

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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF MICHAEL SMITH REGARDING THE PERSKE (JOE) FOR SENATE COMMITTEE:

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. On October 26, 2018, the Board chair dismissed the corporate contribution allegation concerning JR Broadcasting LLC, and another allegation concerning the acceptance of a contribution without the required underlying disclosure. The chair concluded that the complaint did state prima facie violations of Minnesota Statutes section 211B.04, subdivision 1, and section 10A.27, subdivision 1, by the Perske committee.

The complaint alleges and provides pictorial evidence that the Perske committee prepared and disseminated campaign signs that listed the name and mailing address of Perske's 2014 congressional campaign committee in the disclaimer instead of the Perske senate committee's name and address. Additionally, the complaint states and provides pictorial evidence that some campaign signs used by the Perske committee did not contain any disclaimer. Minnesota Statutes section 211B.04, subdivision 1, requires campaign signs to include a disclaimer that identifies the committee responsible for the sign and the address where the committee may be contacted.

The complaint also alleges that the Perske committee accepted a contribution in the form of the campaign signs from Perske's 2014 congressional campaign committee, named Joe Perske for US Congress. The complaint alleges that the lawn signs from Perske's congressional committee have a market value greater than \$1,000. The Joe Perske for US Congress committee is an unregistered association under Chapter 10A. The maximum contribution that a candidate in a special election for state senate may receive from an unregistered association is \$1,000 during the special election cycle. Accepting an in-kind contribution with a value in excess of \$1,000 would be a violation of Minnesota Statutes section 10A.27, subdivision 1.

On October 30, 2018, the Perske committee's treasurer filed the committee's pre-general report of receipts and expenditures. The report discloses an in-kind contribution of \$1,510 dated June 29, 2018, from the candidate, Joe Perske, in the form of "Leftover Perske campaign signs from 2014 CD 6 election contest." The report also discloses an in-kind campaign expenditure for use of the signs valued at the same amount.

By letter dated November 21, 2018, David Zoll, legal counsel for the Perske committee, responded to the complaint. The letter states that Mr. Perske took personal possession of the campaign signs when the congressional committee closed after the 2014 election. Therefore, the signs were an in-kind

contribution to the Perske committee, but they were donated to the committee by the candidate, not by the congressional committee.

In regards to the lack of a disclaimer on some of the campaign signs, Mr. Zoll states that the Perske committee only cut the disclaimer off of the signs that were carried in parades and that there was no risk of confusion to voters as to who was responsible for those signs.

Mr. Zoll acknowledges that the Perske committee did initially distribute the other campaign signs with an incorrect disclaimer. Mr. Zoll states, "The Perske Committee printed stickers with the proper disclaimer immediately after becoming aware of the need to include the disclaimer on the signs and attempted to correct the signs immediately." With his response, Mr. Zoll provided a picture of the sticker containing the correct disclaimer that was used to correct the campaign signs.

By email on November 27, 2018, Mr. Zoll responded to a Board request for additional information on the campaign signs. Mr. Zoll states that Mr. Perske donated approximately 445 signs to the committee, and that most of these signs were initially distributed without the correct disclaimer. Further, the Perske committee ordered the stickers to update the signs when it learned of the complaint, and committee volunteers started to affix the corrective stickers on October 26, 2018. The Perske committee estimates that the corrective sticker had been applied to substantially all of the signs by November 2, 2018. In response to a Board question on the cost of correcting the signs, Mr. Zoll states that the stickers to update the disclaimer cost \$387.53, and the stickers used to change the signs from "Congress" to "MN Senate" cost \$1,705.73.

## **Analysis**

When the Board chair makes a finding that a complaint states a prima facie violation, the full Board then must determine whether probable cause exists to believe an alleged violation that warrants an investigation has occurred. Minn. Stat. § 10A.022, subd. 3 (d). A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation.

Minnesota Statutes section 211B.04, subdivision 1, requires principal campaign committees to include on their campaign material a disclaimer substantially in the form provided in the statute. Mr. Zoll's response acknowledges that the Perske committee violated the disclaimer requirement by preparing and disseminating campaign signs that lacked the correct committee name and address as well as signs that did not contain any disclaimer.

Mr. Perske's 2014 congressional campaign committee, named Joe Perske for US Congress, filed a termination report with the Federal Election Commission (FEC) on November 27, 2014. The requested termination was granted by the FEC by letter dated December 3, 2014. Therefore, the signs could not have been contributed by the congressional committee because it had been terminated for 3½ years prior to the date of the contribution. Mr. Perske took possession of the campaign signs when the congressional committee shut down, and later made the decision to donate them to his senate

committee. The Perske senate committee properly disclosed the in-kind contribution of the signs as a contribution from the candidate.

Mr. Perske signed the public subsidy agreement for the senate special election. Minnesota Statutes section 10A.27, subdivision 10, permits a senate committee to accept up to \$5,000 in contributions from the committee's own candidate when the candidate has signed a public subsidy agreement. While the pre-general report of receipts and expenditures filed by the Perske committee acknowledges that the value of the signs exceeded \$1,000, there is no basis to believe that the value of the signs exceeded \$5,000 based on the number of signs donated to the committee, and the cost to the committee to modify the signs before they were used in the senate campaign.

**Order:**

1. The allegation that the Perske (Joe) for Senate committee accepted a contribution in excess of \$1,000 from Perske's 2014 congressional campaign committee in violation of Minnesota Statutes section 10A.27, subdivision 1, is dismissed for lack of probable cause.
2. Probable cause exists to believe that the Perske (Joe) for Senate committee prepared and disseminated campaign material lacking the required disclaimer in violation of Minnesota Statutes section 211B.04, subdivision 1.
3. An investigation is ordered for the purpose of preparing an order resolving this matter. No further discovery will be conducted.

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

Date: December 5, 2018