

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

**PROBABLE CAUSE  
DETERMINATION**

IN THE MATTER OF THE COMPLAINT OF CHRISTINA OGATA REGARDING THE CAMPAIGN COMMITTEE OF ELLIOTT W ENGEN

On September 10, 2020, the Campaign Finance and Public Disclosure Board received a complaint submitted by Christina Ogata regarding the Campaign Committee of Elliott W Engen. The Campaign Committee of Elliott W Engen is the principal campaign committee of Elliott Engen, a candidate for Minnesota House of Representatives District 38B.

The complaint alleges a violation of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleges that the committee's lawn signs did "not include a mailing address or a website address where you could find the mailing address." The complaint includes a partial photograph of a lawn sign with a disclaimer that stated "PAID FOR BY COMMITTEE TO ELECT ELLIOTT W ENGEN" and did not include a mailing or website address.

On September 15, 2020, the Board chair determined that the complaint alleged a prima facie violation of Minnesota Statutes section 211B.04. The same day, Mr. Engen spoke with Board staff and stated that his committee would add the committee's address to its lawn signs. On September 20, 2020, Ms. Ogata supplemented her complaint alleging that the Engen committee's "website and print literature also do not include the campaign mailing address." As of that date, the Engen committee's website contained prominent text stating "ELLIOT ENGEN FOR STATE REPRESENTATIVE" and included Mr. Engen's telephone number and an email address, but did not include a disclaimer or the committee's mailing address. Ms. Ogata provided photographs of a two-sided piece of campaign literature produced by the Engen committee. One side of that literature included a disclaimer that stated "Paid for and prepared by the campaign committee of Elliott Engen." The other side included the committee's mailing address.

On September 26, 2020, Mr. Engen provided a written response to the supplemented complaint. Mr. Engen stated that his "committee has (and continues to) remedy the inadvertent oversight by placing labels on each of the signs which provides a campaign website/ mailing address." As to the committee's website and the campaign literature referenced by Ms. Ogata, Mr. Engen stated that "the displayed address and website are provided pursuant to Minnesota Statute section 211B.04 as evidenced by Ms. Ogata's exhibit." Mr. Engen spoke with Board staff on September 28, 2020, and explained that his committee's website has been modified to include the committee's mailing address. The website now includes a disclaimer that states "Paid for and prepared by the campaign committee of Elliott Engen." The disclaimer does not include an address but the committee's mailing address is displayed directly beside the disclaimer text.

At its meeting on October 7, 2020, the Board considered this matter and Ms. Ogata appeared before the Board to address her complaint.

## **Analysis**

When the Board chair makes a finding that a complaint raises 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.

If the Board finds that probable cause exists, the Board is required to determine whether the alleged violation warrants a formal investigation, considering the type and magnitude of the alleged violation, the knowledge of the respondent, any benefit to be gained from a formal investigation, the availability of Board resources, and whether the violation has been remedied. Minn. R. 4525.0210, subp. 5. If the Board finds that probable cause exists but does not order a formal investigation, the Board is required to either dismiss the complaint or order a staff review. Minn. R. 4525.0210, subp. 6.

Minnesota Statutes section 211B.04, subdivision 1, generally requires principal campaign committees to include a disclaimer on campaign material that prominently states “Prepared and paid for by the . . . committee, . . . (address).” “The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.” Minn. Stat. § 211B.04, subd. 1. Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”

Based on the supplemented complaint, the photographs provided by Ms. Ogata, the response from the Engen committee, and images depicting the Engen committee’s website as it appeared on September 22, 2020, there is probable cause to believe that a violation of the disclaimer requirement occurred. At the time the complaint was received by the Board, the Engen committee’s lawn signs included a disclaimer that stated “PAID FOR BY COMMITTEE TO ELECT ELLIOTT W ENGEN.” The piece of campaign literature depicted in photographs submitted by Ms. Ogata included a disclaimer that stated “Paid for and prepared by the campaign committee of Elliott Engen.” Neither the signs nor the literature included the required address in the disclaimer. In addition, at the time that the supplemental complaint was received, the committee’s website did not include any disclaimer.

Given their content, including the prominent display of Mr. Engen’s name and office sought, it is unlikely that the lack of a proper disclaimer caused confusion as to who prepared and paid for the Engen committee’s lawn signs, website, and campaign literature. The website provided

individuals with the means to contact the committee by email or telephone and the campaign literature included the committee's mailing address separately from the disclaimer text, as well as the committee's website address and Mr. Engen's email address and telephone number. According to its 2020 pre-primary report of receipts and expenditures the Engen committee paid \$500 for lawn signs purchased in March 2020. Mr. Engen stated to Board staff that approximately 100 signs were distributed with the improper disclaimer. The committee has not reported any itemized expenditures related to its website. Mr. Engen is a first-time candidate. The Engen committee registered with the Board in February 2020 and has no prior violations of the disclaimer requirement. The Engen committee also has taken steps to include a proper disclaimer on its website and signs. It is unlikely that significant relevant information would be forthcoming as a result of conducting a formal investigation. Considering those factors, the Board concludes that a formal investigation is not warranted.

**Order:**

1. The Board's executive director is directed to initiate a staff review regarding the allegations contained in the supplemented complaint, pursuant to Minnesota Rules 4525.0320, subpart 2, for the limited purpose of drafting findings in this matter and determining an appropriate civil penalty, if any. Although there is probable cause to believe that a violation occurred, a formal investigation is not warranted.

/s/ Gary Haugen  
Gary Haugen, Chair  
Campaign Finance and Public Disclosure Board

Date: October 7, 2020