

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

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IN THE MATTER OF: )  
 ) CASE NO. 2018 IECDB 27  
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KIM REYNOLDS FOR IOWA, )  
a candidate's committee. ) REQUEST FOR  
 ) RECONSIDERATION  
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COMES NOW Complainant Gary Dickey and requests the Iowa Ethics and Campaign Disclosure Board reconsider its September 20, 2018, Order Dismissing Complaints. In support of this request, the Complainant states as follows:

**I. THE REYNOLDS FOR IOWA CANDIDATE COMMITTEE'S REPORTING OF DAVID NORTH'S IN-KIND CONTRIBUTION IS NOT CONSISTENT WITH THE IRS DEFINITION OF "FAIR MARKET VALUE" OF EMPLOYER-PROVIDED PILOTED AIRCRAFT**

In its order, the Board concluded "the valuations of the flights in this case appear to be consistent with . . . IRS Regulation section 1.61-21." (09/20/18 Order at 7). This conclusion is incorrect as a matter of law and as matter of fact.<sup>1</sup> As a legal matter, IRS rules provide a definition for the "fair market value" of the use of an employer-provided piloted flight on a corporate plane:

***(6) Fair market value of a flight on an employer-provided piloted aircraft—***

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***(ii) Value of flight.*** If an employee takes a flight on an employer-provided piloted aircraft and that employee's flight is primarily personal, ***the value of the flight is equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable piloted aircraft for that period for the same or a comparable flight. A flight taken under these circumstances may not be valued by reference to the cost***

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<sup>1</sup> At the hearing, Chairman James Albert suggested that IRS rules require consideration of the number of hours in the air and pilot costs. That would be true for the "non-commercial flight valuation rule," but not under the "fair market value" rule. *Compare* 26 C.F.R. § 1.61-21(b)(6) *with* § 1.61-21(g).

*of commercial airfare for the same or a comparable flight.* The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances unless one or more of the employees controlled the use of the aircraft.

26 C.F.R. § 1.61-21(b)(6)(ii) (emphasis added). As a factual matter, the reported amount of \$2,880 for David North's in-kind contribution was not consistent with "the amount an individual would have to pay in an arm's length transaction to charter the same or a comparable piloted aircraft for that period or for the same or a comparable flight." *Id.* As demonstrated by the quotes for comparable flights included in the complaint, the Reynolds for Iowa candidate committee severely underreported the value. More importantly, the Board undertook no investigation to determine what the fair market value of the flight under the IRS rules. Because the Board's conclusion that the valuation was consistent with IRS rules is both legally and factually incorrect, its dismissal order should be reversed, and the complaint should be reinstated.

**II. THE REIMBURSEMENT RATE UNDER THE BOARD'S RULE 351 IAC 4.47(4) HAS NO RELEVANCE TO DETERMINING "FAIR MARKET VALUE" UNDER IOWA CODE SECTION 68A.402A**

The Board's order also concludes that its "rule 351—4.47 allows the contributor, Mr. North, to estimate the fair market value of the trip using coach class airfare." (09/20/18 Order at 7). This is a stunningly incorrect statement of the law. Rule 4.47(3) applies to the rate of reimbursement required by a campaign that uses a corporation's private airplane. By its plain language, that methodology applies only when a candidate committee pays in advance for the use of a corporate jet in which case the amount must be reported as an expenditure on the committee's Schedule B. Here, the Reynolds for Iowa candidate committee did not pay in advance for the use of a corporate jet, nor did it report the amount on Schedule B. Rather, the expense was paid by David North and reported as an in-kind contribution. Under Iowa Code section 68A.402A, the in-kind contribution must be

reported at its “fair market value.” Reimbursement cost is not the same as fair market value. Fair market value is “generally understood to be the price for which an asset would be sold, in a transaction between a willing buyer and willing seller, with neither party being under any particular compulsion to complete the deal within any particular period of time.” *In re Marriage of Lang*, 2017 WL 1735893 at \*2 (Iowa Ct. App. 2017); accord Black’s Law Dictionary at 597 (6th Ed. 1990). The Board has essentially adopted definition in its administrative rules: “fair market value’ means the amount that a member of the general public would expect to pay to purchase or rent similar property within the community in which the property is located.” 351 Iowa Admin. Code § 4.47(1). Astonishingly, the Board’s order fails to acknowledge its own definition of fair market value. This shortcoming alone is sufficient to reconsider the dismissal order.

## CONCLUSION

At the Board hearing on the complaint, Chairman Albert repeatedly emphasized that it’s the Board’s job to “get the law right, regardless of politics.” The Board has failed to get the law right with respect to the fair market value of in-kind contributions in the form of private jet service in at least three ways:

1. Misstating the IRS definition of fair market value of private jet service;
2. Conflating the concept of fair market value under section 68A.402A with the reimbursement rate for pre-paid corporate travel under Rule 4.47(3); and
3. Failing to follow the Board’s own definition of fair market value under Rule 4.47(1).

The legal and factual errors are so apparent, that the Board’s action in dismissing the complaint will not survive judicial review. The citizens of the State of Iowa deserve to have the matter investigated in advance of the 2018 general election so they can fairly evaluate the Reynolds for Iowa candidate committee’s campaign finance reports. Accordingly, I ask

the Board to reconsider its dismissal order with respect to the issue of David North's in-kind contribution.

DATED this 21st day of 2018.



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Gary Dickey, Complainant