

State of Nebraska Accountability and Disclosure Commission

P.O. BOX 95086
Lincoln, Nebraska 68509
nadc.nol.org



11th Floor, State Capitol
Phone (402) 471-2522
Fax (402) 471-6599

Synopsis of Case 12-11 Action Taken March 1, 2013

Respondent: Ben Gray

The respondent, Ben Gray, is an Omaha City Council member. His candidate committee is Ben Gray for City Council. The respondent filed an annual campaign statement in 2012 reporting the 2011 activities of the committee. On August 9, 2012 Patrick McPherson filed a complaint alleging that the campaign statement: a) failed to list all contributors of more than \$250; b) failed to list all expenditures of more than \$250; and c) expended campaign funds for unlawful purposes. A preliminary investigation was commenced. The parties reached a settlement agreement. By the terms of the agreement the respondent admits that his campaign statement failed to report all expenditures of more than \$250 in violation of §49-1455(1)(g). The other allegations are dismissed. The agreement provides for a civil penalty of up to \$1,500.00. The Commission approved the settlement agreement with eight Commissioners concurring, none dissenting and none abstaining from participating and voting.

Violation: The Commission found that the respondent failed to report all expenditures of more than \$250 on an annual campaign statement as required by §49-1455(1)(g) of the Nebraska Political Accountability and Disclosure Act.

Civil Penalty: \$250.00

Other: Allegations a) and c) are dismissed. Amended campaign statement to be filed

Attorney for the Respondent: None

Attorney for the Commission: Neil Danberg

Synopsis Prepared by: Frank Daley
Executive Director
Nebraska Accountability & Disclosure Commission
11th Floor State Capitol, P.O. Box 95086
Lincoln, NE 68509
402-471-2522

BEFORE THE NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

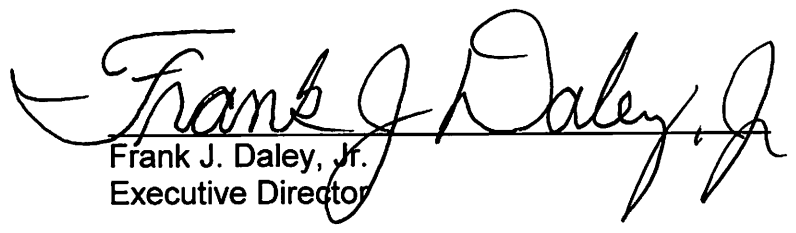
In the Matter of)
)
 Benjamin Gray) **CASE No. 12-11**
)
) **ORDER**
)

Now on this 1st day of March, 2013, this matter comes before the Nebraska Accountability and Disclosure Commission. Commissioners Hosford, Gale, Grant, Mumm, Nelson, Conway, Schulz and Von Gillern are present with Commissioner Hosford presiding. The Respondent, Benjamin Gray does not appear. Neil Danberg appears on behalf of the Commission. The Commission notes the submission of a proposed settlement agreement.

Whereupon, the Commission with eight Commissioners concurring, no Commissioners dissenting, and no Commissioners abstaining, finds that there has been a violation of Nebraska Revised Statutes, §49-1455 and approves the attached Settlement Agreement, and the terms thereof are incorporated into this order as if fully set forth herein. As provided by the settlement agreement, the Respondent shall pay a civil penalty of \$250.00.

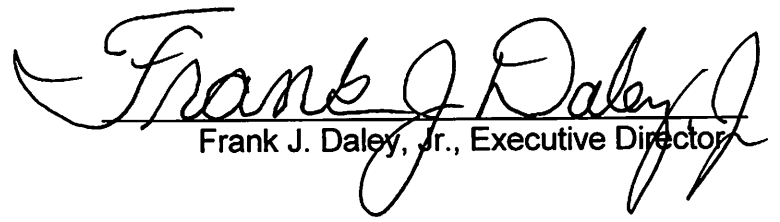
Issued this 1st day of March, 2013

Nebraska Accountability and Disclosure Commission


Frank J. Daley, Jr.
Executive Director

Certificate of Service

I hereby certify that a copy of this Order was sent by certified U.S. Mail, postage prepaid, return receipt requested on this 1st day of March, 2013 to the following persons at the following addresses: Councilman Benjamin Gray, 5425 Fort Street, Omaha, Nebraska 68104; and Patrick J. McPherson, 4720 South 102nd Circle, Omaha, Nebraska 68127.


Frank J. Daley, Jr., Executive Director

BEFORE THE NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

In the Matter of Ben Gray)
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CASE No. 12-11

