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No. 4-18-0502

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

DAVID W. COOKE, Appellant, v. ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in his capacity as chairman; JOHN R. KEITH, in his capacity as vice-chairman; WILLIAM M. MCGUFFAGE, in his capacity as member; ANDREW K. CARRUTHERS, in his capacity as member; CHARLES W. SCHOLZ, in his capacity as member; IAN K. LINNABARY, in his capacity as member; KATHERINE S. O'BRIEN, in her capacity as member; CASANDRA B. WATSON, in her capacity as member; and COMMITTEE FOR FRANK J. MAUTINO, the respondent before the Illinois State Board of Elections, Appellees.	Petition for Review of the Order of the Illinois State Board of Elections, 16 CD 093 Date of Petition for Review: July 20, 2018 Date of Judgment: July 16, 2018 Supreme Court Rule that confers jurisdiction on the reviewing court: 335

BRIEF OF APPELLANT DAVID W. COOKE

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NATURE OF THE CASE

This matter returns to this Court after it issued an opinion on May 22, 2018 remanding it to the Illinois State Board of Elections ("the Board") instructing the Board to address and issue rulings on the merits of the complaint filed by David W. Cooke alleging that the Committee for Frank J. Mautino ("Committee") violated the Illinois Election Code by making improper expenditures for gas and repairs at Happy's Super Service Station ("Happy's") and expenditures in excess of fair market value at both Happy's and the Spring Valley City Bank ("Bank"). On July 10, 2018, in compliance with this Court's May 2018 opinion, the Board held a hearing on the merits of the complaint, and on July 16, 2018 entered a final order, on a split four-to-four vote, failing to find that the Committee violated 10 ILCS 5/9-8.10(a)(2) and (a)(9), as alleged in the complaint. Cooke timely filed this appeal.

ISSUES PRESENTED FOR APPEAL

(1) Did the Board err in failing to find that the evidence Cooke provided shows that the Committee violated 10 ILCS 5/9-8.10(a)(9) by making improper expenditures for the repair and maintenance of motor vehicles not owned or leased by the Committee at Happy's?

(2) Did the Board err in failing to find that the evidence Cooke provided clearly shows that the Committee violated 10 ILCS 5/9-8.10(a)(2) by making 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 at Happy's, rather than reimbursing individuals based on the mileage driven for campaign or government purposes, and (2) withdrawing funds from the Bank in whole dollar amounts that were purportedly used for campaign expenses to undisclosed third parties, while not returning any of the withdrawn cash?

JURISDICTION

The Court has jurisdiction over this matter because the Illinois Election Code provides that "[a]ny party to a Board hearing, any person who files a complaint on which a hearing was denied or not acted upon within the time specified in § 9-21 of this Act, and any party adversely affected by a judgment of the Board may obtain judicial review . . . directly in the Appellate Court for the District in which the cause of action arose and not in the Circuit Court . . . by filing a petition for review within 7 days after entry of the order of other action complained of." 10 ILCS 5/9-22; *Thompson v. Ill. State Bd. of Elections*, 408 Ill. App. 3d 410, 414 (1st Dist. 2011). The procedure for obtaining statutory direct review of orders by an administrative agency is by filing a petition for review with the Appellate Court. Ill. S. Ct. R. 335 (eff. July 1, 2017).

The Board issued its final order on July 16, 2018. C. 478. Cooke filed a petition for review with this Court on July 20, 2018.

The cause of action before the Board arose in this appellate district as the Board has an office in Springfield. Further, this Court previously issued an

opinion in this matter, remanding the case to the Illinois State Board of Elections for a ruling on the merits of Cooke's complaint. The Board issued its ruling, which Cooke now appeals.

STATEMENT OF FACTS

This case concerns alleged improper expenditures by the Committee for Frank J. Mautino ("Committee"), which is a candidate campaign committee ostensibly created to support the election of Frank J. Mautino to the Illinois House of Representatives, of which he was a member from 1991 through 2015. In October 2015, Mautino became the Auditor General of Illinois, and he remains in that position.

I. Procedural History

On February 16, 2016, David W. Cooke filed a complaint with the Illinois State Board of Elections ("the Board"), alleging that the Committee made expenditures to Happy's Super Service Station in Spring Valley, Illinois ("Happy's") and 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.

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 violations 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 each 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.

