

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

**FINDINGS, CONCLUSIONS, AND ORDER**

IN THE MATTER OF THE COMPLAINT OF JOHN PERSELL REGARDING THE EICHORN (JUSTIN) FOR MN SENATE CAMPAIGN COMMITTEE

**Background**

On May 10, 2022, the Campaign Finance and Public Disclosure Board received a complaint submitted by John Persell regarding the Eichorn (Justin) for MN Senate Campaign Committee, which is the principal campaign committee of Senator Justin Eichorn.

The complaint alleged that the Eichorn committee violated Minnesota Statutes section 10A.20, subdivision 3, by failing to report any in-kind contributions or expenditures within the 2021 calendar year related to two billboards. The complaint provided the location and photographs of the billboards on which the allegations are based. The complaint states that posters with the text “EICHORN FOR STATE SENATE” were added to the billboards approximately eight weeks prior to the 2020 general election and remained displayed until the end of March 2022. The complaint estimated that based on current rates, the value of the display of the billboard posters in 2021 was \$8,125. The complaint included documentation of current advertising rates for billboards in the same area. The complaint noted that within its 2020 year-end report of receipts and expenditures, the Eichorn committee reported an in-kind contribution and corresponding in-kind expenditure valued at \$900, which appeared to account for the value of the billboards during that year.

The complaint also alleged that the Eichorn committee violated Minnesota Statutes section 211B.04, subdivision 1, by failing to include a campaign disclaimer on the billboard posters. The complaint includes photographs of the two billboards that do not appear to contain a campaign disclaimer.

On May 23, 2022, the Board chair determined that the complaint stated a prima facie violation of Minnesota Statutes section 10A.20, subdivision 3, and 211B.04. The Eichorn committee retained counsel and on June 24, 2022, Board staff received a response from counsel. The Eichorn committee’s response requested that the complaint be dismissed because the billboard signs were not in the control of the candidate committee after the 2020 election and because, with respect to the 2021 calendar year, the “signs are valueless or, at best, of such *de minimus* [sic] value as to not require reporting.” The Eichorn committee stated that the signs are “private property, owned and exclusively controlled by” the individual contributor, Adam Arnold. The Eichorn committee stated that:

Mr. Arnold was responsible for causing the signs to be put up, and Mr. Arnold was exclusively in control of removing them at his leisure. Mr. Arnold understood

that the signs were for the 2020 election, and his sole decision to remove them after 2021 was based solely on when doing so was most convenient for him. Mr. Arnold had no explicit or tacit agreement . . . to leave the signs up for the whole of 2021.

The Eichorn committee's response argued that there was no value to the signs in 2021 because there was not an election in 2021, 2022 was a redistricting year, and Senator Eichorn could not have known if he was running for office in 2022 or even if the signs would remain located in his new legislative district where he might be running for office.

On June 27, 2022, Board staff received information from counsel regarding the allegation that the Eichorn signs did not contain a disclaimer. The Eichorn committee stated that the image used for the billboard posters included the disclaimer; however, when the billboard posters were wrapped onto the billboards, the disclaimer was tucked underneath and was not visible. The Eichorn committee stated that this was a "constructive" disclaimer and that the public was not confused about the signs because they included the campaign's branding. The Eichorn committee provided a copy of the image used for the billboard, and the image did contain a disclaimer.

On June 28, 2022, Board staff requested more information from counsel. Board staff requested information about how the in-kind value of the contribution from Adam Arnold was determined, if there was any written documentation about this in-kind contribution, and any information about whether the Eichorn committee requested the signs to be taken down. Board staff received a response from counsel that stated that the \$900 in-kind value was based on the costs of the sign printing and putting the sign up, there was nothing in writing about the in-kind contribution, and there was verbal communication regarding taking down the signs after the 2020 election. At the July 6, 2022, Board meeting, Board staff requested that the matter be laid over to the August meeting to allow for Board staff to seek more information. The Board granted the request to lay the matter over to the August meeting.

On July 15, 2022, Board staff requested more details regarding how the value of the in-kind contribution was determined, any information regarding documentation between the Eichorn committee and Mr. Arnold about the in-kind contribution, and any other information regarding communications about taking the signs down. On August 1, 2022, the Eichorn committee responded to the Board request for more information adding that there was verbal communication with Mr. Arnold about taking down the signs but no definite date was given. The Eichorn committee restated that the removal of the signage was outside of the physical control of the Eichorn committee and that the signs were left up after the 2020 election and therefore had no value.

