

BEFORE THE STATE BOARD OF ELECTIONS  
STATE OF ILLINOIS

In the Matter Of: )  
)  
David W. Cooke, )  
)  
Complainant, )  
)  
vs. ) 16 CD 093  
)  
Committee for Frank J. Mautino, )  
)  
Respondent. )  
)

**NOTICE OF FILING**

To: Anthony Jacob (tjacob@hinshawlaw.com)  
Carson Griffis (cgriffis@hinshawlaw.com)  
Ken Menzel (kmenzel@elections.il.gov)

Please take notice that on July 5, 2018, we filed with the Illinois State Board of Elections Cooke's Merits Brief in connection with the Public Hearing, a copy of which is hereby served on you.

**CERTIFICATE OF SERVICE**

I, Jeffrey Schwab, an attorney, certify that on July 5, 2018, I caused the foregoing document to be served by electronic mail.

/s/ Jeffrey M. Schwab

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**COMPLAINANT’S MERITS BRIEF**

**Introduction**

Two issues remain in this matter that the Board of Elections must address:

1. Did the Committee for Frank J. Mautino, which did not own or lease any vehicles, yet paid Happy’s Super Service Station for gas and repairs of personal vehicles, violate the Illinois Election Code’s prohibition on expenditures for gas and repairs for vehicles not owned or leased by a committee?
  
2. Did the Committee violate the Illinois Election Code’s prohibition on expenditures clearly in excess of the fair market value of the goods or services received in exchange by: (1) making expenditures for gas and repairs of personal vehicles, rather than reimbursing individuals based on the mileage driven for campaign or government purposes, and (2) withdrawing funds from their bank in whole dollar amounts that were purportedly used for campaign expenses to undisclosed third parties, while not returning any of the withdrawn cash?

**Summary of Facts**

The following facts are not in dispute.

**I. Procedural Background**

On February 16, 2016, Complainant David W. Cooke filed a complaint with the Illinois State Board of Elections (“Board”) alleging that the Committee for Frank J. Mautino (“Committee”) made expenditures to Happy’s Super Service Station in Spring Valley, Illinois (“Happy’s”) and

the Spring Valley City Bank (the “Bank”) in violation of the Illinois Election Code, 10 ILCS 5/1-1, *et seq.* (the “Code”). C. 004-125.<sup>1</sup>

The complaint alleged that the Committee: (1) reported making expenditures directly to the Bank for types of services the Bank did not offer; (2) from 1999 to 2015, paid Happy’s more than \$225,000, an amount that, on its face, exceeds reasonable costs of fuel and repair for vehicles for campaigning during that time period; and (3) reported that a majority of its expenditures paid to the Bank and Happy’s were in whole dollar amounts, which is highly implausible. C. 004-007.

The complaint alleged violations of the Code, including but not limited to violation of 10 ILCS 5/9-7 for failure to keep detailed accounts and records of the full name and address of every person to whom an expenditure was made, as well as the date, amount, and proof of payment for each expenditure; and violations of 10 ILCS 5/9.8-10 for expenditures in excess of fair market value of the services, materials, facilities, and other things of value received. C.004-007.

The Board held a closed preliminary hearing on March 1, 2016. R. 002. On March 31, 2016, the Committee filed a motion to strike and dismiss, C. 130-149, which the Board denied on May 18, 2016, finding that the complaint was filed on justifiable grounds. C. 298-299. The Board also issued an order on May 18, 2016 directing the Committee to amend its campaign disclosure reports by July 1, 2016 to: (1) provide an accurate breakdown between gas and repairs expenditures reportedly made at Happy’s; (2) indicate whether the vehicles involved in each itemized expenditure to Happy’s were owned or leased by the Committee or privately owned;

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<sup>1</sup> On the instructions of the Board’s General Counsel, Complainant refers to the record, as submitted to the appellate court.

and (3) identify the actual recipient and purpose of each itemized expenditure reported as a payment to the Bank. C. 298-299.

On June 1, 2016, the Committee asked the Board to stay the proceedings on the basis of a reported federal investigation into the Committee's expenditures. C. 300-320. On June 15, 2016, the Board issued an order continuing the hearing on the Committee's motion until July 11, 2016 and extending the Committee's deadline to file its amended reports to that date. C. 322. On July 13, 2016, the Board issued an order denying the Committee's motion and extending the Committee's deadline to file its amended reports to July 25, 2016. C. 328-329.