A. Cooke's initial proceedings before the Board that were found by this Court to have improperly failed to address the merits of Cooke's claims.

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, no later than 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; 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 that denial to the First District Appellate Court, No. 16-2530, which dismissed it for lack of jurisdiction. C. 394-395.

Cooke issued discovery requests, and he sought subpoenas to obtain documents from Frank J. 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. Supp. 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. At that Board meeting, before the Board made its findings, Cooke's counsel requested that the Board address the merits of the complaint's substantive allegations – specifically that the Committee made prohibited expenditures under 10 ILCS 5/9.8-10(a)(2) and (a)(9) and failed to properly record and report those expenditures under 10 ILCS 5/9-7(1) and 9-11(a). R. 216-221. But the Board did not do so.

On May 24, 2017, Cooke filed a motion asking the Board to reconsider its order because the Board never addressed the merits of Cooke's complaint – specifically, it did not address 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 making 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 this Court on June 28, 2017. On May 22, 2018, this Court issued an opinion remanding this matter to the Board to address and issue rulings on the merits of Cooke's § 9-8.10(a)(2) and (a)(9) claims. *Cooke v. Illinois State Bd. of Elections*, 2018 IL App (4th) 170470. That opinion also directed the Board to amend its May 18, 2017 order to show that the Committee violated §§ 9-7 and 9-11 of the Election Code. *Id.* at ¶ 95. On June 27, 2018 the Clerk of the Appellate Court issued the mandate.

B. Proceedings before the Board after this Court's opinion ordering the Board to address the merits of Cooke's claims.

On July 5, Cooke and the Committee each filed briefs with the Board on the issue of the merits of Cooke's §§ 9-8.10(a)(2) and (a)(9) claims. C. 446-463; 464-470. On July 10, 2018, the Board held on a special meeting of the Board to conduct a hearing on the complaint's §§ 9-8.10(a)(2) and (a)(9) claims. R. 313-405. At the beginning of that meeting, the Board adopted a Nunc Pro Tunc Order correcting its May 18, 2017 order, pursuant to this Court's opinion, finding that the evidence presented established that the Committee violation §§ 9-7 and 9-11 of the Illinois Code. C. 476-477; R. 316-318.

At the end of the hearing on July 10, 2018, the Board voted on two motions. First, the Board split four to four on the motion that:

> complainant has met its burden of proof by the preponderance of the evidence and that the Committee to Elect Frank Mautino

> violated Section [9-]8.10(a)(9) by making expenditures for the maintenance and repair and gas of motor vehicles that were neither owned nor leased by the committee . . . .

R. 386. Because the vote was tied, four to four, the motion failed to pass. The members of the Board explained the reasons they voted for or against the motion as follows:

Member Cadigan, who voted in favor of the motion, explained that "I do believe that the complainant has met their burden of proof under a preponderance of the evidence that violations of (a)(9) occurred." R. 388. Member Carruthers, who made the motion, explained he that voted in favor of the motion because the "complainant has met its burden and that any expenditure at all for gas, repairs, maintenance of vehicles neither owned nor leased by the committee are violations of (a)(9)." R. 388. Member Linnabary and Member O'Brien stated that they agree with Member Carruthers.

Vice Chairman Keith, who voted against the motion explained that "I do not believe that the burden of proof has been met by the complainant and that there was a knowing violation of the article based upon the record before us." R. 388. Member McGuffage agreed. R. 389. Member Scholz explained that in order "to make that determination with specificity, we would need the adequate reports. The reports [filed by the Committee] were inadequate. . . . But to fine specifically, I need to see those reports, and they weren't filed. So I want to reiterate what Vice Chairman Keith said." R. 389. Member Watson stated that "the complainant has failed to meet its burden by a

preponderance of the evidence based on the evidence presented and the existing record as well." R. 390.

The Board also split four to four on the second motion:

> the complainant has met its burden of proof by a preponderance of the evidence and that the Committee for Frank Mautino violated Section [9-]8.10(a)(2) by making expenditures clearly in excess of fair market value for the goods and services received by the committee, by making expenditures for gas and repairs for personal vehicles rather than reimbursing them on the mileage rate, and by withdrawing funds from the bank in whole dollar amounts that were purportedly used for campaign expenses without returning any cash.

