. Instead, it was generically addressed to “Folks.” The piece also was printed using a landscape orientation and contained a color photo of the candidate. Logos for both the committee and the DFL party were printed in color on the piece. Finally, although the name “Mike” was printed near the end of the text, there was no signature on the piece. Taken as a whole, these details show that the literature piece was not a personal letter and that it therefore should have had a disclaimer.

By letter dated September 17, 2016, Mr. Moore provided additional information regarding the campaign material produced without the required disclaimer and the steps taken by the committee to correct the error. Mr. Moore states that the committee added a sticker with the proper disclaimer to the banners. Before the disclaimer sticker was added, one banner was displayed in the window of the committee’s campaign headquarters, one was displayed in the private home of a relative who lives outside the district, and the remaining two were used on a vehicle that was driven in one parade.

Mr. Moore maintains that only a few lawn signs were distributed without the disclaimer. The committee found all of the distributed signs and added a sticker with the proper disclaimer to them immediately after receiving the complaint. The committee also added a sticker with the proper disclaimer to the signs that were yet to be distributed so that all of the lawn signs now have a proper disclaimer.

Finally, Mr. Moore acknowledges that all 1,000 of the literature pieces were distributed without a disclaimer. Approximately 600 of the literature pieces were mailed and the remaining 400 pieces were used as handouts.

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

Findings of fact

1. The Committee to Elect Mike Moore caused four banners and 1,000 literature pieces to be prepared and disseminated without a disclaimer.
2. The Committee to Elect Mike Moore caused 1,000 lawn signs to be prepared and partially disseminated without a disclaimer.
3. The purpose of the banners, literature pieces, and lawn signs was to influence voting at an election.
4. The Committee to Elect Mike Moore has added a sticker with a proper disclaimer to the banners and lawn signs.

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

Conclusions of law

1. The banners, lawn signs, and literature pieces that the Committee to Elect Mike Moore caused to be prepared and disseminated were campaign materials that required a disclaimer. The Committee violated Minnesota Statutes section 211B.04 by causing these materials to be prepared and disseminated without the required disclaimer.
2. The Committee to Elect Mike Moore mitigated the harm caused by the violation of section 211B.04 by adding a proper disclaimer to the banners and the lawn signs as soon as it became aware of the problem.

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

Order

1. A civil penalty in the amount of \$350 is assessed against the Committee to Elect Mike Moore for violating the disclaimer requirement in Minnesota Statutes section 211B.04. The amount of the civil penalty takes into account both the large number of literature pieces that were disseminated without the disclaimer and the committee's prompt efforts to mitigate the harm caused by the lack of a disclaimer on the other material.
2. The Committee to Elect Mike Moore 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. If the Committee to Elect Mike Moore 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/ Daniel N. Rosen
Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: October 5, 2016