

Filed
OCT 06 2014
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
)
Petitioner,)
) Case No. 13A148
v.)
)
McFARLANE DUNCAN,)
Candidate)
)
and)
)
DUNCAN FOR 77TH DISTRICT,)
Candidate Committee)
)
Respondents)

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

This is the decision and order of the Missouri Ethics Commission following a hearing on a complaint filed by Petitioner by and through counsel, pursuant to Section 105.961, RSMo, and Chapter 536, RSMo. The hearing was conducted before the following members of the Missouri Ethics Commission: Charles Weedman, John Munich, Bill Stoltz, and Bill Deeken.

A closed hearing took place on Thursday, October 2, 2014, at the offices of the Missouri Ethics Commission at 3411A Knipp Drive, Jefferson City, Missouri 65109. The Commission was represented by attorney Curt Stokes. Respondents did not appear after their timely receipt of a hearing notice.

The Commission admitted into evidence Petitioner's Exhibits 1 and 2, including excerpted portions 1A through 1O. Having considered all the competent and substantial evidence upon the whole record, the Commission finds by a vote of 4-0 as follows:

FINDINGS OF FACT

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

2. Respondent Duncan for 77th District is a committee that registered with the Missouri Ethics Commission as a candidate committee in March 2012 and is currently registered as a debt service committee.

3. Respondent Duncan was an unsuccessful candidate for District 77 State Representative in the August 2012 primary election.

4. Pursuant to Section 105.961, RSMo, the Commission's staff has investigated the reports and statements filed with the Commission and reported the investigation's findings to the Commission.

5. Based on the report of the Commission's staff, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

COUNT I

Failure to timely and accurately report contributions

6. Respondents failed to timely and accurately report the following three contributions over \$100 each, totaling \$1,250, on campaign finance reports:

Date	Contributor	Amount
05/07/2012	Cash deposit	500.00
06/22/2012	Cash deposit	500.00
07/30/2012	International Fire Fighters Local #73	250.00
	TOTAL	\$1,250.00

7. Respondents also failed to timely and accurately report eleven (11) contributions of \$100 or less, totaling \$470.34, on campaign finance reports.

8. Respondents deposited \$300 in contributions on June 5, 2012, reporting \$200 as itemized contributions and reporting \$40 as non-itemized contributions, but Respondents failed to report the remaining \$60 of those contributions.

9. Respondents reported a \$900 monetary contribution as an in-kind contribution and inaccurately reported a \$200 contribution as a \$250 contribution.

COUNT II

Failure to timely and accurately report expenditures

10. Respondents failed to report the following eight (8) expenditures over \$100 each, totaling \$3,234.76, on campaign finance reports:

Date	Recipient	Amount
04/18/2012	MO Demo State Committee	\$ 375.00
04/19/2012	AT&T	\$ 136.84
04/30/2012	Creative Litho	\$ 210.47
05/15/2012	Creative Litho	\$ 1,307.32
06/13/2012	AT&T	\$ 151.66
06/13/2012	Creative Litho	\$ 670.47
06/18/2012	Money Order	\$ 200.00
08/08/2012	Cirrus withdrawal	\$ 183.00
	TOTAL	\$3,234.76

11. Respondents failed to timely and accurately report sixty-three (63) expenditures of \$100 or less, totaling \$1,747.38, on campaign finance disclosure reports.

12. Respondents reported an incurred expenditure of \$2,131.85 to Creative Litho on their July 2012 quarterly report. Subsequently, Respondent Duncan made two payments on this debt — the first for \$670.47 and the second for \$200 — from Respondent Duncan's personal funds, but Respondents did not report those payments on Respondents' campaign finance disclosure reports.

13. Respondents also reported paying a campaign worker \$140 on the July 2012 quarterly report, but that payment actually came from Respondent Duncan's personal funds, and so should have been reported as an-kind contribution.

