

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GARY DICKEY, JR.,)	Case No. CVCV057127
)	
Petitioner,)	
)	
v.)	
)	
IOWA ETHICS AND CAMPAIGN)	ORDER GRANTING MOTION
DISCLOSURE BOARD,)	TO DISMISS PETITION FOR
)	JUDICIAL REVIEW OF AGENCY
Respondent.)	ACTION
)	

Petitioner Gary Dickey (Mr. Dickey) filed a Petition for Judicial Review of Agency Action (the Petition) on October 9, 2018. On November 16, 2018, Respondent the Iowa Ethics and Campaign Disclosure Board’s (the Board) Motion to Dismiss (the Motion), resisted by Mr. Dickey (the Resistance), came before the court for oral argument. The Board was represented by attorney Megan Tooker. Mr. Dickey was self-represented. Oral argument was not reported.

Upon review of the record presented, the court file, and the Motion and Resistance in light of the relevant law, the court finds and concludes that Mr. Dickey lacks standing to bring the Petition for the following reasons.

BACKGROUND FACTS AND PROCEEDINGS

The material facts are undisputed. On December 30, 2017, Governor Kim Reynolds, her husband and two of the Reynolds’ adult children traveled to Memphis, Tennessee on a plane provided by David North (Mr. North). (Ex. 3 at p. 1, ¶ 4). While in Memphis, Governor Reynolds engaged in activities related to her election campaign and attended the Liberty Bowl game. (*Id.* at p. 7, ¶ 2). In its January 19, 2018, disclosure report, Governor Reynolds’ campaign committee—Kim Reynolds for Iowa—reported

receiving an in-kind contribution in the form of a flight from Mr. North in the amount of \$2,880.00. (Ex. 7 at p. 5).

Mr. Dickey filed a complaint with the Board alleging that the Reynolds campaign underreported the fair market value of the flight. (Ex. 1). The Board met on September 20, 2018, to discuss this issue. (Ex. 3 at p. 1, ¶ 1). The Board ultimately dismissed Mr. Dickey's complaint, concluding that it was not "legally sufficient." (Ex. 3 at p. 8, ¶ 1). The complaint was not legally sufficient because under Iowa Code section 68B.32B(4)(a), it did not provide facts that would establish a violation of a provision of Iowa Code chapter 68A, 68B, Iowa Code section 8.7 or administrative rules adopted by the Board. (Ex. 3 at p. 8, ¶ 2). *See also* Iowa Code § 68B.32B(4)(a)-(c) (2017)¹ (setting out all three required factors for a complaint to be legally sufficient). A copy of the Board's order dismissing Mr. Dickey's complaint was mailed to Mr. Dickey on September 24, 2018.

Mr. Dickey filed his Petition for Judicial Review (the Petition) on October 9, 2018. (10/09/18 Pet.). In the Petition, Mr. Dickey asserts that the Reynolds campaign undervalued the in-kind contribution from Mr. North and alleges it was wrong for the Board to dismiss his complaint. (10/09/18 Pet. at p. 5, ¶ 27). Mr. Dickey asks the court to "reverse the Board's order, award a judgment with costs assessed to the Board, and remand with instructions to process the complaint in accord with the requirements of Iowa Code section 68B.32B." (10/09/18 Pet. at p. 6, ¶ 33).

The Board responded by filing a pre-answer motion to dismiss, alleging that Mr. Dickey lacks standing to seek judicial review of the Board's decision to dismiss his complaint. (11/01/18 Motion to Dismiss at pp. 4-6).

¹ All references are to the 2017 Iowa Code unless otherwise indicated.

The parties agree that the Board's order dismissing Mr. Dickey's complaint is final agency action and that Mr. Dickey timely filed the Petition. Iowa Code § 17A.19.