R. 390. Because the vote was tied, four to four, the motion failed to pass. The members of the Board explained the reasons they voted for or against the second motion as follows:

Member Carruthers, who made the motion, explained:

> I believe . . . the amount paid was certainly in excess of the value received considering that the gas and repairs were made on personal vehicles. . . . I also believe that this section has been violated through the numerous expenditures by the committee to Spring Valley City Bank in whole dollar amounts purportedly for cash or walking-around money for Representative Mautino when he was traveling that were not properly documented, and it is not plausible for the committee to suggest that all of the money was used and none was left over, and we know that none was returned from these expenditures by Representative Mautino to the committee.

R. 391-393. Chairman Cadigan agreed with Member Carruthers and stated that he also relied on the adverse inference drawn from Mr. Mautino's refusal to testify. R. 393. Member Carruthers stated that he too relied on that adverse inference. R. 393. Members Linnabary and O'Brien stated that they

"share the sentiments expressed by Members Cadigan and Carruthers." R. 393.

Vice Chairman Keith, who voted against the motion, stated:

> I adopt the explanation I gave on the previous vote, plus while I agree with the Chairman that the case cited permits an adverse inference to be drawn, it does not require an adverse inference, and I do not find an adverse inference sufficient with the press of the evidence to meet the burden of proof.

R. 393-394. Member McGuffage stated that he adopted the argument of Mr. Keith and "that the plaintiff has not met its burden. There's no evidence to conclusively show that fair market value was clearly exceeded. All we got is the record, and the record does not prove that the violation of the section has actually occurred. We don't have the amended reports, the D-2 reports we need to make that determination." R. 394. Member Scholz stated that he agreed with Member McGuffage and Vice Chairman Keith. R. 394. Member Watson also adopted the arguments of Vice Chairman Keith and Member McGuffage and that she believed that "the complainant has failed to meet its burden by a preponderance of the evidence based on the evidence presented. R. 394.

On July 16, 2018, the Board entered a final order failing to find that the Committee made prohibited expenditures in violation of § 9-8.10(a)(9) and expenditures in excess of fair market value in violation of § 9-8.10(a)(2) of the Illinois Election Code. C. 478. Cooke timely filed his petition for review with this Court on July 20, 2018, appealing the Board's July 16, 2018 order.

II. Evidence of the Committee's Expenditures to Happy's

Cooke presented the following evidence to the Board of the Committee's improper expenditures to Happy's.

From 1999 to 2015, the Committee paid Happy's a total of $225,109.19, Supp. E 0136-0138, purportedly for gas and vehicle repairs, Supp. E 0100. But, in fact, the Committee never owned or leased any vehicles that could have been repaired. Supp. E 0100 at 21:13-15.

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 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*.

The Committee filed reports with the Board, indicating that the Committee paid Happy's for repairs and gasoline. (Supp. E 1041, 1059, 1084, 1117, 1143, 1162, 1184, 1199. Further, invoices from Happy's, Supp. E 0135-0139, and receipts from Happy's, Supp. E 0140-0150, 0228-0787, indicate that the Committee paid for gas and repairs or vehicles at Happy's.

In the quarterly reports for its last two years of operation, 2014 and 2015, the Committee reported expenditures in the amount of $38,649.54 at Happy's

for two purposes: (1) gasoline; and (2) "camp vehicle repair & gasoline" or "gasoline/camp vehicle repair,"[1] *see* Supp. E 1026-1203, 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 for "gasoline/camp vehicle repair" and $4,790.29 was for "gasoline." See Supp. E 1026-1203. The reports provide no other information about whose vehicles received the gas and repairs or the expenditures' relationship to any campaign or governmental purpose.

III. Evidence of the Committee's Expenditures to the Bank

Cooke presented the following evidence to the Board of the Committee's improper expenditures purportedly to the Bank.

The Committee reported expenditures of $159,028.00 to the Bank from 2000 to 2015 for services or goods that the Bank did not offer, and not for the purpose of reimbursing expenses incurred by the Bank on behalf of the Committee.[2] 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, Maunu's mother) would write a check from the Committee to the Bank –

[1] "Camp vehicle" presumably means "campaign vehicle."
[2] This number is the sum of all the Committee's reported expenditures to the Bank from 2000 to 2015, excluding any loan principal or interest payments and purchases of new checks.

usually in a whole dollar amount and in an increment 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*. And Mautino did not disclose any expenditures on his own behalf as contributions to his campaign, as he would be required to do by 10 ILCS 5/9-7 if he kept the spent more cash than what he withdrew. Supp. E 1026-1203.

