

Before the
Administrative Hearing Commission
State of Missouri



NORWOOD TOWNSHIP COMMITTEE,)
)
PATRICIA JONES, Treasurer,)
)
and)
)
YOLONDA HENDERSON,)
)
Petitioners,)
)
vs.)
)
MISSOURI ETHICS COMMISSION,)
)
Respondent.)

No. 15-0879 EC

DECISION

Petitioners Norwood Township Committee (“Norwood”) and Yolonda Henderson owe fees of \$2,000 and Norwood, Patricia Jones and Yolonda Henderson (“Petitioners”) owe fees of \$20,800 for violation of Missouri campaign finance laws.

Procedure

On May 12, 2015, Petitioners filed a complaint appealing the Missouri Ethics Commission’s (MEC”) assessment of fees totaling \$22,800, and MEC’s order to file all outstanding campaign finance reports and statements, and to terminate the committee pursuant to

§ 105.961.4 RSMo.¹ MEC filed its answer on July 2, 2015. We conducted an evidentiary hearing on September 29, 2015. Elbert A. Walton, Jr. appeared for the Petitioners and Curtis Stokes appeared for MEC. The matter became ready for our decision on December 7, 2015, the date Petitioners' brief was due.

Findings of Fact

1. Norwood is a continuing committee that has been registered with MEC since January 11, 2007.
2. Both Jones and Henderson signed the statement of committee organization for Norwood.
3. On its statement of committee organization, Norwood identified Jones as its Treasurer, but did not identify Henderson as either Treasurer or Deputy Treasurer.
4. On its statement of committee organization, Norwood identified an account number ending in *4077 at U.S. Bank as its official depository account. Exhibit 8.
5. At all times relevant to this matter, Henderson was the only authorized signatory on Norwood's official depository account.
6. Henderson prepared and filed campaign finance disclosure reports for Norwood.
7. Henderson has never been named Treasurer or Deputy Treasurer for Norwood on any document filed with MEC.
8. Jones is not listed as a signatory on bank records with Norwood's official depository account. Exhibit 1 at 0319.
9. On May 29, 2015, MEC issued its Findings of Fact, Conclusions of Law, and Order, finding probable cause that Petitioners violated Chapter 130, RSMo, Missouri's campaign

¹ Supp. 2013. Unless noted otherwise, we refer to the versions of Chapters 105 and 130, RSMo, that are reprinted as they existed in the revised statutes of Missouri prior to the enactment of Senate Bill 844 (2010) because Senate Bill 844 was declared "unconstitutional on procedural grounds" in *Legends Bank v. State*, 361 S.W.3d 383 (Mo. bane 2012). Section 3.066, RSMo.

finance disclosure law. MEC ordered Petitioners to file all necessary reports and imposed fees totaling \$2,000 against Norwood and Henderson for Counts I and II of the complaint before MEC, and a fees totaling \$20,800 against Norwood, Jones and Henderson for Counts III-VII.

Count I - Commingling

10. The closing balance for Norwood's official depository account in October 2012 was \$32.86.

11. Between October 2012 and February 2013, there was no activity in Norwood's official depository account.

12. Between March 2013 and April 2014, Henderson made a total of \$32,931.99 in deposits of personal funds into Norwood's official depository account.

13. Between March 2013 and April 2014, Henderson made a total of \$32,210.04 in personal expenditures from Norwood's official depository account.

14. Henderson was the only member of Norwood with authorized access to Norwood's official depository account.

Count II - Failure to Maintain and Act through a Committee Treasurer

15. Between October 2012 and April 2014, Henderson signed all checks from Norwood's official depository account.

16. Henderson was not named as Treasurer or Deputy Treasurer of Norwood within 20 days of making deposits and expenditures from Norwood's account or at any other time.

Count III - Failure to Timely and Accurately Report Contributions

17. Petitioners failed to timely report three contributions that were over \$100 each:

03/09/2011	Clay Jr. for Congress	\$500.00
08/06/2012	Citizens to Elect Hudson	\$1,100.00
03/25/2013	Cash	\$140.00
	<hr/> TOTAL	<hr/> \$1,740.00

18. Petitioners failed to timely report three contributions, totaling \$235, that were \$100 or less each.

19. Petitioners reported receiving two contributions totaling \$400 that were not deposited in Norwood's official depository account.

