

Before the
Administrative Hearing Commission
State of Missouri



NILES STEPHENS and NILES STEPHENS OF WILDWOOD,)	
)	
Petitioners,)	
)	
vs.)	No. 20-2952
)	
MISSOURI ETHICS COMMISSION,)	
)	
Respondent.)	

DECISION

We find probable cause that Petitioners Niles Stephens and Niles Stephens of Wildwood (collectively Petitioners) violated the requirement to report an in-kind campaign contribution.

Procedure

The Missouri Ethics Commission (MEC) issued a final decision and order on October 20, 2020, finding probable cause to believe Petitioners violated Missouri's Campaign Finance Disclosure Law under § 130.041.1(3)(d).¹ On November 5, 2020, Petitioners filed a complaint with this Commission appealing MEC's decision. On December 4, 2020, MEC filed an answer. On January 11, 2021, MEC filed a motion for summary decision. On February 22, 2021, we denied the motion. On February 25, 2021, we held a hearing. David E. Roland of the Freedom

¹Statutory references are to RSMo 2016, unless otherwise stated.

Center of Missouri appeared on behalf of the Petitioners. Brian Hamilton represented MEC. This matter became ready for our decision on May 18, 2021, the date the last brief was filed.

Findings of Fact

1. Niles Stephens was a successful candidate for Council Member for Ward Eight with the City of Wildwood in the April 2018 general election.
2. On March 27, 2018, Stephens registered his candidate committee, Niles Stephens for Wildwood, with MEC.
3. At all relevant times, Stephens was employed by a contractor located in St. Louis, Missouri.
4. At all relevant times, Stephens had custody and control of a work vehicle (vehicle or truck), and he was allowed by his employer to use the truck at any time and for any purpose, whether or not work related. The truck displayed the employer's logo on the sides and back.
5. Stephens' employer allowed him to use the truck as a benefit of his employment.
6. Sometime prior to February 2018, Stephens placed a campaign-related sticker in the back window of the truck and campaign signs in the truck bed supporting his candidacy.
7. Between February and April of 2018, Stephens continued to use the truck as he had previously done, but also displayed signs in support of his campaign for city council.
8. Stephens considered the use of the truck and the association between his campaign signs and his employer's logos to have value.
9. Petitioners did not disclose the use of the truck to support Stephens' candidacy on any campaign finance disclosure reports filed with MEC.
10. MEC received a complaint alleging Stephens' use of the truck was an in-kind contribution to Stephens' candidate campaign.

11. MEC conducted an investigation, but did not interview anyone from Stephens' employer.

12. On October 20, 2020, MEC issued its findings of fact, conclusions of law, and order, and determined in part that "There is probable cause to believe that [Petitioners] violated Section 130.041.1(3)(d), RSMo, by failing to report the use of the employer's vehicle in support of his candidate campaign." The order cites to § 130.011(12) for the definition of the term "contribution."²

13. In its October 20, 2020 Order, MEC did not find that Stephens' employer provided the truck to Stephens for the purpose of supporting his campaign for public office. MEC also did not find that the employer was aware that Stephens had placed campaign or political signs on or about the vehicle, or that Stephens was an agent of the employer.

Conclusions of Law

We have authority to hear this matter. Section 105.961.3. Our duty is to decide the issues that were before MEC. *Impey v. Missouri Ethics Comm'n*, 442 S.W.3d 42, 46-47 (Mo. banc 2014). We follow the same law that MEC must follow, and render, on the evidence before us, the agency's final decision. *Mo. Ethics Comm'n v. Wilson*, 957 S.W.2d 794, 798-99 (Mo. App. W.D. 1997); *Impey*, 442 S.W.3d at 47. MEC has the burden of proof. *See, Heidebur v. Parker*, 505 S.W.2d 440, 444 (Mo. App. E.D. 1974).

Petitioners' complaint states that MEC "issued an order finding probable cause to believe that Mr. Stephens's employer had made an in-kind contribution to Mr. Stephens's campaign and that Mr. Stephens violated § 130.041.(3)(d), RSMo . . . [.]” Complaint at ¶ 28. Petitioners plead that there is no evidence that Stephens' employer gave something of value to Petitioners "for the

² MEC ordered, in part, that Petitioners file an amended campaign disclosure report and pay a fee of \$1,000, but if they paid \$50 within 45 days of the order, the remainder of the fee would be stayed.

purpose of supporting or opposing the nomination or election for any candidate.” Complaint ¶ 34. Petitioners ask in part that we reverse and vacate MEC’s finding of probable cause and to enter a finding that the complaint filed against Petitioners was frivolous. They also plead that § 130.041 violates the first and fourteenth amendments.³ Petitioners acknowledge that this Commission lacks authority to decide constitutional matters, but are preserving the issues for judicial review.