COUNT III

Improper cash contributions and expenditures

14. Respondents accepted three (3) cash contributions that each exceeded \$100 from a single contributor. Respondents made the following cash deposits into their official depository account:

Deposit Date	Amount
05/07/2012	\$ 500.00
06/22/2012	\$ 500.00
06/01/2012	\$ 900.00
TOTAL	\$ 1,900.00

15. Respondents made a cash withdrawal from their official depository account on August 3, 2012 in the amount of \$60.

COUNT IV

Improper reporting period and failure to timely file campaign finance reports

16. Respondents did not timely file the following five (5) Quarterly Disclosure reports:

Report	Due Date	Date Filed	Days Late
July 2012 Quarterly	07/16/2012	07/18/2012	2
30 Day After Primary Election	09/06/2012	09/25/2012	19
April 2012 Quarterly	04/15/2012	04/22/2013	7
July 2013 Quarterly	07/15/2013	09/08/2013	56
October 2013 Quarterly	10/15/2013	10/21/2013	7

17. Respondents improperly filed a Statement of Limited Activity in lieu of a full 8-Day-Before Report for the August 2012 Primary Election when the committee had expenditures

totaling \$533.32, thus exceeding the \$500 threshold for filing a full disclosure report for that period.

18. Respondents filed the following five (5) reports with the incorrect beginning dates:

Report	Reported beginning date	Correct beginning date
July 2012 Quarterly	04/30/2012	04/01/2012
30 Day After Primary	08/04/2012	07/27/2012
April 2013 Quarterly	10/14/2012	10/01/2012
July 2013 Quarterly	04/22/2013	04/01/2013
October 2013 Quarterly	09/01/2012	07/01/2013

COUNT V

Failure to maintain committee records

19. Petitioner issued a subpoena for committee records to McFarlane Duncan and Duncan for 77th District on January 6, 2014.

20. Respondents responded in part to the subpoena but were unable to provide all of the information that was requested, such as invoices for expenditures, records of contributions, and receipts for some cash transactions.

COUNT VI

Failure to Maintain an Official Fund Depository Account

21. Respondents' official depository account was closed on October 31, 2013, when the committee still owed debt.

22. On September 11, 2013, Respondents filed an amended statement of committee organization changing the committee to a debt service committee.

23. As of the date of this complaint, Petitioner Ethics Commission has not received notice that the committee has an active official fund depository account.

CONCLUSIONS OF LAW

COUNT I

Failure to timely and accurately report contributions

24. Respondents were required to file campaign finance disclosure reports setting forth receipts for the period, including the:

- (a) Total amount of all monetary contributions received which can be identified in the committee's records by name and address of each contributor . . .

§130.041.1(3), RSMo.

25. There is probable cause to believe that Respondents violated Section 130.041.1(3), RSMo, by failing to timely and accurately report contributions, including failing to timely and accurately report a total of \$1,250 in contributions that were over \$100 each, and by failing to timely and accurately report eleven contributions of \$100 or less that were deposited into their official depository account, and that Respondents did so knowingly.

COUNT II

Failure to timely and accurately report expenditures

26. Respondents were required to file campaign finance disclosure reports that set forth expenditures for the period, including the:

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

...

- (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. Expenditures of one hundred dollars or less may be grouped and listed by categories of expenditure showing the total dollar amount of expenditures in each category, except that the report shall contain an itemized listing of each payment made to campaign workers by name, address, date, amount and purpose of each payment and the aggregate amount paid to each such worker;

§130.041.1(4), RSMo.

27. There is probable cause to believe that Respondents violated Section 130.041.1(4), RSMo, by failing to timely and accurately report expenditures, including failing to timely and accurately report a total of \$3,234.76 in expenditures that were over \$100 each, failing to timely and accurately report sixty-three (63) expenditures of \$100 or less, totaling \$1,747.38, and failing to report expenditures made by Respondent Duncan from personal funds, and that Respondents did so knowingly.

COUNT III

Improper cash contributions and expenditures

28. Respondents are prohibited from accepting cash contributions that exceed \$100 from a single contributor as follows:

No contributions of cash in any amount of more than one hundred dollars shall be made by or accepted from any single contributor for any elections by a political action committee, a campaign

committee, a political party committee, an exploratory committee
or a candidate committee.

§130.031.1, RSMo.

29. “No contribution in cash in amount in excess of one hundred dollars shall be made or accepted from any single contributor for any election.” § 130.110(1), RSMo.

30. “Candidates and candidate committees shall not accept contributions of cash that, in the aggregate, are in excess of one hundred dollars per person per election cycle.” § 130.110(2), RSMo.

