

BEFORE THE DULY CONSTITUTED
ILLINOIS STATE BOARD OF ELECTIONS

IN THE MATTER OF:

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

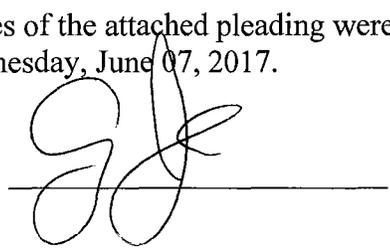
NOTICE OF FILING

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Please take notice that on Wednesday, June 7, 2017, I filed with the Illinois State Board of Elections' General Counsel Respondent's Response to Motion to Reconsider, 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 Wednesday, June 07, 2017.



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RESPONSE TO MOTION TO RECONSIDER

NOW COMES Respondent, Committee for Frank J. Mautino, by its attorneys, Hinshaw & Culbertson LLP, for its Response to Motion to Reconsider, and states:

ARGUMENT

Complainant raised allegations in his Complaint about the accuracy of the reported expenditures made by the Committee. *See* David W. Cooke's D-4 Complaint filed on February 16, 2016. The Board, through the preliminary hearing, various meetings held over a twelve month period, and the public hearing, addressed the allegations raised in the Complaint and, in its Final Order on May 18, 2017, assessed a civil penalty against the Committee. Complainant has no basis to argue that the Board failed to address the allegations in the Complaint. The Record of the Board's proceedings, from the time of the preliminary hearing all the way through the date the Board issued its Final Order, conclusively demonstrates that the Board's decision was based on the allegations made in the Complaint found to be justifiable. Complainant's Motion to Reconsider asks the Board to ignore the Record and expand these proceedings beyond

the scope of the findings first made by the Hearing Officer in April of 2016 and adopted by the Board in May of 2016. His Motion should be summarily denied.

During the preliminary hearing, the Complainant presented information and made arguments focusing on the Committee's failure to provide sufficient information in its campaign reports with respect to two groups of expenditures (1) Happy's Super Service and (2) Spring Valley City Bank. *See* Recommendation of Hearing Officer to the General Counsel Following Closed Preliminary Hearing, dated April 29, 2016. In the preliminary Hearing Officer's recommendations to the General Counsel, the Hearing Officer thoroughly considered the information and arguments presented by Complainant. *Id.* The Hearing Officer did not, however, treat as evidence various news clippings attached to the Complaint. *Id.* The transcript of the preliminary hearing and the Hearing Officer's recommendation detail the specific reasons for the Hearing Officer's recommendations. The Hearing Officer agreed with Complainant's position, found that the expenditures reported to Happy's Super Service and Spring Valley City Bank lacked sufficient detail and recommended that the Board enter an Order that the Complaint was filed on justifiable grounds. *Id.* Because the Complaint addressed the shortcomings in the Committee's campaign reports, the Hearing Officer also recommended that the Committee should be provided an opportunity to file amendments to its campaign reports. *Id.*

The General Counsel concurred with the Hearing Officer's recommendations with a clarification that the amended reports should "provide an accurate breakdown between gas and repairs [at Happy's Super Service] and indicate whether the vehicles involved in each itemized expenditure are owned or leased by the committee, or are privately owned," and "identify the actual recipient of each itemized expenditure [to Spring Valley City Bank] as well as the specific purpose for each one." *See* Recommendation of the General Counsel, dated May 12, 2016. The

Board adopted the General Counsel's recommendation and ordered the Committee to file amendments to its campaign reports to provide sufficient details to address the two groups of expenditures questioned by the Complainant in his Complaint. *See* Order on Complaint, dated May 18, 2016.

It is important to note that during the preliminary hearing what the Hearing Officer found in the Complaint to be justifiable were the allegations that the campaign reports filed by the Committee lacked sufficient detail with respect to certain expenditures to comply with certain provisions of the Election Code. That is why the Board ordered the Committee to amend its campaign reports. The Board acted consistent with its authority to order the Committee to file amended campaign reports to comply with Article 9 of the Election Code. 26 Ill. Adm. Code 125.262(a); 10 ILCS 5/9-12 (granting the Board the authority to issue an order directing a committee to take such action as the Board determines may be necessary in the public interest to comply with Article 9 of the Election Code).

When the Committee did not file the amended reports pursuant to the Board's Order, the Board ordered a public hearing and appointed a Hearing Officer. *See* Board Order dated July 13, 2016. If the campaign reports had been amended, there would have been no need for a public hearing. Since the merits of the Complaint pertained to the sufficiency of the campaign reports with respect to the expenditures to Happy's Super Service and Spring Valley City Bank, the public hearing was limited to the issue of whether the Committee willfully failed to comply with the Board's Order to amend its campaign reports to provide the information requested. The scope of the public hearing was consistent with the Board's Orders that relied upon the allegations made in the Complaint. In fact, as Vice Chairman Gowen stated during the Board's meeting on September 19, 2016 prior to convening the public hearing, the public hearing would

pertain to “a very, very limited obligation on [the Committee], extremely limited.” The Hearing Officer reiterated the limited scope of public hearing on April 20, 2017 by clearly explaining that the only issue to be addressed was whether the Committee willfully violated the Board’s order.

In its May 18, 2017 Board Order, the Board adopted parts of the Hearing Officer’s recommendations from the public hearing and assessed a civil penalty against the Committee. 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 125.425. The Board may impose a civil penalty, not to exceed \$5,000, on a committee who fails to comply with a Board’s Order within the time specified by the Board. 26 Ill. Adm. Code 125.420(c). After notice and a public hearing, the Board may impose a civil penalty but is not required to do so. 10 ILCS 5/9-23.

During a lengthy Board meeting on May 15, 2017, Complainant’s attorney was able to address all of the allegations in the Complaint. But when the attorney attempted to present arguments that went beyond the scope of the Complaint and what was found to have been justifiable allegations, the Board properly stopped counsel from making such arguments. The Complainant’s attorney also attempted to make arguments that went beyond the scope of the justifiable allegations in the Complaint during the public hearing, but those arguments were not taken into consideration by the Hearing Officer.

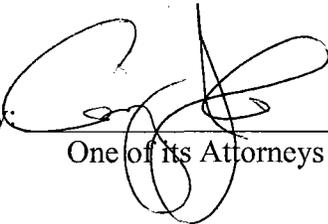
Complainant’s Motion to Reconsider is a restatement of the arguments made by Complainant’s attorney that were found to go beyond the scope of the Complaint and what was found to have been justifiable allegations. These arguments were not considered by the Hearing Officer during the public hearing and were rejected by the Board during the Board’s meeting on May 15, 2017. The Board’s Final Order clearly communicates the specific reasons for its findings and conclusions, which are consistent with the allegations made in the Complaint and

supported by the preliminary hearing's transcript and records, the various Board meetings' transcripts and records, and the public hearing's transcripts and records.

WHEREFORE, based upon the foregoing, Respondent respectfully urges this Board to deny Complainant's Motion to Reconsider.

Respectfully submitted,

COMMITTEE FOR FRANK J. MAUTINO

By: 
One of its Attorneys

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