At its meeting on August 15, 2022, the Board considered the probable cause determination in this matter. The Board determined that there was probable cause to believe that the Eichorn committee violated the reporting requirements of Minnesota Statutes section 10A.20 and the disclaimer requirement of Minnesota Statutes section 211B.04. Pursuant to Minnesota Statutes section 10A.022, subdivision 3 (b), the Board expanded the scope of the investigation to include

potential violations not alleged in the complaint and found there was probable cause to believe that the Eichorn committee accepted a contribution in excess of the limit imposed by Minnesota Statutes section 10A.27, subdivision 1, and failed to have written authorization for approved expenditures as required in Minnesota Statutes section 10A.17. The Board ordered a formal investigation.

On August 23, 2022, Board staff sought the contact information for Mr. Arnold from counsel for the Eichorn committee. On September 7, 2022, counsel provided contact information for Mr. Arnold to Board staff. On October 3, 2022, Board staff sent Mr. Arnold a list of questions regarding this matter. On October 18, 2022, Mr. Arnold responded with detailed information regarding this matter.

Mr. Arnold states that he and his wife have two signs—one in Hackensack, Minnesota and one in Cass Lake, Minnesota. The Hackensack sign is 8 feet by 32 feet. The Cass Lake sign is 11 feet by 48 feet and is two-sided. The Arnolds control what is placed on the signs and typically use the signs for business advertisements for their family store. The Arnolds “own the sign structures themselves and lease the right for the signs structures to rest on the property via long term leases with the landowners.” The Arnolds wished to donate use of the signs to the Eichorn committee and another state-level candidate in 2020. As such, the costs were split evenly between and reported as in-kind contributions received by the two candidate committees.

Mr. Arnold states that the understanding that he had with the committees was for the campaign signs to be placed on both sign structures in early September 2020 and then for the campaign signs to be removed right after the election in 2020. Mr. Arnold was going to replace the campaign signs with a new advertising promotion for the family store; however, due to the business climate in 2021, the business cancelled their promotions in 2021 and did not want to pay the cost to replace the signs until there was a new promotion, which did not happen until March of 2022. Mr. Arnold states that he recalls Senator Eichorn asking him to remove the signs after the election.

Mr. Arnold provided an email chain between himself, the other candidate, and the treasurer for the Eichorn committee. The emails discuss the fact that Mr. Arnold will be giving the sign space and cost of the vinyl poster production and installation to the Eichorn committee and the other candidate committee. The specific costs of the expenditure are not detailed in the emails. On August 10, 2020, Mr. Arnold emailed the treasurer for the Eichorn committee outlining the agreement. The August 10, 2020, email from Mr. Arnold specifically states that “[r]emoval of the signs will occur right after election day” and that they “will need from [the candidate committees] all compliance guidance about the inkind donation of the rental space, graphics, and installation.”

Mr. Arnold also provided a breakdown of the full costs of the vinyl production and installation and the cost of the sign leases. The vinyl production and installation costs were \$610 for the Hackensack sign and \$1,460 for the Cass Lake sign, which totals \$2,070. The share for the Eichorn committee was \$1,035 for the vinyl production and installation for both the Hackensack

and Cass Lake signs. The cost for the sign leases is \$141.67 per month for the Hackensack sign and \$183.33 per month for the Cass Lake signs. This monthly cost should be split between the Eichorn committee and the other candidate committee. The Hackensack sign lease cost would have been \$212.49 for three months for the Eichorn committee's share of the sign and the Cass Lake double-sided sign would have been \$274.98 for three months for the Eichorn committee's share of the sign. For the three months in 2020 (September, October, November) that the campaign signs were supposed to be displayed, the total cost for the in-kind contribution to the Eichorn committee would have been \$1,522.47.

Board staff spoke with Mr. Arnold on November 2, 2022, regarding the information he provided and Mr. Arnold was very apologetic about the situation. He stated that in reviewing the costs involved he realized that the amount that he gave to the candidate committees was too low. Mr. Arnold stated that the vinyl costs were higher than they had typically been when he had changed over those signs previously. Mr. Arnold reported that both he and his wife are providing the in-kind contribution to the Eichorn committee as the value of the signs would otherwise exceed the \$1,000 individual contribution limit for a Senate candidate committee. Lastly, Mr. Arnold emphasized that the intention was never for the signs to remain up past the general election in 2020, but that COVID upset his business' advertising plans so he didn't get around to replacing the signs until March 2022.