The Committee ignored the July 25 deadline – it never produced any amended reports or otherwise attempted to comply with the Board's May 18, 2016 order. C. 416-418. Instead, the Committee filed a second motion to stay, virtually identical to the first, on September 6, 2016. C. 330-351. The Board denied the second motion on September 21, 2016. C. 357-358. The Committee then appealed to the First District Appellate Court, which dismissed the appeal for lack of jurisdiction. C. 394-395.

Cooke issued discovery requests and sought subpoenas to obtain documents from Frank Mautino, Committee treasurer Patricia Maunu, Happy's, and the Bank. C. 395. Cooke also sought subpoenas for depositions of Mautino and Maunu. Mautino submitted a declaration stating that, if subpoenaed to testify at a deposition, he would assert his Fifth Amendment privilege to any and all questions asked. *Id.* In response, the Hearing Examiner recommended, and the General Counsel of the Board agreed, over Cooke's objection, that the subpoena for deposition to Mautino should not be issued. *Id.* The Board did issue a subpoena to Maunu, who was then deposed. E. 0095-0128.

On April 20, 2017, the Hearing Examiner held a public hearing. R. 121-212. At the beginning of the hearing, the Hearing Examiner stated that the only issue to be determined at the hearing was whether the Committee was justified in not complying with the Board's May 18, 2016 order requiring the Committee to file amended reports – not the merits of Cooke's complaint. R. 128-132. Counsel for Cooke objected to limiting the Public Hearing to this narrow issue. R. 132. Notwithstanding the Hearing Examiner's statement, the parties provided evidence, testimony, and argument at the public hearing related to both the narrow issue and the merits of the substantive issues in the complaint. R.121-212.

On May 5, 2017, the Hearing Officer issued his recommendations following the public hearing. C. 392-409. The Hearing Officer recommended that the Board find: (1) with respect to the records prior to 2014, the Committee had not willfully violated the Board's May 18, 2016 order because those records were lawfully destroyed; (2) with respect to the Board's order seeking information on whether the Committee owned or leased any vehicles, that the Committee had not willfully violated the Board's May 18, 2016 order because Treasurer Patricia Maunu testified in a deposition – taken in response to a subpoena issued by Cooke on March 21, 2017 – that the Committee never owned or leased any vehicles; and (3) that the Committee had willfully violated the Board's May 18, 2016 order with respect to expenditures in 2014 and 2015. C. 408-409.

The Board considered the Hearing Officer's recommendation at its meeting of May 15, 2017. R. 213-287. The Board adopted the Hearing Officer's first and third recommended findings but rejected the second, concluding that the Committee *did* willfully fail to comply to comply with the part of the order requiring it to state whether the Committee owned or leased any vehicles. C. 416-418. However, the Board did not address the merits of the complaint's substantive

allegations that the Committee made prohibited expenditures under 10 ILCS 5/9.8-10 despite Cooke's counsel requested that the Board do so. R. 216-221.

On May 24, 2017, Cooke filed a motion asking the Board to reconsider its order because the Board never addressed the merits of the complaint's allegations that the Committee made prohibited expenditures by paying for gas and repairs of vehicles not owned or leased by the Committee and made expenditures in excess of fair market value. C. 419-428. The Board held a hearing on Cooke's motion on June 20, 2017 (R. 288-312), and issued a final order on June 22, 2017 denying Cooke's motion by a vote of four to four, stating that the May 18, 2017 final order remained in effect (C. 437-438).

Cooke filed a petition for review with Fourth District Appellate Court on June 28, 2017. On May 22, 2018, the Court of Appeals issued an opinion remanding this case to the Board to address and issue rulings on the merits of Cooke's Section 9-8.10(a)(2) and (a)(9) claims. That opinion also directed the Board to amend its May 18, 2017 order to show that the Committee violated sections 9-7 and 9-11 of the Election Code. On June 27, 2018 the Clerk of the Appellate Court issued the mandate.

## **II. Evidence supporting Cooke's Section 9-8.10(a)(2) and (a)(9) claims**

In support of his claims that the Committee violated Section 9-8.10(a)(9) of the Code by making expenditures for gas and repairs of personal vehicles at Happy's and Section 9-8.10(a)(2) of the Code by making expenditures in excess of fair market value at Happy's and the Bank, Cooke submits the following evidence, which he also previously provided to the Board.

**A. Evidence of the Committee's expenditures to Happy's Super Service Station**

From 1999 to 2015, the Committee paid Happy's a total of \$225,109.19 (Supp. E 0136-0138),<sup>2</sup> purportedly for gas and vehicle repairs (Maunu Dep. 21-24, Supp. E 0100). But, in fact, the Committee never owned or leased any vehicles that could have been repaired. *Id.* at 21:13-15; *see also* Committee Expenditures from Board's website, listing no expenditures for purchase or lease of vehicle.