ANALYSIS

Under the Iowa Administrative Procedure Act, “[a] person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action” may seek judicial review to determine whether the “substantial rights of the person seeking judicial relief have been prejudiced” by agency action. Iowa Code § 17A.19(1), (10). From this language the Iowa Supreme Court (the Court) has created a two-pronged test for standing under the Act. *Medco Behavioral Care Corp. of Iowa v. Dep’t of Human Servs.*, 553 N.W.2d 556, 562 (Iowa 1996). To demonstrate standing, the complaining party must satisfy both prongs of [the] standing inquiry.” *DuTrac Cmty. Credit Union v. Hefel*, 893 N.W.2d 282, 289 (Iowa 2017).

These prongs are (1) a specific personal or legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question. *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 452 (Iowa 2013). To satisfy the first prong, the litigant must “allege some type of injury different from the population in general.” *Hawkeye Foodservice Distrib., Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 606 (Iowa 2012). To meet the second prong, “the injury cannot be conjectural or hypothetical, but must be concrete and actual or imminent.” *Godfrey v. State*, 752 N.W.2d 413, 423 (Iowa 2008).

A. The First Standing Prong: Specific or Legal Interest. In *Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008), the Court said “cases involving actions by private persons to enforce public rights may be brought under the personal-interest alternative to the first element.” *Id.* at 420. A good example of this approach, according to the

Godfrey Court, is the Court's decision in *Hurd v. Odgaard*, 297 N.W.2d 355 (Iowa 1980). *Id.* "In *Hurd*, two lawyers who were users of the county courthouse brought a mandamus action to compel the county to repair the crumbling, decaying building." *Id.* (citing *Hurd*, 297 N.W.2d at 356). The lawyers' status as users of the courthouse is what gave rise to the identifiable injury necessary to support standing. *Id.* (citing *Hurd*, 297 N.W.2d at 358). "As citizens who use the courthouse 'to pay taxes, obtain licenses, record instruments, and attend court,' the lawyers had an individual interest in the safety and conservation of the building that was directly affected by the alleged inaction by the county." *Id.* (quoting *Hurd*, 297 N.W.2d at 358).

In the present case, Mr. Dickey filed a declaration along with the Resistance to the Board's Motion to Dismiss. (11/08/18 Declaration). In that declaration, Mr. Dickey declares that he has served as counsel to numerous candidate committees and is currently the treasurer for a Des Moines city council member. (*Id.* at ¶¶ 4-5). He further declares that he regularly reviews campaign disclosure reports filed with the Board both in his personal and professional capacities. (*Id.* at ¶¶ 6-7, 9). He says campaign disclosure reports "aid in [his] evaluation of candidates for public office." (*Id.* at ¶ 7). He further states that he "find[s] access to accurate campaign finance information necessary for [him] to evaluate gubernatorial candidates and track whether a candidate's most generous donors receive special favors in return." (*Id.* at ¶ 10).

At the hearing on the Motion and Resistance, the Board conceded that Mr. Dickey's status as a user or consumer of campaign disclosure reports filed with the Board likely satisfies the first standing prong. The court agrees. Consistent with the Court's decision in *Hurd*, Mr. Dickey's status as a user of campaign disclosure reports

creates a sufficiently distinct personal interest in the matter presented here that is different from the public in general. He satisfies the first prong of standing.

B. The Second Standing Prong: Injuriouly Affected. The second standing prong requires Mr. Dickey to demonstrate that he is “injuriously affected” by the Board’s decision to dismiss his complaint. *DuTrac Cmty. Credit Union*, 893 N.W.2d at 289.

Mr. Dickey’s complaint alleges that the Reynolds committee undervalued an in-kind contribution that was an airplane flight. Iowa Code section 68A.402A requires campaign committees to disclose in-kind contributions on a separate schedule. This provision requires a committee to

[I]dentify the nature of the contribution and provide its estimated fair market value. A committee receiving an in-kind contribution shall report the estimated fair market value of the in-kind contribution at the time it is provided to the committee.

