

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF BOB FOSTER REGARDING THE SCOTT COUNTY RPM AND JOSEPH DITTO

On August 22, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by Bob Foster regarding the Scott County RPM and Joseph Ditto, who is a former chair of the Scott County RPM. The Scott County RPM is a political party unit registered with the Board.

The complaint alleges that the Scott County RPM violated four provisions of Minnesota Statutes Chapters 10A and 211B. The complaint alleges that the Scott County RPM violated Minnesota Statutes section 10A.176 (activities that show expenditures are coordinated with a candidate) because the party unit did not have authority to make a coordinated expenditure supporting a candidate not endorsed by the Republican party, specifically Representative Erik Mortensen. The complaint further alleges that the party unit violated Minnesota Statutes section 10A.20 (information in campaign reports) when it failed to list an itemized in-kind contribution for the use of the fair booth by Representative Mortensen within its 2022 pre-primary report of receipts and expenditures. The complaint also states that the Scott County RPM violated Minnesota Statutes section 211B.02 (false claim of support), when the party unit let a candidate who was not endorsed by the Republican party distribute literature at the party unit's booth at the Scott County Fair. The complaint alleges that the Scott County RPM issued a press release that contained false statements about candidate Bob Loonan that violated Minnesota Statutes section 211B.06 (distribution of false campaign material). Lastly, the complaint alleges that the party unit also violated Minnesota Statutes section 211B.06 by allowing Representative Mortensen to use its booth at the Scott County Fair to disseminate false campaign material.

In support of the allegations the complainant provides photos of the party unit's booth at the Scott County Fair. The photos show campaign literature and signs for candidates available at the booth, including what is alleged to be literature for the Mortensen committee. The complaint also provides a picture of a water bottle allegedly given away at the booth with a "Mort for House" sticker attached. The complaint included copies of a Facebook post allegedly made by Representative Mortensen dated July 29, 2022, promoting times when he would be at the Scott County RPM fair booth, and a Facebook post by the Scott County RPM dated July 31, 2022, that generally promoted the booth at the fair. The complaint also provided a copy of a Scott County RPM press release dated August 3, 2022.

Determination

The Board's jurisdiction over Minnesota Statutes Chapter 211B is limited, and does not extend to sections 211B.02 and 211B.06. Complaints regarding those two statutes must be filed with the Office of Administrative Hearings.¹ Minn. Stat. § 211B.32, subd. 1. The allegations in the complaint regarding a false claim of support and false campaign material therefore do not state a prima facie violation of Minnesota Statutes Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction.

Minnesota Statutes section 10A.176 describes relationships and communication between a candidate and or the candidate's committee and a political committee, political fund, or political party unit that would constitute a coordinated expenditure. Coordination with a candidate is not prohibited by this statute. The provisions of the statute are used to distinguish approved expenditures on behalf of a candidate from independent expenditures. The complainant appears to state that coordination between a party unit and a candidate that is not endorsed is a violation of this statute; however, a party's endorsement is irrelevant to the statute, and there is no means by which an individual or association may violate the statute because the statute does not prohibit any particular activity. The complaint therefore does not state a prima facie violation of Minnesota Statutes section 10A.176.

Minnesota Statutes section 10A.20 provides reporting requirements for political party units registered with the Board. The statute establishes filing deadlines for periodic reports that disclose, in part, the itemized contributions made to candidates for state office. Itemization is required when the cumulative contributions to a candidate exceed \$200. Each report discloses the party unit's financial activity for a specific period of time. As of the date of this prima facie determination the party unit has been required to file only one report in 2022, the pre-primary report, which covered financial activity during the period of January 1 to July 18, 2022.

The complaint points out that on its pre-primary report the Scott County RPM disclosed an expenditure on May 4, 2022, of \$600 to the Scott County Fair for rental of the booth. The complainant alleges that the report should have also itemized an in-kind contribution to the Mortensen committee for use of the fair booth. However, the complaint does not reference any specific evidence that the party unit rented the fair booth with the understanding that it would be an approved expenditure (a type of in-kind contribution) on behalf of the Mortensen committee or any other candidate. The photographs of the fair booth provided as evidence appear to show a banner and material promoting the Scott County RPM, along with campaign signs and/or campaign literature for at least twelve other candidates besides Representative Mortensen. The committees that provided literature or campaign signs to the Scott County RPM for display at the fair booth would have received an in-kind contribution consisting of the value of use of some area of the booth during the dates of the fair, which occurred from July 27 to July 31, 2022.

¹ The website of the Office of Administrative Hearings states that it "may not consider and must dismiss claims alleging violations of Minn. Stat. § 211B.06 (false campaign material); the United States Court of Appeals for the Eighth Circuit determined that statute was unconstitutional in 281 Care Committee v. Arneson."

These dates are after the period of activity included in the pre-primary report. To the extent that the use of the fair booth was a reportable in-kind contribution from the Scott County RPM to the Mortensen committee it would not be disclosed until the pre-general report, which is due on October 31, 2022, and includes activity from January 1 to October 24, 2022. Having concluded that an in-kind contribution for use of the fair booth did not need to be included in the pre-primary report, this prima facie determination need not consider whether the alleged contribution exceeded the \$20 threshold for accounting of in-kind contributions, and if so, whether the contribution requires itemization. The complaint therefore does not state a prima facie violation of the reporting requirements in Minnesota Statutes section 10A.20.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (c), this prima facie determination is made by a single Board member and not by any vote of the entire Board. Based on the above analysis, the Chair concludes that the complaint does not state a prima facie violation of Chapter 10A or of those sections of Chapter 211B under the Board's jurisdiction. The complaint is dismissed without prejudice.

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: August 31, 2022