The Committee had a charge account at Happy's (Supp. E 0099), which Mautino's family and associates – including his wife, daughter, son, niece, nephew, and secretary, plus Ms. Maunu and her husband and son – used for gasoline for their personal vehicles. (Supp. E 0100, 0103-04, 0107-09). The Committee also paid for the gas and repairs for Mautino's four personal vehicles. Supp. E 0100. The Committee never reimbursed anyone for actual mileage for the use of their personal vehicles for campaign purposes or for the performance of governmental duties. *Id.*

In the quarterly reports for its last two years of operation, 2014 and 2015, the Committee reported expenditures totaling \$38,649.54 at Happy's for two purposes: (1) gasoline; and (2) "camp vehicle repair & gasoline" or "gasoline/camp vehicle repair" (presumably "campaign vehicle"), even though the Committee neither owned nor leased a campaign vehicle. Supp. E 0100. Of the total reported in 2014 and 2015, \$33,859.25 was reported to be for "gasoline/camp vehicle repair" and \$4,790.29 was reported to be for "gasoline." The reports provide no other information about whose vehicles received the gas and repairs or the expenditures' relationship to any campaign or governmental purpose.

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<sup>2</sup> This number excludes the payments dated 7/9/1998, 9/2/1998, 10/27/1998, 11/3/1998, and 12/31/1998.

## **B. Evidence of the Committee's expenditures to Spring Valley City Bank**

The Committee reported expenditures of \$159,028.00<sup>3</sup> to the Bank from 2000 to 2015 for services or goods not provided by the Bank, and not for the purpose of reimbursing expenses incurred by the Bank on behalf of the Committee. Supp. E 0008-0044.

These “expenditures” to the Bank were actually just checks written to withdraw cash, which was then spent on (unreported) expenditures to other vendors. Either Mautino or Maunu (or the previous treasurer, Sophie Lewis, Ms. Maunu’s mother) would write a check from the Committee to the Bank – usually in whole dollar amounts and mostly in increments of \$100 – and then sign it, go to the bank, cash it (with funds coming out of the Committee’s checking account), and leave with the cash. Supp. E 0109. This would take place entirely before the Committee actually incurred any expense. *Id.* Then Mautino would use the cash for some purpose unrelated to the Bank. Sometimes he would return with receipts for the expenditures he made with the cash, but not always. Supp. E 0111. Mautino never returned any cash not used for the withdrawal’s purported purpose. *Id.*

All of the purported “expenditures” to the Bank the Committee reported in its 2014 and 2015 quarterly reports were in whole dollar amounts.<sup>4</sup> Supp. E 0788-1203. The Committee reported thirteen of the “expenditures” as being for Chicago or Springfield meetings or travel expenses, *id.* – even though there is no evidence that Mautino knew or could have known the exact amounts of his travel expenses for these meetings in advance, nor is there any evidence explaining how Mautino’s expenses could have consistently been in whole dollar amounts. The Committee reported most of the remaining “expenditures” to the Bank as being for poll

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<sup>3</sup> This number is the sum of all the Committee’s reported expenditures to the Bank from 2000 to 2015, excluding any expenditures for loan principal or interest payments and expenditures for new checks.

<sup>4</sup> This excludes expenditures for reordering checks or loan payments listed in the reports.

watchers, precinct walkers, or phone callers. *Id.* But the reports do not indicate who actually received this money, and the Committee has not provided any documentation to show that these payments to third parties were actually made.

### **Argument**

#### **I. The Committee's expenditures of \$225,000 for gas and repairs for vehicles it did not own or lease from 1999 to 2015 violated the Code.**

The evidence establishes that the Committee's expenditures at Happy's violated the Code because it shows that the Committee paid for gas and repairs of personal vehicles, which the Code prohibits.

The Code prohibits expenditures "for the purchase of or installment payment for a motor vehicle" except where "the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9)." 10 ILCS 5/9-8.10(a)(9). The same Code section further requires that any vehicle that a committee buys or leases "be used primarily for campaign purposes or for the performance of governmental duties." *Id.* Committees may reimburse individuals who use their own (or third parties') vehicles "for campaign purposes or the performance of governmental duties" based on their "actual mileage . . . at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code." *Id.*

The Code allows a committee to reimburse people who use their own vehicles for campaign or governmental purposes for their actual mileage, but prohibits expenditures for gas and repairs of a vehicle unless the vehicle is both: (1) owned or leased by the committee; and (2) used primarily for campaign purposes or for the performance of governmental duties. 10 ILCS 5/9-8.10(a)(9). The reason for this is not difficult to understand: Once someone's gas tank is filled, there is no way to ensure that the gas will only be used for permissible purposes.

