

**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 alleges that Chairman Lowes mentioned to the Elder Committee Chair that he could not introduce Mr. Barbeau as a candidate as that would be violating the election code and claims Chairman Lowes was trying to find a way to skirt around the 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 Chairman Lowes 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.

Chairman Lowes' statements and actions at the Manistique Elder meeting must be examined through the definition of campaigning in 10.103(4) and in relation to 10.113(2) which prohibits campaigning on tribal property. If the draft minutes are accurate, it appears that Chairman Lowes attended the meeting and that the meeting took place at a tribal property. So, the issue is whether the actions and statements by Chairman Lowes were "efforts designed to influence Members to support" Larry Barbeau.

Ms. Hatinger claims that Chairman Lowes mentioned to the Elder Committee Chair that he could not introduce Mr. Barbeau as a candidate as that would be violating the election code, insinuating that the Chairman was attempting to skirt around what would otherwise be a violation of Chapter 10. There is nothing in the submitted complaint to indicate how Ms. Hatinger would have knowledge of such a conversation as the complaint doesn't 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 Chairman Lowes spent any additional time discussing either Mr. Barbeau or the ongoing 2024 General Election.

Although the definition of campaigning is broad so as to encompass many different scenarios, it should not be read so broad as to limit current Board Members or Tribal Chairs from communicating with the tribal community. As the Chairman of the Tribe it is

expected that he will attend meetings throughout the community, engage with the membership, and speak to current issues surrounding actions of the Board of Directors. Additionally, section 5.3e of the Manistique Elders Advisory Subcommittee Bylaws makes it clear that all Tribal members are welcome to attend the elder meetings. While words and actions of the Chairman may be inferred as implicit support of particular candidates, the question here is whether Chairman Lowes, introducing Larry Barbeau as his good friend and sitting with him during the meeting is an “effort designed to influence Members” to support Mr. Barbeau. Had Chairman Lowes introduced Mr. Barbeau as a candidate for election to unit 4 or spoken on the merits of Mr. Barbeau’s candidacy, there would be stronger evidence to support a violation. The documentation supplied here does not show Chairman Lowes making any such statement.

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 introducing a candidate as a “good friend” or sitting with a candidate at an elder luncheon meeting.

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 Chairman Lowes 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 Chairman Lowes 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.