

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

**PRIMA FACIE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF THE MINNESOTA DFL REGARDING THE MATT BIRK FOR  
LIEUTENANT GOVERNOR CAMPAIGN AND THE DR. SCOTT JENSEN FOR GOVERNOR COMMITTEE

On April 4, 2022, the Campaign Finance and Public Disclosure Board (the Board) received a complaint submitted by Charles Nauen on behalf of the Minnesota Democratic Farmer Labor Party regarding Matt Birk, a candidate for lieutenant governor (Birk campaign). Matt Birk is an announced candidate seeking the Republican Party of Minnesota (RPM) endorsement for lieutenant governor. Mr. Birk is running for that office with Dr. Scott Jensen, who has announced that he is a candidate seeking the RPM endorsement for governor. Dr. Jensen registered the Dr. Scott Jensen for Governor Committee (Jensen Committee) with the Board in March of 2021. Mr. Birk has not registered a principal campaign committee with the Board.

Although the complaint does not make any specific allegations against the Jensen Committee, two of the allegations against the Birk campaign may, if determined to be true, also constitute violations by the Jensen Committee. Because the allegations in the complaint, and evidence provided with the complaint, reference the Jensen Committee, the Board chair considers the complaint to be against both the Birk campaign and the Jensen Committee.

The complaint's initial allegation is that Mr. Birk failed to register a principal campaign committee with the Board within fourteen days of raising or spending more than \$750 on his campaign for lieutenant governor. In support of the allegation the complaint provides a screenshot of a web page<sup>1</sup> where political donations may be made to "Matt Birk for Lt. Gov". The web page also states "Give TODAY to help our team WIN!". The donation page disclaimer states "Paid for and provided by Dr. Scott Jensen for Governor". Additionally, the complaint provides information on five Facebook advertisements that announce that Mr. Birk is running for lieutenant governor on a ticket with Dr. Jensen's campaign for governor. The initial Facebook advertisement was released on March 10, 2022, and the combined cost of the Facebook advertisements is approximately \$4,000. The five Facebook advertisements each contain the statement "Paid for by Matt Birk for Lt. Governor".

The complaint further alleges that the Birk campaign either received prohibited contributions from the Jensen Committee, or alternatively, that the unregistered Birk campaign committee will need to reimburse the Jensen Committee for expenditures made on behalf of Mr. Birk's candidacy for lieutenant governor. In support of the allegation the complaint states that the website <https://mattbirk.com> is the website for the Birk campaign. The homepage of the website provides the disclaimer:

---

<sup>1</sup> <https://secure.anedot.com/dr-scott-jensen-for-governor/birk-for-lg>

Paid for and provided by the Dr. Scott Jensen for Governor Committee  
Dr. Scott Jensen for Governor  
P. O. Box 1348  
Minnetonka, MN 55345

The complaint also alleges that if Mr. Birk has not formed a campaign committee for lieutenant governor, then the Facebook page advertisements contain a false and misleading disclaimer in violation of Minnesota Statutes section 211B.04. In support of the allegation, the complaint again references the five Facebook advertisements that state “Paid for by Matt Birk for Lt. Governor”.

The complaint’s last allegation states that if Mr. Birk has not formed a campaign committee, then the contributions donated through the website donation page are probably being deposited in the Jensen Committee’s bank account. The complaint alleges that if contributions made via the website for the Birk campaign are being deposited in the Jensen Committee’s bank account, then the donations are being earmarked in violation of Minnesota Statutes section 10A.16. Earmarking is the practice of soliciting or accepting a contribution for a candidate with the understanding that the contribution will be forwarded to another candidate.

## **Determination**

### Failure to Register a Principal Campaign Committee

The office of lieutenant governor is a state constitutional office, and an individual who seeks nomination or election to that office is a candidate as defined in Minnesota Statutes section 10A.01, subdivision 10. Minnesota Statutes section 10A.14, subdivision 1, requires the treasurer of a candidate’s principal campaign committee to file a registration statement with the Board within 14 days after the committee “has made a contribution, received contributions, or made expenditures in excess of \$750.”

However, Minnesota Rules part 4503.1300, subpart 1, provides an alternative to registering a principal campaign committee for lieutenant governor candidates. The rule provides:

Subpart 1. **Seeking endorsement as lieutenant governor.** Raising and spending funds to seek endorsement as lieutenant governor may be done either through a separate principal campaign committee established by the lieutenant governor candidate or through a joint principal campaign committee of the governor and lieutenant governor candidates.

The complainant’s allegation appears to be that a separate principal campaign committee exists for the Birk campaign because the disclaimer on the Facebook advertisements and the language on Mr. Birk’s donation page reflect that such a committee exists. In support of the allegation the complaint provides evidence that contributions were solicited for “Matt Birk for Lt.

Gov”, and that Facebook advertisements that cost more than the \$750 registration threshold were distributed with the disclaimer “Paid for by Matt Birk for Lt. Governor”. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.14.

