

**SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
ELECTION COMMISSION**

Complainant: Kelly Hatinger

April 9, 2024

BACKGROUND

On March 25, 2024 the Election Commission received a complaint filed by Tribal Member Kelly Hatinger. The Complaint alleges that Candidate Larry Barbeau violated Chapter 10 Section 10.113(2) by campaigning at the Manistique Elder Meeting on March 13, 2024. The complaint was accompanied by written documentation allegedly substantiating the claims.

The complaint alleges that Chairman Lowes introduced Mr. Barbeau as his ‘good friend’ and that the Elder Committee Chair stated Mr. Barbeau was running for election in Unit 4 and that the Chairman sat with Mr. Barbeau during the meeting, which indicated a clear statement of support for him. See Kelly Hatinger Election Complaint. Ms. Hatinger further states in her complaint that Mr. Barbeau is not an Elder, has never before attended a Manistique Elder Committee function, and it was known in advance that Director Morrow would be out of town and that Chairman Lowes should have known that making such a public endorsement by association with a candidate on tribal property would be a violation of the election code.

Documentation Provided. The sign in sheet of the March 13, 2024 meeting and a document labeled draft of the meeting minutes of said meeting.

The complaint requested the following relief:

1. Find Candidate Barbeau in violation of Chapter 10.113(2);
 - a. No Campaigning shall take place in any of the tribal offices, tribal enterprises or majority owned subsidiaries, tribally owned property, or tribally sanctioned events or functions, or those areas reasonably required as access to any of the forgoing locations except as allowed in Subsections (5) and (6).

On April 3, 2024 the Election Commission held an open meeting pursuant to Tribal Code 10.121(1) to review the grounds alleged in the complaint. Under Tribal Code 10.121(2)(c) the Election Commission hereby renders this written decision finding no violation of 10.113(2).

ANALYSIS

First, this Election Commission would be remiss if it did not point out that it is unclear how Ms. Hatinger obtained a copy of the Draft Meeting minutes as those minutes have yet to be approved and section 6.4 of the Manistique Elders Advisory Subcommittee Bylaws states that copies are sent to the Elders Services Division and the Board of Directors. Further, the draft meeting minutes, per committee procedure, would not be disseminated until the next regular scheduled meeting. However, Ms. Hatinger appears to have obtained them early. There is no indication in the bylaws for a process where they are sent to individual tribal members, nor is there record of an information request pursuant to Chapter 15 of the Tribal Code. This calls into question the authenticity of this documentation and there is no way to officially establish either the authenticity nor the accuracy of the documentation at this point in time.

The authenticity of the draft minutes notwithstanding, in order to determine if the above allegations constitute campaigning, the definition must be examined. "Campaigning" is defined in 10.103(4) as "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." This definition is very broad to allow the Election Commission wide latitude when determining whether someone was campaigning properly under Chapter 10. The Sault Ste. Marie Tribal Court of Appeals has reinforced this definition as broad stating, "the definition of 'campaigning' is quite broad and includes 'all efforts designed to influence Members to support or reject a particular Candidate.'" See APP 14-02 Hollowell v Election Committee.

Candidate Barbeau's action of attending the meeting must be analyzed under the definition of campaigning in 10.103(4) and in relation to 10.113(2) which prohibits campaigning on tribal property. If the meeting minutes are accurate, then it does appear that Candidate Barbeau attended the meeting and that the meeting took place at a tribal property. So, the issue is whether the action of Candidate Barbeau attending the meeting and sitting with current Board members were "efforts designed to influence Members to support" and vote for him.

Ms. Hatinger claims that Mr. Barbeau's attendance at the meeting and his actions in sitting with current board directors is clearly a campaign activity and those board directors who accompanied him were demonstrating their support, as evidenced by Chairman Lowes introducing him as a 'good friend'. There is nothing in the submitted complaint to indicate how Ms. Hatinger would have knowledge of what transpired at this meeting, as the complaint does not indicate that Ms. Hatinger attended said meeting. The draft meeting minutes supplied does indicate that Chairman Lowes spoke about many current events and issues that the Board of Directors has been dealing with and did introduce Larry Barbeau as a "good friend of his." There is no indication from the draft minutes that Mr. Barbeau discussed the ongoing 2024 General Election nor does the documentation submitted support the allegation that Candidate Barbeau sat with current board of directors.

Although the definition of campaigning is broad so as to encompass many different scenarios, it should not be read so broad as to limit tribal members from participating in events, especially events that occur in their community and are open to all tribal members. Candidate Barbeau lives in Unit 4 and section 5.3e of the Manistique Elders Advisory Subcommittee makes it clear that all Tribal members are welcome to attend the elder meetings. While his attendance, as a candidate running for Unit 4, may be inferred as campaigning, the question here is whether his mere attendance is an “effort designed to influence Members” to support him.

The campaigning definition in 10.103(4) provides guidance on how to interpret efforts as “...including without limitation, advertising, rallying, public speaking, or other communications with Members.” Though this list is not exhaustive, it does provide examples of the types of efforts that would be considered campaigning all of which infer some affirmative action on the individual campaigning to show substantive support of a candidate. First, advertising would necessarily involve an explicit endorsement of the candidate being supported. Second, attending or participating in a rallying for a specific candidate would be clear public support. Third, public speaking would likely involve an explicit endorsement of the candidate being supported. Fourth, other communication with Members, when read in context of the previous examples would also likely involve an explicit endorsement of the candidate being supported. In all these examples campaigning would seem to indicate something more than just attending an elder luncheon meeting or sitting with current directors of the Board.

FINDINGS

The Election Commission, by majority vote, makes the following findings:

1. Based on the complaint filed and the documentation provided it does not appear that the facts are sufficient to support the allegation that Candidate Barbeau violated the campaigning provision of 10.113(2). A written finding that there was no violation would be reasonable under 10.121 2(c).

ORDER

NOW, THEREFORE BE IT ORDERED, that the Election Commission makes the determination pursuant to 10.121(2)(c) that Candidate Barbeau did not violate the campaigning provision of 10.113(2). This order shall be published according to 10.121(2)(c).

April 9, 2024

Election Commission Chairman



NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Tribal Court of Appeals by filing a notice of appeal within five days of receipt of this decision. That appeal shall be governed by Tribal Code Chapter 82 Subchapter II: Appeals from the Election Committee. A notice of appeal must be filed within five (5) business days of the Appellant receiving this order and the publication of this order.