



Decision of Election Committee  
In Re Sheila Berger

Allegations of Complaint

**Election Committee**

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Michigan

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The Election Committee received a written complaint (via e-mail). The complaint alleges that Sheila Berger is unlawfully campaigning by publishing a campaign flyer without first registering as a Non-Candidate Registrant. Although, Ms. Berger was a candidate during the primary, she did not receive sufficient votes to appear on the general election, thus she ceased being candidate.

Section 10.112(13) of the Election Ordinance provides, "*Campaigning shall be monitored by the Election Committee. Any infraction of the campaign regulations by any person shall subject to penalties as provided by this Chapter.*" Sections 10.119 and 10.120 authorizes the imposition of fines or other penalties as determined appropriate by the Election Committee.<sup>1</sup>

That pursuant to Section 10.120(2)(c), a quorum of the Election Committee convened electronically on June 8, 2022 to discuss the matter and rendered a decision.

Ordinance Provisions Implicated

1. Section 10.103(4) of the Election Ordinance defines "Campaigning" to mean all efforts designed to influence Members to support or reject a particular Candidate, including without limitation, advertising, rallying, public speaking, or other communications with Members.
2. Section 10.103(20) of the Election Ordinance defines "Non-Candidate Registrants" shall mean individuals who expend money on campaigning.
3. Section 10.112(9) provides All campaign advertisement material must have placed upon its face in a conspicuous manner the endorsement of the Candidate or the Non-Candidate Registrant responsible for the advertisement. Any campaign advertisement that endorses or opposes more than one Candidate must be endorsed by the Candidates or the Non-Candidate Registrants responsible for the advertisement

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<sup>1</sup> Although the Election Ordinance is silent as to the appropriate standard of proof, the preponderance of the evidence standard appears to be the historical standard utilized, which was used in this instance, which will not be disturbed absent an amendment to Election Ordinance.

as well as by any other Candidates endorsed by the campaign advertisement. The endorsement shall specifically state:

“[Candidate’s or Non-Candidate Registrant’s name] endorses this advertisement.”

4. Section 10.113 (Campaign Financing) requires Any person expending money on a campaign must first file as 1). Candidate or as a 2). Non-Candidate Registrant, with the exception of contributions pursuant to subsection 1 of this section.
5. Section 10.113(3)(a) (Non-Candidate Registrants) provides that only Members may register as Non-Candidate Registrants. Members must register by submitting information, on forms provided by the Election Committee for that purpose, to the Designated Representative at the Designated Office declaring them to be a Non-Candidate Registrant and include the following:
  - (1) The full name of the Non-Candidate Registrant;
  - (2) The name of the Candidate(s) for which the Non-Candidate Registrant will campaign;
  - (3) The physical and mailing address and phone number where the Non-Candidate Registrant can be reached;
  - (4) A certification under oath and penalty of perjury, that the Non- Candidate Registrant shall abide by all requirements of this Chapter; and
  - (5) A signed statement consenting to jurisdiction of the Sault Ste. Marie Tribe of Chippewa Indians for this Chapter or any other Chapter in substantially the following form:

“I, [Non-Candidate Registrants Name], hereby consent to personal jurisdiction of the Sault Ste. Marie Tribe of Chippewa Indians.”
6. Section 10.113(3)(b) provides that Non-Candidate Registrants are prohibited from soliciting Contributions for use by the Non-Candidate Registrant.

7. Section 10.113(3)(c) provides that Non-Candidate Registrants may only spend funds supporting or opposing Candidates for office representing the Election Unit in which the Non-Candidate is registered to vote and which have been specifically identified and disclosed in the Non-Candidate Registrant's registration letter.
8. Section 10.113(3)(d) provides that Non-Candidate Registrants shall not spend more than one thousand dollars (\$1,000) per Election Cycle, including direct Contributions to the Candidate.
9. Section 10.113(4) provides that all Candidates and Non-Candidate Registrants shall accurately account for and report all campaign Contributions and expenditures pursuant to Section 10.114.
10. Section 10.113(5) provides that all Candidates shall remit to the Designated Representative any unobligated Contributions at the end of the election cycle.
11. Section 10.114 (Reports and Report Filing) provides:
  - (1) Each Candidate and Non-Candidate Registrant shall file reports under oath and penalty of perjury with the Designated Representative at the Designated Office detailing all Contributions and expenditures, including without limitation, advertising, flyers, postage, fundraising expenses, phone bank charges, and other campaign costs, in accordance with this Section.
  - (2) An initial report shall be filed within five (5) days of registering as a Non-Candidate Registrant or submitting a Letter of Intent as a Candidate. Interim reports shall be filed monthly no later than the fifth (5th) day following the end of each month. A final report shall be filed no later than the deadline set for Contests.
  - (3) All reports shall itemize all Contributions and expenditures and include:
    - (a) the name and address of each individual making the Contribution;
    - (b) the amount of each Contribution;

- (c) the date each Contribution was made;
  - (d) the amount of each expenditure;
  - (e) the date each expenditure was made;
  - (f) the purpose of each expenditure;
  - (g) the receipt from each expenditure; and
  - (h) copies of all ads and advertising materials endorsed by the Candidate or Non-Candidate Registrant.
- (4) Materials acquired prior to submitting a Letter of Intent or registering as a Non- Candidate Registrant, must be disclosed and accounted for in the report.
- (5) Failure to report Contributions and expenditures as required shall result in prosecution in accordance with this Chapter.
12. Section 71.1103 Election Fraud.
- (1) Offense. A person commits the offense of election fraud, if the person: (b) acts to compromise the integrity of the election, or attempts to do so by falsifying any document, including documents filed with the Tribal Election Committee or Board of Directors.

Findings of Fact by the Election Committee

1. The Election Committee has chosen to address this complaint pursuant to 10.120(2)(c) without the necessity of a hearing.
2. That based upon an internal investigation, the campaign flyer sponsored by Sheila Berger falls within the definition of "Campaigning" as defined by the Election Ordinance.
3. Sheila Berger was not a candidate at the time the flyer was disbursed.

4. Sheila Berger has failed to register as a Non-Candidate Registrant.
5. That campaigning outside the scope of the Election Code is an act to compromise the integrity of the election.
6. Failing to register as a Non-Candidate Registrant and failing to file financial reports is equivalent to falsifying documentation to the Election Committee.

Sanction Imposed by Election Committee

The Election Committee, by majority vote finds that Sheila Berger has 15 days from the date of this decision to comply with the Election Code by registering as a Non-Candidate Registrant and to comply with all financial disclosures. Failure to do so will result in the Election Committee imposing a fine of \$1,500.00 and or referring this matter over to the Tribal Prosecutor's Office for Election Fraud.

APPROVED BY UNANIMOUS VOTE OF THE ELECTION COMMITTEE

Dated: June 8, 2022



James McKerchie  
Election Committee Chairman

**NOTICE: Pursuant to Section 10.120(7) of the Election Code a decision issued by the election committee may be appealed to the Sault Tribe Chippewa Tribal Court of Appeals pursuant to Chapter 82 (Subchapter II) of the Tribal Code. A notice of appeal must be filed within five business days of the Appellant receiving an adverse decision from the Election Committee.**

A copy of this decision was mailed to Sheila Berger on June 8, 2022 by first class mail.



James McKerchie  
Election Committee Chairman