All of the purported "expenditures" to the Bank the Committee reported in its 2014 and 2015 quarterly reports were in whole dollar amounts. 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 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. Standard of Review

The standard of review that an appellate court will apply to an administrative agency's order depends on what is in dispute: the facts, the law, or a mixed question of fact and law. *Jackson v. Bd. of Election Comm'rs*, 2012 IL 111928, ¶ 47.

Mixed questions of fact and law are questions in which the historical facts are established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008). Mixed questions of fact and law are reviewed for clear error. *Id.* An administrative agency's decision is deemed clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id*.

The questions that Cooke presents to this Court – did the evidence show that the Committee violated the Code by making illegal expenditures to Happy's and the Bank – is a mixed question of fact and law and therefore subject to the clearly erroneous standard.

II. The Board clearly erred in failing to find that Cooke presented sufficient evidence to show that the Committee violated the Code.

The Board failed to find that the Committee violated the Code even though Cooke presented undisputed evidence that the Committee violated: (1) § 9-8.10(a)(9) of the Code by making expenditures for gas and repairs of personal vehicles at Happy's; and (2) § 9-8.10(a)(2) of the Code by making expenditures in excess of fair market value at Happy's and the Bank. Because the evidence Cooke presented to the Board showed that the Committee violated the Code, the Board committed clear error in failing to issue findings that the Committee violated §§ 9-8.10(a)(2) and (a)(9).

A. 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 established that the Committee's expenditures at Happy's violated the Code. The Board's final order failing to find that the Committee violated 10 ILCS 5/9-8.10(a)(9) by paying for gas and repairs of personal vehicle was clearly erroneous. The justifications given by members of the Board who voted against the motion to find the Committee in violation of § 9-8.10(a)(9) are not supported by the facts or the law. The members of the Board voting against the motion stated that they did so because: (1) Cooke failed to meet his burden by a preponderance of the evidence, R. 388-390; (2) the Board did not have "adequate reports" filed by the Committee, R. 389; and (3) there was not a knowing violation, R. 388.

There is no dispute that Cooke's burden in this case is a preponderance of the evidence. R. 330, 332. By a preponderance of the evidence it is meant the greater weight of the evidence, not necessarily in numbers of witnesses, but in merit and worth that which has more evidence for it than against it is said to be proven by a preponderance. Preponderance of the evidence is sufficient if it inclines an impartial and reasonable mind to one side rather than the other. *Moss-American, Inc. v. Fair Emp't Practices Com.*, 22 Ill. App. 3d 248, 259 (1974). A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. *In re Estate of Ragen*, 79 Ill. App. 3d 8, 13 (1979). In this case, the preponderance of the evidence clearly supports a finding that the Committee violated § 9-8.10(a)(9).

The Code prohibits a political committee from making 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.* Further, that section prohibits a committee from making "expenditures for use of the vehicle for non-campaign or non-governmental purposes." *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*.

It is undisputed that § 9-8.10(a)(9) prohibits committees from making expenditures for gas and repairs of a vehicle unless the vehicle is owned or leased by the committee and used primarily for campaign purposes or the performance of governmental duties. 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.

Further, the facts are not in dispute. The undisputed testimony of the Committee's own treasurer was that the Committee did not own or lease any vehicles. Supp. E 0100. Further, the expenditures reported by the Committee and listed on the Board's website disclose no expenditures for the purchase or lease of a vehicle. Testimony from the Committee's treasurer indicated that 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; that the Committee also paid for the gas and repairs for Mautino's four personal vehicles, Supp. E 0100; and that 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*. And the Committee's reports filed with the Board indicate that the Committee paid Happy's for repairs and gasoline, which the Committee was not permitted to pay for if it did not own or lease any vehicles primarily for campaign purposes, which it did not. Supp. E 1041, 1059, 1084, 1117, 1143, 1162, 1184, 1199. Finally, the evidence also included invoices from Happy's, Supp. E 0135-0139, and receipts from Happy's, Supp. E 0140-0150, 0228-0787. The evidence overwhelmingly shows that the Committee did not own or lease any vehicles and that the Committee paid for gas and repairs for vehicles, which it did not own. Indeed, the Committee doesn't even dispute this. See C. 468-469. Thus, the preponderance of the evidence overwhelmingly shows that the Committee makes expenditures for gas and repairs of vehicles which it did not own or lease. Any finding to the contrary is clearly erroneous.

