

BEFORE THE  
MISSOURI ETHICS COMMISSION

**Filed**  
**SEP 17 2010**  
Missouri Ethics  
Commission

|  |   |            |
|--|---|------------|
| MISSOURI ETHICS COMMISSION                             | ) |            |
|  | ) |            |
| Petitioner,  | ) |            |
|  | ) |            |
| v.   | ) |            |
|  | ) |            |
| MARK MATZEDER, Candidate                               | ) | No. 09A272 |
|  | ) |            |
| and  | ) |            |
|  | ) |            |
| MARK MATZEDER FOR 54 <sup>th</sup> DISTRICT, 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: Jim Wright, James Tweedy, Vernon Dowdy, Louis J. Leonatti, Dennis Rose, and Jeff Davison.

The closed hearing took place on September 10, 2010 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, Legal Counsel. The Respondent appeared in person.

Prior to the hearing the Petitioner and Respondent entered into a Joint Stipulation of Facts and Law which was entered into the record. The Commission admitted into evidence Petitioner's Exhibits 1 through 17. 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 Mark Matzeder was an unsuccessful candidate for State Representative in District 54 in the November 4, 2008 General Election.
3. Respondent Mark Matzeder for 54<sup>th</sup> District is a Candidate Committee in support of Respondent Matzeder registered with Petitioner and was in existence at all relevant times.
4. Pursuant to § 130.026, RSMo, the Missouri Ethics Commission is the appropriate officer designated to receive campaign finance reports under Chapter 130 for candidate committees.
5. Respondent Matzeder, as Candidate, was ultimately responsible for filing campaign finance reports for Respondent Committee, pursuant to § 130.041.1 and §130.058, RSMo.
6. Pursuant to § 105.959, RSMo, the Commission’s staff audited the files of the Committee and reported its findings to the Commission.

### Campaign Finance Disclosure Reports

7. Respondents filed the following campaign finance disclosure statements of limited activity for 2008 Committee: April 2007 Quarterly Statement on April 26, 2007; July 2007 Quarterly Statement on July 27, 2007; January 2008 Quarterly Statement on February 19, 2008; April 2008 Quarterly Statement on May 5, 2008; July 2008 Quarterly Statement on August 20, 2008; and November 3, 2008, Respondents filed an 8 Day Before Election Statement of Limited Activity which was to be filed no later than October 27, 2008.

8. Respondents filed an October 2008 Full Quarterly Disclosure Report on November 3, 2008, originally due on October 15, 2008. This was the first and only full quarterly disclosure Report filed by Respondents.

9. Respondents, having failed to terminate Respondent Committee, failed to file the following campaign finance disclosure reports: April, July and October 2009 and January and April, 2010.

Failure to Report Contributions and Expenditures

10. On the October 2008 campaign finance full disclosure report, Respondents reported monetary contribution in the amount of \$240.00 received September 12, 2008, no expenditures and total money on hand of \$240.00 as follows.

11. Three of those contributions were actually deposited into the official fund depository as follows:

| <b>Deposit Date</b> | <b>Reported Date</b> | <b>Contributor</b> | <b>Amount</b>   |
|---------------------|----------------------|--------------------|-----------------|
| 5/5/2008            | 10/12/2008           | Jo Anna Dale       | \$50.00         |
| 5/5/2008            | 10/12/2008           | Dirk Hutcheson     | \$25.00         |
| 5/7/2008            | 10/12/2008           | Donald Souter      | \$40.00         |
|                     |                      | <b>Total</b>       | <b>\$115.00</b> |

12. Respondents failed to report the following contributions into the official fund depository for 2008 committee:

| <b>Date</b> | <b>Item</b>      | <b>Contributor</b>               | <b>Amount</b> |
|-------------|------------------|----------------------------------|---------------|
| 6/25/2007   | On-line transfer | From Account Number 145591186906 | \$40.00       |
| 8/24/2007   | On-line transfer | From Account Number 145591186906 | \$40.00       |
| 9/7/2007    | On-line transfer | From Account Number 145591186906 | \$40.00       |
| 10/16/2007  | On-line transfer | From Account Number 145591186906 | \$40.00       |
| 4/18/2008   | CASH             | Cash-in                          | \$20.00       |
| 6/23/2008   | CASH             | Cash-in                          | \$100.00      |
| 8/15/2008   | On-line transfer | From Account Number 145591186906 | \$100.00      |
| 6/24/2009   | CASH             | Cash-in                          | \$100.00      |

|  |  |              |                 |
|--|--|--------------|-----------------|
|  |  | <b>TOTAL</b> | <b>\$480.00</b> |
|--|--|--------------|-----------------|

