

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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF DAVID OSMEK REGARDING JAY NYGARD

On February 10, 2017, the Campaign Finance and Public Disclosure Board received a complaint submitted by Senator David Osmeke regarding Jay Nygard. The complaint alleges the following violations:

1. Jay Nygard was required by Minnesota Statutes section 10A.105 to register a principal campaign committee with the Board for his campaign in 2016 for the District 33 seat in the Minnesota Senate, and that he failed to do so; and
2. Jay Nygard was required by Minnesota Statutes section 10A.20, subdivision 6, to file pre-primary-election, pre-general-election, and year-end reports of receipts and expenditures with the Board, and that he failed to do so.

On February 23, 2017, the Board chair made a determination that the complaint (1) did not state a prima facie violation of the registration requirement in Minnesota Statutes section 10A.105; and (2) did state a prima facie violation of the reporting requirement in Minnesota Statutes section 10A.20, subdivision 6.

On March 26, 2017, Mr. Nygard and his campaign finance chair, David Erickson, submitted separate responses to the complaint. Mr. Erickson states that "it did not appear to [him] that Mr. Nygard had to file anything after [they] had reviewed the campaign literature provided by the state." Mr. Nygard agreed and states that this was based on the conclusion that "if [he] did not accept more than \$700 in donations" and "if [he] only spent [his] own money, [he] would not have to worry about filing." Mr. Nygard and Mr. Erickson both explain that any potential error in filing campaign finance reports was an honest mistake. Mr. Nygard estimates that he spent "around \$3,500 on the campaign overall" and states that no records or receipts now exist for any campaign expenditures because he "had to dispose of most of [his] election materials in order to be able to move on."

On March 27, 2017, Mr. Nygard emailed Board staff stating that he "mailed [his] final campaign finance report today in order to come into compliance with MN statutes." Attached to the email was the Secretary of State's campaign financial report form for local office candidates filled out by Mr. Nygard. The form discloses that Mr. Nygard accepted in-kind contributions of \$100 and made \$3,500 in disbursements on "signs, banner, website, t-shirts, parades, candy, flags, misc." between 3/16 and 11/16. No expenses of over \$200 are itemized on the report.

**Determination:**

Minnesota Statutes section 10A.20, subdivision 6, provides that a candidate who is not required to register a principal campaign committee with the Board is still required to file reports detailing the campaign expenditures made by the candidate if the aggregate total of those expenditures

exceeds \$750. These reports must be filed by the dates on which reports must be filed by principal campaign committees under Minnesota Statutes section 10A.20, subdivision 2.

The complaint alleges that expenditures were made that exceed \$750 and provides specific factual information in support of that allegation. Mr. Nygard confirms this allegation by stating that he made around \$3,500 in campaign expenditures during 2016.

Board records do not contain any campaign finance reports filed by Mr. Nygard. With his email on March 27, 2017, Mr. Nygard did provide a completed copy of the Secretary of State's financial reporting form for local office candidates. However, because reporting requirements are different for local candidates, the form submitted by Mr. Nygard does not include all information required by Chapter 10A. For example, expenditures to vendors aggregating over \$200 during the calendar year were not itemized on the reporting form as required by Minnesota Statutes section 10A.20, subdivision 3(h).

Finally, Minnesota Statutes section 10A.025, subdivision 3, states that a person must maintain records that will verify in sufficient detail the necessary information on reports that are required to be filed with the Board. These records must be kept for four years from the date the report is filed. Mr. Nygard states that he now has no records or receipts for reports that were required to be filed during the past year.

### **Order**

1. Probable cause exists to believe that Jay Nygard violated the reporting requirement set forth in Minnesota Statutes section 10A.20, subdivision 6, and the recordkeeping requirement set forth in Minnesota Statutes section 10A.025, subdivision 3.
2. An investigation is ordered for the purpose of preparing the matter for final resolution. The investigation will determine when Mr. Nygard met the \$750 threshold for campaign expenditures and, therefore, how many campaign finance reports were required to be filed by statute.
3. Until the Board makes a public finding or enters into a conciliation agreement, this matter is subject to the confidentiality requirements of Minnesota Statutes section 10A.022, subdivision 5.

/s/ Daniel N. Rosen  
Daniel N. Rosen, Chair  
Campaign Finance and Public Disclosure Board

Date: April 5, 2017