Reimbursements for actual mileage eliminate this problem. Also, paying a service station directly for a tank of gas for someone's personal vehicle and reporting the service station as the recipient of the expenditure masks the fact that the individual – whose name is not reported – is the one receiving the benefit of the tank of gas.

Here, it is undisputed that the Committee did not own or lease any vehicles (Supp. E 0100) and therefore could not lawfully have made expenditures to “insure, maintain, and repair” a motor vehicle. ILCS 5/9-8.10(a)(9). Under the Code, the Committee could only have reimbursed people for their actual mileage when they used their own vehicles for campaign purposes or for the performance of government duties. *Id.* But the Committee did not do that; instead, according to the Committee's reports and the testimony of the Committee's treasurer, Maunu, the Committee paid Happy's directly for gas and repairs of the personal vehicles of Mautino, Maunu, and their various family members and associates. Supp. E 0100.

And by paying Happy's directly for gas and repairs of the personal vehicles of these family members and associates while filing reports disclosing Happy's, not the individuals who received the gas and repairs of their personal vehicles, the Committee masked the actual recipients, and ultimate beneficiaries, of its expenditures. Anyone who read the Committee's reports would know that the Committee paid Happy's for gas and repairs of vehicles, but would not know the identities of the owners of those vehicles. The Committee therefore violated the Code's restrictions on vehicle-related expenditures in 10 ILCS 5/9-8.10(a)(9).

The Board has the authority to investigate violations of Section 9-8.10(a)(9) and may levy a fine on any person who knowingly makes expenditures in violation of Section 9-8.10(a)(9). 10 ILCS 5/9-8.10(b). Here, statements from Maunu show that the Committee knowingly made expenditures in violation of § 9-8.10(a)(9).

“A person knows, or acts knowingly or with knowledge of \*\*\* [t]he nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.” *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 53. Whether the defendant acts knowingly may be inferred from circumstantial evidence. *Id.* at ¶ 56. Here, in order to satisfy the knowledge requirement, Cooke must prove that the Committee knew that it did not own or lease vehicles and that the Committee paid for gas and repairs of vehicles it did not own or lease. Cooke has proved both of those facts with the statements of Maunu, who testified that the Committee did not own or lease vehicles and that the Committee paid for gas and repairs of vehicles it did not own or lease. (Supp. E 0100.) The knowledge requirement does not mean, as the Committee seemed to imply on appeal (Committee Br. 38), that the Committee’s officers must have known what the law required of them.<sup>5</sup> Further, the fact that the Board never objected to the Committee’s filings (C. 386) is irrelevant to the knowledge requirement. The fact that a government fails to enforce a law has no bearing on one’s mental state. Thus, Cooke has proved that the Committee knowingly failed to comply with § 9-8.10(a)(9).

In attempting to justify its conduct, the Committee also previously relied on quarterly disclosure reports of other candidate committees, asserting that they suggest that these other committees also failed to comply with § 9-8.10(a)(9). (C. 384-385.) But as Cooke pointed out in his brief before the Board (C. 369-370), the Committee failed to provide any evidence – such as

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<sup>5</sup> The Committee has maintained before this Board and on appeal that Patricia Maunu was ignorant or confused by these requirements in the Election Code. And while ignorance of the law is irrelevant to determine whether a Code violation occurred, this assertion ignores the fact that Frank Mautino was also an officer of the Committee. As a state legislator for over two decades, who had occasion to vote on amendments to the Election Code, as well as being subject to it in many elections over those years, any assertion that Mautino was ignorant of the Election Code is either implausible or concerning.

whether the committee owned or leased a vehicle – to show that these expenditures were improper. And these few cherry-picked reports from the hundreds of reports that candidates file cannot prove that any improper reporting is the product of confusion over the rules. And even if the Committee could establish that other committees did not comply with the Code – which it did not – that still would not justify the Committee’s own violations of the Code. These reports of other candidate committees are therefore irrelevant, as Cooke has maintained throughout this matter, and the Board should disregard them.<sup>6</sup>

The Committee’s Code violations warrant a substantial monetary penalty because making payments directly to Happy’s, ostensibly for gas and repairs of people’s personal vehicles, allowed the Committee to avoid any disclosure or scrutiny of who received benefit of the gas and repairs and whether the people who received the gas and repairs actually used their vehicles for campaign or government purposes. It also conferred a big benefit on Happy’s; presumably people who paid for their own gas and repairs, and were reimbursed only for their actual mileage for campaign and government work as the Code requires, would have patronized a variety of service stations, not just this particular one favored by Frank Mautino.

