

BEFORE THE  
MISSOURI ETHICS COMMISSION

**Filed**  
**SEP 09 2011**  
Missouri Ethics  
Commission

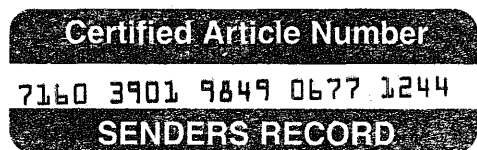
MISSOURI ETHICS COMMISSION )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DAVID W. POGER ) No. 10E052  
 )  
and )  
 )  
POGER FOR KIRKWOOD, Committee )  
 )  
Respondents. )

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

This is the Final Decision and Order of the Missouri Ethics Commission following a hearing on a Complaint filed by Petitioner, by and through Counsel, pursuant to § 105.961, RSMo, and Chapter 536, RSMo. The hearing was conducted before the following members of the Missouri Ethics Commission: James Tweedy, Jeff Davison, Vernon Dowdy, Louis J. Leonatti, and Dennis Rose.

The closing hearing took place on September 9, 2011, at the offices of the Missouri Ethics Commission at 3411 A Knipp Drive, Jefferson City, Missouri, 65109. The Commission was represented by Elizabeth L. Ziegler, General Counsel, and Curtis Stokes, Staff Counsel. Respondents failed to appear after proper notice.

The Commission admitted into evidence Petitioner's Exhibits 1 through 19. Having considered all the competent and substantial evidence upon the whole record, the Commission finds as follows:



## FINDINGS OF FACT

1. The Missouri Ethics Commission (“the Commission”) is an agency of the State of Missouri established pursuant to §105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 130, RSMo.

2. Respondent David W. Poger was an unsuccessful candidate for City Council of Kirkwood, Missouri in the April 6, 2010 Municipal Election.

3. Respondent Poger for Kirkwood was a candidate committee registered with the St. Louis County Board of Elections. On December 18, 2009, a statement of committee organization was filed with the St. Louis County Board of Elections.

4. Respondents terminated the committee on October 20, 2010.

5. Respondent Poger, as candidate, was ultimately responsible for filing campaign finance reports for Respondent Committee, pursuant to §130.041.1 and §130.058 RSMo.

6. On April 12, 2010, a complaint was filed with Petitioner.

7. Pursuant to §105.961, RSMo 2000, a special investigator reported its findings to the Commission.

8. Based on the report of the special investigator, the Commission determined that there are reasonable grounds to believe that a violation of law has occurred and is therefore authorized to hold a hearing in this matter pursuant to §105.961.3, RSMo.

### Campaign Finance Disclosure Reports

9. For the April 6, 2010 election, the 40 Day Before Election Report was due on or before February 25, 2010, for the period up to February 20, 2010.

10. Respondents filed a 40 Day Before Election Report with the St. Louis County Board of Elections on June 8, 2010, and an amended 40 Day Before Election Report on July 16, 2010.

11. For the April 6, 2010 election, the 8 Day Before Election Report was due on or before March 29, 2010, for the period ending March 25, 2010.

12. Respondents filed the 8 Day Before Election Report on June 8, 2010, and an amended 8 Day Before Election Report on July 16, 2010.

13. For the April 6, 2010 election, the 30 Day After Election Report was due on or before May 6, 2010, for the period ending May 1, 2010.

14. Respondents filed a 30 Day After Election Report on June 8, 2010, and an amended report on July 16, 2010.

15. Respondents filed a July 2010 Quarterly Disclosure Report on July 26, 2010 and an amended July 2010 Quarterly Disclosure Report on October 20, 2010.

Failure to Report Timely Contributions Received

16. Respondents filed the following contributions untimely:

12/3/2009	William J. Kuelling	\$250.00	April Quarterly	40 Day Before
1/3/2010	Committee to Elect Reed	\$100.00	April Quarterly	40 Day Before
1/9/2010	Mary Murphy-Overman	\$75.00	April Quarterly	40 Day Before
2/8/2010	Lynn A. Olivetti	\$100.00	April Quarterly	40 Day Before
2/14/2010	Miles L. Patterson	\$50.00	April Quarterly	40 Day Before
2/16/2010	N. Ruth Faerber	\$25.00	April Quarterly	40 Day Before
2/17/2010	Leigh Ann Bess	\$25.00	April Quarterly	40 Day Before
2/17/2010	Tammy Vent	\$25.00	April Quarterly	40 Day Before
2/17/2010	Roman T. Kuuch	\$100.00	April Quarterly	40 Day Before
2/22/2010	Ronald N. Danna	\$200.00	April Quarterly	8 Day Before
2/23/2010	S. Lee Patton	\$50.00	April Quarterly	8 Day Before
3/2/2010	Stephen D. Bransford	\$50.00	April Quarterly	8 Day Before
3/5/2010	Deborah Blanchard	\$50.00	April Quarterly	8 Day Before
3/6/2010	Carol Gilster	\$30.00	April Quarterly	8 Day Before