In its October 20, 2020 order, MEC found “probable cause to believe that [Petitioners] violated Section 130.041.1(3)(d), by failing to report the use of the truck in support of his candidate campaign.” Complaint, Ex. 3. MEC’s finding was not limited to whether Stephens’ employer made a contribution to Stephens’ campaign. It also covered whether Stephens himself made a contribution and failed to report it.

In its answer, MEC again alleged that Stephens used the truck to display signs in support of his campaign; did not disclose the use of the truck in support of his candidacy; and candidate committees are required to report the total dollar value of all in-kind contributions pursuant to § 130.041.1(3)(d). While the parties focused on the issue of whether Stephens’ employer made an in-kind contribution, there remains the issue of whether Stephens made a personal contribution to his campaign.

Campaign Disclosure Requirement

A committee⁴ that accepts contributions or makes expenditures for the primary or incidental purpose of influencing or attempting to influence the action of voters regarding a candidate for public office is required to disclose its receipts and expenditures, including the

³ We have no authority to decide constitutional issues. *Cass County v. Director of Revenue*, 550 S.W.3d 70, 74 (Mo. banc 2018); *State Tax Comm’n v. Admin. Hearing Comm’n*, 641 S.W.2d 69, 76 (Mo. banc 1982).

⁴ See definition of “committee” under § 130.011(7).

“total amount of all monetary contributions,” the “[t]otal dollar value of all in-kind contributions,” and all “expenditures for the period.” Section 130.041.1(3).

Pursuant to § 130.011(11), “contribution” is defined as:

a payment, gift, loan, advance, deposit, or *donation of money or anything of value for the purpose of supporting or opposing* the nomination or election of any candidate for public office . . . or for the support of any committee supporting or opposing candidates . . . or for paying debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value. *“Contribution” includes, but is not limited to:*

(a) A candidate’s own money or property used in support of the person’s candidacy other than expense of the candidate’s food, lodging, travel, and payment of any fee necessary to the filing for public office;

(g) Facilities, office space or equipment supplied by any person *to a candidate or committee* without charge or at reduced charges, except gratuitous space for meeting purposes which is made available regularly to the public, including other candidates or committees, on an equal basis for similar purposes on the same conditions[.]

(Emphasis added.) An “in-kind contribution” is defined as “a contribution or expenditure in a form other than money.” Section 130.011(19).

Probable Cause

It is undisputed that Stephens was a candidate for public office in the April 2018 general election. At all relevant times, Stephens had access to an employer-owned truck, which he was allowed to use at any time and for any purpose. While the truck was under Stephens’ custody and control, he placed campaign signs on the truck in support of his candidacy. There is no direct evidence that Stephens had authority from his employer to donate the use of the company logo to support his election. In fact, pursuant to § 130.029.1(1), a corporation may make campaign contributions only insofar as “the board of directors of any corporation by resolution has authorized contributions or expenditures, or by resolution has authorized a designated officer

to make such contributions or expenditures[.]” There is no evidence that Stephens was a designated officer, and MEC made no finding that the employer donated the truck for the purpose of supporting Stephens’ campaign. The record before this Commission is void of any evidence as to whether Stephens’ employer was aware that Stephens posted campaign signs on a truck carrying its logo, or whether the employer had a policy about posting political signs on its vehicles. Accordingly, the evidence does not support a finding that Stephens’ employer made an in-kind contribution to Petitioners via the use of the company truck.

However, the definition of “contribution” also includes the act of the candidate giving his campaign something of value.⁵ Section 130.011(12) makes it clear that a donation or gift of “anything of value” given to a campaign “for the purpose of supporting or opposing the nomination or election of any candidate for public office” is a contribution. Section 130.011(12) gives some specific examples of what constitutes a contribution, such as when a candidate contributes his own money or property in support of his candidacy, with certain cited exceptions. Section 130.011(12)(a). However, § 130.011(12) specifically states that the definition of contribution includes, but is not limited to, the stated examples.

