No. 125386

IN THE
SUPREME COURT OF ILLINOIS

DAVID W. COOK, *Complainant-Appellee,* v. *COMMITTEE FOR FRANK J. MAUTINO,* *Respondent-Appellant.* *ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in his capacity as chairman; JOHN R. KEITH, in his capacity as vice chairman; WILLIAM M. McGUFFAGE, in his capacity as member; ANDREW K. CARRUTHERS, in his capacity as member; CHARLES W. SCHOLZ, in his capacity as member; IAN K. LINNABARY, in his capacity as member; KATHERINE S. O'BRIEN, in her capacity as member; and CASANDRA B. WATSON, in her capacity as member,* *Respondents.*	Rule 315 Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District, No. 4-18-0502; There Heard on appeal on Petition for Review of the Order of the Illinois State Board of Elections, No. 16 CD 093.

BRIEF OF APPELLANT COMMITTEE FOR FRANK J. MAUTINO

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POINTS AND AUTHORITIES

NATURE OF THE CASE

In February 2016, Complainant David W. Cooke filed a complaint with the Illinois State Board of Elections ("the Board") alleging respondent Committee for Frank J. Mautino ("the Committee") filed expenditure reports that lacked sufficient detail, and alleging the expenditures reported were not being made to the reported recipients.

At the time the complaint was filed, the Committee was already dissolved. The Committee had been dissolved on December 31, 2015, the day before Frank Mautino assumed the office of Illinois Auditor General. When the Committee was dissolved, most of the records were disposed of in consultation with the Board. Thus, at the time the complaint was filed, few records remained to substantiate the reported expenditures.

After numerous hearings before the Board and appeals to both the First District and the Fourth District, the Board declined to find that the respondent the Committee violated sections 9-8.10(a)(2) and 9-8.10(a)(9) of the Election Code (the Code) (10 ILCS 5/9-8.10(a)(2), (a)(9)). The vote in the Board was a deadlocked 4-4 decision.

Cooke appealed to the Fourth District. The Court reversed, and reweighed the evidence presented to the Board to determine that the Board's decision was clearly erroneous because the Committee's expenditures on gas

and vehicle repairs were "inevitably" made for personal purposes. To reach this conclusion, the Fourth District held the Board erred in its interpretation of sections 9-8.10(a)(2), which prohibits expenditures by political committees in excess of "fair market value," and 9-8.10(a)(9), which permits certain expenditures by political committees related to vehicle use.

ISSUES PRESENTED FOR REVIEW

1. Whether the Fourth District erred in failing to defer to the Board's evidentiary findings absent clear error.

2. Whether the Fourth District erred in failing to defer to the Board's interpretation of the Illinois Election Code.

3. Whether the Fourth District interpreted section 9-8.10(a)(2), prohibiting expenditures clearly in excess of fair market value, and section 9-8.10(a)(9), prohibiting the use of campaign vehicles for personal purposes, of the Illinois Election Code contrary to the plain language and intent of the statutes.

STATEMENT OF JURISDICTION

The judgment of the appellate court was entered on August 19, 2019. A petition for rehearing was filed. The appellate court denied the petition for rehearing on September 16, 2019. The Committee filed a timely petition for

leave to appeal on October 21, 2019. Leave to appeal was allowed on January 29, 2020. Jurisdiction exists in this Court pursuant to Supreme Court Rule 315.

STATUTES INVOLVED

10 ILCS 5/9-8.10 (West 2016)

Use of political committee and other reporting organization funds.

(a) A political committee shall not make expenditures:

…(2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange….

…(9) For the purchase of or installment payment for a motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code.…

(b) The Board shall have the authority to investigate, upon receipt of a verified complaint, violations of the provisions of this Section. The Board may levy a fine on any person who knowingly makes expenditures in violation of this Section and on any person who knowingly makes a malicious and false accusation of a violation of this Section. The Board may act under this subsection only upon the affirmative vote of at least 5 of its members…

10 ILCS 5/9-21 (West 2016)

Upon receipt of a complaint as provided in Section 9-20, the Board shall hold a closed preliminary hearing to determine whether or not the complaint appears to have been filed on justifiable grounds. Such closed preliminary hearing shall be conducted as soon as practicable after affording reasonable notice, a copy of the complaint, and an opportunity to testify at such hearing to both the person making the complaint and the person against whom the complaint is directed. If the Board fails to determine that the complaint has been filed on justifiable grounds, it shall dismiss the complaint without further hearing. Any additional hearings shall be open to the public.

10 ILCS 5/9-22 (West 2016)

Any party to a Board hearing, any person who files a complaint on which a hearing was denied or not acted upon within the time specified in Section 9-21 of this Act, and any party adversely affected by a judgment of the Board may obtain judicial review, which shall be governed by the provisions of the Administrative Review Law, as amended, and all amendments and modifications thereof and the rules adopted pursuant thereto[.]

735 ILCS 5/3-111(b) (West 2016). Powers of circuit court.

Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the court that such error or failure materially affected the rights of any party and resulted in substantial injustice to him or her.

STATEMENT OF FACTS

Frank Mautino served as the representative for the 76th District in the Illinois House of Representatives from 1991 to 2015. (C. 376) The 76th District is

1,089 square miles, encompassing parts of LaSalle, Putnam, Bureau, and Livingston Counties. (Sup. E. 1276)

In October 2015, Mautino was appointed to serve a 10-year term as the Auditor General of Illinois beginning January 1, 2016. (C. 380) Because Illinois law prohibits the Auditor General from participating in any campaigns for public office, the Committee was dissolved on December 30, 2015. (C. 380)

Complaint, Initial Proceedings, and First Appeal

On February 16, 2016, Complainant filed a complaint with the Board alleging that the Committee had violated three provisions of the Code: (1) section 9-7(1), which requires the treasurer of a political committee to keep certain records; (2) section 9-8.10(a)(2), which prohibits political committees from making expenditures clearly in excess of fair market value; and (3) section 9-8.10(a)(9), which governs a committee's ownership of vehicles. (C. 4, 6, 167) Complainant claimed that the Committee's expenditure reports lacked sufficient specificity and speculated that the expenditures were not being made to the reported recipients. (C. 7) Complainant attached the Committee's expenditure reports to the complaint. (C. 18-125)

The Committee moved to dismiss the complaint because the Committee had been dissolved and Complainant failed to present justifiable grounds for finding a violation of the Code. (C. 130, 131, 134)

A hearing officer held a closed preliminary hearing on the complaint. (C. 162) The hearing officer recommended that the Board deny the Committee's motion to dismiss and find that the complaint was filed on justifiable grounds. (C. 171) More specifically, the hearing officer recommended that the Board find that the reports of expenditures to two vendors—Happy's Super Service (Happy's) and Spring Valley City Bank (the Bank)—"lack sufficient detail." (C. 170-71)

The Board adopted the hearing officer's recommendations and ordered the Committee to file amended reports of its expenditures to Happy's and the Bank. (C. 298) The Board stated that, if the Committee failed to file amended reports, it would hold a public hearing. (C. 299)

The Committee filed two motions to stay the Board proceedings because federal authorities had begun investigating the Committee's expenditures. (C. 300, 307, 330-51) The Committee noted that it could not comply with the Board's order requiring amended disclosures without compromising Mautino's constitutional rights in the investigation. (C. 301-02) The Board's General Counsel recommended that the Board grant the request for a stay. (C. 321) The Board denied the Committee's stay motions and ordered a public hearing to be held. (C. 358; R. 112-13) The Committee appealed the Board's denial of its second stay motion to the First District of the Appellate Court, but the First

District dismissed the appeal because it lacked jurisdiction. *Committee for Frank J. Mautino v. Ill. State Bd. of Elections*, 2017 IL App (1st) 162530-U, ¶ 8.

At the public hearing, the hearing officer stated that the only issue to be decided was whether the Committee failed to comply with the order for amended reports. (R. 128-30) Respondent argued that the proceedings should encompass not only the sufficiency of the Committee's reports, but also whether it made expenditures in violation of sections 9-8.10(a)(2) and (a)(9) of the Code (10 ILCS 5/9-8.10(a)(2), (a)(9)), which respectively prohibit political committees from making expenditures for goods or services clearly in excess of fair market value and from making expenditures for vehicles used for non-campaign or non-governmental purposes. (R. 136-55) Both parties presented evidence at the public hearing, which will be discussed in more detail below.

After the public hearing, the Hearing Officer recommended that the Board find that the Committee failed to comply with the Board's order for an accurate breakdown of expenses, for the identity of the recipients of the expenditures, and for the specific purposes of the expenditures to the Bank. (C. 409) The Board found that the Committee had willfully violated its order by failing to provide information on any Committee vehicles, to provide a breakdown of expenses to Happy's, to identify the actual recipient of its expenses, and to identify the specific purpose of the expenditures to the Bank.

(R. 273-77) The Board imposed a $5,000 fine against the Committee, the maximum penalty the Board could issue. (R. 274)

Complainant appealed to the Fourth District, arguing that the Board should have taken up his arguments that the Committee violated sections 9-8.10(a)(2) and (a)(9) of the Code. (Opinion, ¶¶ 1, 80). The Fourth District agreed and remanded for additional proceedings on those claims. *Id.* ¶ 95. The court expressly declined to consider the substance of those claims or whether the Board could impose any fine beyond the $5,000 it had already imposed. *Id.* ¶ 93.

Proceedings on Remand

On remand, the Board stated that its decision would be based on the evidence presented at the public hearing—it would "not be taking additional evidence absent good cause shown." (C. 439) Complainant did not request to supplement the record with any additional evidence or to conduct any additional discovery.