## **Analysis**

### Approved Expenditures in Writing

Minnesota Statutes section 10A.01, subdivision 9, defines the term expenditure, in relevant part, to mean "a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question." Minnesota Statutes section 10A.01, subdivision 4, defines the term approved expenditure as:

an expenditure made on behalf of a candidate or a local candidate by an entity other than the candidate's principal campaign committee or the local candidate, if the expenditure is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate or local candidate, the candidate's principal campaign committee, or the candidate's or local candidate's agent. An approved expenditure is a contribution to that candidate or local candidate.

Minnesota Statutes section 10A.17 requires that expenditures made by principal campaign committees be authorized by the treasurer. Minnesota Statutes section 10.17, subdivision 2, prohibits individuals from making "approved expenditures of more than \$20 without receiving written authorization from the treasurer of the principal campaign committee of the candidate who approved the expenditure stating the amount that may be spent and the purpose of the expenditure." Written authorization is an important safeguard for the committee because it provides protection if an individual or committee either spends more on the approved

expenditure than the amount agreed to in the written authorization or does not comply with the terms of the agreement. While the Eichorn committee did not provide any written authorization by the treasurer for the approved expenditure involving the billboards, Mr. Arnold provided an email chain that provided authorization and terms of the approved expenditure. The written authorization does not specifically outline the amount that could be spent by Mr. Arnold but it does show that there was approval by the Eichorn committee for the signs and that the signs were to be removed after the general election in 2020.

### Reporting

Minnesota Statutes section 10A.20, subdivision 3, requires candidate committees to report all contributions received and expenditures made on their campaign finance reports, including in-kind contributions that exceed \$20. The complaint alleges and contains evidence that the billboard signs were displayed from 2020 through March of 2022, and were valued at \$900 by the Eichorn committee on the 2020 year-end report. The Board's records reflect that the Eichorn committee did not report the in-kind contribution of the signs from Mr. Arnold in 2021 and 2022. The Eichorn committee's response agreed that the committee did not account for the value of the billboards, but stated that the billboards had no value in 2021 because it was not an election year. The Eichorn committee also argued that with redistricting occurring in 2022 there was no value to the billboards because it was possible that the billboards would not remain in Senator Eichorn's district or that he would not run for office in 2022.

Mr. Arnold's response and documentation shows that he had agreed to remove the signs after the election in 2020, and Mr. Arnold admits that he did not remove the signs until March 2022. Since the written authorization from the Eichorn committee as outlined in the email chain provided by Mr. Arnold shows that the signs were to be taken down after the election, the Eichorn committee did not accept the in-kind contribution of Mr. Arnold's signs in 2021 and 2022.

There is some value to a candidate in having a billboard displaying the candidate's name, even in a non-election year prior to redistricting. However, the purpose of the written authorization requirement for approved expenditures is to protect a candidate committee from being forced to accept something that they do not want and did not authorize.

However, the value of the signs in 2020 was more than the \$900 reported based on the information provided by Mr. Arnold. Here, the share for the Eichorn committee was \$1,035 for the vinyl production and installation for both the Hackensack and Cass Lake signs. The Hackensack sign lease cost would have been \$212.49 for three months for the Eichorn committee's share of the sign and the Cass Lake double-sided sign would have been \$274.98 for three months for the Eichorn committee's share of the sign. For the three months in 2020 (September, October, November) that the campaign signs were supposed to be displayed, the total cost for the in-kind contribution to the Eichorn committee would have been \$1,522.47.

“A donation in kind must be disclosed at its fair market value,” pursuant to Minnesota Statutes section 10A.20, subdivision 3, paragraph (c). Minnesota Rules 4503.0100, subpart 3a, defines the phrase fair market value to mean “the amount that an individual would pay to purchase the same or similar service or item on the open market.” The complaint alleged and provided evidence that a media company has similar billboards near the signs in question and the rate for those billboards is \$625 for four weeks, which is a greater rate than the Arnolds pay for their sign leases. However, there are important differences between the signs and the business arrangements involved, which affect the price. Here, the Arnolds and the landowners have entered into an agreement that sets the fair market value for the rental space and display of the signs that are typically used for their business’ advertising promotions.

