

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

FINDINGS, CONCLUSIONS, AND ORDER

IN THE MATTER OF THE CAMPAIGN COMMITTEE OF ELLIOTT W ENGEN

Background

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 alleged a violation of Minnesota Statutes section 211B.04, which regulates the use of disclaimers on campaign material. The complaint alleged 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 included 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 by alleging that the Engen committee's "website and print literature also do not include the campaign mailing address." Board staff reviewed the Engen committee's website and as of September 21 and 22, 2020, the 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 disseminated 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 reverse 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." Regarding 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 had been modified to include the committee's mailing address. On September 29, 2020, Mr. Engen stated that approximately 100 lawn signs had been disseminated with a disclaimer lacking an address.

At its meeting on October 7, 2020, the Board considered this matter and Ms. Ogata appeared before the Board to address her complaint. The Board determined that while there was probable cause to believe that the disclaimer violations alleged in the supplemented complaint occurred, a formal investigation was not warranted considering the factors listed in Minnesota Rules 4525.0210, subpart 5. The Board directed the executive director to initiate a staff review for the purpose of drafting these findings and determining an appropriate civil penalty, if any.

On October 7, 2020, Mr. Engen provided photographs documenting the efforts taken by his committee to address the issues raised in the supplemented complaint. Mr. Engen included photographs of labels applied to the committee's initial batch of lawn signs. The labels contain the required disclaimer text including both the committee's mailing address and website address. Mr. Engen included a photograph of one of the committee's new batch of lawn signs, which were printed with a complete disclaimer including the committee's mailing and website addresses. Mr. Engen included a photograph of campaign literature disseminated by the committee, which was different from the literature identified in the supplemental complaint. The newer piece of campaign literature included a complete disclaimer with the committee's mailing address displayed within the disclaimer text. Mr. Engen also included screenshots of the committee's website, which had been modified again to include the committee's mailing address within the disclaimer text.

On October 9, 2020, Ms. Ogata alleged in an email to Board staff that as of that date, lawn signs disseminated by the Engen committee continued to be displayed at 17 different locations within the house district without a disclaimer containing the committee's address. On October 13, 2020, Board staff sent a letter to Mr. Engen informing him of Ms. Ogata's allegation and the specific locations she identified. Because the Engen committee had not clearly stated how quickly labels containing a complete disclaimer had been added to its lawn signs or whether a portion of the lawn signs continued to be displayed without a complete disclaimer, the letter asked Mr. Engen to "please explain, as of October 9, how many of the approximately 100 signs in question had labels applied with the complete disclaimer and how many had yet to have a label applied."

Mr. Engen spoke with Board staff on October 13 and explained that as of that day, the committee had applied labels containing a complete disclaimer to approximately 75% of the signs that were disseminated without a complete disclaimer. Mr. Engen stated that some of the labels had worn off or had been damaged by weather conditions and that as of October 13, the committee had not been able to locate all of the signs that were disseminated without a complete disclaimer. Mr. Engen also explained that the committee was in the process of purchasing waterproof labels. In an email to Board staff on October 19, Mr. Engen stated that waterproof labels had been applied to the committee's signs. On October 20 Board staff asked Mr. Engen via email to confirm whether waterproof labels had been applied to all or nearly all of the approximately 100 signs, and to also clarify how many signs had labels applied to them as of October 9, the date that Ms. Ogata stated that multiple signs continued to be displayed without a complete disclaimer. Mr. Engen did not provide any further response.

Analysis

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.” 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.”

When the original complaint was received, the Engen committee’s lawn signs did not include the committee’s mailing or website address. When the supplemental complaint was received, the committee’s website did not include a disclaimer or the committee’s mailing address. The committee also disseminated a two-sided piece of campaign literature that did not include the committee’s address within the disclaimer text, but instead displayed the committee’s mailing address on the reverse side. In determining the appropriate penalty for a violation of the disclaimer requirement the Board considers multiple factors such as whether it was clear who was responsible for the campaign material and how to contact them, whether the violation has been remedied, whether there were prior violations of the disclaimer requirement, the cost of the campaign material and how widely it was disseminated, whether the violation was self-reported, and whether there is any basis for concluding that the violation was willful.¹ The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04.

Based on the above background and analysis, the Board makes the following:

Findings of Fact

1. The Campaign Committee of Elliott W Engen prepared and disseminated lawn signs, a website, and a piece of campaign literature promoting the candidacy of Mr. Engen for the purpose of influencing voting at an election.
2. Approximately 100 lawn signs displayed a disclaimer that did not include the committee’s mailing or website address.
3. As of the date the supplemental complaint was received, the website did not include any disclaimer or the committee’s mailing address.
4. The two-sided piece of campaign literature referenced in the supplemental complaint contained a disclaimer that did not include the committee’s mailing or website address within the disclaimer text, but did include the committee’s mailing address on the reverse side.

¹ Minnesota Statutes section 14.045, subdivision 3, lists factors that agencies should consider when setting the amount of a fine including the gravity, willfulness, and number of violations; the offender’s past violations and economic benefit; and any other factor that justice requires.

5. The committee's 2020 pre-primary report of receipts and expenditures disclosed a \$500 expenditure for lawn signs and itemized expenditures totaling \$746.05 for campaign literature, excluding business cards which do not require a disclaimer. The report did not disclose any itemized expenditures related to the committee's website.
6. Given their content, it is unlikely that the lack of a complete disclaimer on the committee's lawn signs, website, and campaign literature caused confusion as to who prepared and paid for that material. Although the committee's lawn signs did not include an address or any other contact information, they included a partial disclaimer stating the lawn signs were paid for by the Engen committee. For some period of time the website did not include any disclaimer. However, the website and campaign literature each contained prominent text stating the candidate's name and the office sought, as well as a telephone number and email address for the committee. The campaign literature also included the committee's mailing and website addresses and the website included a form that could be used to send a message to the committee.
7. After being notified of the complaint, the Engen committee began modifying its lawn signs to display a complete disclaimer including the committee's address. The committee had difficulty locating some of the signs and stated that many of the labels that were applied wore off or were damaged by weather. The committee has applied waterproof labels to its signs, but has never confirmed how quickly and how completely labels were applied to the approximately 100 signs there were initially disseminated without a complete disclaimer.
8. The committee has modified its website to include a complete disclaimer with the committee's mailing address within the disclaimer text. The committee also provided documentation showing that after being notified of the complaint, it began including the committee's mailing address within the disclaimer text when printing campaign literature.
9. Mr. Engen is a first-time candidate, his committee has no history of past violations of the disclaimer requirement, and there is no evidence in the record indicating that the committee willfully violated the disclaimer requirement.

Based on the above analysis and findings of fact, the Board makes the following:

Conclusions of Law

1. The lawn signs, website, and campaign literature prepared and disseminated by the Campaign Committee of Elliott W Engen were campaign material under Minnesota Statutes section 211B.01, subdivision 2.
2. The Engen committee violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared and disseminated lawn signs, a website, and a piece of campaign literature without disclaimers in the form required by statute.

Based on the above findings of fact and conclusions of law, the Board issues the following:

Order

1. A civil penalty in the amount of \$300 is assessed against the Campaign Committee of Elliott W Engen for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Engen committee is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. If the Engen committee does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

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

Date: November 6, 2020