#### Donation from an Active Principal Campaign Committee

A contribution is defined, in relevant part, as “...money, a negotiable instrument, or a donation in kind...” by Minnesota Statutes, section 10A.01, subdivision 11. Minnesota Statutes, section 10A.01, subdivision 13, provides in part that “Donation in kind” means anything of value that is given...”. The complaint alleges that the mattbirk.com website was a donation in kind given to the Birk campaign by the Jensen Committee based on the website disclaimer stating that the website is “Paid for and provided by the Dr. Scott Jensen for Governor Committee”. The complaint further alleges that the donation of the website is prohibited under Minnesota Statutes section 10A.27, subdivision 9, which limits contributions that a principal campaign committee may accept from, or give to, other principal campaign committees. The statute provides in part:

Subdivision 9. **Contributions to and from other candidates.** (a) A candidate or the treasurer of a candidate's principal campaign committee must not accept a contribution from another candidate's principal campaign committee or from any other committee bearing the contributing candidate's name or title or otherwise authorized by the contributing candidate, unless the contributing candidate's principal campaign committee is being dissolved. A candidate's principal campaign committee must not make a contribution to another candidate's principal campaign committee, except when the contributing committee is being dissolved.

If, as alleged, the Birk campaign is operated separately and not through the Jensen Committee, and the disclaimer on the website is accurate, then the mattbirk.com website is a donation in kind from the Jensen Committee. There is no reason to believe that the Jensen Committee is being dissolved. The prohibition on campaign contributions between principal campaign committees applies to both the donor and recipient committees. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.27, subdivision 9 by both the Jensen Committee and the Birk campaign.

#### Improper Campaign Material Disclaimer

With limited exceptions, Minnesota Statutes section 211B.04 requires campaign material to contain a disclaimer that identifies the person or campaign committee that prepared and disseminated the material.<sup>2</sup> The complainant’s allegation assumes that there is not a Matt Birk for Lt. Governor committee, and therefore the Facebook advertisements that state “Paid for by

---

<sup>2</sup> The exceptions to the disclaimer requirement provided are found in Minnesota Statutes section 211B.04, subdivision 3.

Matt Birk for Lt. Governor” are false, and do not identify the individual or committee that actually paid for the advertisements. As noted above, Mr. Birk has not registered a campaign committee with the Board. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 211B.04.

### Earmarking of Contributions

Minnesota Statutes section 10A.16, provides in part:

An individual, political committee, political fund, principal campaign committee, or party unit may not solicit or accept a contribution from any source with the express or implied condition that the contribution or any part of it be directed to a particular candidate other than the initial recipient. An individual, political committee, political fund, principal campaign committee, or party unit that knowingly accepts any earmarked contribution is subject to a civil penalty imposed by the board of up to \$3,000.

The complainant’s allegation on earmarking is based first on the assumption that there is no Matt Birk for Lieutenant Governor committee, and then presumes that any money raised through the website donation page is deposited in the Jensen Committee’s bank account. The complaint further assumes that the donations made through the website are made with the express or implied condition that the contribution be directed by Mr. Birk to the Jensen committee.

The complainant includes evidence showing that the contribution page prominently displayed a logo with the text “MATT BIRK FOR LT. GOV” and a photograph of Mr. Birk. The contribution page also included text asking contributors to mail physical checks to “Matt Birk for Lt. Governor” and a disclaimer stating that the website was “Paid for and provided by Dr. Scott Jensen for Governor.” The complaint does not allege or provide evidence showing that any particular donor contributed with the condition that the Birk campaign direct their contribution to the Jensen committee. However, the complaint alleges and includes some evidence that the Birk campaign publicly solicited contributions, and based on the disclaimer displayed, the Birk campaign intended to direct some or all of the contributions received to the Jensen committee. The presence of the disclaimer on the contribution page also provides evidence that the Jensen Committee may have accepted contributions with knowledge that they were earmarked. The chair therefore concludes that the allegation regarding earmarking states a prima facie violation of Minnesota Statutes section 10A.16 by both the Jensen Committee and the Birk campaign.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, this prima facie determination is made by a single Board member and not by any vote of the entire Board. This prima facie determination does not mean that the Board has commenced, or will commence, an investigation or has made any determination of a violation by any of the individuals or entities named in the complaint.

Minnesota Statutes section 10A.022, subdivision 3, requires the Board, within 45 days of the date of this determination, to make findings and conclusions as to whether probable cause exists to believe that the violations of Minnesota Statutes sections 10A.14, 10A.16, 10A.27, subdivision 9, and 211B.04, alleged in the complaint have occurred and warrant a formal investigation. The complainant and the respondents named in this prima facie determination will be given an opportunity to be heard by the Board prior to any decision on probable cause.

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.

A handwritten signature in black ink, appearing to read 'F. Rashid', written over a horizontal line.

Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board

Date: April 14, 2022