While the truck was not owned by Stephens, he had use of it at any time and for any reason, and he decided to use it to advance his campaign. Petitioners argue that since there is no evidence that Stephens’ employer subjectively intended its logo to be used to endorse Stephens for city council, there can be no reportable contribution. In fact, there is no specific evidence that Petitioners’ purpose in posting the signs near the logo was to gain value by creating the appearance that a local company supported his candidacy.

⁵ Chapter 130, RSMo does not define the term “value,” and the parties provided none. Where a word is not defined in statute, we give it its common sense, dictionary meaning. *State v. Trotter*, 5 S.W.3d 188, 193 (Mo. App. W.D. 1999). The term “value” is defined, in part, as “something (such as a principle or quality) intrinsically valuable or desirable.” *Merriam-Webster* online dictionary at merriam-webster.com.

Before applying any test to determine whether a contribution is reportable, something of value must first be given to a candidate or committee. MEC cites to Federal Election Commission's Advisory Opinion 2007-10 to support its argument that a corporate sponsorship is a thing of value. In addition, MEC argues that whether something has value is an objective standard and not a subjective one. It cites to *Orloski v. Fed. Election Comm'n*, 795 F.2d 156, 164 (D.C.Cir. 1986) ("Administrative exigencies mandate that the FEC adopt an objective, bright-line test for distinguishing between permissible and impermissible corporate donations.") and *Eastman v. Lackawanna County*, 95 F. Supp. 3d 773, 787-88 (M.D. Pa 2015), in support of its argument. Petitioners did not otherwise argue that the association between the logos on the truck and the campaign signs did not have value.

While there are clear differences between the present case and *Orloski*, the court in *Orloski* addressed the broader concept of applying an objective test to the intended purpose of a contribution versus a subjective one that is dependent "on the basis of the state of mind of the donor."⁶ *Orloski*, 795 F.2d at 162. The court accepted the objective standard test, and held that such a test "does not ignore the state of mind of the donor [because] [i]t is common legal practice to infer intent from underlying circumstances." *Id.* An objective test "is necessary to enable donees and donors to easily conform their conduct to the law and to enable the FEC [and likewise the MEC] to take the rapid, decisive enforcement action that is called for in the highly-charged political arena." *Id.* at 165.

Accordingly, we find that Stephens made a contribution to his campaign when he decided to post campaign signs on his employer's truck for the purpose of supporting his election to public office. The use of the truck had value for purposes of advertisement, and it had value because it allowed Stephens to advertise his candidacy, and the association between the

⁶ For example, the definition of the term "contribution" is different between state and federal law. See 52 U.S.C. § 30101 and § 130.011(11).

employer's logos on the truck and the campaign signs gave the appearance that Stephens' employer endorsed his candidacy. While the evidence is void of Stephens' subjective intent, the objective finding in light of the evidence is that Stephens intended to use the truck to display the signs as he drove the truck, and to use the logos on the truck to infer that his employer supported his candidacy. Stephens considered this association to have value by his actions. Petitioners failed to report the use of the truck as a contribution to Stephens' campaign. The definition of the term "contribution" includes "*anything* of value for the purpose of supporting or opposing the nomination or election of any candidate for public office," and Petitioners did not plead or argue any other exception that may otherwise apply. Section 130.011(12) (emphasis added). MEC properly determined that there was probable cause to believe that Petitioners violated § 130.041.1(3)(d) by failing to report the use of the truck in support of Stephens' candidate campaign.

Additional Relief

In addition to Petitioners' constitutional claims, which we address above, they further ask that we declare that the complaint filed against them was frivolous, in part, because it was filed by the candidate who ran against Stephens in the race for city council and lost. Pursuant to § 105.961.3, we may only hear appeals of MEC's determinations of probable cause, and we have otherwise upheld the MEC's decision.

Summary

We find probable cause that Petitioners failed to report a campaign contribution in violation of § 130.041.1(3)(d).

SO ORDERED on July 9, 2021.


RENEE T. SLUSHER
Commissioner

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. 20-0001-I
NILES STEPHENS, Candidate)	
)	
and)	
)	
NILES STEPHENS FOR WILDWOOD,)	
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 legal complaint filed by Petitioner pursuant to Section 105.961, RSMo, and Chapter 536, RSMo.