The evidence submitted at the public hearing consisted mostly of records the Committee had provided to complainant, including the Form D-2 Reports of Campaign Contributions and Expenditures the Committee had filed with the Board over the years, numerous receipts and invoices from Happy's for

gasoline and vehicle repairs, and copies of checks cashed at the Bank. (Sup. E. 228-1301)

Complainant also submitted the deposition of Patricia Maunu, the Committee's former treasurer. (Sup. E. 95) Maunu testified that Happy's provided gas and vehicle repairs for Mautino and his campaign employees. (Sup. E. 100) Happy's kept a charge account for the Committee and sent the Committee monthly bills. (Sup. E. 99-100)

Maunu clarified that the expenses charged to the Happy's account were related to Mautino's election campaigns; Mautino also maintained a completely separate personal account at Happy's for his personal expenses. (Sup. E. 100-01, 117-18) Maunu testified that the monthly bills from Happy's varied because of changes in gas prices. (Sup. E. 100) She explained that Happy's receipts were sometimes in whole-dollar amounts because Happy's employees topped off gas tanks to reach the nearest whole-dollar amount. (Sup. E. 115)

Maunu also testified that the Committee maintained an account at the Bank. (Sup. E. 109) Over the years, she and Mautino would write checks made out to cash and use the cash for campaign-related travel expenses or other campaign expenses. (Sup. E. 109, 111) For example, she noted that Mautino withdrew cash to pay campaign workers like poll watchers and phone bank

workers, to pay for a golf outing fundraiser, and to pay for an inauguration dinner. (Sup. E. 112, 114)

Maunu testified that, on certain occasions, she checked Mautino's calendar to verify that the money he withdrew from the Bank was used for a campaign fundraising event or travel. (Sup. E. 118) The calendar always matched Mautino's reported expenses. (Sup. E. 118)

Maunu said that, at one time, the Committee had possessed the receipts for all of its expenses. (Sup. E. 116) But, when the Committee was dissolved, the receipts were discarded after she consulted the Board. (Sup. E. 115-16) She and Mautino had discarded the receipts before Complainant filed his complaint with the Board and before any investigation began. (Sup. E. 117)

In the 15 years that Maunu served as the Committee's treasurer, the Board never informed her that her method of reporting the Bank expenditures was improper. (Sup. E. 117) In other circumstances, the Board would advise her if it needed additional information or had concerns about a specific expenditure. (Sup. E. 117)

The Committee presented evidence of the reported expenditures of two other political committees: Citizens to Elect Grant Wherli and Friends of Jeanne Ives. (Sup. E. 209-27) None of those reports disclosed the members of the committee making the various expenditures or explanations for the amount of

expenditures made. (Sup. E. 209-27) In fact, they disclosed vehicle expenses with brief explanations such as "vehicle repair," "automobile repair," "fuel," or "tires." (Sup. E. 214, 219) The reports did not specify that those expenses were made for campaign vehicles, that the committees owned campaign vehicles, or identify the owners of the vehicles for which those expenses were made. (Sup. E. 214, 219)

On July 10, 2018, the Board held a special meeting to consider complainant's section 9-8.10(a)(2) and (a)(9) claims. (R. 313) At the outset of the hearing, Chairman Cadigan noted that the hearing would be limited to the issues raised under sections 9-8.10(a)(2) and (a)(9) of the Code because the Board had already fined the Committee for insufficient reporting. (R. 318) He also noted that the Board would not determine the amount of any fine to be levied unless it first found violations of sections 9-8.10(a)(2) and/or (a)(9). (R. 319)

With respect to section 9-8.10(a)(2), the Committee argued that Maunu's undisputed testimony, along with the receipts from Happy's, showed that the Committee "paid the same gas price that was charged to everybody else." (R. 333) The Committee argued that the complainant could not prove that the Committee violated the fair-market-value rule in section 9-8.10(a)(2) simply by

adding the amount the Committee spent on gas and repairs over a 16-year period and saying that that amount was too much. (R. 337)

The Committee also argued that it did not violate section 9-8.10(a)(2) by withdrawing money from the Bank. (R. 365-67) The Committee noted that Maunu testified that, before the Committee dissolved, she had maintained records of what the money withdrawn from the Bank was spent on. (R. 365) Once the Committee was dissolved, the records were disposed of in consultation with the Board. (R. 365)

In discussing section 9-8.10(a)(2) (*i.e.*, the fair-market-value rule), Member Linnabary stated that "there have to be consequences for this kind of shoddy recordkeeping." (R. 380) Member McGuffage noted that the Board had already fined the Committee for recordkeeping violations, and that the issues before the Board did not involve insufficient recordkeeping. (R. 382)

Member McGuffage also pointed out that the Board lacked sufficient information to determine what the fair market value of gas was throughout the 16 years of expenditures at issue. (R. 371) He noted that gas prices "change[ ] every day" and that there was no evidence in the record to establish what those gas prices were. (R. 371) Member Scholz echoed those comments, noting that the Board had already fined the Committee for filing inadequate reports and

that, without those reports, he could not determine whether funds were spent on items in excess of fair market value. (R. 389)

As to complainant's charge that the Committee misused campaign funds on vehicles used for personal purposes, the Committee argued that Maunu's undisputed testimony was that the Committee only spent money on gas and vehicle repairs related to campaign or governmental purposes. (C. 354-55) Member Linnabary suggested that the Committee's argument was speculative, but the Committee noted that no evidence contradicted Maunu's testimony that the Committee did not make expenditures for the personal use of vehicles. (R. 354)

Member McGuffage noted that, without amended reports on expenditures, Board was in a "conundrum" because it could not analyze what was a campaign expenditure and what was a personal expenditure; "We can only speculate." (R. 370-71) He added, "There's no evidence whatsoever from the complainant to show that Mr. Mautino's repairs to his vehicle were personal, and there's no evidence to show that they were all campaign oriented either. So what we've got here is just an amorphous blob. The same with the gas reimbursement." (R. 357-58)

Near the conclusion of the hearing, Chairman Cadigan *sua sponte* raised the notion of drawing an adverse inference from Mautino's invocation of his

Fifth Amendment right against self-incrimination. (R. 377) Complainant's counsel said he did not know if he had requested an adverse inference before but that it seemed "reasonable." (R. 379) Member McGuffage voiced his objection to drawing an adverse inference, noting that there was a federal investigation that may be ongoing. (R. 383) Because anything Mautino said or filed with the Board could have jeopardized his ability to defend himself, Member McGuffage said he understood Mautino's "reluctance to file amended reports or testify or do anything else." (R. 383)

The Board members held two votes, one on each section of the Code complainant accused the Committee of violating. (R. 386-94) Chairman Cadigan and Members Linnabary, O'Brien, and Carruthers voted in favor of finding that the Committee violated both sections. (R. 386-87, 391) With respect to section 9-8.10(a)(2), Chairman Cadigan and Member Linnabary explained that they relied on an adverse inference drawn from Mr. Mautino's invocation of the Fifth Amendment in casting their vote. (R. 393)

Vice Chairman Keith and Members McGuffage, Scholz, and Watson voted against finding violations of either section. (R. 386-87, 391) In addition to the comments they made during the hearing, Vice Chairman Keith and Members McGuffage, Scholz, and Watson further explained their reasoning in declining to find that the Committee violated either section. All four stated that

they did not believe Complainant bore his burden of proving that the Committee violated the Code. (R. 388-90, 393-94) They noted that finding a violation of either section required speculation as to what the Committee spent money on. (R. 388-90, 393-94) They added that, without sufficient reports or documents to show how the Committee actually spent funds, they could not determine that the Committee spent on items in excess of fair market value or on vehicles used for non-campaign or non-governmental purposes. (R. 388-90, 393-94) As for the adverse inference, they noted that drawing an adverse inference was discretionary, not mandatory, and that an adverse inference was not specific enough to support complainant's charges. (R. 393-94)

The Board entered its final order memorializing the tie vote on July 16, 2018. (C. 478)

The Fourth District's Decision on Appeal to this Court

The appellate court entered its Opinion on August 19, 2019. The Fourth District found that "section 9-8.10(a)(9) is the exclusive provision regulating campaign expenditures on vehicles and does not permit, and therefore effectively prohibits, any expenditure to a third party for gas and repairs of vehicles neither owned nor leased by a committee." (Opinion, ¶68) The court found that "A plain reading of section 9-8.10(a)(9) does not authorize a committee to make expenditures to a third party for gas and repairs of a

personal vehicle used for campaign purposes or for the performance of governmental duties." *Id.* at ¶67. The court did not address the impact of section 9-8.10(c), which states "Nothing in this Section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions," on its interpretation that a committee may not reimburse individuals for use of a vehicle for government or public service functions unless the vehicle is owned by the committee.

The court also found that "section 9-8.10(a)(2) regulates not only the amount but also the purpose for which an expenditure is used." (Opinion, ¶73) The court agreed with Complainant that "An expenditure for a particular item or service used for an improper purpose would be an expenditure clearly in excess of the fair market value of what the committee received in exchange, which would be nothing." *Id.* at ¶72. The court explained that "This interpretation makes sense" because "[i]t prohibits committees from paying market value for a particular item or service and then allowing that item or service to be used for a purpose unrelated to campaign or governmental duties." *Id.*

Based on its interpretation of section 9-8.10(a)(9) and section 9-8.10(a)(2), the court reversed the Board's decision insofar as it found Complainant failed to establish violations of the fair market value regulation based on the Committee's expenditures to the Bank for traveling expenses and to Happy's for gas and repairs of personal vehicles. (Opinion, ¶89). The court also reversed the Board's decision to the extent it found Complainant failed to establish violations of the prohibition on using campaign vehicles for personal purposes based on the Committee's expenditures to Happy's for gas and repairs of personal vehicles. *Id.* The Court remanded with directions for the Board to address the matter of fines. *Id.* The Court left open whether the fines may be assessed against Mautino individually, as the Committee was dissolved in December 2015.