Any claim that in order for Cooke to meet his burden he needed to provide adequate reports filed by the Committee is also clearly erroneous. The reports filed by the Committee with the Board indicate that the Committee made expenditures on gas or repairs. And the Committee's own treasurer testified that the Committee did not own or lease any vehicles, and the

Committee never filed any reports with the Board indicated that it made expenditures on the purchase or lease of vehicles. Adequately filed reports with the Board would not have provided any additional information that was not already before the Board.[3] Therefore, any finding that Cooke failed to provide his claim by a preponderance of the evidence because the evidence did not include adequate reported filed by the Committee is clearly erroneous.

The Board has the authority to investigate violations of § 9-8.10(a)(9) and may levy a fine on any person who knowingly makes expenditures in violation of § 9-8.10(a)(9). 10 ILCS 5/9-8.10(b). While the members of the Board who voted against finding that the Committee violated § 9-8.10(a)(9) are correct that Cooke must prove a knowing violation, those members misapply that standard in this case. 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

[3] Further, a requirement that adequate reports be filed by a committee in order for the Board to find that the Committee made improper spending would simply incentivize a committee that made improper spending to not file adequate reports, since then the Board could not find them liable for the improper spending. Such a requirement would actually thwart the goals of the Election Code.

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 – and some members of the Board – seem to imply, C. 468-469, that the Committee's officers must have known what the law required of them.[4] Further, the fact that the Board never objected to the Committee's filings, C. 386, 468, 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).

[4] The Committee has maintained before the Board and previously before this Court that Patricia Maunu was ignorant or confused by the 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.

The preponderance of the evidence clearly shows that the Committee violated § 9-8.10(a)(9) by paying for gas and repairs of vehicles it did not own or lease. 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).

For these reasons, the Board's final order failing to find that the Committee violated § 9-8.10(a)(9) by paying for gas and repairs of vehicles that the Committee did not own or lease was clearly erroneous. This Court should reverse this claim to the Board and remand it for a determination of a fine to be assessed against the Committee.

B. The Board clearly erred in failing to find that the Committee's expenditures at 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 showed 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). The Board's failure to so find was clearly erroneous.

The members of the Board voting against the motion to find that the Committee's expenditures to Happy's and the Bank exceeded fair market value stated that they did so because: (1) Cooke failed to meet its burden by a preponderance of the evidence, R. 393-394; (2) no evidence conclusively showed that fair market value was clearly exceeded, R. 394; and (3) that the record does not prove that the violation of the section has actually occurred because the Committee did not file amended reports to the Board, R. 394. The justifications given by members of the Board who voted against the motion to find the Committee in violation of § 9-8.10(a)(2) for expenditures at Happy's and the Bank are not supported by the facts or the law.

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

The evidence before the Board established that the Committee's expenditures at Happy's for gas and repairs of personal vehicles exceeded the fair market value of any services the Committee received in exchange. The Board's final order failing to find a violation of § 9-8.10(a)(2) for making expenditures in excess of fair market value by paying for gas and repairs at Happy's was clearly erroneous.

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 as indicated in Section A, above, the evidence clearly shows that the Committee did not own or lease vehicles and that the Committee paid for gas and repairs of vehicles that it did not own or lease. The fact that the Committee did not file amended reports is irrelevant, because it would not have provided any evidence not already provided to the Board.

The evidence shows that those expenditures clearly were in excess of fair market value of the things of value received in exchange. 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 only 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. The Committee, thus, received gas and repairs for vehicles used for campaign and governmental purposes, but inevitably it was paying for gas and repairs also used for personal purposes of these individuals, meaning that the amount it paid exceeded the fair market value of what the Committee received in

return – the gas and repairs used only for campaign or governmental 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 would have if it had simply reimbursed the owners of the vehicles based on the mileage used for campaign and government purposes. As a result, 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, let alone for campaign or government purposes only. If one conservatively assumes that half of the money spent at Happy's ($112,554.60) was for gas, that the 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 must have 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 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.

