

**BEFORE THE
MISSOURI ETHICS COMMISSION**

Filed

MISSOURI ETHICS COMMISSION,)
)
Petitioner,)
)
v.)
)
FRIENDS OF DIEHL, et al.)
Candidate Committee, et al.)
)
Respondents.)

MAY 23 2023

Missouri Ethics
Commission

Case No. 22-0006-A

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE MISSOURI ETHICS COMMISSION, AND
CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondents acknowledge that they have received and reviewed a copy of the legal complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission.

The undersigned Respondents further acknowledge that they are aware of the various rights and privileges afforded by law, including but not limited to: the right to appear and be represented by counsel; the right to have all allegations against Respondents be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondents; the right to present evidence on Respondents' behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to Respondents by operation of law, the undersigned Respondents knowingly and voluntarily waive each and every one of these rights and freely enter into this Joint Stipulation of Facts, Waiver of

Hearing before the Missouri Ethics Commission, and Consent Order with Joint Proposed Findings of Fact and Conclusions of Law and agree to abide by the terms of this document.

Respondent Diehl contends that he fully cooperated with Commission staff during the audit and provided all documents and records in his possession or in his ability to access that were requested by Commission staff.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondents jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT PROPOSED 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 John Diehl was a successful candidate for State Representative in the 2008, 2010, 2012, and 2014 general elections. He left office in 2015 and has not run as a candidate in any election since the 2014 general election.

3. Respondent Diehl registered his candidate committee, Friends for Diehl, by filing a Statement of Committee Organization with the Missouri Ethics Commission on or about June 30, 2008.

4. Respondents listed United Missouri Bank (UMB) as the official depository account on an amended Statement of Committee Organization. This bank account was closed in 2015.

¹ Unless noted otherwise, all statutory references are to the current version of the Revised Statutes of Missouri.

5. On or about July 7, 2015, Respondents opened a new official depository account at UMB. Respondent's Statement of Committee Organization was not timely amended to report the new account number and this account has not been registered with the Commission.

6. Pursuant to Sections 105.959 and 105.961, RSMo, the Commission's staff initiated an audit in April 2022 and reported the findings to the Commission.

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

8. Respondents filed and amended all reports referenced herein in October, 2022.

COUNT I

Non-campaign use of committee funds

9. On or about January 13, 2020, Respondents used committee funds totaling \$6,762.70, to make a credit card payment for purchases not related to Respondent Diehl's candidacy.

10. After the transaction was discovered during the audit, Respondent Diehl returned the \$6,762.70 to the committee in July 2022.

COUNT II

Failure to accurately report beginning and ending money on hand

11. Respondents inaccurately reported the beginning and ending money on hand on the April 2019 Quarterly Report. The beginning and ending money on hand was \$52,513.51 more than what was in the bank account.

COUNT III

Failure to timely and accurately file campaign finance disclosure reports and indebtedness

12. Prior to the initiation of the audit, the last full disclosure report filed by Respondents was the 2019 April Quarterly. Respondents filed a statement of limited activity for the 2019 July

Quarterly. Respondents did not file any other reports/statements with the Commission until October 2022, after the audit was initiated.

13. In October 2022, Respondents filed four full quarterly reports and seven statements of limited activity from 2019 to 2022.

Report Name	Report Year	Due Date	File Date
October Quarterly Report	2019	10/15/19	10/12/22
January Quarterly Report	2020	1/15/20	10/13/22
April Quarterly Report	2020	4/15/20	10/13/22
July Quarterly Report - Limited Activity	2020	7/15/20	10/13/22
October Quarterly Report - Limited Activity	2020	10/15/20	10/13/22
April Quarterly Report	2021	4/15/21	10/13/22
July Quarterly Report - Limited Activity	2021	7/15/21	10/13/22
October Quarterly Report - Limited Activity	2021	10/15/21	10/13/22
January Quarterly Report - Limited Activity	2022	1/15/22	10/13/22
April Quarterly Report - Limited Activity	2022	4/15/22	10/13/22
July Quarterly Report - Limited Activity	2022	7/15/22	10/13/22

COUNT IV

Failure to timely and accurately report expenditures

14. Respondents failed to timely report a \$10.00 bank service charge made to UMB on March 2, 2021, on its 2021 April Quarterly Report.

15. Respondents failed to timely report five itemized expenditures totaling \$34,620.00. These expenditures were not reported until October 2022.

Expenditure Name	Amount	Date	Report Not Showing Expenditure
Committee to Elect Jay C. Hoffman	\$5,000.00	7/31/19	2019 October Quarterly
Missouri Ethics Commission	\$920.00	8/5/19	2019 October Quarterly
Chaminade Fund	\$15,000.00	12/30/19	2020 January Quarterly
John Burroughs School	\$3,700.00	Unknown	2020 January Quarterly
Chaminade Fund	\$10,000.00	12/31/20	2021 April Quarterly
Total	\$34,620.00		

JOINT PROPOSED CONCLUSIONS OF LAW

COUNT I

Non-campaign use of committee funds

16. Committee funds may be used only for purposes allowed by law, and expenses incurred in connection with the duties of a holder of elective office must be “ordinary and necessary.” § 130.034.2(2), RSMo.

17. There is probable cause to believe that Respondents violated Section 130.034, RSMo, by using committee funds to make a credit card payment for purchases not related to Respondent Diehl’s candidacy.