For each illegal expenditure of \$500 or less, the Board may impose a fine as high as \$500, and for each illegal expenditure of \$500 or more, the Board may impose a fine as high as \$500 plus the amount of the unlawful expenditure. 10 ILCS 5/9-8.10(b). At minimum, a reasonable

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<sup>6</sup> As Cooke pointed out in his brief before the Board (C. 369-370), the reports introduced by the Committee belong to two state representatives who both voted against Mautino’s appointment as Auditor General and have called for his resignation. *See e.g.*, Kidd, Karen, *Streator man says Mautino probes began with his decision to speak out*, Madison – St. Clair Record, Sept. 14, 2016, <http://madisonrecord.com/stories/511010185-streator-man-says-mautino-probes-began-with-his-decision-to-speak-out>; *Reps. Wehrli and Ives: Auditor General Mautino Must Promptly be Removed from Office*, Apr. 20, 2017. <http://www.jeanneives.org/2017/04/reps-wehrli-and-ives-auditor-general.html>. Given their irrelevance, the introduction of these reports appear more about attempting to discredit political opponents than about defending the Committee’s own conduct.

fine for the Committee for its illegal expenditures at Happy's Super Service Station should equal the amount of those expenditures: \$225,109.19.

**II. The Committee's expenditures to Happy's and the Bank exceeded the fair market value of any services, goods, or other things of value received in exchange.**

The undisputed evidence also shows that the Committee's expenditures to Happy's and the Bank violated the Election Code's prohibition of expenditures that are "[c]learly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange." 10 ILCS 5/9-8.10(a)(2).

**A. The Committee's expenditures for gas and repairs in excess of \$225,000 for personal vehicles clearly exceeded the fair market value of any services received in exchange.**

The Committee's expenditures at Happy's for gas and repairs of personal vehicles clearly exceeded the fair market value of any services the Committee received in exchange. Again, the Code prohibited the Committee from paying for the gas and repairs of personal vehicles, as it did from 1999 to 2015; it could only reimburse vehicles' owners based on the actual mileage traveled for campaign or government purposes. And the Committee did not follow the law: it paid Happy's directly for gas and repairs for individuals' personal vehicles.

This illegal method resulted in two benefits to private parties that they would not have received if the Committee had followed the law. *First*, the individuals received the benefit of having their entire gas tanks filled without any way to ensure that the gas would only be used for campaign or government purposes rather than personal purposes. And it is virtually certain that at least some of the gas paid for at Happy's was used for personal purposes because it would be difficult, if not impossible, for the individuals to use a whole tank of gas exclusively for campaign or government purposes even if they wanted to. Thus, the Committee paid those

individuals more than they should have received for the use of their vehicles for campaign or government purposes. *Second*, because the Committee was paying for gas and repairs for personal purposes in addition to campaign and government purposes, the Committee was paying Happy's more than it should have if it had simply reimbursed the owners of the vehicles based on the mileage used for campaign and government purposes. By setting up a charge account at Happy's to directly pay for the gas of campaign workers, Happy's received the benefit of guaranteed business from people who otherwise presumably would have patronized a variety of gas stations. Both of these benefits show that the Committee's expenditures at Happy's exceeded the fair market value of the benefits the Committee received in return.

In addition, it is simply implausible that the Committee actually spent \$225,109.19 on gas and repairs from 1999 to 2015. If one conservatively assumes that half of the money spent at Happy's (\$112,554.60) was for gas, that gas cost an average of \$3 per gallon, and that the vehicles had a fuel economy of 15 miles per gallon, then the vehicles fueled travelled 562,773 miles from 1999 to 2015. That's 35,173.31 miles – a distance greater than the circumference of the Earth – every year for 16 years. This would be hard to believe even if Mr. Mautino hadn't run unopposed – as he did – in the 2004, 2008, and 2010 elections.

The expenditures listed on the 2014 and 2015 quarterly reports for “repair of camp vehicle,” which total more than \$33,000, also show how the Committee reported expenditures in excess of fair market value. Again, the number is simply implausible – and it is especially incredible in light of the Committee's refusal to explain it even now.