13. Respondents failed to report the following expenditures made from the official fund depository for 2008 committee:

| <b>Date</b> | <b>Item</b>      | <b>Payee</b>                 | <b>Amount</b>   |
|-------------|------------------|------------------------------|-----------------|
| 6/25/2007   | On-line transfer | Account No. 145591186906     | \$40.00         |
| 8/26/2007   | On-line transfer | Account No. 145591186906     | \$40.00         |
| 8/29/2007   | On-line transfer | Account No. 145591186906     | \$40.00         |
| 10/17/2007  | On-line transfer | Account No. 145591186906     | \$40.00         |
| 1/16/2008   | Bank Charge      | Fee                          | \$5.00          |
| 4/28/2008   | Bank Charge      | Check Printing               | \$22.95         |
| 5/4/2008    | 1031             | CostCo                       | \$103.06        |
| 6/25/2008   | 1152             | Cash                         | \$30.00         |
| 7/9/2008    | On-line transfer | Account No. 145591186906     | \$50.00         |
| 7/30/2008   | On-line transfer | Account No. 145591186906     | \$100.00        |
| 4/9/2009    | Bank Charge      | Fee                          | \$5.00          |
| 6/19/2009   | On-line transfer | Account No. 145591186906     | \$100.00        |
| 6/24/2009   | 1241             | John Bullard Jr for MO House | \$110.00        |
|             |                  | <b>TOTAL</b>                 | <b>\$686.01</b> |

14. Respondents failed to properly report the cash on hand at the beginning and end of reporting periods in the official fund depository from the filing of the Statement of Committee for the 2008 Committee.

#### Cash Contributions

15. The following cash deposits were made into the official fund depository for 2008 committee:

| Date       | Item             | Contributor                      | Amount          |
|------------|------------------|----------------------------------|-----------------|
| 6/25/2007  | On-line transfer | From Account Number 145591186906 | \$40.00         |
| 8/24/2007  | On-line transfer | From Account Number 145591186906 | \$40.00         |
| 9/7/2007   | On-line transfer | From Account Number 145591186906 | \$40.00         |
| 10/16/2007 | On-line transfer | From Account Number 145591186906 | \$40.00         |
| 8/15/2008  | On-line transfer | From Account Number 145591186906 | \$100.00        |
|            |                  | <b>TOTAL</b>                     | <b>\$260.00</b> |

16. All cash deposits into the official fund depository were made from account number 145591186906, which is in the name of Mark Matzeder. This was not the official fund depository of Mark Matzeder for 54<sup>th</sup> District Committee.

#### Cash Expenditures

17. Respondents made the following cash withdrawals from the official fund depository in 2007 as follows:

| Date       | Item             | Payee                       | Amount          |
|------------|------------------|-----------------------------|-----------------|
| 6/25/2007  | On-line transfer | Transfer to<br>145591186906 | \$40.00         |
| 8/26/2007  | On-line transfer | Transfer to<br>145591186906 | \$40.00         |
| 8/29/2007  | On-line transfer | Transfer to<br>145591186906 | \$40.00         |
| 10/17/2007 | On-line transfer | Transfer to<br>145591186906 | \$40.00         |
| 7/9/2008   | On-line transfer | Transfer to<br>145591186906 | \$50.00         |
| 7/30/2008  | On-line transfer | Transfer to<br>145591186906 | \$100.00        |
| 6/19/2009  | On-line transfer | Transfer to<br>145591186906 | \$100.00        |
|            |                  | <b>Total</b>                | <b>\$410.00</b> |

18. All cash expenditures from the official fund depository were made to account number 145591186906 which is in the name of Mark Matzeder. This was not the official fund depository of Mark Matzeder for 54<sup>th</sup> District Committee.