3/8/2010	Hardee C. Menees	\$50.00	April Quarterly	8 Day Before
3/9/2010	James P. Holloran	\$250.00	April Quarterly	8 Day Before
3/9/2010	Friends of Gregory F.X. Daly	\$50.00	April Quarterly	8 Day Before
3/9/2010	Stan Wallach	\$50.00	April Quarterly	8 Day Before
3/9/2010	Todd A. Mandel	\$50.00	April Quarterly	8 Day Before
3/9/2010	Mike Korte	\$100.00	April Quarterly	8 Day Before
3/9/2010	Bruce Hilton	\$50.00	April Quarterly	8 Day Before
3/9/2010	Sue Ann Babcock- McAvoy	\$100.00	April Quarterly	8 Day Before
3/9/2010	Loretta K. Haggard	\$50.00	April Quarterly	8 Day Before
3/9/2010	Judith Foster	\$200.00	April Quarterly	8 Day Before
3/9/2010	Zoe W. Lyle	\$100.00	April Quarterly	8 Day Before
3/14/2010	Debra Hacke Cotton	\$100.00	April Quarterly	8 Day Before
3/16/2010	Arthur J. Martin	\$40.00	April Quarterly	8 Day Before
3/24/2010	James P. Holloran	\$250.00	April Quarterly	8 Day Before
	<b>Total</b>	<b>\$2,570.00</b>		

Failure to Report Accurately and Timely Expenditures

17. Respondents failed to file timely the following expenditures:

<b>Date</b>	<b>Expenditure</b>	<b>Amount</b>	<b>Original Report</b>	<b>Correct Report</b>
1/8/2010	Pelican Printing	\$324.72	April Quarterly	40 Day Before
1/8/2010	Citizen Kane's Steak Houe	\$1,300.00	April Quarterly	40 Day Before
1/12/2010	Robinson PTO	\$25.00	Amended 40 Day	40 Day Before
1/14/2010	Ads	\$283.77	April Quarterly	40 Day Before
1/14/2010	Karl Unsworth	\$75.00	April Quarterly	40 Day Before
1/14/2010	Kirkwood Rotary	\$15.00	Amended 40 Day	40 Day Before
1/16/2010	Kirkwood Lions Club	\$35.00	Amended 40 Day	40 Day Before
1/20/2010	David Poger	\$140.43	April Quarterly	40 Day Before
1/21/2010	Meacham Park Neighborhood Assn.	\$120.00	April Quarterly	40 Day Before
1/24/2010	Highlands Brewing	\$214.72	April Quarterly	40 Day Before

1/31/2010	Friends of Library	\$25.00	Amended 40 Day	40 Day Before
2/4/2010	Kirkwood Rotary	\$15.00	Amended 40 Day	40 Day Before
2/10/2010	Police benevolent fund	\$12.00	Amended 40 Day	40 Day Before
2/11/2010	Alphagraphics	\$333.37	April Quarterly	40 Day Before
2/17/2010	Highlands Brewing	\$759.82	April Quarterly	40 Day Before
2/17/2010	Ken Hirsch	\$100.00	April Quarterly	40 Day Before
2/18/2010	David Poger	\$60.00	April Quarterly	40 Day Before
2/18/2010	Kirkwood Rotary	\$15.00	Amended 40 Day	40 Day Before
2/21/2010	Manor Grove	\$20.00	8 Day Before	8 Day Before
2/25/2010	David Poger	\$29.73	April Quarterly	8 Day Before
2/25/2010	US Postmaster	\$35.20	April Quarterly	8 Day Before
2/25/2010	Kirkwood Rotary	\$15.00	8 Day Before	8 Day Before
3/4/2010	Kirkwood Rotary	\$15.00	8 Day Before	8 Day Before
3/5/2010	Wacco Printing	\$1,015.08	April Quarterly	8 Day Before
3/5/2010	KHS Publications	\$30.00	April Quarterly	8 Day Before
3/11/2010	Jungmeyer for council	\$25.00	April Quarterly	8 Day Before
3/12/2010	Alphagraphics	\$235.20	April Quarterly	8 Day Before
3/15/2010	David Poger	\$50.00	April Quarterly	8 Day Before
3/22/2010	Kirkwood Area Arts Council	\$50.00	Amended 30 DayAfter	30 Day After
3/23/2010	Advance Mailing Services	\$1,354.11	Amended 8 Day Before	30 Day After
3/23/2010	Alphagraphics	\$521.14	April Quarterly	8 Day Before
4/5/2010	Kirkwood Rotary	\$40.00	Amended 30 Day After	30 Day After
4/7/2010	Highlands Brewing	\$75.00	Amended 30 Day After	30 Day After
4/8/2010	Kirkwood Rotary	\$15.00	Amended 30 Day After	30 Day After
4/15/2010	Kirkwood Rotary	\$15.00	Amended 30 Day After	30 Day After
	<b>Total</b>	<b>\$7,394.29</b>		