**B. The Committee's “expenditures” to Spring Valley City Bank clearly exceeded the fair market value of any services received in exchange.**

The Committee reported “expenditures” to the Bank for services that the bank does not provide and for which the Committee has provided no receipts. If the Committee correctly

reported these expenditures, then these “expenditures” exceeded the fair market value of anything the Committee received in return from the Bank, which was nothing.<sup>7</sup>

Because the Committee’s reported “expenditures” at the Bank were actually just checks cashed, the proceeds of which were later used for unreported expenditures to other vendors, of which the Committee has no receipts or records, there is no evidence that this cash actually was used on legitimate campaign expenditures.

Further, almost all of the withdrawals from the Bank were in round dollar amounts with any excess cash taken never returned, which means that the withdrawals must have exceeded the fair market value of any legitimate expenses for which Mautino used the cash. For example, the Committee reported \$200 in expenditures to the Bank for “Traveling expenses” on June 28, 2014. (Sup E0152.) From Maunu’s testimony, we know that this meant that a check was written to withdraw cash from the Bank for \$200 and then Mautino took that \$200 and supposedly used it for traveling expenses, although no receipts were tendered, and Mautino never returned any unused cash. (Supp. E 0111.) It is implausible that Mautino could have known in advance that his travel expenses would have been exactly \$200. It is also unlikely that whatever traveling expenses Mautino incurred amounted to exactly \$200. The result is that the Committee reported that it spent \$200 for traveling expenses that inevitably cost less than \$200.

The Committee cannot argue that Mautino could have consistently taken less cash than he spent on these expenditures, because Mautino would have been required to disclose the expenditures on his own behalf as contributions to his campaign, 10 ILCS 5/9-7, which he did not do. Thus, the only reasonable conclusion is that the cash that Mautino took from the

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<sup>7</sup> But according to Maunu’s undisputed testimony, the Committee did not accurately report these “expenditures” in violation of Sections 9-7 and 9-11 of the Code: they were actually just checks cashed, the proceeds of which were later used for unreported expenditures to other vendors.

Committee's bank account exceeded the fair market value of any legitimate expenses for which he used the cash.

**C. The Board should impose fines equaling the amounts of the Committee's excessive expenditures.**

The Board may levy a fine on any person who knowingly makes expenditures in violation of Section 9-8.10, upon the affirmative vote of at least 5 of its members, not to exceed \$500 for each expenditure of \$500 or less and shall not exceed the amount of the expenditure plus \$500 for each expenditure greater than \$500. 10 ILCS 5/9-8.10(b). The Committee made \$225,109.19 in expenditures to Happy's that were not allowed under the Code. Further, the Committee's purported expenditures to the Bank in the amount of \$159,028 were not expenditures to the Bank at all and the Bank has no records to show to whom these expenditures were made and whether these expenditures were legitimate campaign expenditures.

The Committee's violations of Section 9-8.10(a)(2) for making expenditures that are clearly in excess of the fair market value of the services received in exchange warrant a substantial monetary penalty. In both cases, the Committee made expenditures to undisclosed third parties that exceeded that exceeded the value of the goods and services provided to the Committee. *First*, making payments directly to Happy's, ostensibly for gas and repairs of people's personal vehicles, allowed the Committee to avoid any disclosure or scrutiny of who received benefit of the gas and repairs and virtually ensured that those individuals received more compensation – gas and repairs of their vehicles – than they actually were entitled to for the use of their vehicles for campaign or government purposes. *Second*, the Committee reported "expenditures" at the Bank that were actually just checks withdrawing cash that was used to pay other undisclosed and unreported vendors. But because almost all of these "expenditures" were in round dollar amounts, with any excess cash taken never returned, the Committee reported paying more than

those goods or services actually cost. The Committee's infraction was therefore twofold: making expenditures in excess of fair market value for goods or services, and doing so to undisclosed third parties.

At minimum, a reasonable fine for the Committee for its expenditures at Happy's should be equal to those expenditures: \$225,109.19 and a reasonable fine for the Committee for its expenditures at the Bank should be equal to those expenditures: \$159,028.

**III. The Committee did not properly maintain and report records of its expenditures.**

The Appellate Court's opinion, based on the agreement of the parties, also directed the Board to amend its May 18, 2017 order to show that the Committee violated sections 9-7 and 9-11 of the Election Code.

The Board's May 2017 final order found that the "evidence presented at public hearing established that the [Committee filed] disclosure reports that were insufficient with regard to documentation, amount and accuracy of reported expenditures to Spring Valley City Bank and Happy's Super Service," erroneously identifying this as a violation of § 9-8.10, rather than § 9-7 and § 9-11 of the Code. Before the Appellate Court, the Board acknowledged that this was an error.