19. For calendar year 2007, the total expenditures paid from the official fund depository were \$686.01.

20. For calendar year 2007, the aggregate expenditures in cash exceeded ten percent of all expenditures made by Respondents for that year.

#### Committee Termination

21. On the October 2008 quarterly disclosure report, Respondents did not report indebtedness.

22. Respondents failed to terminate Respondent Committee within 30 days of the General Election.

### CONCLUSIONS OF LAW

#### Campaign Finance Disclosure Reports

1. §130.046. 1, RSMo provides, in pertinent part:

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 contributions or expenditures either in support or opposition to any candidate or ballot measure;

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

2. §130.046.5, RSMo provides, in pertinent part:

Notwithstanding any other provisions of this chapter to the contrary:

(2) No disclosure report needs to be filed for any reporting period if during that reporting period the committee has neither received contributions aggregating more than five hundred dollars nor made expenditure aggregating more than five hundred dollars and has not received contributions aggregating more than three hundred dollars from any single contributor and if the committee's treasurer files a statement with the appropriate officer that the committee has not exceeded the identified thresholds in the reporting period. Any contributions received or expenditures made which are not reported because this statement is filed in lieu of a disclosure report shall be included in the next disclosure report filed by the committee. This statement shall not be filed in lieu of the report for two or more consecutive disclosure periods if either the contributions received or expenditures made in the aggregate during those reporting periods exceed five hundred dollars....

3. There is probable cause that Respondents have violated §130.046.1, RSMo and §130.046. 5, RSMo by failing to file timely April 2007, July 2007, January 2008, April 2008, and July 2008 Limited Activity Statements, an October 2008 full quarterly disclosure report; and an 8 Day Before Election Statement of Limited Activity; and by failing to file an April, July and October 2009, and January and April 2010 campaign finance disclosure reports, and that Respondents did so knowingly.

#### Failure to Report Contributions and Expenditures

4. According to §130.011(12), RSMo: a contribution includes:

a payment, gift, loan, advance, deposit, or donation of money... for the purpose of supporting or opposing the nomination or election of any candidate for public office

5. According to §130.011(16), RSMo: an expenditure includes:

a payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office ...; a payment, or an agreement or promise to pay, money or anything of value, including a candidate's own money or property, for the purchase of goods, services, property, facilities or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office....

6. According to §130.021.4. (1), RSMo:

Every committee shall have a single official fund depository within this state which shall be a federally or state-chartered bank, a federally or state-chartered savings and loan association, or a federally or state-chartered credit union in which the committee shall open and thereafter maintain at least one official depository account in its own name... All contributions which the committee receives in money, checks and other negotiable instruments shall be deposited in a committee's official depository account. Contributions shall not be accepted and expenditures shall not be made by a committee except by or through an official depository account and the committee treasurer, deputy treasurer or candidate. Contributions received by a committee shall not be commingled with any funds of an agent of the committee, a candidate or any other person, except that contributions from a candidate of the candidate's own funds to the person's candidate committee shall be deposited to an official depository account of the person's candidate committee.

7. According to §130.021.2, RSMo:

... all contributions on hand and all further contributions received by such candidate and any of the candidate's own funds to be used in support of the person's candidacy shall be deposited in a candidate committee depository account established pursuant to the provisions of subsection 4 of this section, and all expenditures shall be made through the candidate, treasurer or deputy treasurer of the person's candidate committee.

8. According to §130.041.1,RSMo a committee's campaign finance disclosure

report must include:

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:

(2) The amount of money, including cash on hand at the beginning of the reporting period;

(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;

...

- (4) Expenditures for the period, including:

- (a) The total dollar amount of expenditures made by check drawn on the committee's depository;

- (b) The total dollar amount of expenditures made in cash;

...

- (5) The total amount of cash on hand as of the closing date of the reporting period covered, including amounts in depository accounts and in petty cash fund;

...

- (8) A separate listing by full name and address of any committee including a candidate committee controlled by the same candidate for which a transfer of funds or a contribution in any amount has been made during the reporting period, together with the date and amount of each such transfer or contribution;

9. There is probable cause that Respondents have violated §130.041.1, RSMo by failing to accurately report \$115.00 in contributions, by failing to report \$480.00 in contributions, by failing to report \$686.01 in expenditures and contributions made to other committees, and by failing to accurately report the cash on hand at the beginning and end of the campaign finance reporting periods, and that Respondents did so knowingly.