18. Respondents failed to report timely the purpose of the following expenditures:

<b>Date</b>	<b>Expenditure</b>	<b>Amount</b>	<b>Original Report</b>	<b>Amended Report</b>	<b>Purpose</b>
1/8/2010	Pelican Printing	\$324.72	April Quarterly	40 Day Before	Printing
1/8/2010	Citizen Kane's Steak House	\$1,300.00	April Quarterly	40 Day Before	Fundraising Costs - Food and Drink
1/14/2010	Ads	\$283.77	April Quarterly	40 Day Before	Campaign Laptop
1/21/2010	Meacham Park Neighborhood Assn.	\$120.00	April Quarterly	40 Day Before	Membership
1/24/2010	Highlands Brewing	\$214.72	April Quarterly	40 Day Before	Campaign Lunch
2/11/2010	Alphagraphics	\$333.37	April Quarterly	40 Day Before	Printing
2/17/2010	Highlands Brewing	\$759.82	April Quarterly	40 Day Before	Fundraising Costs - Food and Drink
2/17/2010	Ken Hirsch	\$100.00	April Quarterly	40 Day Before	Entertainment-Music
3/5/2010	Wacco Printing	\$1,015.08	April Quarterly	8 Day Before	Printng- Yard Signs
3/12/2010	Alphagraphics	\$235.20	April Quarterly	8 Day Before	Printing
3/23/2010	Alphagraphics	\$521.14	April Quarterly	8 Day Before	None
3/26/2010	Times Newspapers	\$225.00	April Quarterly	Am April Quarterly	Advertising
4/5/2010	David Poger (Cash)	\$75.00	April Quarterly	30 Day After	Campaign Expenses
4/5/2010	Messenger Printing	\$226.12	April Quarterly	30 Day After	Graphic Design
4/6/2010	Highlands Brewing	\$250.00	April Quarterly	30 Day After	None
	<b>Total</b>	<b>\$5,983.94</b>			

Termination

19. On the Thirty Day After Election Report, Respondents reported \$1,463.70 money on hand and no indebtedness.

20. On the Amended Thirty Day After Election Report, Respondents reported a negative balance of money on hand of \$114.29 and \$114.29 indebtedness.

21. Respondents filed a July Quarterly Disclosure Report again reporting a negative balance of money on hand of \$114.29 and \$114.29 indebtedness.

22. On October 20, 2010, Respondents amended the July Quarterly Disclosure Report reporting \$21.39 money on hand and no indebtedness.

23. The reporting period for the July Quarterly Disclosure Report was for the period May 1, 2010 through June 30, 2010.

24. Respondents terminated on October 20, 2010.

### **CONCLUSIONS OF LAW**

#### **Campaign Finance Disclosure Reports**

1. §130.046. 1, RSMo provides:

The disclosure reports required by section 130.041 for all committees shall be filed at the following times and for the following periods:

(1) Not later than the eighth day before an election for the period closing on the twelfth day before the election if the committee has made any contribution or expenditure either in support or opposition to any candidate or ballot measure;

(2) Not later than the thirtieth day after an election for a period closing on the twenty-fifth day after the election, if the committee has made any contribution or expenditure either in support of or opposition to any candidate or ballot measure...; and

(3) Not later than the fifteenth day following the close of each calendar quarter.

Notwithstanding the provisions of this subsection, if any committee accepts contributions or makes expenditures in support of or in opposition to a ballot measure or a candidate, and the report required by this subsection for the most recent calendar quarter is filed prior to the fortieth day before the election on the measure or candidate, the committee shall file an additional disclosure report not later than the fortieth day before the election for the period closing on the forty-fifth day before the election.

2. There is probable cause that Respondents have violated §130.046. 1, RSMo by failing to file timely a 40 Day Before Election Report, an 8 Day Before Election Report, a Thirty

Day After Election Report and a July 2010 Quarterly Disclosure Report, and that Respondents did so knowingly.