Thus, Cooke asks the Board to correct this part of its May 2017 final order to indicate that the Committee violated § 9-7 and § 9-11 of the Code.

**Conclusion**

The evidence establishes that the Committee made prohibited payments for gas and repairs, made expenditures clearly in excess of fair market value. The Board should therefore enter an order finding that the Committee failed to comply with its order and the Election Code and

impose fines in an amount at least equal to the amount of the expenditures reported to Happy's and the Bank, a total of \$384,137.19.

Dated: July 5, 2018.

/s/ Jeffrey M. Schwab  
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Please take notice that on Thursday, July 5, 2018, I filed with the Illinois State Board of Elections' General Counsel Respondent's Brief, a copy of each is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that copies of the attached pleading were served upon the parties referenced above by email on Thursday, July 5, 2018.



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v.	)	Board File # 16 CD 093
	)	
Committee for Frank J. Mautino,	)	
	)	
Respondent.	)	

**RESPONDENT’S BRIEF**

On remand from the Illinois Appellate Court of Illinois, Fourth District, this matter before the Board is limited to ruling on the merits of Complainant’s claims under section 9-8.10(a)(2) and section 9-8.10(a)(9) of Article 9 of the Illinois Election Code with respect to the expenditures of the Committee for Frank J. Mautino (“Committee”) to Happy’s Super Service Station (“Happy’s”) and Spring Valley City Bank (“Bank”) as reported by the Committee and filed with the Board during the period in question.

**I. Complainant Fails to Clearly Show the Committee’s Expenditures Were in Excess of Fair Market Value and Makes Erroneous Allegations Unsupported by the Evidence.**

Section 9-8.10(a)(2) states very specifically that a political committee shall not make expenditures “[c]learly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.” 10 ILCS 5/9-8.10(a)(2) (emphasis added). Complainant has the burden to show clearly and convincingly, not just more likely than not, that the Committee made expenditures to Happy’s and to the Bank in excess of fair market value.

Complainant's allegations that the Committee violated the Election Code by reporting expenditures in excess of market value shows a basic misunderstanding of the term "fair market value". Fair market value is the price a reasonable person would pay to purchase an item or service that is also charged to other people.

The Committee paid no more for gas at Happy's than paid by others at fair market value. During Patricia Maunu's deposition, she stated the Committee paid the same gas price that was charged to others at the time. Maunu Deposition pp. 82-84. Additionally, the Committee delivered to Complainant hundreds, if not thousands, of receipts, reports and other documents, in total, showing a detailed breakdown of each gas station visit which included: the date, the license plate of the vehicle gassed, the type of gas (unleaded), the number of gallons, the amount charged, the initials of the Happy's employee filling up the gas and the signature of the person driving the vehicle being filled up. As an average, the price per gallon paid by the Committee was about \$2.21 per gallon for full service at Happy's as shown on a Happy's gas receipt during the period between 2014-2015. Maunu Deposition pp. 82-83. A report by the U.S. Energy Information Administration available on its website shows that the retail price of gas per gallon in the Chicago, Illinois area from 2014 to 2015 was between \$3.40 and \$2.01 per gallon. See U.S. Energy Information Administration Weekly Chicago, IL Reformulated Retail Gas Prices, [https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM\\_EPMRR\\_PTE\\_YORD\\_DPG&f=W](https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPMRR_PTE_YORD_DPG&f=W). The price per gallon for gas paid by the Committee to Happy's was well within the fair market value for gas paid at the time in question.

Not only did the Committee pay fair market value for gas at Happy's, the Committee keep records and reported to the Board expenditures paid at fair market value from funds withdrawn from the Committee's deposit account at the Bank. Patricia Maunu testified during

her deposition that funds from the Bank were used to pay for fundraisers, Frank Mautino's meetings and events for his campaign and governmental duties, campaign workers and get out the vote drives. Maunu Deposition p. 59-61, 66-67. In her role as the Committee's treasurer, Ms. Maunu kept check stubs, copies of checks, receipts, notes on inauguration dinners, lists of campaign workers and their hours worked and rate of pay, and other documents to record the amounts paid, to whom the payments were made and the timing of the payments, all for campaign or governmental duties. Maunu Deposition p. 66-67, and 76-79. She kept these records at or around the time of the actual expenditures. Maunu Deposition p. 65-67. The payments were made for the actual amount of the items or services provided. Maunu Deposition p. 69-73. For example, the Committee reported a check to the Bank in the amount of \$10,000 dated October 31, 2014 on its reports with the Board. The Committee's records show that the \$10,000 was used to pay for the following: 44 poll watchers at \$125 each (\$5,500), 30 phone callers at \$100 (\$3,000) each and 15 callers at \$100 each (\$1,500). Maunu Deposition p. 77-78. The amounts paid to the campaign workers are standard amounts paid by the Committee for these services on an arms-length basis with the third party workers. Maunu Deposition p. 78-79. There is nothing to indicate the items and services were *clearly* paid in excess of fair market value.

