

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

**PRIMA FACIE
DETERMINATION**

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 Osmeke regarding Jay Nygard. The complaint alleges the following violations:

1. Jay Nygard was required by Minn. Stat. §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 Minn. Stat. §10A.20, subd. 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.

Determination:

The complaint alleges a registration and a reporting violation by Mr. Nygard. The complaint asserts that the registration violation occurred when, despite spending over \$750 on his campaign for state senate, Mr. Nygard failed to register a principal campaign committee with the Board, and that the reporting violation occurred when, after spending over \$750 on his campaign, Mr. Nygard failed to file reports of expenditures for the pre-primary-election, pre-general-election, or year-end reporting periods. The complaint provides examples of campaign expenditures made by Mr. Nygard that the complaint asserts exceed \$750 in value.

The requirement of Minn. Stat. §10A.105 to register a principal campaign committee is based upon contributions, not expenditures. The registration requirement occurs when a candidate accepts aggregate contributions in excess of \$750, not counting money contributed to the campaign by the candidate. Having reviewed the submissions, the chair makes the determination that the complaint fails to assert a factual basis to find that Mr. Nygard received over \$750 in contributions. Therefore, the complaint does not state a prima facie violation of Minn. Stat. §10A.105.

Minn. Stat. §10A.20, subd. 6, provides that a candidate that is not required to register a principal campaign committee is still required to file a report of the campaign expenditures made by the candidate if the aggregate total of those expenditures exceeds \$750. The Complaint alleges that expenditures were made that exceed \$750 and provides specific factual information in support of that allegation. Board records do not contain pre-primary-election, pre-general-election, or year-end reports of receipts and expenditures for Mr. Nygard. Accordingly, the chair makes the determination that the complaint does state a prima facie allegation of a violation of Minn. Stat. §10A.20, subd. 6.

Pursuant to Minnesota Statutes section 10A.022, subdivision 3, paragraph (1), 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, paragraph (2), 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 reporting violation alleged in the complaint warrants 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/ Daniel N. Rosen
Daniel N. Rosen, Chair
Campaign Finance and Public Disclosure Board

Date: February 23, 2017