The preponderance of the evidence, thus, shows that the Committee made expenditures that went to personal purposes, which inevitably meant that the value for campaign and governmental purposes that the Committee received in return was less than what it paid. See *In re Estate of Ragen*, 79 Ill. App. 3d at 13 ("A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not.") The Board's final order failing to find that the Committee made expenditures in excess of fair market value at Happy's was clearly erroneous. This Court should reverse the Board and remand this matter to the Board for a determination of the appropriate fine.

2. The Committee's "expenditures" to the Bank clearly exceeded the fair market value of any services received in exchange.

The evidence before the Board established that the Committee's purported "expenditures" to the Bank exceeded the fair market value of any services the Committee received in exchange. The Board's final order, which failed to find a violation of § 9-8.10(a)(2) for withdrawing funds from the Bank in whole dollar amounts that were purportedly used for campaign expenses to

undisclosed third parties, while not returning any of the withdrawn cash, was clearly erroneous.

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. But according to the Committee's treasurer's undisputed testimony, the Committee did not accurately report these "expenditures" in violation of §§ 9-7 and 9-11 of the Code. Rather, these "expenditures" were actually just checks cashed, the proceeds of which were later used for unreported expenditures to other vendors.

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. Supp. E 0152. 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 reported thirteen of the "expenditures" as being for Chicago or Springfield meetings or travel expenses that were in whole dollar amounts, Supp. E 0788-1203, and from which Mautino never returned unused cash, Supp. E 0111, – 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. And Mautino did not disclose any expenditures on his own behalf as contributions to his campaign, as he would be required to do by 10 ILCS 5/9-7 if he spent more cash than what he withdrew. Supp. E 1026-1203.

In addition, 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. C. 395. Thus, it is reasonable to infer that Mautino was in fact withdrawing cash in whole amounts for expenses not yet incurred and was not returning the excess cash. See *Harris v. City of Chi.*, 266 F.3d 750, 753 (7th Cir. 2001) ("the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.")

The preponderance of the evidence, therefore, shows that the Committee made expenditures in excess of fair market value for the services or things received in return when Mautino withdrew cash in whole dollars amounts for things such as travel to Chicago, prior to incurring such expenses and then not returning any unused cash because it is implausible that Mautino could have known in advance exactly what his travel expenses would be and that his travel expenses would have been in whole dollar amounts. Thus, the Committee paid for expenses such as travel expenses in an amount that inevitably was more than when it actually cost.

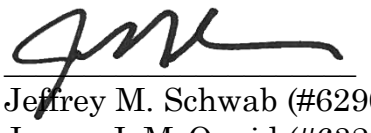
The evidence clearly shows that on multiple occasions that Committee made expenditures in excess of the fair market value for what he received in return. The reasoning by the members of the Board who voted against the motion to find that the Committee made expenditures to the Bank in excess of fair market value that Cooke failed to meet his evidentiary burden or that additional documentation was necessary is clearly erroneous. The preponderance of the evidence shows that the Committee made expenditures in excess of fair market value when Mautino withdrew money from the bank for travel expenses in advance of incurring those expenses in whole dollar amounts and never returned any excess funds. Inevitably, the travel expenses Mautino incurred on multiple occasions could not have always been exactly the amount Mautino withdrew. The logical conclusion is that the Committee made expenditures in excess of what it received in return.

The Board's final order failing to find that the Committee made expenditures in excess of fair market value related to expenditures reported to the Bank was clearly erroneous. This Court should reverse the Board and remand this matter to the Board for a determination of the appropriate fine.

CONCLUSION

The Court should find that the Board committed clear error in failing to find that the evidence that Cooke presented to the Board established that the Committee's expenditures, and reporting of those expenditures, violated §§ 9-8.10(a)(2) and (a)(9) of the Code and remand this case to the Board for a determination of the appropriate fines.

Dated: November 21, 2018.



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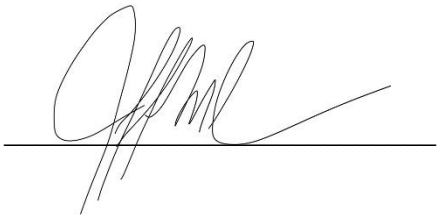
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 30 pages.



CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, certify that on November 21, 2018, I caused the foregoing Appellant's Brief to be served via electronic mail on all attorneys on the attached service list.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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