The Complainant's argument that expenditures to Happy's Super Service and Spring Valley City Bank exceeded fair market value is erroneous. The Complainant fails to meet his burden to show the expenditures were *clearly* paid in excess of fair market value as required by the Illinois Election Code.

## **II. Committee Did Not Violate Section 10-8(a)(9).**

Section 9-8.10(a)(9) states a political committee shall not make expenditures for the purchase of or installment payment for a motor vehicle. 10 ILCS 5/9-8.10(a)(9). During Patricia Maunu's deposition, she stated the Committee did not own or lease a motor vehicle. Maunu Deposition p. 21. Therefore, this part of section 9-8.10(a)(9) is not applicable.

Section 9-8.10(a)(9) goes on to state "[p]ersons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties." 10 ILCS 5/9-8.10(a)(9). Patricia Maunu testified during her deposition that the gas paid for by the Committee was in accordance with the direction given to Patricia Maunu by Board staff and her historical practice of reporting. Campaign reporting requirements are outlined in the Illinois Election Code, the Illinois Administrative Code, and documents provided by the Illinois State Board of Elections. These requirements are complicated, leading to different interpretations for how expenditures should be reported.

Patricia Maunu testified during her deposition that she had frequent calls with Ms. Sharon Steward, the former Director of Campaign Finance of the Illinois State Board of Elections asking for her assistance with the interpretation and confusing communication with employees of the Board to determine how to correctly report the expenditures of the Committee. Maunu Deposition p. 90-93. Patricia Maunu never received any notification from the Board that expenditures to Happy's Super Service for gas and repairs should detail the ownership of the vehicles involved or be shown as direct reimbursements. Maunu Deposition pp. 91-92.

Ms. Maunu testified during her deposition that the only individuals who were authorized to purchase gas were working on the campaign. Maunu Deposition p. 96. She also testified that the authorized charges by other individuals at Happy's Super Service were always for campaign

work. *Id.* Ms. Maunu testified that she was not aware of any time that the State Board of Elections contacted her to question the reported expenditures to Happy's Super Service. Maunu Deposition pp. 91-92. Any gas for personal motor vehicle use, other than for campaign or governmental duties, were not handled by the Committee or paid for from the Committee's funds. Maunu Deposition p. 26-27, 91-93. Frank Mautino and his family had a completely separate personal account with Happy's which was used to pay for the personal use of gas from his personal funds, not the Committee's funds. Maunu Deposition p. 91-93.

Complainant argues that the Committee should have issued reimbursements for gas used for campaign or governmental purposes. Ms. Maunu relied on the direction of the Board staff member when reporting expenditures. Ms. Maunu reported the expenditures to Happy's Super Service, rather than the individual being reimbursed. Accordingly, the Committee did not knowingly violate the reporting requirements set forth by the Election Code and the Board.

### **III. If Civil Penalties are Assessed, the Board Should Consider the Nature of the Violation in Determining Whether a Civil Penalty Should be Assessed.**

Civil penalties fall within the sole discretion of the Board. *See* 10 ILCS 5/9-10; 10 ILCS 5/9-23; 26 Ill. Adm. Code 125.245(e); 26 Ill. Adm. Code 125.245(d)(4). While the Election Code provides that the Board may impose a civil penalty for violation of a Board order, this is not a mandate. 10 ILCS 5/9-23; 26 Ill. Adm. Code 125.245(e). The penalty does not have to be over \$0 and the Board is required to take into account the nature of the violation. 10 ILCS 5/9-10; 26 Ill. Adm. Code 125.245(d)(4).

The Committee closed on December 30, 2015 after filing its final report. Any penalty the Board desires to be issued will be well after the Committee had dissolved. In determining the appropriate civil penalty, the Board should consider that the Committee was closed and unable to

re-open when the Board's order was issued. The Board should not impose a civil penalty even if it determines a violation occurred.

Respectfully submitted,

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