ARGUMENT

This Court should reverse the Fourth District's decision and affirm the decision of the Illinois State Board of Elections. The court below improperly substituted its factual determination for the Board's in violation of the clearly erroneous standard of review. In addition, the court incorrectly interpreted the Illinois Election Code provisions at issue in this case.

I. The Illinois State Board of Elections is comprised of an equal number of Republican and Democrat members to address partisan matters as necessary.

The Illinois constitution requires the General Assembly to create a State Board of Elections to supervise the administration of election laws throughout the state. Ill. Const. Art. III, sec. 5. While the constitution gives the General Assembly the power to determine the size, manner of selection, and compensation of the Board, it prohibits any political party from having a majority of members. *Id.* During the 1970 Constitutional Convention, the delegates debated this provision at length. In support of including the provision in the Constitution, rather than simply allowing the General Assembly to determine if such a Board is necessary, Delegate Cicero explained:

> Neutrality in the administration of elections is particularly important. The integrity of no process is more fundamental to the proper functioning of the political system under which we live. Much of Illinois election law is built around the idea of an adversary principle in the administration of elections—challenges to nominating petitions, for example; hearings and adjudications of such challenges; challenges to registration; canvassing with representatives of both parties; voting and registration judges of both parties. These are all examples of where the adversary system is in effect, built in to the administration of Illinois election law. Yet too often, at the top of such system, we have vested general authority for administration in a single official who is a member of a particular—of one or the other particular parties. It is better to assure, through a board like this, that neutrality of the same adversary principle is at the top of the election administration system. This is the type of system which would assure fundamental fairness in the administration of the election

> laws; and, therefore, it is of sufficient importance to be put into the constitution.

1970 Illinois Constitutional Convention, Verbatim Transcript of May 14, 1970, pg. 1057.

Based on this constitutional requirement, the Board consists of eight members, typically four Democrats and four Republicans. *Hossfeld v. Illinois State Board of Elections*, 398 Ill. App. 3d 737, 738 n. 1 (2010). Board members must have extensive knowledge of Illinois' election laws. 10 ILCS 5/1A-2. The Election Code requires a majority vote of five of the eight Board members for any action to become effective. 10 ILCS 5/1A-7. Thus, a deadlock vote of 4-4 will result in no action. For example, when the Board votes on whether to invalidate a candidate's nominating papers during the objection process, the candidate will be permitted on the ballot if the Board ties in a 4-4 vote. Relevant here, the Board will not take action on any complaint related to campaign finance disclosures absent the affirmative vote of five of the eight Board members. By prohibiting a political party from having a majority of Board members, a Board member of the opposing political party is required to cross "party lines" to take an action. As emphasized at the Constitutional Convention, this ensures neutrality in the administration of Illinois' election laws.

II. The clearly erroneous standard of review should be applied here, thereby giving deference to the Board's decision.

The question of whether the Committee did not comply with the Code is a mixed question of law and fact. *See Santana v. State Bd. of Elections*, 371 Ill. App. 3d 1044, 1051 (1st Dist. 2007) ("A mixed question of law and fact involves an analysis of the application of the rule of law to the established facts; the ultimate determination is whether the rule of law is violated."). Mixed questions of fact and law arise when the Board was required to decide whether a rule of law, as applied to the established facts, was or was not violated. *Cinkus v. Stickney Mun. Officers Electoral Bd*., 228 Ill. 2d 200, 211 (2008). In this case, the Board addressed whether, based on the facts established, the Committee violated the law prohibiting purchases clearly in excess of fair market value and whether, based on the facts established, the Committee violated the law prohibiting the use of campaign vehicles for a personal purpose. The Board found that the Committee violated neither of these laws. Thus, the question before the appellate court, and this Court, presents a mixed question of law and fact.

This Court applies a clearly erroneous standard when reviewing a mixed question of law and fact, which is "'significantly deferential'" to the Board's decision. *Santana*, 371 Ill. App. 3d at 1051 (quoting *AFM Messenger Service, Inc. v. Dep't of Employment Sec.*, 198 Ill. 2d 380, 394 (2001)). "A decision is clearly erroneous only if the reviewing court is left with a definite and firm conviction

that a mistake has been committed." *Cook County Republican Party v. Ill. State Bd. of Elections*, 232 Ill. 2d 231, 244 (2009) (internal quotation marks omitted). Here, the Fourth District did not give deference to the Board's decision and instead, absent any evidence, found that the Board's decision was clearly erroneous because it was "inevitable" that the Committee violated the Election Code.

A. Complainant failed to prove that the Committee purchased gasoline or made expenditures for vehicle repair for an amount clearly in excess of market rates.

The Fourth District cited no evidence to show the Committee made expenditures in excess of the fair market value for gasoline or vehicle repairs at Happy's. Nor could it, as Complainant fell far short of meeting his burden of proving that the Committee's expenditures to Happy's were "[c]learly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange." 10 ILCS 5/9-8.10(a)(2); *see also Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532-33 (2006) ("[U]nder any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden.").

Before the Board and Fourth District, Complainant claimed that the Committee violated section 9-8.10(a)(2), prohibiting purchases clearly in excess of fair market value, because the Committee spent too much on gas and repairs,

in total, over a 16-year period. The Fourth District erred in agreeing with the Complainant's assumption.

Complainant has not offered a single example out of the hundreds of receipts in the record where the price of gas clearly exceeded the fair market value of gas. Instead the receipts from Happy's, which were admitted as evidence at the hearing, show the Committee made no expenditure in excess of fair market value. For example, on February 25, 2013, the Committee paid $61 for 15.6 gallons of gas, or $3.91 per gallon. (Sup. E. 386) On October 31, 2013, the Committee paid $54 for 16.3 gallons of gas, or $3.31 per gallon. (Sup. E. 320) On December 8, 2014, the Committee paid $72 for 27.3 gallons of gas, or $2.64 per gallon. (Sup. E. 432) On January 11, 2015, the Committee paid $10.35 for 5 gallons of gas, or $2.07 per gallon. (Sup. E. 454) Complainant presented no evidence to show that $3.91 per gallon or $2.07 per gallon clearly exceeded the fair market value for gas.

Although some members of the Board expressed concern that, on some occasions, Happy's charged whole-dollar amounts for gas, there was nothing to show that those whole-dollar amounts *clearly exceeded* fair market value. For example, on January 12, 2015, the Committee paid $33 for 16.5 gallons of gas, or $2 per gallon. (Sup. E. 454) It is highly unlikely that $2 per gallon clearly exceed market value in 2015. Certainly, the Board could not determine that $2 per

gallon was *clearly* in excess of fair market value by simply looking at the price. If anything, $2 per gallon may have been *below* fair market value.

The same is true for the repairs performed at Happy's. Maunu testified that only Mautino's vehicles were repaired at Happy's—no other campaign employees had their cars repaired there. (Sup. E. 100) And none of the repair invoices in the record show that Happy's charges for its repairs clearly exceeded fair market value. For example, on December 31, 2013, Happy's charged $298.95 for "Rotors" and "Pads" on Mautino's Chevy Avalanche. (Sup. E. 100, 229) On January 17, 2014, Happy's charged $635.88 for a "Spindle" and "Hub Kit" on Mautino's Ford Explorer. (Sup. E. 100, 242) Complainant offered no evidence showing that these charges clearly exceeded the fair market value for these parts or labor. In fact, he presented no evidence to establish the normal costs of *any* car repairs.

Complainant did not present any evidence that the payments to Happy's were used to conceal expenditures to other vendors or individuals. At most, he speculated that this occurred because the Committee spent a significant amount on gas and repairs over a 16-year period. The Board members voting in favor of the Committee were right to disregard his speculation. These four Board members explained that complainant's evidence was insufficient and declined to speculate as to the details of those expenditures. (R. 370-71, 376, 388-90, 393-

94) The Fourth District cited no support for its finding that it was "more probably true than not that the Committee made expenditures for gas and repairs for personal purposes." (Opinion, ¶84). Thus, the Fourth District should not have substituted its factual judgment for that of the Board members who have specialized knowledge related to the Illinois Election Code.

B. Complainant failed to prove that the Committee used the funds withdrawn from the Bank for purchases clearly in excess of market rates.