20. Petitioners reported duplicate contributions on the Amended 8 Day Before General Election 2012 report.

21. Petitioners failed to itemize a \$255 contribution on the Amended 8 Day Before General Election 2012 report.

Count IV - Failure to Timely and Accurately Report Expenditures

22. Petitioners failed to timely report the following 18 expenditures totaling \$11,970.28 that were over \$100 each:

03/18/2011	Mark's Quick Print	\$400.00
06/03/2012	City Graphics	\$922.17
06/04/2012	City Graphics	\$1,940.63
06/28/2012	City Graphics	\$271.23
07/03/2012	City Graphics	\$216.98
07/24/2012	Missouri General Insurance	\$200.00
07/27/2012	Yolonda Henderson	\$510.00
07/30/2012	Down Home Elegance	\$135.00
08/03/2012	Jermond Mosley	\$139.00
08/03/2012	City Graphics	\$2,115.57
08/03/2012	City Graphics	\$2,983.50
08/04/2012	Alexis Brice	\$549.00
08/06/2012	Alexis Brice	\$140.00
08/06/2012	Missouri General Insurance	\$150.00
08/06/2012	Down Home Elegance	\$163.20
08/07/2012	Jermond Mosley	\$150.00
08/07/2012	Yolonda Henderson	\$634.00
08/20/2012	Yolonda Austin	\$350.00
	<u>TOTAL</u>	<u>\$11,970.28</u>

23. Petitioners failed to report 23 expenditures totaling \$1,083.72 that were \$100 or less each.

24. Petitioners reported the following two expenditures that were not made from

Norwood's official depository account:

02/28/2012	Lady Printing	\$234.00
03/22/2012	Lady Printing	\$134.00
	<u>TOTAL</u>	<u>\$368.00</u>

25. Petitioners made the following 13 monetary and in-kind contributions to other committees totaling \$4,889.04, but did not timely report these contributions on campaign finance reports:

06/03/2012	Redditt Hudson		\$922.17
06/04/2012	Rochelle Gray		\$404.74
06/04/2012	Terry Wilson		\$426.34
06/04/2012	Tony Weaver		\$438.34
06/04/2012	Redditt Hudson	In-Kind Expenditures	\$671.21
06/18/2012	Citizens to Elect Terry Wilson		\$198.41
06/28/2012	Citizens to Elect Terry Wilson		\$216.98
06/28/2012	Citizens to Elect Terry Wilson		\$271.23
07/25/2012	Citizens to Elect Gray		\$314.62
08/01/2012	Citizens to Elect Weaver		\$150.00
08/09/2012	Citizens to Elect Weaver	Monetary Expenditures	\$350.00
08/14/2012	Citizens to Elect Gray		\$500.00
04/17/2014	Broadnax for Prosecuting Attorney		\$25.00
	<u>TOTAL</u>		<u>\$4,889.04</u>

Count V - Cash Contributions and Expenditures in Excess of Limits

26. Petitioners accepted a cash contribution that exceeded \$100 from a single contributor.

27. Petitioners deposited a single cash contribution of \$140 into Norwood's official depository account on March 25, 2013.

28. Petitioners made a cash withdrawal from Norwood's official depository account of \$60 on April 7, 2011.

Count VI - Failure to Timely and Accurately File Reports

29. Petitioners filed a Statement of Limited Activity for the calendar quarter ending March 31, 2011 when Petitioners received a contribution from a single contributor totaling \$500.

30. Petitioners filed a Statement of Limited Activity for the 30 Day after Election Report for the August, 2012 election when Petitioners received contributions totaling \$1,100 and made expenditures totaling \$12,998.43.

Count VII - Failure to Maintain and Make Available Committee Records

31. MEC issued a subpoena for committee records to Norwood and to Jones on April 28, 2014.

32. In response to the subpoena, Norwood and Jones were not able to provide all records necessary to prepare and substantiate campaign finance disclosure reports, such as contributor lists, invoices, bills, and receipts necessary to substantiate campaign finance disclosure reports.

Conclusions of Law

We have jurisdiction of this matter. Section 105.963.4. Our duty is to decide the issues that were before MEC. *Impey v. Missouri Ethics Com'n*, 442 S.W.3d 42, 47 (Mo. banc 2014). We must follow the same law that the MEC must follow. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). MEC has the burden of proof. *See, Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App., E.D. 1974).

Petitioners' Arguments

Petitioners' complaint raises the arguments that MEC's final decision constitutes an excessive fine in violation of Art. I Section 21 and is unauthorized by Art. I Section 31 of the Missouri constitution. In addition, they allege that MEC's decision is in excess of the agency's statutory authority or jurisdiction; is unsupported by competent and substantial evidence; is

unauthorized by law; is made upon unlawful procedure or without a fair hearing; is arbitrary, capricious or unreasonable; and involves an abuse of discretion. Petitioners presented no evidence or argument to support these allegations.

Sections 105.959 and 105.961 require and authorize MEC to prepare an investigative report for purposes of determining whether there is probable cause to find that a violation of law has occurred. If MEC determines there are reasonable grounds to believe that a violation of the law has occurred that is not a violation of criminal law, then MEC conducts a closed hearing to determine whether there exists probable cause that a violation has occurred. Section 105.961.3. If MEC determines, by a vote of four or more commissioners, that referral for criminal prosecution or for action by a disciplinary authority is not appropriate, then the commission may “[t]hrough reconciliation agreements or civil action... seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.” Section 105.961.4(6). Subsection 5 of 105.961 also states that the subject of the complaint “may appeal any action of the Missouri ethics commission, other than a referral for criminal prosecution, to the administrative hearing commission.” The supreme court has reviewed this procedure, up to and including the right to appeal to this Commission, and has found it underpinned by statute and by the constitution. *Impey v. Missouri Ethics Comm’n*, 442 S.W.3d 42, 44-45 (Mo. banc 2014). In any case, this Commission does not have authority to decide constitutional issues. *Sprint Communications Co., L.P. v. Director of Revenue*, 64 S.W.3d 832, 834 (Mo. banc 2002); *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999); *Williams Cos. v. Director of Revenue*, 799 S.W.2d 602, 604 (Mo. banc, 1990). The constitutional issues have been raised and may be argued before the courts. *Geier v. Missouri Ethics Comm’n*, 474 S.W.3d 560, 564 (Mo. banc 2015).

At the hearing, MEC presented documentary evidence, including its investigative report, supported by the testimony of Ronald Getty, under whose supervision the report was prepared.

MEC's exhibits and Getty's testimony were admitted without objection; in fact, Petitioners presented no defense, and filed no brief to explain or call into question the facts and conclusions alleged by MEC. We therefore find that MEC has carried its burden to prove that the following statutory violations occurred.

Count I - Commingling

Under § 130.021.4(1), contributions received by a committee may not be commingled with any funds of an agent of the committee or any other person. Between March 2013 and April 2014, Henderson violated § 130.021.4(1) by making a total of \$32,931.99 in deposits of personal funds into, and a total of \$32,210.04 in personal expenditures from, Norwood's official depository account.

Count II - Failure to Maintain and Act through a Committee Treasurer

Henderson was not named as Treasurer or Deputy Treasurer of Norwood within 20 days of making deposits and expenditures from Norwood's account or at any other time. There is no "candidate" affiliated with a continuing committee. Section 130.011(10). Under § 130.021.4(1), "expenditures shall not be made by a committee except by or through an official depository account and the committee treasurer, deputy treasurer or candidate." Under § 130.031.2 "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." Henderson was the only member of Norwood with authorized access to Norwood's official depository account, and between October 2012 and April 2014, Norwood and Henderson violated §§ 130.021.4 and 130.031.2 by signing all checks from Norwood's official depository account, including those for expenditures of more than \$50.00.

Petitioners do not argue that at any point Henderson became *de facto* or *de jure* treasurer of Norwood. But if by some construction she could be found to have had the legal authority of a

committee treasurer, § 130.021.7 requires that within 20 days of changing the treasurer or deputy treasurer for a committee, the committee must amend its statement of committee organization on file with the appropriate authority. In the alternative, Henderson and Norwood violated § 130.021.7 by failing to file an amended statement of committee organization identifying Henderson as Norwood's Treasurer or Deputy Treasurer.

Count III - Failure to Timely and Accurately Report Contributions

Under § 130.041.1(3), committees are required to file campaign finance disclosure reports that set forth receipts for required reporting periods, 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 ...
- (b) Total amount of all anonymous contributions accepted;
- (c) Total amount of all monetary contributions received through fund-raising events or activities from participants whose names and addresses were not obtained with such contributions, with an attached statement or copy of the statement describing each fund-raising event as required in subsection 6 of section 130.031;
- (d) Total dollar value of all in-kind contributions received;
- (e) A separate listing by name and address and employer, or occupation if self-employed or notation of retirement, of each person from whom the committee received contributions, in money or any other thing of value, aggregating more than one hundred dollars, together with the date and amount of each such contribution[.]

In addition, “[a]ll contributions which the committee receives in money, checks and other negotiable instruments shall be deposited in a committee’s official depository account.” Section 130.021.4(1). Petitioners violated §§ 130.041.1(3) and 130.021.4 by failing to report six contributions totaling \$1,975, as enumerated above in finding Nos. 16 and 17; by not depositing into Norwood’s official depository account other contributions that were reported as enumerated above in finding No. 18; by reporting duplicate contributions; and by failing to itemize one contribution of \$255 on the Amended 8 Day Before General Election 2012 report.

*Count IV - Failure to Timely and
Accurately Report Expenditures*

Under § 130.041.1(4), committees are required to report all expenditures, 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;
- (c) The total dollar value of all in-kind expenditures made;
- (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[.]