#### Cash Contributions

10. According to §130.031.1, RSMo:

No contribution of cash in an amount of more than one hundred dollars shall be made by or accepted from any single contributor for any election by a continuing committee, a campaign committee, a political party committee, an exploratory committee or a candidate committee.

11. §130.041. 1 (3), RSMo, requires that the candidate committee report the name and mailing address, and 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.

12. There is probable cause that Respondents have violated §130.031.1, RSMo and §130.041. 1 (3), RSMo by receiving cash contributions in the amount of \$260.00 in excess of a \$100.00 from a single contributor, and that Respondents did so knowingly.

#### Cash Expenditures

13. According to § 130.031.2, RSMo:

Except for expenditures from a petty cash fund which is established and maintained by withdrawals of funds from the committee's depository account and with records maintained pursuant to the record-keeping requirements of section 130.036 to account for expenditures made from petty cash, each expenditure of more than fifty dollars, except an in-kind expenditure, shall be made by check drawn on the committee's depository and signed by the committee treasurer, deputy treasurer or candidate. A single expenditure from a petty cash fund shall not exceed fifty dollars, and the aggregate of all expenditures from a petty cash fund during a calendar year shall not exceed the lesser of five thousand dollars or ten percent of all expenditures made by the committee during that calendar year. A check made payable to "cash" shall not be made except to replenish a petty cash fund.

14. There is probable cause Respondents have violated §130.031.2, RSMo by withdrawing \$200.00 in cash through on-line banking transfers which exceeded \$50 for single transactions, and withdrawing a total of \$410.00 aggregate in cash through on-line banking transfers for the calendar year 2007 which exceeded 10% of all expenditures made by the committee during that calendar year, and that Respondents did so knowingly.

### Committee Termination

15. §130.011(9), 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...

16. §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.

17. §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.

18. There is probable cause to believe that Respondents violated §130.011(9), RSMo, §130.021.8, RSMo, and §130.046.7, RSMo by failing terminate Respondent Committee within 30 Days of the General Election and file a full termination statement with a complete disclosure report, and that Respondents did so knowingly.

## ORDER

The Commission finds probable cause that Respondents Mark Matzeder and Mark Matzeder for 54<sup>th</sup> District Committee knowingly violated, and have knowingly violated §130.046.1, RSMo, §130.046.5, RSMo, §130.041.1, RSMo, §130.031.1, RSMo, §130.041.1(3), RSMo, §130.031.2, RSMo, §130.011(9), RSMo, §130.021.8, RSMo, and §130.046.7, RSMo.

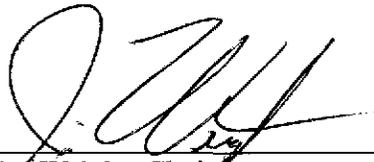
It is the order of the Missouri Ethics Commission that a fee is imposed against the Respondents Mark Matzeder and Mark Matzeder for 54<sup>th</sup> District Committee in the amount of \$8,000.00 pursuant to § 105.961.4(6) RSMo. However, if either Respondent pays \$400.00 of that fee, files all necessary reports and terminates the committee within forty-five (45) days after the date of the Order, the remainder of the fee will be stayed for two years, subject to the provisions below.

If Respondents Mark Matzeder or Mark Matzeder for 54<sup>th</sup> District Committee have not committed any further violations of the campaign finance disclosure laws pursuant to Chapter 130, RSMo, during the two year stay then Respondents will not be required to pay the balance of this fee.

If, however, either Respondent Mark Matzeder or Mark Matzeder for 54<sup>th</sup> District Committee is found to have violated the campaign finance laws pursuant to Chapter 130, RSMo 2000, during this two year stay, Respondents Mark Matzeder or Mark Matzeder for 54<sup>th</sup> District

Committee 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.

Date: 9/17/10

  
\_\_\_\_\_  
Jim Wright, Chairman  
MISSOURI ETHICS COMMISSION