Section 9-8.10(a)(2) does not regulate the reporting of expenditures. It regulates the *act* of making expenditures. And Complainant offered no evidence to show that any of the expenditures made with the money withdrawn from the Bank to be used for gas and repairs clearly exceeded fair market value. The members of the Board who voted against finding that the Committee violated section 9-8.10(a)(2) highlighted this problem throughout the hearing on remand:

- "The essence [of the claim] is the inadequacy of the disclosure, and clearly that's been dealt with." (R. 370)
- "The question is, until we see a breakdown, you know, we asked for an amended report. We didn't get it and we imposed a fine. So we're kind of in a conundrum here because we don't have a full breakdown of the expenditures. So we can't determine—we can't

analyze a report to determine which was campaign expenditures, which was personal expenditures. We can't make that division because we don't have anything to go on. We can't prove it. We can only speculate." (R. 370-71)

- "I can't agree [that the Committee violated section 9-8.10(a)(2)] because we don't know what happened to that $30. I could be—I mean we're all just speculating. That's the problem." (R. 376)

- "There's no evidence to conclusively show that fair market value was clearly exceeded. All we got is the record, and the record does not prove that the violation of the section has actually occurred. We don't have the amended reports, the D-2 reports we need to make that determination." (R. 394)

As these members noted, the Board could only determine that the Committee purchased goods or services clearly in excess of fair market value if they knew what those goods and services were. Without knowing what the money was spent on, the Board could not find that the Committee bought goods or services clearly in excess of fair market value. *See*, *e.g.*, *In re Estate of Blickenstaff*, 2012 IL App (4th) 120480, ¶ 51 ("What an executor earns in his full-time job would be relevant to establishing the fair-market value of his services as president of the corporation only if, in his full-time job, he did the same kind

of work that he did as president of the corporation."). Thus, it was reasonable for four Board members to find that Complainant presented insufficient evidence to show that any of the money was used for expenditures that exceeded fair market value.

Instead, the Fourth District simply assumed that there was excess cash without any evidence to support that determination. In fact, the evidence suggests the opposite: Maunu testified that the Committee kept receipts that matched the sums reported by the Committee. (Sup. E. 110-11) Complainant did not present any evidence to suggest that the receipts did not match the checks. In fact, his attorney never even asked that question of Maunu during her deposition.

The Fourth District also ignored the evidence showing that the Committee spent the money on legitimate campaign expenses. The Fourth District was required to defer to the Board's determination unless it was made in clear error. *Santana*, 371 Ill. App. 3d at 1051. There was nothing indicating the Committee's travel expenses were improper, much less that the amounts taken out *clearly* exceeded fair market value. The Fourth District simply found that it was "inevitable" that Mautino did not return excess cash even though there was no evidence to suggest that there ever was any excess cash. (Opinion, ¶84).

Complainant speculated that gasoline expenditures exceeded fair market value because the Committee spent a substantial amount on gasoline over 16 years and certain gas prices were in whole-dollar amounts. But as the Committee explained above, neither of those pieces of evidence supports the Fourth District's inference that the Committee used funds for personal purposes. And as for the money withdrawn from the Bank, Complainant presented no evidence of what goods or services the Committee bought using the cash withdrawn from the Bank. Thus, he failed to prove that any of that cash was spent on items or services clearly in excess of fair market value.

C. The Fourth District ignored the Board's expertise and roll in weighing partisan considerations when it substituted its judgment for the Board's.

The Board split 4-4 on whether the Committee violated sections 9-8.10(a)(2) and 9-8.10 (a)(9) of the Code. Four members of the Board found that the record lacked sufficient information to determine what the fair market value of gas, vehicle repairs and travel expenses and whether funds were spent by the Committee on items in excess of fair market value. Setting this decision aside, the Fourth District found that the Committee made expenditures for gas and repairs for personal purposes because he established it is "more probably true than not that the Committee made expenditures for a personal purpose." (Opinion, ¶84). The Board did not make a finding that it was "less probably true

than not" that the Committee violated sections 9-8.10(a)(2) and 9-8.10 (a)(9) of the Code. Instead, the Board found that the evidence did not conclusively show that the Committee expended funds for personal purposes. (R. 376; 394). The Fourth District was required to defer to the Board's determination on this issue.

As discussed, there was no evidence that campaign funds were used for personal purposes. Instead, there was evidence that supported the Committee's contention that campaign funds were used for campaign purposes. It was reasonable for four Board members to find that Complainant presented insufficient evidence to show that any of the money was used for expenditures that exceeded fair market value. "A decision is clearly erroneous only if the reviewing court is left with a definite and firm conviction that a mistake has been committed." *Cook County Republican Party v. Ill. State Bd. of Elections*, 232 Ill. 2d 231, 244 (2009) (internal quotation marks omitted). Still, the Fourth District found that it was inevitable that at least some portion of the cash was used for personal purposes. This finding is far from having a definite and firm conviction that a mistake had been committed by the four Board members who voted in favor of the Committee.

It is clear that the Board's 4-4 deadlock decision was decided based on political party affiliations. The four Republican Board members voted against the Committee with respect to the issue of travel expenses, while the four

Democrat Board members voted in favor of the Committee. The four Board members who voted in favor of the Committee with respect to the gas, vehicle repairs and travel expenses issues articulated clear reasons to explain how they came to their decision. The members explained that they could not find a violation due to a lack of evidence showing any personal use of committee funds. It is the Board's statutory responsibility to decide partisan, political matters such as the matter at hand. It is not a reviewing court's role to serve as a "tiebreaking" vote when a partisan deadlock has occurred.

III. The Fourth District interpreted section 9-8.10(a)(2) and section 9-8.10(a)(9) of the Illinois Election Code contrary to the plain language and intent of the law.

In addition to failing to give deference to the Board's expertise and constitutionally established purpose, the Fourth District interpreted two sections of the Election Code in a manner that conflicts with the plain language of the statute and the purpose behind the statutes.

To the extent that this Court must construe the Code, *de novo* review applies. *Hartney v. Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16. "Yet even where review is *de novo*, an agency's interpretation of its regulations and enabling statute are 'entitled to substantial weight and deference,' given that 'agencies make informed judgments on the issues based on their experience and expertise and serve as an informed source for ascertaining the legislature's intent.'" *Id.*

(quoting *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill. 2d 368, 387 n.9 (2010)).

Section 9-8.10(a)(2) prohibits a political committee from making any expenditure clearly in excess of the fair market value of the services or products it receives. Section 9-8.10(a)(2) limits only the amount of specific expenditures. But the Fourth District read an additional mental state into the statute, holding that a political committee violates the section if the Board or Court determines the *purpose* of the expenditure is improper. (Opinion, ¶89) ("By making expenditures for gas and repairs for personal purposes, the Committee made expenditures in excess of the fair market value for what it received in exchange, which was nothing."). While there are sections of the Illinois Election Code dedicated to regulating the purposes for which a political committee may make an expenditure, section 9-8.10(a)(2) does not.

Section 9-8.10(a)(9) prohibits "expenditures for use of the vehicle for non-campaign or non-governmental purposes." 10 ILCS 5/9-8.10(a)(9) (emphasis added). The only reasonable interpretation of that section is that it prohibits certain uses of personal vehicles, not that it prohibits all expenditures on vehicles owned by individuals working for the campaign. Contrary to this interpretation, the Fourth District held the Election Code prohibits a political committee from making any expenditure on a vehicle unless it is owned by the

committee. This interpretation creates absurd results, as a political committee will be unable to reimburse volunteers for any vehicle costs incurred on the campaign trail aside from base mileage reimbursement. These interpretations are incorrect and create significant implications for political committees in Illinois.

A. The Fourth District interpreted section 9-8.10(a)(2) of the Illinois Election Code contrary to the plain language and intent of the law.

The Fourth District interpreted section 9-8.10(a)(2) ("Fair Market Value Regulation") to regulate not only the amount of an expenditure but also the purpose for which an expenditure is used. (Opinion ¶ 73.) This is inconsistent with the plain language and intent of the law.

Section 9-8.10(a)(2) states:

> (a) A political committee shall not make expenditures:
> (2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange.

10 ILCS 5/9-8.10(a)(2).

The Fourth District's interpretation of the Fair Market Value Regulation expands the prohibition to regulate not only the amount of the expenditure but also the purpose for which the expenditure was used. The Fourth District also held that "the manner in which the Committee paid for [gas, vehicle repairs and travel expenses] . . . inevitably led to at least some portion of the cash being used

for personal purposes" (Opinion, ¶ 84-85). The Fourth District based this finding on its assumption that it was "more probably true than not" that funds were used for personal purposes. *Id.* Based on its finding that it was "inevitable" that the Committee used funds for a personal purpose, the Court held expenditures were made in excess of fair market value. *Id.* The Fourth District's "inevitable" and "more probably true than not" expose any candidate to fines based on the court attempting to place itself in the mind of the candidate to determine what was "necessary" on the campaign trail.

Complainant's primary argument before the Board and the Fourth District was that the Committee spent too much, in total, on gasoline and repairs over 16 years. The Fourth District agreed with Complainant based on its assumption that it was "inevitable" that "at least some portion of the gas and repairs were for personal use." (Opinion, ¶84). But the Fair Market Value Regulation does not police the purpose of an expenditure. It only prohibits purchasing goods or services for an amount that clearly exceeds "fair market value." The Fourth District's interpretation of the Fair Market Value Regulation conflicts with the well-established meaning of "fair market value" and creates absurd results.

Although the Code does not define "fair market value," that term has a well-developed meaning in the common law. This Court has defined it as the

price a willing buyer would pay a willing seller for goods, services, or property. *See, e.g.*, *Bloomington Pub. Schs. v. Ill. Property Tax Appeal Bd.*, 379 Ill. App. 3d 387, 389 (4th Dist. 2008) ("Fair cash value has the same meaning as fair market value and is defined as 'the price a willing buyer would pay a willing seller for the subject property, there being no collusion and neither party being under any compulsion.'") (quoting *Residential Real Estate Co. v. Ill. Property Tax Appeal Bd.*, 188 Ill. App. 3d 232, 242 (5th Dist. 1989)); *Kane v. McDermott*, 191 Ill. App. 3d 212, 219 (4th Dist. 1989) ("'Fair market value' is defined as '[t]he amount at which property would change hands between a willing buyer and a willing seller.'") (quoting Black's Law Dictionary 537 (5th ed. 1979)). With no other definition in the Code, this Court should presume that the legislature had that common-law definition in mind when it drafted the Fair Market Value Regulation. *See, e.g.*, *Koester v. First Mid-Ill. Bank & Trust, N.A.*, 2012 IL App (4th) 110879, ¶ 67 (presuming that legislature incorporated common-law definition of "will" when Probate Act did not define it).

The Fair Market Value Regulation does not regulate the *purpose* of expenditures—it limits only the *amount* of specific expenditures. It only prohibits committees from making expenditures for goods and services that clearly exceed the market rate for those goods and services. So long as a campaign committee pays market value for a particular item, the Fair Market

Value Regulation does not say how that item must be used. Section 9-8.10(a)(9), discussed below, regulates the purpose of a committee's expenditures on vehicles by requiring that vehicles be used for campaign or governmental purposes. *See* 10 ILCS 5/9-8.10(a)(9) (prohibiting "expenditures for use of the vehicle for non-campaign or non-governmental *purposes*.") (emphasis added). The Fair Market Value Regulation contains no similar language. The Fourth District's interpretation inserts the language of the prohibition on the use of vehicles for personal purposes into the Fair Market Value Regulation. This is an unreasonable reading of the Fair Market Value Regulation that is not supported by its plain text. *See Ultsch v. Ill. Mun. Retirement Fund*, 226 Ill. 2d 169, 190 (2007) ("[A] court should not attempt to read a statute other than in the manner in which it was written."); *Malec v. City of Belleville*, 407 Ill. App. 3d 610, 636 (5th Dist. 2011) ("[T]he courts have no right to read into a statute words not found therein either by express inclusion or by fair implication.") (internal quotation marks omitted). This Court should reject this drastic expansion of the Fair Market Value Regulation by reading language into that provision that simply isn't there.

More importantly, even if the Fair Market Value Regulation regulated the purpose of a committee's expenditures, complainant failed to prove that any of the Committee's expenditures were used for improper purposes. As

discussed more fully in Argument I above, complainant failed to prove that any gasoline was used for non-campaign or non-governmental purposes. *See infra* Arg. I. Complainant presented no evidence of what activities the gasoline was used for, let alone that it was used for personal purposes.

It is also reasonable to interpret "fair market value" as requiring only that a political committee pay market rates for goods and services. Thus, at most, the Fourth District should have determined section 9-8.10(a)(2) was ambiguous. *See County of Du Page v. Ill. Labor Relations Bd.*, 231 Ill. 2d 593, 604 (2008) ("Where a statute is capable of more than one reasonable interpretation, the statute will be deemed ambiguous.").

Courts "afford considerable deference to the interpretation of an ambiguous statute by the agency charged with its administration." *Id.* at 608-09. "The reason for this deference is that the 'agency can make informed judgments upon the issues, based on its experience and expertise.'" *Id.* at 609 (quoting *Bonoguro v. County Officers Electoral Bd.*, 158 Ill. 2d 391, 398 (1994)). This Court has deferred to the Board's interpretation of other provisions of the Code. *See*, *e.g.*, *Bonoguro*, 158 Ill. 2d at 399 (deferring to Board's construction of article 7 of Code).

As Chairman Cadigan pointed out, each of the members of the Board is appointed because he or she has "some knowledge of the election laws and

bring some practical experience." (R. 351) The four Board members who voted in favor of the Committee used that knowledge in casting their votes. They emphasized how the Code's reporting provisions are designed to give the Board sufficient information to determine if the fair-market-value rule is violated, and without evidence of the fair market rates of gasoline or repairs, they could not determine that the Committee violated the fair-market-value rule. (R. 370-71, 388-89, 394) This Court should defer to these members' interpretations of the Fair Market Value Regulation as regulating the rate at which items are purchased rather than the purpose of the expenditure.

The legislative history of the Fair Market Value Regulation further supports this interpretation. *See Cinkus v. Vill. of Stickney Mun. Officers Elec. Bd.*, 228 Ill. 2d 200, 217 (2008) ("Where the meaning of a statute is ambiguous, courts may look beyond the statutory language and consider . . . the legislative history of the statute."). During the House debate on the bill enacting the fair-market-value rule, the following colloquy occurred:

> REP. BLACK: Under fair market value, if I am a small business owner, I can go to a newspaper and I can buy advertising space on a contract rate, and maybe it costs me $10 an inch for a retail ad. As a political candidate, I have to pay the highest applicable rate. Now, am I going to get in trouble for doing that? As a business person, I could pay [$]8 to $10 an inch, but as a political candidate, under most of the laws that I'm familiar with in the print media, I must pay the highest applicable rate on their card for that ad.

> REP. KUBIK: Representative, you would pay the *rate* that you have to pay for *that particular ad*. It would be, unless it was clearly above the established *rate*, so if the established *rate* is that one, then that would be the market rate.

90th Ill. Gen. Assem., House Proceedings, May 22, 1998, at 197-98 (emphasis added). Thus, the bill's sponsor clearly explained that the fair-market-value rule was designed to regulate the *rate* at which good or services are purchased, not the purpose of the goods or services.

The Fourth District's decision confused the Code's regulation of *expenditures* with the Code's regulation of *recordkeeping* and *disclosures*. Section 9-7 of the Code requires a committee's treasurer to keep "a detailed and exact account of . . . the full name and mailing address of every person to whom any expenditure is made, and the date and amount thereof[.]" 10 ILCS 5/9-7(1)(d). Section 9-11 requires a committee to disclose the "full name and mailing address of each person to whom expenditures have been made by the committee or candidate within the reporting period in an aggregate amount or value in excess of $150; [and] the amount, date, and purpose of each of those expenditures[.]"10 ILCS 5/9-11(a)(12). The Board already fined the Committee for keeping insufficient records under sections 9-7 and 9-11. Those provisions are no longer at issue in this case.

By contrast, the Fair Market Value Regulation, which is at issue here, deals with *expenditures themselves*, not how the Committee kept track of those expenditures or reported them to the Board: "A political committee shall not *make expenditures* . . . [c]learly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange." 10 ILCS 5/9-8.10(a)(2) (emphasis added). The fact that the Committee reported the checks cashed at the Bank as expenditures to the Bank rather than expenditures to the ultimate recipients of the cash is irrelevant. The reports say nothing about whether the expenditures the Committee actually made were in excess of fair market value. In effect, the Fourth District has bootstrapped claims of insufficient recordkeeping and disclosure into a provision dealing only with expenditures.

The four members who voted in the Committee's favor interpreted the Fair Market Value Regulation in accord with Representative Kubik's explanation of the rule. They all interpreted the Fair Market Value Regulation as prohibiting a political committee from paying more than market rate for a particular good or service. The Fourth District's expansive interpretation of the Fair Market Value Regulation, which has no support in the language of the statute or the legislative record, was contrary to the Board's interpretation.

B. The Fourth District interpreted section 9-8.10(a)(9) of the Election Code Contrary to the Statute.

The Fourth District held that section 9-8.10(a)(9) "is the exclusive provision regulating campaign expenditures on vehicles and does not permit, and therefore effectively prohibits, any expenditure to a third party for gas and repairs of vehicles neither owned nor leaded by a committee." (Opinion, ¶68). The court did not discuss the impact of section 9-8.10(c), which provides that section 9-8.10 shall not be construed to prohibit expenditures in furtherance of government or public service functions, on its interpretation of section 9-8.10(a)(9).

Contrary to the Fourth District's interpretation, section 9-8.10(a)(9) ("prohibition on using vehicles for personal purposes") does not prohibit expenditures on personal vehicles; it only prohibits "expenditures for use of the vehicle for non-campaign or non-governmental *purposes*." 10 ILCS 5/9-8.10(a)(9) (emphasis added). The only reasonable interpretation of that section is that it prohibits certain uses of personal vehicles, not that it prohibits all expenditures on vehicles owned by individuals working for the campaign.

The undisputed evidence established that the Committee spent money on vehicles for campaign or government purposes alone. Maunu testified that all charges made on the Committee's account at Happy's were for campaign work. (Sup. E. 118) She added that Mr. Mautino had a personal account at

Happy's, which he used for personal expenses on his vehicles. (Sup. E. 117-18) The documents presented at the public hearing bolstered her testimony, including monthly invoices showing that Happy's did in fact keep separate campaign and personal accounts. (Sup. E. 135-36)

The prohibition on using vehicles for personal purposes contains only one prohibition on campaign expenditures, reading, "A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes." 10 ILCS 5/9-8.10(a)(9). It allows a political committee to make expenditures on vehicles not owned by the committee so long as those expenditures relate to campaign or governmental purposes. The Fourth District's interpretation of this statute expanded the prohibitions in section 9-8.10(a)(9) beyond the plain language of the statute. *See Rosewood Care Ctr., Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567 (2007) ("We may not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent.").

The Fourth District's interpretation of the prohibition on using vehicles for personal purposes directly conflicted with the legislature's intent to allow political committees to make expenditures on vehicles used for campaign purposes. The prohibition on using vehicles for personal purposes states that "[a] political committee may . . . insure, maintain, and repair a motor vehicle if

the vehicle will be used primarily for campaign purposes or for the performance of governmental duties." 10 ILCS 5/9-8.10(a)(9). And section 9-8.10(c) states:

> Nothing in this Section prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions.