Committees are also required to include on the report “[a] separate listing by full name and address of any committee . . . 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[.]” Section 130.041.1(8). An “in-kind expenditure” is an expenditure in a form other than money. Section 130.011(19). Expenditures other than in-kind expenditures may not be made by a committee except by or through an official depository account. Section 130.021.4. Petitioners violated §§ 130.041.1(4) and 130.021.4 by failing to report a total of \$13,054 in expenditures as enumerated in finding Nos. 22 and 23, including \$11,970.28 in expenditures that were each over \$100 and \$1,083.72 in expenditures that were each \$100 or less; by making reported expenditures from a source other than Norwood’s official depository account; by reporting duplicate expenditures; and by failing to report contributions made to other committees totaling \$4,889.04, as enumerated in finding No. 24.

*Count V - Cash Contributions and
Expenditures in Excess of Limits*

Committees are prohibited from accepting cash contributions from a single contributor in excess of \$100. Sections 130.031.1 and 130.110(1). Committees are likewise prohibited from making expenditures (other than in-kind expenditures) of more than \$50 except by check drawn on the committee's depository and signed by the committee treasurer, deputy treasurer or candidate, 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." Section 130.031.2. "A check made payable to 'cash' shall not be made except to replenish a petty cash fund." *Id.* Petitioners violated §§ 130.031.1, 130.110(1) and 130.031.2, by accepting a cash contribution that exceeded \$100 from a single contributor and by making a cash withdrawal that exceeded \$50.

Count VI - Failure to Timely and Accurately File Reports

Committees are required to file campaign finance disclosure reports not later than the fifteenth day following the close of each calendar quarter. Section 130.046.1(3). According to §130.046.5(2), no disclosure report needs to be filed for any reporting period if during that reporting period the committee has neither received contributions of more than \$500 nor made expenditures of more than \$500 nor received more than \$300 from any single contributor. Under those circumstances, the committee's treasurer must file a "limited activity" statement with MEC. Petitioners violated §§ 130.046.1 and 130.046.5(2) by failing to timely file a campaign finance report for the calendar quarter ending March 31, 2011, and instead filing a statement of limited activity when Petitioners received a contribution from a single contributor totaling \$500, and by filing a statement of limited activity for the "30 Day after Election" report for the August 2012 election when Petitioners received contributions and made expenditures in the reporting period that exceeded \$500.

*Count VII - Failure to Maintain and
Make Available Committee Records*

Each candidate and committee must maintain accurate records and accounts on a current basis. Section 130.036.1. The records must be maintained in accordance with accepted normal bookkeeping procedures and must “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.” *Id.* Records of contributions and expenditures are to be kept by the treasurer and maintained for three years. *Id.*, and 130.036.8. “The records shall include name, address and amount pertaining to each contribution received or expenditure made and any bills, receipts, canceled checks or other documents relating to each transaction.” Section 130.036.7. Petitioners violated § 130.036.1, 7 and 8, by failing to maintain accurate records of each contribution and expenditure and failing to make them available for inspection by MEC.

Fees Imposed

In its original Findings of Fact, Conclusions of Law and Order, MEC assessed a fee of \$1,000 for Count I and \$1,000 for Count II against Norwood and Henderson; and lumped together Counts III-VII and assessed a fee of \$20,800 against Petitioners Henderson, Jones, and Norwood. The following chart shows the choices for each fee available to us, and the fee that we impose, pursuant to § 105.961.4(6), for each count, noting that we believe Counts III, IV and VI to be the most serious violations, in that they significantly hinder MEC’s ability to report Norwood’s campaign finance activities to the public:

Count	Amount Involved	Double the Amount Involved	\$1,000 per Violation	Fee Imposed
Count I	\$32,931.99	\$65,863.98	\$1,000.00	\$1,000.00
Count II	n/a	n/a	\$1,000.00	\$1,000.00
Count III	\$2,630.00	\$5,260.00	\$1,000.00	\$5,200.00
Count IV	\$18,311.04	\$36,622.08	\$1,000.00	\$12,200.00
Count V	\$200.00	\$400.00	\$2,000.00	\$400.00
Count VI	n/a	n/a	\$2,000.00	\$2,000.00
Count VII	n/a	n/a	\$1,000.00	\$1,000.00
TOTAL				\$22,800.00

Summary

Petitioners improperly commingled personal funds in the committee's official depository account, made deposits to and expenditures from the official depository through someone who was neither the treasurer nor deputy treasurer, failed to timely and accurately report contributions and expenditures, made cash contributions and expenditures in excess of the legal limits, failed to timely and accurately file required campaign finance reports, and failed to maintain and make committee records available to MEC. Norwood and Henderson are assessed fees of \$2,000 and Norwood, Jones and Henderson are assessed fees of \$20,800.

SO ORDERED on February 4, 2016.

A handwritten signature in black ink, appearing to read "Brett W. Berri", is written over a horizontal line.

BRETT W. BERRI
Commissioner