

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE FUNK (THOMAS) FOR SENATE COMMITTEE

Background

The Funk (Thomas) for Senate committee is the principal campaign committee of Thomas Funk, a candidate for Minnesota Senate District 47. In January 2020 Mr. Funk contacted Board staff and self-reported that his committee disseminated two campaign material mailers that lacked the disclaimer for campaign material. Mr. Funk stated that the disclaimer text was accidentally deleted during the committee's process of editing the design of those two mailers. Mr. Funk reported that each mailer was sent to approximately 505 individuals and that the total amount spent on designing, printing, and disseminating the two mailers was \$1,231.95. Mr. Funk explained that his committee discovered the error on its own, and that the disclaimer was included on a subsequent mailer. Mr. Funk provided copies of the campaign mailers to the Board.

Analysis

Minnesota Statutes section 211B.04, subdivision 1, requires candidates to include a disclaimer on campaign material that prominently states "Prepared and paid for by the . . . committee, . . . (address)". Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

Determining whether the Funk committee violated this statute requires little analysis; the candidate notified the Board of the violation and an examination of the two campaign mailers confirms that the required disclaimer is missing. What requires more analysis is determining an appropriate penalty given the facts of this particular violation. In determining the penalty for a violation of the disclaimer requirement in Minnesota Statutes section 211B.04 the Board considers factors such as those listed below.

Is it clear who is responsible for the campaign material, and is information provided that would allow an individual to contact the responsible committee? In this case the mailers lacking the required disclaimer were delivered through the U.S. postal system. Both mailers provide the return address, "TOM FUNK FOR MN SENATE 7985 Acorn Cir Victoria, MN 55386." This is the same address provided for the committee when the committee was registered with the Board. Additionally, both mailers provide the website and Facebook page addresses for the committee. The committee's website and Facebook page contain the disclaimer required by Minnesota Statutes section 211B.04, subdivision 1.

Is this the first violation by the committee of the relevant disclaimer requirement? The Funk (Thomas) for Senate committee registered with the Board on August 1, 2019. The committee has no prior violation of Minnesota Statutes section 211B.04, subdivision 1.

What was the cost of the campaign material and how widely distributed was the campaign material lacking the required disclaimer? In this case the distribution and cost of the campaign material was relatively limited; approximately 505 individuals were sent the two mailers at a total cost of \$1,231.95.

Did the committee self-report the violation? The Funk (Thomas) for Senate committee notified the Board of the violation and provided all requested information.

The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04, subdivision 1. Based on the analysis of the factors listed above, however, the Board has determined that a \$100 penalty is appropriate for the violation in this case.

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

Findings of Fact

1. The Funk (Thomas) for Senate committee prepared and disseminated two campaign material mailers promoting Mr. Funk's candidacy for the purpose of influencing voting at an election.
2. The two mailers did not include disclaimer text in the format provided by Minnesota Statutes section 211B.04, subdivision 1.
3. The two mailers were each disseminated to approximately 505 individuals.
4. The total cost to produce and disseminate the two mailers was \$1,231.95.
5. The Funk (Thomas) for Senate committee discovered its error in omitting the disclaimer text from the two mailers, self-reported the apparent violation to the Board, and included the disclaimer in a subsequent campaign material mailer.

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

Conclusions of Law

1. The two mailers prepared and disseminated by the Funk (Thomas) for Senate committee were campaign material under Minnesota Statutes section 211B.01, subdivision 2.
2. The Funk (Thomas) for Senate committee violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared and disseminated two mailers without the required disclaimer.

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

Order

1. A civil penalty in the amount of \$100 is assessed against the Funk (Thomas) for Senate committee for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Funk (Thomas) for Senate committee 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 the date of this order.
3. If the Funk (Thomas) 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/ Robert Moilanen
Robert Moilanen, Chair
Campaign Finance and Public Disclosure Board

Date: March 6, 2020