

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE COMPLAINT OF MICHAEL SMITH REGARDING THE PERSKE (JOE) FOR SENATE COMMITTEE

Allegations of the complaint

On October 18, 2018, the Campaign Finance and Public Disclosure Board received a complaint submitted by counsel for Michael Smith regarding the Perske (Joe) for Senate committee, and JR Broadcasting, LLC. Perske (Joe) for Senate is the principal campaign committee of Joe Perske, a candidate for the special election in Minnesota Senate District 13. JR Broadcasting, LLC owns AM 950 Radio, which produces a program called “Democrat of the Day”.

The complaint alleged the following violations:

1. the Perske committee used signs that did not include the required campaign disclaimer in violation of Minnesota Statutes section 211B.04, subdivision 1;
2. the Perske committee accepted an in-kind contribution of campaign signs from Joe Perske’s 2014 congressional campaign committee that had a value exceeding the \$1,000 maximum contribution limit for the office of state senate in violation of Minnesota Statutes section 10A.27, subdivision 1;
3. the Perske committee accepted the campaign signs from an unregistered association (the Perske congressional committee) without the disclosure statement required for contributions of over \$200 by Minnesota Statutes section 10A.27, subdivision 13; and
4. the Perske committee accepted a corporate contribution from JR Broadcasting, LLC when Mr. Perske participated in the radio program “Democrat of the Day”. Correspondingly, the complaint alleges that JR Broadcasting made a corporate contribution to the Perske committee through the same radio program. Corporate contributions to the principal campaign committee of a candidate are prohibited by Minnesota Statutes section 211B.15, subdivision 2.

Prima Facie Determination

On October 26, 2018, the Board chair issued a prima facie determination. The determination found that the allegation that the Perske committee accepted a contribution with a value of over \$200 from an unregistered association without the required disclosure statement was mere speculation. The chair reached this conclusion because the required disclosure statement is forwarded to the Board with the committee’s next report of receipts and expenditures filed after the contribution is accepted. The first report of receipts and expenditures for the special election in Senate District 13 was not due until October 30, 2018.

The chair also found that the complaint did not state a prima facie violation of the corporate contribution prohibition in Minnesota Statutes section 211B.15, because that statute also provides an exception which excludes from the prohibition any “publication or broadcasting of news items or editorial comments by the news media.” The complaint contained no allegation that AM 950 is not part of the news media, and the complaint contained no allegation that the radio broadcast segment in question did not consist of news items or editorial comments.

However, the chair further determined that the complaint did state prima facie violations by the Perske committee of the campaign disclaimer and contribution limit statutes. Pursuant to Minnesota Statutes section 10A.022, subdivision 3, when the chair finds that the complaint alleges a prima facie violation, the Board must then hold a probable cause hearing to determine if probable cause exists to believe that the violations alleged in the complaint warrant a formal investigation.

Response from the Perske Committee

The Perske committee provided information relevant to the complaint when it filed the pre-general report of receipts and expenditures on October 30, 2018. The report disclosed an in-kind contribution of \$1,510 dated June 29, 2018, from the candidate, Joe Perske, in the form of “Leftover Perske campaign signs from 2014 CD 6 election contest.” The report also discloses an in-kind campaign expenditure for use of the signs valued at the same amount.

By letter dated November 21, 2018, David Zoll, legal counsel for the Perske committee, responded to the complaint. The letter states that Mr. Perske took personal possession of the campaign signs when the congressional committee terminated after the 2014 election. Therefore, the signs were an in-kind contribution to the Perske committee, but the signs were a donation from the candidate, not by the congressional committee.

In regards to the lack of a disclaimer on some of the campaign signs, Mr. Zoll states that the Perske committee only cut the disclaimer off of the reused signs that were carried in parades and that there was no risk of confusion to voters as to who was responsible for those signs.

Mr. Zoll acknowledges that the Perske committee did initially distribute other reused campaign signs with an incorrect disclaimer. Mr. Zoll states, “[t]he Perske Committee printed stickers with the proper disclaimer immediately after becoming aware of the need to include the disclaimer on the signs and attempted to correct the signs immediately.” With his response, Mr. Zoll provided a picture of the sticker containing the correct disclaimer that was used to correct the campaign signs.

By email on November 27, 2018, Mr. Zoll responded to a Board request for additional information on the campaign signs. Mr. Zoll states that Mr. Perske donated approximately 445 signs to the committee, and that most of these signs were initially distributed without the correct disclaimer. The Perske committee ordered the stickers to update the signs when it learned of the complaint, and committee volunteers started to affix the corrective stickers on October 26, 2018. The Perske committee estimates that the corrective sticker had been applied to substantially all of the signs by November 2, 2018. In response to a Board question regarding the cost of correcting the signs, Mr. Zoll states that the stickers to update the disclaimer cost \$387.53. Before the reused signs were distributed the committee bought other stickers

that were used to change the office referenced on the signs from “Congress” to “MN Senate”. The cost of the “MN Senate” stickers was \$1,705.73.

Probable Cause Hearing

The probable cause hearing was held in executive session at the December 5, 2018, Board meeting. Benjamin Pachito appeared before the Board on behalf of the complainant; David Zoll appeared before the Board on behalf of the Perske committee.

In considering the allegation that the Perske committee accepted the contribution of campaign signs from an unregistered association the Board determined that Mr. Perske’s 2014 congressional campaign committee, named Joe Perske for US Congress, filed a termination report with the Federal Election Commission (FEC) on November 27, 2014. The requested termination was granted by the FEC by letter dated December 3, 2014. Therefore, the signs could not have been contributed by the congressional committee because it had been terminated for 3½ years prior to the date of the contribution. Mr. Perske took possession of the campaign signs when the congressional committee shut down, and later made the decision to donate them to his senate committee. The Perske senate committee properly disclosed the in-kind contribution of the signs as a contribution from the candidate.

Because the signs were donated by the candidate, the \$1,000 contribution limit for unregistered associations does not apply. Mr. Perske signed the public subsidy agreement for the senate special election. Minnesota Statutes section 10A.27, subdivision 10, permits a senate committee to accept up to \$5,000 in contributions from the committee’s own candidate when the candidate has signed a public subsidy agreement. While the pre-general report of receipts and expenditures filed by the Perske committee acknowledges that the value of the signs exceeded \$1,000, there is no basis to believe that the value of the signs exceeded \$5,000 based on the number of signs donated to the committee, and the cost to the committee to modify the signs before they were used in the senate campaign.

Mr. Zoll, in his written response and his appearance before the Board, acknowledged that the Perske committee violated the disclaimer requirement by preparing and disseminating campaign signs that lacked the correct committee name and address as well as signs that did not contain any disclaimer.

On December 5, 2018, the Board made the determination that there was not probable cause to believe that the Perske committee accepted a contribution of over \$1,000 from an unregistered association and dismissed the allegation. The Board also found that there was probable cause to believe that the Perske committee violated the disclaimer requirement in Minnesota Statutes section 211B.04, subdivision 1. An investigation was ordered for the purpose of preparing these findings, conclusions, and order to resolve the matter.

Analysis of Violation

Minnesota Statutes section 211B.04 requires a candidate’s campaign committee to include a disclaimer on any campaign material that it causes to be prepared or disseminated. The disclaimer must identify the committee as the entity responsible for preparing and paying for the campaign material, and must provide either a physical address where the committee may be contacted, or a website address that in turn contains the physical address where the committee may be contacted. The Board may impose a

civil penalty of up to \$3,000 for a violation of the disclaimer requirement pursuant to Minnesota Statutes section 10A.34, subdivision 4.

In this case, the Perske committee acknowledges that it violated Minnesota Statutes section 211B.04, subdivision 1, when it used campaign signs originally prepared for Mr. Perske's congressional campaign. The committee also states, and has documented, that it printed stickers containing the correct disclaimer and mobilized volunteers to correct the signs as soon as it became aware of the problem.

In determining an appropriate civil penalty for the violation, the Board found no reason to believe that the Perske committee reused the campaign signs without a correct disclaimer to either intentionally confuse voters, or deny responsibility for the signs. Indeed the Perske committee did go to the time and expense of modifying the signs for the office of senate. However, the requirement to have a disclaimer on campaign material is not new, and this was not the first political campaign for Mr. Perske. Further, the reused signs were used without the required disclaimer for the majority of the campaign before they were corrected in October and early November. The Board also notes that new campaign signs ordered by the Perske committee contained the correct disclaimer, which shows that members of the Perske committee were aware of the disclaimer requirement.

Findings of fact:

1. The Perske (Joe) for Senate committee used approximately 445 campaign signs that had either no disclaimer, or which contained a disclaimer that was not accurate for the committee.
2. The Perske (Joe) for Senate committee reported that the signs were donated to the committee on June 29, 2018, and that the in-kind value of the signs was \$1,510. The committee was responsible for, and had use of the signs, from that date onward.
3. During the period from October 26, 2018 to November 2, 2018, the Perske (Joe) for Senate committee corrected substantially all of the signs it had previously disseminated that lacked a proper disclaimer.

Based on the foregoing findings of fact, the Board makes the following:

Conclusions of law

1. The Perske (Joe) for Senate committee violated Minnesota Statutes section 211B.04, subdivision 1, when the committee used campaign signs that did not contain the required disclaimer.

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

Order

1. A civil penalty of \$500 is imposed against the Perske (Joe) for Senate committee for violation of the disclaimer provision in Minnesota Statutes section 211B.04, subdivision 1.

2. The Perske (Joe) for Senate committee is directed to forward payment to the Board, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. If the Perske (Joe) for Senate 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/ Margaret Leppik

Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

Date: January 3, 2019