The hearing was conducted before the following members of the Missouri Ethics Commission: Cheryl D.S. Walker, Sherman W. Birkes, Jr., Robert C. Cook, Helene J. Frischer, and Wayne Henke.

The Commission held the closed hearing on October 20, 2020, at the offices of the Missouri Ethics Commission at 3411A Knipp Drive, Jefferson City, Missouri 65109. The Commission was represented by Brian Hamilton. Respondents Niles Stephens and Niles Stephens for Wildwood appeared by counsel, David Roland.

Having considered all the competent and substantial evidence upon the whole record, the Commission finds by a unanimous vote 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.¹

2. Respondent Niles Stephens was a successful candidate for Council Member for Ward Eight with the City of Wildwood in the April 2018 general election.

3. Respondent Stephens registered his candidate committee, Niles Stephens for Wildwood, with the Missouri Ethics Commission on March 27, 2018.

4. Respondents filed a Termination Statement for the committee on April 7, 2018.

5. At all relevant times, Respondent was employed with a contractor located in St. Louis, Missouri.

6. At all relevant times, Respondent had custody and control of a work vehicle assigned to him by his employer.

7. The employer-owned vehicle assigned to Respondent Stephens was a truck with the employer's logo on the sides and back of the truck.

8. Sometime prior to February of 2018, Respondent Stephens placed a campaign related bumper sticker located in the back window of the employer-owned vehicle.

9. Between February and April of 2018, Respondent Stephens used his employer's vehicle to display signs in support of his campaign for city council.

10. Respondents did not disclose the use of the employer-owned vehicle used to support Stephens's candidacy on any campaign finance disclosure reports.

¹Unless noted otherwise, all statutory references are to the Revised Statutes of Missouri 2000 (Supp. 2019).

CONCLUSIONS OF LAW

11. A contribution is “a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, or for the support of any committee supporting or opposing candidates or ballot measures or for paying debts or obligations of any candidate or committee previously incurred for the above purposes. A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value.” § 130.011(12), RSMo.

12. Pursuant to Section 130.011(19), RSMo, an in-kind contribution is a contribution in a form other than money.

13. Candidate “committees are required to report receipts at the times and for the periods prescribed in section 130.046, including... (d) Total dollar value of all in-kind contributions received[.]” § 130.041.1(3)(d), RSMo.

14. There is probable cause to believe that Respondents violated Section 130.041.1(3)(d), RSMo, by failing to report the use of the employer’s vehicle in support of his candidate campaign.

ADDITIONAL AUTHORITY

15. The Commission also considered the advice in MEC Advisory Opinion 1996.06.135, which states: “Expenditures . . . made in support of a specific candidate are not considered contributions to that candidate if those expenditures were made [by someone other than the candidate] and such expenditures were not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.” (citing *Buckley v. Valeo*, 424 U.S. 1, 78 (1976)).

16. The Commission also considered the advice given in Advisory Opinion 2007-10 issued by the Federal Election Commission, which states: “Corporate names, trademarks, and service marks are corporate resources. . . . By allowing the committee to use the corporation’s resources-in effect, by lending the corporation’s resources to the committee – the corporation is using its resources to facilitate contributions to the [c]ommittee. By approving or accepting the use of the corporation’s resources, the employee ratifies this use as an agent of the corporation.”

ORDER

The Missouri Ethics Commission finds probable cause to believe that Respondents Niles Stephens and Niles Stephens for Wildwood violated Section 130.041.1(3)(d), RSMo.

1. Respondents shall comply with all relevant sections of Chapter 130, RSMo.
2. Respondents shall file and amend all campaign disclosure reports pertaining to this Order.
3. It is the order of the Missouri Ethics Commission that a fee is imposed against Respondents in the amount of \$1,000, pursuant to Section 105.961.4(6), RSMo. However, if Respondents pay \$50 of that fee within forty-five days after the date of the Order, the remainder of the fee will be stayed. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.
4. Regardless of the stay in paragraph 3 above, if there is probable cause to believe that any Respondent committed any further violation of the campaign finance laws under Chapter 130, RSMo, within the two-year period from the date of this order, then the Respondent who committed the violation will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that there is probable cause to believe such Respondent has committed such a violation.
5. The filing of this matter was not frivolous under Section 105.957.4, RSMo.
6. Respondents shall be jointly and severally liable for all fees imposed under this Order.

SO ORDERED, this 20th day of October, 2020.


Cheryl D/S. Walker, Chair