Failure to Report Timely Contributions Received

3. According to §130.041.1(3)(a), RSMo:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

(3) Receipts for the period, including:

(a) Total amount of all monetary contributions received which can be identified in the committee's records by name and address of each contributor. In addition, the candidate committee shall make a reasonable effort to obtain and report the employer, or occupation if self-employed or notation of retirement, of each person from whom the committee received one or more contributions which in the aggregate total in excess of one hundred dollars and shall make a reasonable effort to obtain and report a description of any contractual relationship over five hundred dollars between the contributor and the state if the candidate is seeking election to a state office or between the contributor and any political subdivision of the state if the candidate is seeking election to another political subdivision of the state.

4. There is probable cause that Respondents have violated §130.041.1(3)(a), RSMo by failing to report timely contributions totaling \$2,570.00 which were deposited into the official fund depository, and that Respondents did so knowingly.

Failure to Report Accurately and Timely Expenditures

5. §130.041.1(4)(d), RSMo provides:

Except as provided in subsection 5 of section 130.016, the candidate, if applicable, treasurer or deputy treasurer of every



committee which is required to file a statement of organization, shall file a legibly printed or typed disclosure report of receipts and expenditures. The reports shall be filed with the appropriate officer designated in section 130.026 at the times and for the periods prescribed in section 130.046. Except as provided in sections 130.049 and 130.050, each report shall set forth:

(4) Expenditures for the period, including:

...

(d) The full name and mailing address of each person to whom an expenditure of money or any other thing of value in the amount of more than one hundred dollars has been made, contracted for or incurred, together with the date, amount and purpose of each expenditure.

6. There is probable cause to believe that Respondents violated §130.041.1(4)(d), RSMo by failing to report timely \$7,394.29 in expenditures, and by failing to report timely the purpose of \$5,983.94 in expenditures, and that Respondents did so knowingly.

#### Termination

7. §130.011(5), RSMo defines a candidate committee and requires termination of a candidate committee of an unsuccessful candidate as follows:

a committee which shall be formed by a candidate to receive contributions or make expenditures in behalf of the person's candidacy and which shall continue in existence for use by an elected candidate or which shall terminate the later of either thirty days after the general election for a candidate who was not elected or upon the satisfaction of all committee debt after the election...

8. §130.021.8, RSMo provides as follows:

Upon termination of a committee, a termination statement indicating dissolution shall be filed not later than ten days after the date of dissolution with the appropriate officer or officers with whom the committee's statement of organization was filed. The termination statement shall include: the distribution made of any remaining surplus funds and the disposition of any deficits; and the name, mailing address and telephone number of the individual

responsible for preserving the committee's records and accounts as required in section 130.036.

9. §130.046.7, RSMo provides:

In the case of a committee which disbands and is required to file a termination statement pursuant to the provisions of section 130.021 with the appropriate officer not later than the tenth day after the committee was dissolved, the candidate, committee treasurer or deputy treasurer shall attach to the termination statement a complete disclosure report for the period closing on the date of dissolution. A committee shall not utilize the provisions of subsection 8 of section 130.021 or the provisions of this subsection to circumvent or otherwise avoid the reporting requirements of subsection 6 or 7 of this section.

10. There is probable cause that Respondents violated §130.011(5), RSMo, §130.021.8, RSMo and §130.046.7, RSMo by originally reporting indebtedness on the July 2010 Quarterly Disclosure Report and failing to terminate upon satisfaction of committee debt which was reported by the committee to have occurred on or before June 30, 2010, and that Respondents did so knowingly.

**ORDER**

The Commission finds probable cause that Respondents David W. Poger and Poger for Kirkwood violated, and have knowingly violated, sections 130.046.1, 130.041.1(3)(a), 130.041.1(4), 130.011(5), 130.021.8, and 130.046.7, RSMo.

It is the order of the Missouri Ethics Commission that a fee is imposed against Respondents David W. Poger and Poger for Kirkwood in the amount of \$4,000 pursuant to § 105.961.4(6), RSMo. It is the further order of the Commission that Respondents David W. Poger and Poger for Kirkwood file accurately all necessary campaign finance reports and statements. However, if either Respondent pays \$400 of that fee within forty-five (45) days after the date of the Order and files all required campaign finance disclosure reports, the remainder of the fee will be stayed for two years, subject to the provisions below.

If Respondents David W. Poger and Poger for Kirkwood have not committed any further violations of the campaign finance disclosure laws pursuant to Chapter 130, RSMo, as amended during this two year stay, Respondents David W. Poger and Poger for Kirkwood will be required to pay the balance of the fee as originally imposed by the Commission. The amount of the balance will be due immediately upon final adjudication finding probable cause of such a violation. Respondents David W. Poger and Poger for Kirkwood shall be jointly and severally liable for the balance.

Date: 9-9-2011

  
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Jim Tweedy, Vice-Chairman  
MISSOURI ETHICS COMMISSION