#### Individual Contribution Limit

Minnesota Statutes section 10A.27, subdivision 1, states that during a two-year election segment, a candidate for state Senator “must not permit the candidate's principal campaign committee to accept aggregate contributions made or delivered by any individual, political committee, political fund, or association not registered with the board in excess of” \$1,000. Based on the information discovered during the investigation, the in-kind contribution of the campaign signs in Hackensack and Cass Lake was worth \$1,522.47, which would exceed the \$1,000 individual contribution limit by \$522.47. However, Mr. Arnold and his spouse jointly made the contribution to the Eichorn committee which resolves the individual contribution limit issue.

#### Disclaimer

Minnesota Statutes section 211B.04 requires campaign material to include a disclaimer in the form specified in the statute. The complaint alleged and contained evidence that the Eichorn committee’s billboard posters did not include a disclaimer. While the image used to produce the posters may have included a disclaimer, the disclaimer was not visible on the signs.

The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04. 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.<sup>1</sup>

Given the fact that the signs had the Eichorn committee’s standard branding, it seems unlikely that anyone was confused about who prepared and paid for the signs. The Eichorn committee has no history of past violations of the disclaimer requirement and the Eichorn committee

---

<sup>1</sup> Minnesota Statutes section 14.045, subdivision 3, lists factors that agencies must 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.

intended for the disclaimer to be on the signs. The value of the signs was \$1,522.47, and were seen by motorists in the two locations for a significant period of time. Considering those factors, the Board will impose a civil penalty of \$200 for the disclaimer violations.

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

### **Findings of Fact**

1. In August 2020, the Eichorn committee agreed to accept an in-kind contribution from Adam Arnold for two signs. One sign would be in Hackensack, Minnesota and the other in Cass Lake, Minnesota.
2. The written authorization for the in-kind contribution of the signs was provided via email between Adam Arnold, another candidate, and the treasurer for Eichorn committee.
3. The written authorization stated that the campaign signs would be removed after the general election in 2020.
4. In September 2020, Eichorn committee campaign signs were displayed at both the Hackensack and Cass Lake locations. The campaign signs were not removed until March 2022.
5. The Eichorn committee's 2020 year-end report of receipts and expenditures listed the in-kind contribution from Adam Arnold as \$900, which is the amount that Mr. Arnold estimated it would cost to produce the signs.
6. The actual value of the signs for the months of September, October, and November 2020 was \$1,522.47. This cost includes the vinyl production and installation and the fair market value of the advertising space.
7. The individual contribution limit for a Senate candidate in the 2019-2020 election cycle segment was \$1,000.
8. The Arnolds jointly made the \$1,522.47 in-kind contribution to the Eichorn committee as a married couple.
9. The campaign signs for the Eichorn committee displayed from 2020 to 2022 at the Hackensack and Cass Lake locations did not have a disclaimer visible on the sign.

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

### **Conclusions of Law**

1. The Eichorn committee failed to accurately report the value of the signs on its 2020 year-end report of receipts and expenditures in violation of Minnesota Statutes section 10A.20, subdivision 3.
2. The Eichorn committee failed to include a disclaimer on both campaign signs displayed from 2020-2022 in violation of Minnesota Statutes section 211B.04.

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

#### **Order**

1. The Eichorn for MN Senate Campaign Committee must file an amended 2020 year-end report within 10 days of the date of this order. The amended report must include the \$1,522.47 in-kind contribution and expenditure for the campaign signs as a joint contribution from the Arnolds.
2. If an amended 2020 year-end report addressing the issues listed in paragraph 1 above is not filed within 10 days of the date of this order, on the 11<sup>th</sup> day, the Eichorn committee will begin to incur a late filing fee of \$25 per day up to a maximum of \$1,000 pursuant to Minnesota Statutes section 10A.025, subdivision 4.
3. A civil penalty of \$200 is assessed against the Eichorn committee for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
4. The Eichorn 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.
5. If the Eichorn 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.
6. 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/ Faris Rashid  
Faris Rashid, Chair  
Campaign Finance and Public Disclosure Board

Date: November 14, 2022