10 ILCS 5/9-8.10(c). "Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible." *Knolls Condo. Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002). "Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible." *Id.* Together, the prohibition on using vehicles for personal purposes and section 9-8.10(c) clearly demonstrate the legislature's intent to allow political committees to spend money on vehicles used for campaign or governmental purposes. The prohibition on using vehicles for personal purposes should be construed in light of this clear statement of Illinois policy. *See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178 (1990) ("[I]n ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered."). Instead, the Fourth District's interpretation read an additional prohibition into section 9-8.10(a)(9) that is not present in its text. *See People v. Smith*, 2016 IL 119659, ¶ 27 ("This court will not depart from a statute's plain language by reading into it exceptions, limitations,

or conditions that the legislature did not express."); *Ultsch*, 226 Ill. 2d at 190 ("[A] court should not attempt to read a statute other than in the manner in which it was written.").

The Fourth District's interpretation also is not good public policy. Many campaign workers are volunteers. The Fourth District's reading of the prohibition on using vehicles for personal purposes to prohibit committees from paying campaign workers' of their personal vehicles will have a significant chilling effect on a committee's ability to retain volunteers. Fewer individuals will be willing to assist in campaigns if they have to pay for their own gas and repairs while doing campaign work. This would especially affect less well-funded political campaigns and candidates in down-ballot races, who may lack the funds to hire paid staff.

It is true that the prohibition on using vehicles for personal purposes states that individuals using their vehicles for campaign or governmental purposes "may be reimbursed for actual mileage for the use of the vehicle." 10 ILCS 5/9-8.10(a)(9). But this provision simply confers a benefit on an individual using his or her car for campaign or governmental purposes. Nothing in the language of the reimbursement provision limits a committee's expenditures. It does not say that a political committee may only make expenditures on vehicles used for campaign purposes if they are in the form of reimbursements for actual

mileage. This Court should not read a restriction on campaign spending into a statute that does not include it. *See Smith*, 2016 IL 119659, ¶ 27; *Ultsch*, 226 Ill. 2d at 190 (2007).

Maunu's testimony established that the Committee only spent money on gasoline and vehicle repairs that related to campaign or governmental purposes. Complainant presented no evidence to contradict her on this point. Instead, he relied on an unwarranted and expansive interpretation of the prohibition on using vehicles for personal purposes that is not grounded in the language or intent of the statute.

CONCLUSION

For all of the foregoing reasons, appellant Committee for Frank J. Mautino, respectfully requests that this Court reverse the decision of the appellate court and affirm the Illinois State Board of Elections.

Respectfully submitted,

Dated: September 10, 2020

By: */s/Adam R. Vaught*

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 43 pages.

/s/Adam R. Vaught

CERTIFICATE OF SERVICE

I, Adam R. Vaught, one of the attorneys for Appellant, Committee for Frank J. Mautino, certify that I electronically filed with Odyssey EfileIL the foregoing Brief of Appellant Committee for Frank J. Mautino, with the Clerk of the Supreme Court of Illinois, on September 10, 2020.

The undersigned further certifies that on September 10, 2020, an electronic copy of the foregoing Brief of Appellant Committee for Frank J. Mautino is being served through Odyssey EfileIL.

In addition, I have served counsel of record by sending a copy thereof by email on the September 10, 2020, before 5:00 p.m..

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Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

By: */s/Adam R. Vaught*

APPENDIX

E-FILED
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SUPREME COURT CLERK

No. 125386

IN THE
SUPREME COURT OF ILLINOIS

DAVID W. COOK, *Complainant-Appellee,* v. *COMMITTEE FOR FRANK J. MAUTINO,* *Respondent-Appellant.* *ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in his capacity as chairman; JOHN R. KEITH, in his capacity as vice chairman; WILLIAM M. McGUFFAGE, in his capacity as member; ANDREW K. CARRUTHERS, in his capacity as member; CHARLES W. SCHOLZ, in his capacity as member; IAN K. LINNABARY, in his capacity as member; KATHERINE S. O'BRIEN, in her capacity as member; and CASANDRA B. WATSON, in her capacity as member,* *Respondents.*	Rule 315 Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth District, No. 4-18-0502; There Heard on appeal on Petition for Review of the Order of the Illinois State Board of Elections, No. 16 CD 093

APPENDIX TO BRIEF OF APPELLANT
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Appellate Court

***Cooke v. Illinois State Board of Elections*, 2019 IL App (4th) 180502**

Appellate Court Caption	DAVID W. COOKE, Petitioner, v. THE ILLINOIS STATE BOARD OF ELECTIONS; WILLIAM J. CADIGAN, in His Official Capacity as Chairman; JOHN R. KEITH, in His Official Capacity as Vice Chairman; WILLIAM M. McGUFFAGE, in His Official Capacity as Member; ANDREW K. CARRUTHERS, in His Official Capacity as Member; CHARLES W. SCHOLZ, in His Official Capacity as Member; IAN K. LINNABARY, in His Official Capacity as Member; KATHERINE S. O'BRIEN, in Her Official Capacity as Member; CASANDRA B. WATSON, in Her Official Capacity as Member; and COMMITTEE FOR FRANK J. MAUTINO, Respondents.
District & No.	Fourth District No. 4-18-0502
Filed Rehearing denied	August 19, 2019 September 16, 2019
Decision Under Review	Petition for review of order of Illinois State Board of Elections, No. 16-CD-93.
Judgment	Affirmed in part and reversed in part; cause remanded with directions.
Counsel on Appeal	Jeffrey M. Schwab and James J. McQuaid, of Liberty Justice Center, of Chicago, for petitioner.

J. William Roberts, Anthony J. Jacob, Adam R. Vaught, and Carson R. Griffis, of Hinshaw & Culbertson LLP, of Chicago, for respondent Committee for Frank J. Mautino.

Kwame Raoul, Attorney General, of Chicago (Aaron T. Dozeman, Assistant Attorney General, of counsel), for other respondents.

Panel

JUSTICE KNECHT delivered the judgment of the court, with opinion. Presiding Justice Holder White and Justice Turner concurred in the judgment and opinion.

OPINION

¶ 1 In February 2016, David W. Cooke, an Illinois resident, filed a complaint with the Illinois State Board of Elections (Board), alleging the Committee for Frank J. Mautino (Committee) committed various violations of article 9 of the Election Code (10 ILCS 5/9-1 to 9-45 (West 2014)) based on its reported expenditures to Happy's Super Service Station (Happy's) and Spring Valley City Bank (Bank) between 1999 and 2015. At the time of filing, the Committee was dissolved due to Frank J. Mautino becoming the Illinois Auditor General on January 1, 2016.

¶ 2 Following a March 2016 closed preliminary hearing, the Board found Cooke's complaint was filed on justifiable grounds and ordered the Committee to file amended reports to provide additional information concerning the expenditures to Happy's and the Bank. The Committee failed to file amended reports. At an April 2017 public hearing, the parties presented evidence and argument relating to both the Committee's failure to comply with the Board's order to file amended reports and the substantive claims raised in Cooke's complaint. The Board found the Committee willfully failed to comply with part of its order and imposed a $5000 fine. The Board also found violations of the Election Code based on the Committee "filing disclosure reports that were insufficient with regard to documentation, amount and accuracy of reported expenditures to [the Bank] and [Happy's]."

¶ 3 After the public hearing, Cooke filed a motion to reconsider, arguing the Board failed to address and issue rulings on his claims alleging the Committee violated section 9-8.10(a)(2) and (a)(9) of the Election Code (*id.* § 9-8.10(a)(2), (a)(9)) based on its use of committee funds. At a June 2017 hearing on the motion, a Board member moved to find Cooke had proven his section 9-8.10(a)(2) and (a)(9) claims and to impose "an additional fine of $5000 to run concurrently with the fine" previously imposed. The Board member's motion failed due to a deadlock four-to-four vote, and Cooke's motion to reconsider was denied. Cooke thereafter filed a petition with this court seeking direct review of the Board's decision.

¶ 4 In May 2018, we issued a decision remanding the matter for the Board to (1) amend, based on the concessions of the parties on appeal, its order to show the Committee violated sections 9-7 and 9-11 of the Election Code (*id.* §§ 9-7, 9-11) based on its accounting and reporting of committee expenditures and (2) address and issue rulings on the merits of Cooke's claims

alleging the Committee violated section 9-8.10(a)(2) and (a)(9) of the Election Code (*id.* § 9-8.10(a)(2), (a)(9)) based on its use of committee funds. *Cooke v. Illinois State Board of Elections*, 2018 IL App (4th) 170470, ¶ 95, 104 N.E.3d 516.

¶ 5 Following a July 2018 special meeting on remand, the Board (1) issued a *nunc pro tunc* order finding the Committee violated sections 9-7 and 9-11 of the Election Code (10 ILCS 5/9-7, 9-11 (West 2014)) and (2) addressed and ruled on Cooke's section 9-8.10(a)(2) and (a)(9) claims. The Board, based on a deadlock, four-to-four vote, concluded it could not find the Committee violated either section 9-8.10(a)(2) or section 9-8.10(a)(9) of the Election Code (*id.* § 9-8.10(a)(2), (a)(9)).

¶ 6 Cooke again seeks direct review of the Board's decision. Cooke argues we should reverse the Board's decision to the extent it ruled against him on his section 9-8.10(a)(2) and (a)(9) claims and then remand for a determination of the appropriate fines. We affirm in part, reverse in part, and remand with directions.

¶ 7 I. BACKGROUND

¶ 8 A detailed background concerning the prior proceedings in this case can be found in our previous decision. See *Cooke*, 2018 IL App (4th) 170470, ¶¶ 3-78. For the purposes of this appeal, we will summarize the facts established at the public hearing relating to Cooke's section 9-8.10(a)(2) and (a)(9) claims as well as the proceedings and rulings that occurred following our remand.