Iowa Code § 68A.402A(1)(d). The in-kind contributor is required to “notify the committee of the estimated fair market value of the in-kind contribution at the time the in-kind contribution is provided to the committee.” *Id.*

As noted above, the Reynolds committee reported the flight from Mr. North on the in-kind schedule contained in its January 2018 report. (Ex. 7, at p. 5). In reviewing Mr. Dickey’s complaint, the Board found the \$2,880.00 value for the flight reasonable and consistent with Board subrule 351–4.47(4)(a) related to determining the cost to travel on corporate airplanes, which says:

4.47(4) Use of airplanes and other means of transportation.

a. Air travel. A candidate, candidate’s agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

Iowa Admin. Code r. 351—4.47(4).

In his complaint, Mr. Dickey alleges the committee should have valued the cost of the flight to Memphis on December 30, 2017, using one or more quotes Mr. Dickey obtained for a chartered Gulfstream G200 from Des Moines to Memphis and back. (Pet. at p. 3, ¶ 11). The Board disagreed. The Board found that because Memphis is served by regularly scheduled commercial service from Des Moines, the contributor, Mr. North, could estimate (and the committee could report) the fair market value of the trip using coach class airfare as subrule 4.47(4)(a) directs. (Def. Ex. A, at p. 7).

In the Petition, Mr. Dickey argues that the Board should not have used subrule 351—4.47(4) in evaluating the reasonableness of the reported value of the flight. (Pet. at p. 4, ¶ 19). Instead, Mr. Dickey claims the Board should have relied upon subrule 351—4.47(1). (*Id.* at p. 4, ¶ 20). That subrule states in its entirety:

4.47(1) Purchase or rental of office facility. A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

Iowa Admin. Code r. 351—4.47(1). In the Motion, the Board stated it did not rely upon this subrule because the in-kind contribution at issue is an airplane flight and not the purchase or rental of a corporate office facility. (11/01/19 Motion to Dismiss at p. 5, ¶ 2).

Neither party's position regarding which valuation subrule should apply is a perfect fit with the rule each cites in support. Subrule 4.47(4) does not specifically name a candidate's committee or a permissible contributor as reimbursing entities. Subrule 4.47(1) does not include or contemplate reimbursement for airplane flights, which would duplicate the subject matter of subrule 4.47(4).

Regardless of which party is more correct about valuation, Mr. Dickey has not been injured by the Board's action. The committee has reported the in-kind contribution and its estimated value. Mr. Dickey has access to that reported value and is free to disagree with that reported value. He has not suffered the kind of injury the United States Supreme Court (the Supreme Court) recognized in *Federal Election Commission v. Akins*, 524 U.S. 11, 24–25 (1998). In *Akins*, the plaintiffs filed a complaint with the Federal Election Commission (FEC) alleging that the FEC should consider the American Israel Public Affairs Committee (AIPAC) to be a “political committee,” which would require AIPAC to make disclosures regarding its membership, contributions and expenditures. *Akins*, 524 U.S. at 15-16.

The FEC disagreed and dismissed the complaint. *Id.* at 18. The complainants then filed a petition for judicial review in federal court. *Id.* The Supreme Court found the plaintiffs had standing because they suffered a “concrete and particular” injury in fact: Their inability to obtain information that in their view must be publicly disclosed pursuant to a statute. *Id.* at 21.

Here, Mr. Dickey has suffered no such injury. The Reynolds campaign has disclosed the nature of the in-kind contribution, the value of the contribution and the name of the contributor. Under the record presented, neither subrule 4.47(4) nor subrule 4.47(1) is outcome determinative. Mr. Dickey has not been deprived of any information. He simply disagrees with the reported valuation. The quotes he obtained demonstrate that he can independently evaluate the reported value.