COUNT II

Failure to accurately report beginning and ending money on hand

18. Reports shall state “[t]he amount of money, including cash on hand at the beginning of the reporting period [.]” § 130.041.1(2), RSMo.

19. Reports shall state “[t]he 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[.]” § 130.041.1(5), RSMo.

20. There is probable cause to believe that Respondents violated Sections 130.041.1(2) and 130.041.1(5), RSMo, by failing to accurately report the beginning and ending money on hand on the April 2019 Quarterly Report.

COUNT III

Failure to timely and accurately file campaign finance disclosure reports and indebtedness

21. Pursuant to Section 130.046.1(3), RSMo, all committees must file regular campaign finance disclosure reports at the following times and for the following periods: “(3) Not later than the fifteenth day following the close of each calendar quarter.”

22. Pursuant to Section 130.046.5(2), RSMo:

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.

23. There is probable cause to believe Respondents violated Sections 130.046.1(3) and 130.046.5(2), RSMo, by failing to timely file eleven quarterly reports.

COUNT IV

Failure to timely and accurately report expenditures

24. All committees are required to report expenditures for each reporting period, including:

(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.

25. There is probable cause to believe that Respondents violated Section 130.041.1(4), RSMo, by failing to timely report six expenditures.

II.

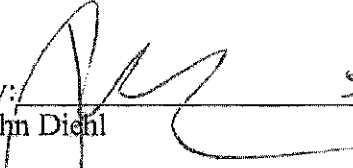
Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the consent order entered by the Missouri Ethics Commission in this matter. This consent order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

1. The parties understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.
2. The Commission shall issue its Consent Order.
 - a. Respondents shall comply with all relevant sections of Chapter 130, RSMo.
 - b. It is the order of the Missouri Ethics Commission that a fee is imposed against Respondents in the amount of \$47,392.00, pursuant to Section 105.961.4(6), RSMo. However, if Respondents pay \$9,762.00 within forty-five days after the date of the Consent 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.
 - c. Regardless of the stay in paragraph 2.b above, if there is probable cause to believe that 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 the Respondent who committed the violation will be required to pay the remainder of the fees. The fee will be due immediately upon final adjudication finding that there was probable cause to believe that such Respondent has committed such a violation.
 - d. Respondents shall be jointly and severally liable for all fees imposed under this order.
3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the legal complaint filed by the Petitioner in this action.
4. Respondents, together with their heirs, successors, and assigns, do hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys of or from


any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, a claim for attorney's fees whatsoever which Respondents or Respondents' attorney may now have or which they may hereafter have, which are based upon or arise out of this case.

SO AGREED:

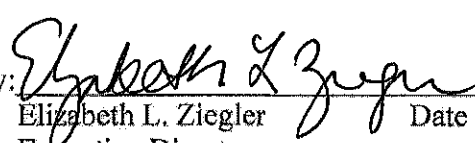
RESPONDENT JOHN DIEHL

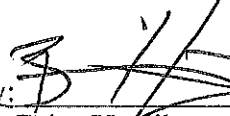
By:  5/11/23
John Diehl Date

RESPONDENT FRIENDS OF DIEHL

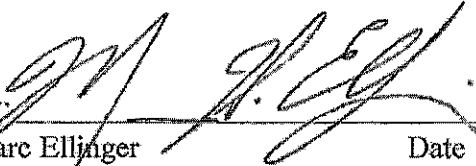
By:  5/11/23
John Diehl Date

PETITIONER MISSOURI ETHICS
COMMISSION

By:  5/23/23
Elizabeth L. Ziegler Date
Executive Director

By:  5/23/23
Brian Hamilton Date
Attorney for Petitioner

ATTORNEY FOR RESPONDENT

By:  5/11/23
Marc Ellinger Date
Ellinger Bell

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
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) Petitioner,)
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FRIENDS OF DIEHL, et al.)
CANDIDATE COMMITTEE, et al.)
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) Respondents.)

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CONSENT ORDER

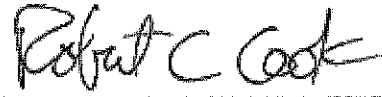
The parties have filed a Joint Stipulation of Facts, Waiver of Hearing, and Proposed Consent Order with the Missouri Ethics Commission. Accordingly, the Missouri Ethics Commission accepts as true the facts stipulated and finds that there is probable cause to believe that Respondents violated Sections 130.034, 130.041.1(2), 130.041.1(4), 130.041.1(5), 130.046.1(3), and 130.046.5(2), RSMo.

The Commission directs that the Joint Stipulation be adopted.

1. Respondents shall comply with all relevant sections of Chapter 130, RSMo.
2. It is the order of the Missouri Ethics Commission that a fee is imposed against Respondents in the amount of \$47,392.00, pursuant to Section 105.961.4(6), RSMo. However, if Respondents pay \$9,762.00 within forty-five days after the date of the Consent 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.
3. Regardless of the stay in paragraph 2 above, if there is probable cause to believe that 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 the Respondent who committed the violation will be required to pay the remainder of the fees. The fee will be due immediately upon final adjudication finding that there was probable cause to believe that such Respondent has committed such a violation.
4. Respondents shall be jointly and severally liable for all fees imposed under this order.

SO ORDERED this 23RD day of May, 2023

By:

Handwritten signature of Robert C. Cook in black ink.

Robert Cook, Chair
Missouri Ethics Commission