

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

IN THE MATTER OF:

Case No. 2012 IECDB 13

Residents for a Better  
Richmond, Inc.

REPRIMAND

On this 26<sup>rd</sup> day of September, 2012, a complaint filed against Residents for a Better Richmond came before the Iowa Ethics and Campaign Disclosure Board. The Ethics Board elects to handle this matter by administrative resolution. See Iowa Admin. Code r. 9.4(2). For the reasons that follow, the Ethics Board hereby reprimands Residents for a Better Richmond, Inc. for providing in-kind contributions to three candidate committees in violation of Iowa Code section 68A.503.

BACKGROUND

Residents for a Better Richmond (hereafter "RBR") became an Iowa corporation in December 2010. On July 5, 2012, Wesley Rich filed a complaint with the Ethics Board against RBR concerning a June 4, 2012 radio advertisement paid for by RBR that advocated in favor of Bob Yoder's Jack Seward's and Stan Stoops' candidacies for Washington County Board of Supervisors. The complaint alleged the radio advertisement violated RBR's non-profit status with the Internal Revenue Service. The complaint also questioned whether RBR was required to register as a political committee with the Ethics Board and whether RBR ran its advertisement in coordination with the three candidates.

After receiving a copy of the complaint, RBR's spokesperson David Rosen contacted the Ethics Board's director. He said the radio advertisement cost RBR \$449.68. Mr. Rosen said he wrote the advertisement. He said prior to running the advertisement, he called Mr. Yoder, Mr. Seward and Mr. Stoops and asked them to approve it, which they did.

ANALYSIS

The Ethics Board must first determine whether the complaint is legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the Ethics Board.

b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Ethics Board determines the complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Ethics Board determines none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. *Id.* The Ethics Board also has the power, on its own motion, to initiate an investigation into matters that the Ethics Board believes may be subject to the Ethics Board's jurisdiction. *Id.* § 68B.32B(7).

The complaint alleges conduct that occurred this year. RBR is subject to the Ethics Board's jurisdiction because it engaged in conduct, express advocacy of one or more candidates, which is regulated by chapter 68A of the Code of Iowa. *Id.* §§ 68B.32(1), 68B.32B(1). The only remaining question is whether the complaint alleges facts that would establish a violation of chapter 68A.

Federal law, not Chapter 68A, governs the tax-exemption requirements for a non-profit corporation. Thus, it is not within the purview of the Ethics Board whether RBR is a non-profit corporation entitled to tax-exempt status. Chapter 68A does govern when an entity must register as a political committee. A group or entity must register as a political committee if it accepts contributions in excess of \$750 in the aggregate, makes expenditures in excess of \$750 in the aggregate, or incurs indebtedness in excess of \$750 in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office. *Id.* § 68A.102(18). However, a corporation is prohibited from contributing to a candidate or committee, including a political committee, except for a ballot issue committee. *Id.* § 68A.503. A corporation is allowed to make an "independent expenditure," which is defined as an expenditure for a "communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate or the passage or defeat of a ballot issue *that is made without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.*" *Id.* § 68A.404(1) (emphasis added).

On August 23, 2012 the Ethics Board met and found the complaint was legally sufficient and ordered its staff to investigate whether RBR, a

corporation, expended its funds for the radio advertisement with prior approval or coordination with one or more of the three candidates.

The Ethics Board's director interviewed Mr. Seward, Mr. Yoder and Mr. Stoops. Mr. Seward said he recalled Mr. Rosen of RBR calling him and reading the radio advertisement aloud over the telephone. Mr. Seward reported Mr. Rosen asked him if he was okay with the advertisement. Mr. Seward said he recalled telling Mr. Rosen that RBR was its own organization and could do whatever it wanted. Mr. Rosen then said he didn't want to do anything that would hurt Mr. Seward's candidacy. Mr. Seward reported that he told Mr. Rosen that he didn't see how the advertisement would hurt his campaign.

Mr. Yoder recalled Mr. Rosen calling him and reading aloud the advertisement to him. Mr. Yoder said he told Mr. Rosen he was fine with the advertisement.

Finally, Mr. Stoops said he remembered Mr. Rosen calling him and reading aloud the advertisement to him. Mr. Stoops recalled Mr. Rosen saying he wanted to make sure Mr. Stoops was okay with the advertisement. Mr. Stoops said that he told Mr. Rosen he was okay with the advertisement.

Based on the statements Mr. Rosen, Mr. Seward, Mr. Yoder and Mr. Stoops made to the Ethics Board's director, the Ethics Board finds that RBR made an expenditure for a communication that expressly advocated in favor of three candidates with the candidates' prior approval. A coordinated expenditure—i.e. an expenditure made with the knowledge and approval of a candidate or candidate's committee—is an in-kind contribution to the candidate's committee. Iowa Admin. Code r. 351—4.53(2). Iowa Code section 68A.503 prohibits a corporation from making a monetary or in-kind contribution to a candidate or candidate's committee. RBR, which is a corporation, made in-kind contributions in violation of Iowa Code section 68A.503 to the committees of Mr. Seward, Mr. Yoder and Mr. Stoops when it sought the candidates' prior approval of the radio advertisement.

The Ethics Board hereby reprimands RBR for violating section 68A.503 and orders it to seek and receive reimbursement from the committees of Mr. Seward, Mr. Yoder and Mr. Stoops for each candidate's pro rata share of the radio advertisement (\$149.89 each) with 30 days of service of this order. Pursuant to Iowa Code Administrative Rule 351—9.4(3), RBR may appeal the issuance of this reprimand by submitting within 30 days of service of this order a written request for a contested case hearing.

By direction of the Ethics Board



---

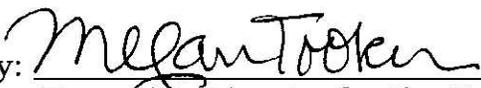
James Albert, Chair  
John Walsh, Vice Chair  
Saima Zafar  
Carole Tillotson  
Jonathan Roos  
Mary Rueter

CERTIFICATE OF SERVICE

The undersigned hereby certified this order was sent by first class mail, address service requested, on November 28, 2012, to:

Residents for a Better Richmond  
Attention: Mr. David Rosen  
1461 Nutmeg Avenue  
Kalona, IA 52247

Mr. Wesley Rich  
806 8<sup>th</sup> Street  
Kalona, IA 52247

By: 

Megan Tooker, Executive Director for the Board