31. “No anonymous contribution in excess of twenty-five dollars shall be made by any person, and no anonymous contributions in excess of twenty-five dollars shall be accepted by any candidate or committee. If any anonymous contribution in excess of twenty-five dollars is received, it shall be returned immediately to the contributor if his or her identity can be ascertained, and if the contributor's identity cannot be ascertained, the candidate or the committee treasurer shall immediately transmit that portion of the contribution which exceeds twenty-five dollars to the state treasurer and it shall escheat to the state.” § 130.110(3), RSMo.

32. Respondents are prohibited from making cash expenditures that exceed \$50 per transaction:

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 recordkeeping requirements of Section 130.036 to account for expenditures made from petty cash, each expenditure of more than fifty dollars, except in-kind expenditures, shall be

made by check drawn on the committee's depository and signed by the committee treasurer, deputy treasurer or candidate...

§130.031.2, RSMo.

33. There is probable cause to believe that Respondents violated Sections 130.031.1, 130.110, and 130.031.2, RSMo, by accepting cash contributions greater than \$100 from a single contributor in the amount of \$1,900.00 and by making a cash withdrawal in the amount of \$60 from their official depository account that exceeded the \$50 limit for cash expenditures, and that Respondents did so knowingly.

COUNT IV

Improper reporting period and failure to timely file campaign finance reports

34. Respondents are required to file campaign disclosure reports at the following times and for the following periods:

Except as provided in subsection 5 of Section 130.016, the candidate...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 time and for the periods prescribed in Section 130.046.

...

(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; except that, a

successful candidate who takes office prior to the twenty-fifth day after the election shall have complied with the report requirement of this subdivision if a disclosure report is filed by such candidate and any candidate committee under the candidate's control before such candidate takes office, and such report shall be for the period closing on the day before taking office; and

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

§130.046.1, RSMo

35. According to §130.046.5(2), RSMo:

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 expenditures 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. . . .

36. There is probable cause to believe the Respondents violated Sections 130.046.1 and 130.046.5(2), RSMo, by failing to timely file five (5) quarterly reports, by incorrectly filing

a Limited Activity report in lieu of a full 8-Day-Before Report for the August 2012 Primary Election, and by filing five (5) reports with incorrect beginning dates, and that Respondents did so knowingly.

COUNT V

Failure to maintain committee records

37. Respondents are required to maintain committee records:

The candidate, treasurer or deputy treasurer of a committee shall maintain accurate records and accounts on a current basis. The records and accounts shall be maintained in accordance with accepted normal bookkeeping procedures and shall contain the bills, receipts, deposit records, canceled checks and other detailed information necessary to prepare and substantiate any statement or report required to be filed pursuant to this chapter.”

§130.036.1, RSMo.

38. There is probable cause to believe that Respondents violated Section 130.036, RSMo, by failing to maintain accurate records of each contribution and expenditure and to make them available for inspection by the Ethics Commission, and that Respondents did so knowingly.

COUNT VI

Failure to Maintain an Official Fund Depository Account

39. 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. §130.021.4(1), RSMo.

40. There is probable cause to believe that Respondents Duncan and Duncan for 77th District violated Section 130.021.4(1), RSMo by failing to maintain an official fund depository account for their committee, and that Respondents did so knowingly.

ORDER

The Missouri Ethics Commission finds probable cause that Respondents Duncan and Duncan for 77th District violated, and have knowingly violated, Sections 130.041.1(3), 130.041.1(4), 130.031.1, 130.110, 130.031.2, 130.046.1, 130.046.5(2), 130.036, and 130.021.4(1), RSMo.

The Commission orders Respondents to accurately amend and file all necessary campaign finance reports and statements and terminate the committee pursuant to Sections 105.961.4(2) and 105.961.5(3), RSMo, within forty-five days of the date of this order.

The Missouri Ethics Commission further orders a fee be imposed against Respondents Duncan and Duncan for 77th District in the amount of \$11,550.00 pursuant to Section 105.961.4(6), RSMo. If any Respondent pays \$1,155.00 of that fee within forty-five days of the date of this Order and files all required campaign finance disclosure reports, the remainder of the fee will be stayed.

Regardless of the stay in the paragraph above, if any Respondent commits any further violation of the campaign finance laws under Chapter 130, RSMo, within the two-year period from the date of this order, then Respondents will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that any Respondent has committed such a violation.

Respondent Duncan and his candidate committee, Duncan for 77th District, shall be jointly and severally liable for all fees imposed under this order.

SO ORDERED this 6th day of October, 2014.



Charles Weedman, Chair
MISSOURI ETHICS COMMISSION