

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

**PRIMA FACIE
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MICHAEL SMITH REGARDING THE PERSKE (JOE) FOR SENATE COMMITTEE AND JR BROADCASTING, LLC

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 alleges violations of Minnesota Statutes section 211B.04 due to the failure to include a proper disclaimer on campaign signs. The complaint further alleges that the Perske (Joe) for Senate Committee violated Minnesota Statutes section 10A.27, subdivision 1, when it accepted a contribution of campaign signs from Perske's 2014 congressional campaign that had a value exceeding the \$1,000 maximum contribution limit. The complaint also states that the Perske committee accepted the signs from an unregistered association (the Perske congressional committee) without the disclosure statement required by Minnesota Statutes section 10A.27, subdivision 13.

Finally, the complaint alleges violations of Minnesota Statutes section 211B.15 due to Mr. Perske's participation in the Democrat of the Day radio broadcast on October 10, 2018.

Determination

Disclaimer Requirement

Minnesota Statutes section 211B.04 requires principal campaign committees to include on their campaign material a disclaimer substantially in the form provided in Minnesota Statutes section 211B.04, subdivision 1. The complaint alleges and provides pictorial evidence that the Perske committee prepared and disseminated campaign signs that listed Perske's congressional committee name and mailing address in the disclaimer instead of the required senate committee name and address. Additionally the complaint states and provides pictorial evidence that some campaign signs distributed by the Perske senate committee did not contain any disclaimer. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 211B.04.

Contribution in Excess of Contribution Limit

Minnesota Statutes section 10A.27, subdivision 1, prohibits principal campaign committees for state senate candidates from accepting contributions that exceed \$1,000 in the aggregate over the course of an election segment from any individual, political committee, political fund, or

association not registered with the Board. The complaint alleges that the Perske senate committee accepted a contribution in the form of campaign signs from Perske's 2014 congressional campaign committee, Joe Perske for US Congress. The complaint alleges that the campaign signs from Perske's 2014 congressional committee have a market value greater than \$1,000. The pictures in the complaint showing the size and number of signs that have been distributed provide support for the complaint's allegation regarding the sign's market value. The chair therefore concludes that the complaint states a prima facie violation of Minnesota Statutes section 10A.27, subdivision 1.

Contribution from an Unregistered Association without Disclosure Statement

Minnesota Statutes section 10A.27, subdivision 13, prohibits principal campaign committees from accepting a contribution in excess of \$200 from an association not registered under Chapter 10A, unless the contribution is accompanied by a written statement from the donor association satisfying the requirements of Minnesota Statutes section 10A.20. The complaint alleges that the Perske congressional campaign committee is an unregistered association for the purposes of Chapter 10A, that the market value of the donated campaign signs is greater than \$200, and that the Perske committee accepted that contribution in the absence of a written disclosure statement that satisfies Minnesota Statutes section 10A.20. A committee that accepts a contribution in excess of \$200 from an unregistered association must receive the required disclosure statement at the time that it accepts the contribution. The recipient committee then must forward a copy of the disclosure statement to the Board with the first report of receipts and expenditures filed by the committee after accepting the contribution. The first report for special election candidates in senate district 13 is not due until October 30, 2018. The chair concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 10A.27, subdivision 13, because the Perske committee is not required to file its first report of receipts and expenditures until October 30, 2018, and therefore it is mere speculation to allege that the required disclosure statement will not be submitted with that report.

Corporate Contribution

Minnesota Statutes section 211B.15, subdivision 2, prohibits principal campaign committees and legislative candidates from accepting contributions from corporations. The definition of corporation includes limited liability companies formed under Minnesota Statutes chapter 322C. The complaint states that on October 10, 2018, Mr. Perske participated in a radio broadcast segment titled "Democrat of the Day" with host Matt McNeil on radio station AM 950 KTNF. The complaint states that AM 950 is owned by JR Broadcasting LLC, which is a Minnesota LLC formed under Minnesota Statutes chapter 322C. The complaint argues that the radio segment in which Mr. Perske participated is a contribution, as that term is defined within Minnesota Statutes section 211B.15, subdivision 2, from JR Broadcasting LLC.

The complaint does not address Minnesota Statutes section 211B.15, subdivision 5, which excludes from the corporate contribution prohibition any "publication or broadcasting of news

items or editorial comments by the news media.” The complaint contains no allegation that AM 950 is not part of the news media. The complaint contains no allegation that the radio broadcast segment in question did not consist of news items or editorial comments. The chair therefore concludes that the complaint does not state a prima facie violation of Minnesota Statutes section 211B.15.

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.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, within 45 days of the date of this determination, the Board will make findings and conclusions as to whether probable cause exists to believe the violations of Minnesota Statutes sections 211B.04 and 10A.27 alleged in the complaint warrant a formal investigation. The complainant and the respondent 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.

/s/ Carolyn Flynn
Carolyn Flynn, Chair
Campaign Finance and Public Disclosure Board

Date: October 26, 2018