

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

IN THE MATTER OF:	Case No. <u>2018 IECDB 12</u>
JIM MOWRER, candidate for Secretary of State	REPRIMAND AND CIVIL PENALTY

On July 13, 2018, the above-captioned matter came before the Iowa Ethics and Campaign Disclosure Board. The Ethics Board elects to handle this matter by administrative resolution rather than through a contested case proceeding process. See Iowa Admin. Code r. 351—9.4(2). For the reasons that follow, the Ethics Board hereby reprimands Jim Mowrer and orders him to pay a civil penalty in the amount of \$100 for maintaining a political committee while he was a candidate for statewide office in violation of Iowa Code section 68A.303(5).

BACKGROUND

Mr. Mowrer recently ran in the Democratic Party’s primary for Secretary of State. He filed a statement of organization with the Ethics Board establishing a candidate’s committee (Jim Mowrer for Iowa) in August 2017. Mr. Mowrer is also the treasurer for “The Majority Rules,” a federal PAC, which was established in November 2016. The Majority Rules PAC gave the Jim Mowrer for Iowa committee a \$1500 contribution in January 2018. All of this information has been confirmed in filings with the Ethics Board and the Federal Election Commission.

William Gustoff filed a complaint against Mr. Mowrer alleging a violation of Iowa Code section 68A.303(5) which states: “A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.”

ANALYSIS

The Ethics Board must first determine whether the complaint is legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the Ethics Board.
- b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Ethics Board determines the complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Ethics Board determines none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. *Id.*

The allegations in the complaint occurred in 2018, which is within three years of the date of the complaint. The Board has jurisdiction over a statewide candidate. *See id.* § 68B.32B(1). The only remaining question is whether the complaint alleges facts that would establish a violation of section 68A.303(5). That section states: “A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.” The Board must decide whether Mr. Mowrer was a candidate for statewide office at the time of the contribution, whether The Majority Rules PAC was a “political committee” under Iowa law, and whether Mr. Mowrer was establishing, directing or maintaining the Majority Rules PAC at the time of the contribution.

A “candidate” is defined in Iowa Code section 68A.102(4) to mean “any individual who has taken affirmative action to seek nomination or election to a public office” The Board has the authority to determine when a person becomes a candidate. *See id.* § 68B.32A(10). In 2004, the Ethics Board issued an advisory opinion that stated:

It is the Board’s opinion that an individual takes “affirmative action to seek nomination or election to a public office” and becomes a “candidate” under the campaign laws when any one of the following courses of conduct are taken:

1. The individual makes a public announcement of intention to seek nomination or election for a state or local office.
2. *The individual or an agent of the individual, accepts any contribution, makes any expenditure, or incurs any debt for such individual’s nomination or election to any state or local office.*
3. *The individual files a Statement of Organization (Form DR-1) pursuant to Iowa Code section 68A.201 that registers a “candidate’s committee” with the Board.*
4. The individual files nomination papers or an affidavit of candidacy with the appropriate commissioner of elections. This also includes

situations where an individual distributes petitions or otherwise seeks signatures for nomination to a state or local office.

5. The individual is nominated for state or local office by any convention process set out by law.

IECDB AO 2004-10 (emphasis added). Although Mr. Mowrer did not file his nomination petition and affidavit of candidacy for Secretary of State until March 12, 2018, he began accepting campaign contributions and established his candidate's committee in August of 2017. Thus, he was a candidate for statewide office at least as early as August 2017.

Iowa Code section 68A.102(18) defines a "political committee" to mean:

A committee, but not a candidate's committee, that accepts contributions in excess of one thousand dollars in the aggregate, makes expenditures in excess of one thousand dollars in the aggregate, or incurs indebtedness in excess of one thousand dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

The definition of "express advocacy" or "expressly advocate" includes "political speech made in the form of a contribution." Iowa Code § 68A.102(14). A candidate for "public office" means any a person running for any "state, county, city, or school office or any other office of a political subdivision of the state that is filled by election." *Id.* § 68A.102(20). Thus, the Majority Rules PAC met the definition of an Iowa "political committee" when it gave more than \$1,000 in a calendar year to a candidate for state office in Iowa. Specifically, it met the definition on January 2, 2018 when it gave \$1500 to Jim Mowrer for Iowa.ⁱ

This conclusion that the Majority Rules PAC qualifies as an Iowa "political committee" is bolstered by the section of the Code that specifically deals with federal and out-of-state committees. Iowa Code section 68A.201A(3) states:

A committee that is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under section 68A.201 and file disclosure reports under section 68A.402, or shall file a verified statement with the board within fifteen days of the contribution being made.

In other words, Iowa law requires a federal or out-of-state PAC to either register as a “political committee” with the Ethics Board or file a verified statement of registration. Nearly all federal and out-of-state committees choose the latter option. The verified statement of registration reports the contribution and provides the jurisdiction where the committee is registered so the Ethics Board’s staff can verify the contribution. The Majority Rules PAC filed a verified statement of registration with the Ethics Board seven days after making the contribution to the Jim Mowrer for Iowa committee.

The final piece of the inquiry is whether Mr. Mowrer was establishing, directing or maintaining the political committee, which Iowa Code section 68A.303(5) prohibits a statewide candidate from doing. Mr. Mowrer established the Majority Rules PAC by electronically filing a statement of organization with the FEC. The statement of organization listed Mr. Mowrer as the committee’s treasurer. The committee never amended the statement of organization to reflect a new treasurer. The committee’s verified statement of organization that was filed after the PAC made the contribution to the Mowrer committee shows that Mr. Mowrer was still very much in charge of the PAC. He was listed as the contact person and the registered agent as well as the parent entity for the PAC. We find the complaint sufficiently alleges fact that show Mr. Mowrer was maintaining a political committee while simultaneously a candidate for statewide office in violation of section 68A.303(5). Thus, we find the complaint legally sufficient.

Under the Board’s complaint procedures in Iowa Code section 68B.32B, the Board shall order an investigation once it determines a complaint is “legally sufficient.” However, the Ethics Board does not believe an investigation is warranted in this situation because all of the facts have been established through Mr. Mowrer’s filings with the Ethics Board and the FEC. Moreover, Mr. Mowrer, through his attorney, does not deny the allegations.

Therefore, the Board elects to handle this matter by administrative resolution rather than through a contested case proceeding. *See id.* r. 9.4(2). The Ethics Board finds a reprimand and a \$100 civil penalty is the appropriate penalty.

SUMMARY

The Ethics Board finds Mr. Mowrer violated Iowa Code section 68A.303(5) when a federal PAC he maintains gave more than \$1,000 in a

calendar year to an Iowa candidate's committee. The Ethics Board reprimands Mr. Mowrer and orders him to pay a civil penalty in the amount of \$100. Pursuant to Iowa Administrative Code rule 351—9.4(3), Mr. Mowrer may appeal the issuance of the reprimand by submitting within 30 days a written request for a contested case hearing.

By direction of the Ethics Board



James Albert, Chair
John Walsh, Vice Chair
Carole Tillotson
Jonathan Roos
Mary Rueter
Elaine Olson

CERTIFICATE OF SERVICE

The undersigned hereby certifies this order was sent by first class mail, address service requested, on July 17, 2018, to:

Grant Woodward
Wandro & Associates
2501 Grand Avenue, Suite B
Des Moines, IA 50312

Attorney for Jim Mowrer

By: 

Megan Tooker, Executive Director for the Board

cc: William R. Gustoff
521 East Locust Street, Suite 302
Des Moines, IA 50309

ⁱ The PAC also gave three campaign contributions to Iowa candidates in 2017 totaling \$950.