¶ 9 A. Public Hearing

¶ 10 The evidence presented at the April 2017 public hearing included, among other things, transcripts from a deposition of the Committee's former treasurer, various reports detailing the Committee's expenditures and contributions, and a December 14, 2012, letter addressed to the Committee from a Board staff member. The following is gleaned from the evidence presented as it relates to Cooke's section 9-8.10(a)(2) and (a)(9) claims.

¶ 11 Between 1999 and 2015, the Committee reported $225,109.19 in expenditures to Happy's for gasoline and vehicle repairs. During that time, the Committee did not own or lease any vehicles. The gas and repairs were expensed to a charge account at Happy's for the Committee. On a monthly basis, the Committee paid an invoice from Happy's for the expenses incurred on the charge account. Mautino had a practice whereby he would give a list of names of individuals to Happy's to serve as authorization for those individuals to purchase gas with the Committee's charge account when they were working on the campaign. The Committee's treasurer, who indicated she personally had been authorized to purchase gas with the Committee's charge account, was not reimbursed for gas on a per mileage basis for driving she did related to the Committee or her work in the district office. The charge account was also used to pay for repairs to Mautino's four personal vehicles.

¶ 12 Between 2000 and 2015, the Committee reported $159,028 in expenditures to the Bank. The expenditures were actually checks written to the Bank for the purpose of withdrawing cash, which was often in whole dollar amounts, and that cash was used for expenditures to other vendors. Either Mautino or the Committee's treasurer would write and cash the checks. Some of the expenditures were for travel expenses for meetings, while others were for election-day expenses, such as hiring poll watchers, precinct walkers, or phone callers. It was the

Committee's practice to obtain and keep receipts for expenses it paid with the cash from the Bank. The Committee treasurer disposed of the receipts after Mautino was appointed Illinois Auditor General. As to the travel expenses, Mautino would write and cash a check prior to leaving for the meeting. Mautino would sometimes, but not always, bring back receipts from the expenses he incurred when traveling. In 2014 and 2015, the Committee reported 13 expenditures as being for Chicago or Springfield meetings or travel expenses. The 13 expenditures were in whole dollar amounts, such as $150, $200, and $250. The Committee's treasurer did not recall an instance where Mautino deposited cash with the Bank when he returned from travel with receipts for expenses totaling an amount less than the amount of cash previously obtained from the Bank. The committee reports did not indicate Mautino sought additional cash for unexpected expenses during travel nor did they disclose contributions from Mautino relating to unexpected expenses paid by Mautino personally during travel.

¶ 13 The December 14, 2012, letter addressed to the Committee from a Board staff member requested clarification concerning a quarterly report as to expenditures reported to various individuals for gas, travel expenses, expenses for a golf outing, and expenses for a county fair booth. The Board staff member asserted, citing the administrative rules and regulations interpreting sections 9-6, 9-10, and 9-11 of the Election Code (10 ILCS 5/9-6, 9-10, 9-11 (West 2010)), "expenditures need to be listed by vendor instead of listing the individual or committee who was reimbursed for the payment of the expenditures." See 26 Ill. Adm. Code 100.70, amended at 35 Ill. Reg. 2295 (eff. Feb. 4, 2011).

¶ 14 B. Supporting Briefs

¶ 15 Following our remand, the Board allowed the parties to submit written briefs in support of their respective positions as to whether Cooke had proven his section 9-8.10(a)(2) and (a)(9) claims.

¶ 16 1. *Cooke's Brief*

¶ 17 As to his section 9-8.10(a)(9) claim, Cooke asserted section 9-8.10(a)(9) "allows a committee to reimburse people who use their own vehicles for campaign or governmental purposes for their actual mileage, but prohibits expenditures for gas and repairs of a vehicle unless the vehicle is both: (1) owned or leased by the committee; and (2) used primarily for campaign purposes or for the performance of governmental duties." Cooke contended:

> "The reason for this is not difficult to understand: Once someone's gas tank is filled, there is no way to ensure that the gas will only be used for permissible purposes. Reimbursements for actual mileage eliminate this problem."

Cooke argued, because the evidence showed the Committee paid Happy's directly for gas and repairs of personal vehicles, the Committee violated section 9-8.10(a)(9). Cooke requested the Board impose, at a minimum, a $225,109.19 fine in accordance with section 9-8.10(b) of the Election Code (10 ILCS 5/9-8.10(b) (West 2014)), as the evidence demonstrated the Committee knowingly made expenditures in violation of section 9-8.10(a)(9).

¶ 18 As to his section 9-8.10(a)(2) claims, Cooke argued, because it was virtually certain at least some of the gas and repairs paid for would be used for personal as opposed to campaign or governmental purposes, the Committee violated section 9-8.10(a)(2) by making expenditures in excess of the fair market value of any services the Committee received in exchange. Cooke also argued, because the checks to the Bank were cashed in whole dollar amounts and no excess

cash was ever returned, the Committee violated section 9-8.10(a)(2) by making expenditures in excess of the fair market value of any services the Committee received in exchange. In so arguing, Cooke specifically highlighted the expenditures for travel expenses and suggested it was "implausible" Mautino could have known in advance the exact cost of travel expenses and that the travel expenses inevitably cost less and the remaining cash was not returned. Cooke also noted Mautino could not claim he consistently took less cash than he actually spent, as he would have been required to disclose his costs as contributions to his campaign, which he did not do. Cooke requested, in accordance with section 9-8.10(b), the Board to impose, at a minimum, a $225,109.19 fine based on the Committee's unlawful expenditures to Happy's and a $159,028 fine based on its unlawful expenditures to the Bank for its knowing violations of section 9-8.10(a)(2).

¶ 19 2. *Committee's Brief*

¶ 20 As to Cooke's section 9-8.10(a)(9) claim, the Committee argued the evidence failed to show a knowing violation occurred, as its treasurer indicated "the gas paid for by the Committee was in accordance with the direction given *** by Board staff and [the treasurer's] historical practice of reporting." The Committee also noted its treasurer "never received any notification from the Board that expenditures to [Happy's] for gas and repairs should detail the ownership of the vehicles involved or be shown as direct reimbursements."

¶ 21 As to Cooke's section 9-8.10(a)(2) claims, the Committee initially asserted section 9-8.10(a)(2) concerned "the price a reasonable person would pay to purchase an item or service that is also charged to other people." The Committee argued the evidence failed to show it "paid more for gas at Happy's than paid by others." The Committee also argued the evidence failed to show it paid more than the fair market value for the various expenses with the funds withdrawn from the Bank.

¶ 22 C. Board Meeting

¶ 23 On July 10, 2018, the Board conducted a special meeting to address the matters in this case. The Board initially issued a *nunc pro tunc* order finding the Committee violated sections 9-7 and 9-11 of the Election Code (*id.* §§ 9-7, 9-11) based on its accounting and reporting of committee expenditures. The Board then allowed the parties to present oral argument in support of their respective positions as to whether Cooke had proven his section 9-8.10(a)(2) and (a)(9) claims. Prior to doing so, Chairman William J. Cadigan indicated the Board would "wait until we make a determination on the (a)(2) and (a)(9) violations before we deal with the issue of fines."

¶ 24 As to his section 9-8.10(a)(9) claim, Cooke asserted section 9-8.10(a)(9) "prohibits paying directly for gas and repairs of vehicles not owned or lease[d] by the [C]ommittee" and argued the evidence showed the Committee violated that section by paying Happy's directly for gas and repairs of personal vehicles. As to his section 9-8.10(a)(2) claims, Cooke argued the evidence showed the Committee violated section 9-8.10(a)(2), as the manner in which the Committee made expenditures at Happy's and the Bank inevitably allowed for money to be used for personal purposes for which the Committee received nothing in exchange. Cooke requested the Board impose fines as outlined in his supporting brief.

¶ 25 As to Cooke's section 9-8.10(a)(9) claim, the Committee asserted section 9-8.10(a)(9) was modified by section 9-8.10(c) of the Election Code (*id.* § 9-8.10(c)) to allow a political

committee to directly pay for gas and repairs of personal vehicles when they are used for campaign or governmental purposes and, as such, its direct payment to Happy's for gas and repairs of personal vehicles did not violate section 9-8.10(a)(9). The Committee also argued the evidence failed to show it committed a knowing violation where it followed the directions from a Board staff member in the December 14, 2012, letter to report gas spent to the vendor and not the individual. As to Cooke's section 9-8.10(a)(2) claims, the Committee argued the evidence failed to show it paid more than the fair market value for the gas from Happy's or for the various expenses with the funds withdrawn from the Bank. As a final matter, the Committee asserted the Board did not have the authority to impose a fine in excess of $5000.

¶ 26 Following argument, a discussion occurred between the Board members and the parties. Member Andrew K. Carruthers initially noted he agreed with Chairman Cadigan "we shouldn't talk about the amount of the fine until we actually get there." Member Carruthers indicated he anticipated the Board making motions and, depending on the outcome of the motions, the Board would then make a determination as to the matter of fines.

¶ 27 The Board members first addressed Cooke's section 9-8.10(a)(9) claim. Member Carruthers questioned the Committee whether section 9-8.10(c) was a "catch-all" to allow an officeholder the ability to "spend money for essentially what they want to defray their expenses," including paying a vendor directly for expenses of a personal vehicle rather than reimbursing per mileage. The Committee responded, "That is one way to do it, yes," and suggested that way was consistent with the December 14, 2012, letter from the Board staff member. Member Carruthers expressed disagreement with the Committee's position, noting (1) the December 14, 2012, letter related to reporting, as opposed to use of, committee funds and (2) his belief section 9-8.10(a)(9) only allowed a committee to pay directly for expenses of a vehicle it owned or leased. The Committee asserted section 9-8.10(a)(9) was not "exclusive," as it only provided a political committee "may" reimburse for mileage. Member Carruthers disagreed with the Committee's position.