At the hearing on the Motion and Resistance, Mr. Dickey alleged his injury is the deprivation of *accurate* information about the value of the in-kind flight. He noted that the Supreme Court has recognized the importance of campaign disclosure requirements. He cited to *Buckley v. Valeo*, 424 U.S.1 (1976), where the Supreme Court stated:

[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Id. at 66–67.

This important interest justifying government regulation of campaign finance activities—intended to foster public disclosure of where campaign money comes from and how it is spent by a candidate—has not been thwarted here. Mr. Dickey and the public are privy to the Reynolds campaign's disclosure reports detailing Mr. North's monetary and in-kind contributions to the Reynolds campaign.

The Board represents—and Exhibits 6, 7 and 8 substantiate—that in the last two years, Mr. North has donated \$110,000.00 in monetary contributions, three airplane flights and over \$2,000.00 in food and beverages at a fundraising event. (Ex. 6 at p. 2;

Ex. 7 at pp. 2-4; Ex. 8 at p. 2). Whether the flights are valued as the Board believes is appropriate or as Mr. Dickey believes is appropriate misses the point of campaign disclosure requirements. The reports at issue here are public and are sufficient for members of the public to conclude, if they wish to, that (1) Mr. North is a major contributor and supporter of Governor Reynolds; and (2) his interests may be predictive, as suggested by *Buckley*, of the Governor's future policies in office. Under this record this is the crux of the information the public is entitled to know.

C. Waiver of Standing Requirements. Further, the legislature knows how to waive the standing requirements as a prerequisite for seeking judicial review. Chapter 21 (open meetings) and chapter 22 (open records) of the Iowa Code expressly provide enforcement remedies in addition to those provided by chapter 17A. Section 21.6 states:

The remedies provided by this section against state governmental bodies shall be in addition to those provided by section 17A.19. Any aggrieved person, taxpayer to, or citizen of, the state of Iowa, or the attorney general or county attorney, may seek judicial enforcement of the requirements of this chapter.

Iowa Code § 21.6(1). Similarly, section 22.10 states:

The rights and remedies provided by this section are in addition to any rights and remedies provided by section 17A.19. Any aggrieved person, any taxpayer to or citizen of the state of Iowa, or the attorney general or any county attorney, may seek judicial enforcement of the requirements of this chapter in an action brought against the lawful custodian and any other persons who would be appropriate defendants under the circumstances.

Iowa Code § 22.10(1). These two chapters allow any taxpayer or citizen of Iowa to seek judicial review without having to prove an injury or even a special interest.

That is not the case here. Significantly, the Campaign Disclosure – Income Tax Checkoff Act, Iowa Code chapter 68A, contains no such provision. The Government

Ethics and Lobbying Act, Iowa Code chapter 68B—which establishes the Board and sets out its responsibilities and complaint procedures—simply states that “[j]udicial review of the actions of the board may be sought in accordance with chapter 17A.” Iowa Code § 68B.33.

As noted above, section 17A.19(1) requires a person or party seeking judicial review to be “aggrieved or adversely affected” by agency action. This is another way of saying that a party seeking judicial review must be injuriously affected to meet the second prong of the standing test unless the legislature has waived the standing requirement. The quoted language from section 68B.33 confirms the legislature’s lack of intent to waive the standing requirement concerning Board actions under chapter 68B as a prerequisite to seeking relief under chapter 17A.

CONCLUSION

The legislature has not waived the standing test as a precursor for judicial review actions under chapter 17A premised upon alleged violations of chapters 68A or 68B. To seek judicial review of an action by the Board, Mr. Dickey must satisfy both prongs of the standing test. Under the record presented he has satisfied the first prong, but not the second. The Motion should granted.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Board’s Motion to Dismiss is **GRANTED**.

Costs are assessed to Mr. Dickey.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
CVCV057127 GARY DICKEY JR VS IOWA ETHICS AND CAMPAIGN
DISCLOSURE BOARD

So Ordered

A handwritten signature in cursive script that reads 'Jeanie Vaudt'.

Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa