

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

**FINDINGS, CONCLUSIONS, AND ORDER 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 Osmeck regarding Jay Nygard. The complaint alleged 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 stated 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 stated 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 explained that any potential error in filing campaign finance reports was an honest mistake. Mr. Nygard estimated that he spent "around \$3,500 on the campaign overall" and stated that no records or receipts now existed for any campaign expenditures because he "had to dispose of most of [his] election materials in order to be able to move on."

On April 5, 2017, the Board made a determination that probable cause existed to believe that Mr. 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.

On April 24, 2017, Mr. Nygard submitted a letter to the Board. Mr. Nygard estimated that he had exceeded \$700 in campaign expenditures in late June or early July 2016. Mr. Nygard also explained that he could find records for much of what would be required to file a report with the Board.

Analysis

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 disclosing the campaign expenditures made by the candidate if the aggregate total of those expenditures exceeds \$750 during a calendar year. 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. Mr. Nygard states that he made around \$3,500 in campaign expenditures during 2016 and exceeded \$700 in campaign expenditures in late June or early July of 2016. Board records do not contain any campaign finance reports filed by Mr. Nygard.

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 initially stated that he now had no records or receipts for reports that were required to be filed under section 10A.20. However, in his most recent response Mr. Nygard states that, if required to do so, he could find records and receipts that would allow him to complete a campaign finance report.

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

Findings of fact

1. During 2016, Jay Nygard exceeded the \$750 threshold for campaign expenditures that, under Minnesota Statutes section 10A.20, subdivision 6, requires a candidate without a registered principal campaign committee to file campaign finance reports with the Board.
2. Because Mr. Nygard exceeded the \$750 threshold prior to July 18, he was required to file three campaign finance reports: a pre-primary-election report due on July 25, 2016, a pre-general-election report due on October 31, 2016, and a year-end report due on January 31, 2017.
3. The two pre-election reports began accruing a late filing fee of \$50 per day commencing the day after the reports were due. The year-end report began accruing a late filing fee of \$25 per day commencing the day after it was due. Each of the three reports has therefore reached the maximum \$1,000 late filing fee under Minnesota Statutes section 10A.20, subdivision 12.
4. Mr. Nygard has access to records that allow him to complete the campaign finance reports required by statute.

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

Conclusions of law

1. Jay Nygard violated the reporting requirement set forth in Minnesota Statutes section 10A.20, subdivision 6, when he failed to file the required pre-primary-election, pre-general-election, and year-end campaign finance reports disclosing campaign expenditures made during 2016.
2. Mr. Nygard did not violate the recordkeeping requirement set forth in Minnesota Statutes section 10A.025, subdivision 3.

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

Order

1. Jay Nygard is ordered to forward to the Board a payment of \$500 for late filing fees accrued on the three campaign finance reports required to be filed under Minnesota Statutes section 10A.20, subdivision 6. In consideration of this payment, the Board waives the remaining \$2,500 in currently accrued late filing fees.
2. Mr. Nygard is directed to forward to the Board the payment for the \$500 late filing fee, by check or money order payable to the State of Minnesota, within 30 days of receipt of this order.
3. Mr. Nygard is ordered to file within 60 days of receipt of this order a year-end report disclosing, to the best of his ability and as required by Minnesota Statutes section 10A.20, the campaign expenditures he made during 2016.
4. If Mr. Nygard 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.
5. 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: June 14, 2017