SETTLEMENT AGREEMENT

- 1) **Parties:** The parties to this Settlement Agreement (hereinafter "Agreement") are the Nebraska Accountability and Disclosure Commission, hereafter referred to as the "Commission" and Councilman Ben Gray, hereinafter referred to as the "Respondent."
- 2) **Jurisdiction:** The Respondent acknowledges the jurisdiction of the Commission pursuant to the Nebraska Political Accountability and Disclosure Act ("NPADA").
- 3) **Intention:** The parties enter into this Agreement with the understanding that this Agreement shall constitute a waiver of a formal hearing on the alleged violations as described in Paragraphs 4 and 6 of this Agreement, thereby resolving the matter without further delay and expense to the parties.
- 4) **The Alleged Violations.** In its Notice of Preliminary Investigation, the Commission alleged that the Respondent had violated the NPADA, Section 49-1455 and Section 49-1446.01 in four respects concerning his Campaign Statement for 2011: (1) A violation of Section 49-1455 by failing to list all contributors and contributions over \$250; (2) A violation of Section 49-1455 by failing to list all expenditures over \$250, and (3) and (4) violations of Section 49-1446.01, by expending campaign funds on two occasions for unauthorized purposes.
- 5) **Admissions and Statements of the Respondent:** The Respondent states and admits that he had a candidate committee in 2011, and that he had a legal obligation to file a campaign statement for calendar year 2011 with the Commission, and he further states that he did in fact file a campaign statement ("Statement") for 2011 with the Commission. With respect to the four alleged violations, as detailed in Paragraph 4, above, and as stated in the Notice of Preliminary Investigation, Respondent states that: (1) With respect to the first alleged violation, Schedule B, which is the listing of contributions over \$250.00, was correctly submitted; (2) With respect to the second alleged violation, Schedule D, which identified expenditures in excess of \$250 was not complete and did not list all expenditures because the receipts necessary to complete that section were not presented to his accountants at the time he asked his accountants to prepare Schedule D, and he did not notice this omission at the time the campaign statement was filed; (3) and (4) With respect to the third and fourth alleged

violations, the expenditures listed in Schedule D were proper and authorized expenditures.

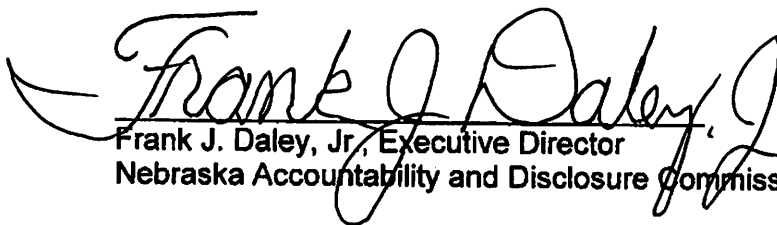
- 6) Violation of the NPADA. With further respect to the second alleged violation as noted in Paragraphs (4) and (5) above, Nebraska Statute, Section 49-1455 of the NPADA (hereinafter, the "Statute"), requires the Respondent to file a Campaign Statement with certain required information, including information on Schedule D of said statement which reports expenditures in excess of \$250.00. The Respondent states that it was not his intent to violate this Statute in that he anticipated and believed that Schedule D of his campaign statement for 2011 had been properly prepared. Nonetheless, the Respondent agrees and stipulates that if the second alleged violation proceeded to a Hearing, there is sufficient evidence for the Commission to find that Schedule D of the Statement was not complete and that it did not list all expenditures in excess of \$250, as required. Respondent further states that the Commission could therefore find a single violation of the Statute as described in the second alleged violation, and that he would not contest such a finding. He further agrees that the Commission may enter an order in accordance with such a finding.
- 7) Dismissal of Further Alleged Violations. Upon acceptance of this Agreement by the Commission, Alleged violations numbered as (1), (3), and (4) in the Notice of Preliminary Investigation and as summarized in Paragraph 4, above, will be dismissed. These alleged violations were, respectively: (1) failure to complete Schedule B of the 2011 Campaign Statement; and (3) and (4) unauthorized campaign expenses, will be dismissed upon acceptance of this Agreement by the Commission.
- 8) Civil Penalty. The parties have agreed that the civil penalty in this case will not exceed \$1,500.00
- 9) Future Compliance and Amended 2011 Campaign Statement. The Respondent agrees that he will file an Amended 2011 Campaign Statement, containing a list of all expenditures in excess of \$250, as required in Schedule D of said Statement, and that he will in the future use all reasonable diligence in complying with all the provisions of the NPADA, and that he will ensure that any future Campaign Statements will be complete and accurate.
- 10) The NADC must approve this Agreement in order for it to be Effective. The parties agree that in order for this Agreement to become effective, the Commission must approve it and shall, if it approves the Settlement, enter an Order in accordance with the terms of this Agreement.
- 11) Effective Date of Agreement: This Agreement shall not be binding upon the parties until approved by the Commission. The date upon which the Commission enters its Order approving this Agreement shall be deemed its effective date. If this Agreement is not approved in whole by the Commission, this Settlement

Agreement shall be void and may not be used in this or any other proceeding. The parties acknowledge that this Settlement Agreement and any subsequent Order shall be announced at an open public meeting of the Commission and that the vote on such matters shall take place during the Closed Session portion of the meeting. The parties acknowledge that upon adoption, this Settlement Agreement, the Order and the Commission's file pertaining to this matter shall become open and public.

- 12) Waiver of Right to Address the Commission: The Respondent waives his right to address the Commission on the matters of the amount of the civil penalty and of the approval of this Settlement Agreement, contingent upon this Agreement being approved by the Commission.


Ben Gray, Respondent

02/20/2013
Date


Frank J. Daley, Jr., Executive Director
Nebraska Accountability and Disclosure Commission

3/1/13
Date