¶ 28 Member Ian K. Linnabary questioned whether a political committee could make expenditures under section 9-8.10(c) for individuals other than the officeholder and suggested the plain language allowed expenditures only for the officeholder. The Committee asserted a committee could make expenditures for individuals other than the officeholder as long as the expenditures were for campaign or governmental purposes. The Committee also asserted it was appropriate under section 9-8.10(c) for it to pay for repairs to Mautino's vehicles, as those vehicles were used for campaign or governmental purposes.

¶ 29 Chairman Cadigan expressed, after first noting the fact Board members were appointed because of their experience with election laws, his belief section 9-8.10(c) applied to expenditures for things such as job fairs and community events. Chairman Cadigan believed section 9-8.10(a)(9) was the exclusive provision for dealing with expenditures related to vehicles.

¶ 30 Member Linnabary expressed agreement with the positions of Chairman Cadigan and Member Carruthers. Member Linnabary further highlighted the difficulty of allocating responsibility for repairs due to wear and tear on a vehicle used for both personal and campaign purposes. Member Carruthers suggested the difficulty in allocating responsibility was why section 9-8.10(a)(9) did not allow for a committee to make direct expenditures for repairs of a vehicle not owned or leased by the committee.

¶ 31 Member William M. McGuffage disagreed with the positions of Chairman Cadigan and Members Carruthers and Linnabary, believing section 9-8.10(a)(9) only regulated for repairs if the political committee owned or leased the vehicle and section 9-8.10(c) was a "catch-all *** to pick up things that might not have been covered." Member McGuffage believed Cooke failed to show the expenditures for gas and repairs were for personal as opposed to campaign purposes.

¶ 32 Vice Chairman John R. Keith questioned whether the Committee's treasurer was simply following the procedure of the former treasurer when making expenditures to Happy's for gas for personal vehicles. The Committee responded in the affirmative and also noted the treasurer continued in such a manner based on the letter from the Board.

¶ 33 The Board's discussion then moved on to whether Cooke had proven his section 9-8.10(a)(2) claims. As to the expenditures reported to the Bank, Chairman Cadigan indicated he did not believe Cooke had met his burden of proof as it related to the cash used for election-day expenses but believed he had met his burden of proof as it related to the cash used for travel expenses. Members Carruthers and Linnabary expressed agreement with the position of Chairman Cadigan. As to the cash used for travel expenses, Chairman Cadigan and Members Carruthers and Linnabary noted (1) the cash was obtained prior to travel, (2) the cash was obtained in whole dollar amounts, (3) Mautino would sometimes not return receipts after traveling, (4) Mautino never returned any amount after traveling, and (5) Mautino did not seek additional cash for unexpected traveling expenses.

¶ 34 Member Charles W. Scholz disagreed with the position of Chairman Cadigan and Members Carruthers and Linnabary, suggesting it was speculative and based on the inadequacy of the reporting. Member Scholz also noted the Board's "big hammer" was ballot forfeiture—Mautino could not run for office in Illinois again due to the outstanding fine against the Committee. Member McGuffage agreed with Member Scholz, noting the lack of evidence due to the inadequacy of the reporting. Member McGuffage acknowledged the fact the reported expenditures were in whole dollar amounts was suspect but asserted without amended reports he was unable to determine "which was campaign expenditures, which was personal expenditures."

¶ 35 At one point during the discussion, Member Linnabary posed the following question:

> "[I]f Representative Mautino took a disbursement from the [Committee] for $200 and then spent $170 on reimbursable expenses, so, therefore, took more money than he had expenses and didn't refund that money to the [C]ommittee, can we all agree that that would be an expenditure to Representative Mautino in excess of the fair market value?"

Vice Chairman Keith answered Member Linnabary's question in the negative, stating:

> "I can't agree with that because we don't know what happened to that $30. It could be—I mean, we're all just speculating. That's the problem. Because Chicago may have been $170, and on the way home, he may have stopped *** [and] met with a county chairman and picked up the tab for $30. We don't know."

¶ 36 At another point during the discussion, Member Carruthers entered as a Board exhibit a March 6, 2017, declaration indicating Mautino intended to assert his fifth amendment privilege if he was subpoenaed to testify at a deposition in this case. Member Carruthers suggested, citing *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364, 523 N.E.2d 1299 (1988), the Board could draw a negative inference from the fact Mautino refused to testify.

Cooke argued the Board should make such an inference, as Mautino was the individual who actually spent the money withdrawn from the Bank. The Committee disagreed, noting its treasurer testified Mautino brought back receipts from his traveling. Member Linnabary suggested "consequences" were warranted where an officeholder is writing checks to himself, taking cash, and then only sometimes returning receipts. Member McGuffage suggested a negative inference was not warranted given a possibly ongoing federal investigation. See *Cooke*, 2018 IL App (4th) 170470, ¶¶ 31-35.

¶ 37 Following the discussion, Member Carruthers moved to find "[Cooke] has met [his] burden of proof by the preponderance of the evidence and that the [Committee] violated [s]ection [9-]8.10(a)(9) by making expenditures for the maintenance and repair and gas of motor vehicles that were neither owned nor leased by the [C]ommittee, and that should the motion pass, we deliberate as to the amount of the fine." Chairman Cadigan and Members Carruthers, Linnabary, and Katherine S. O'Brien voted in favor of the motion. Vice Chairman Keith and Members McGuffage, Scholz, and Cassandra B. Watson voted against the motion. Due to the failure to obtain five votes, the motion failed. The Board's general counsel advised the Board members to give some explanation as to the bases of their votes.

¶ 38 Chairman Cadigan stated he believed Cooke had met his burden of proof and shown the Committee violated section 9-8.10(a)(9). Member Carruthers agreed with Chairman Cadigan, stating any expenditure for gas and repairs on a vehicle neither owned nor leased by the Committee was a violation of section 9-8.10(a)(9). Members Linnabary and O'Brien indicated they reached their decisions based on the same reasoning as Chairman Cadigan and Member Carruthers. Vice Chairman Keith stated, "I do not believe that the burden of proof has been met by [Cooke] and that there was a knowing violation of the article based upon the record before us. While we speculate that there may be violations, I don't believe there's sufficient evidence in the record." Member McGuffage indicated he reached his decision based on the same reasoning as Vice Chairman Keith. Member Scholz indicated he reached his decision based on his belief that, to make any "determination with specificity, we would need the adequate reports." Member Watson indicated she believed Cooke "failed to meet [his] burden by a preponderance of the evidence based on the evidence presented and the existing record."

¶ 39 Member Carruthers next moved to find

> "[Cooke] has met [his] burden of proof by a preponderance of the evidence and that the [Committee] violated [s]ection [9-]8.10(a)(2) by making expenditures clearly in excess of fair market value for the goods and services received by the [C]ommitee, by making expenditures for gas and repairs for personal vehicles rather than reimbursing them on the mileage rate, and by withdrawing funds from the bank in whole dollar amounts that were purportedly used for campaign expenses without returning any cash. And that if the motion should pass, we deliberate as to the amount of the fine."

Chairman Cadigan and Members Carruthers, Linnabary, and O'Brien voted in favor of the motion. Vice Chairman Keith and Members McGuffage, Scholz, and Watson voted against the motion. Due to the failure to obtain five votes, the motion failed. The Board's general counsel advised the Board members to give some explanation as to the bases of their votes.

¶ 40 Member Carruthers stated he believed Cooke had demonstrated at least some portion of the expenditures for gas, repairs, and travel expenses was used for personal purposes and, therefore, the Committee paid more than the fair market value for what it received in return. In reaching his decision, Member Carruthers noted he relied in part on an adverse inference drawn

from Mautino's refusal to testify. Chairman Cadigan and Members Linnabary and O'Brien indicated they reached their decisions based on the same reasoning as Member Carruthers. Vice Chairman Keith indicated he reached his decision based on "the explanation" he gave for his previous vote as well as his decision not to take an adverse inference from Mautino's refusal to testify. Member McGuffage indicated he reached his decision based on the same reasoning as Vice Chairman Keith and specifically noted his belief Cooke had not met his burden, as "[t]here's no evidence to conclusively show that fair market value was clearly exceeded." Members Scholz and Watson indicated they reached their decisions based on the same reasoning as Vice Chairman Keith and Member McGuffage.

¶ 41 D. Board's Final Order

¶ 42 On July 16, 2018, the Board issued a written final order. The Board ordered, in part, as follows:

> "Based on the failure of the Board to achieve 5 votes upon motions to find that [Cooke] has met the burden of proof to find that:
>
> a) [the Committee] violated [s]ection [9-8.10(a)(2)], and
>
> b) [the Committee] violated [s]ection [9-8.10(a)(9)],
>
> the Board does not find that [the Committee] violated either of said [s]ections[.]"

¶ 43 E. Petition for Review

¶ 44 On July 20, 2018, Cooke filed a petition for review with this court.

¶ 45 II. ANALYSIS

¶ 46 Cooke argues we should reverse the Board's decision to the extent it ruled against him on his section 9-8.10(a)(2) and (a)(9) claims and then remand for a determination of the appropriate fines. Both the Committee and the Board disagree.

¶ 47 A. Judicial Review

¶ 48 The parties do not dispute that the Board's decision denying Cooke relief on his section 9-8.10(a)(2) and (a)(9) claims following a public hearing is subject to judicial review. The Board concluded it could not find the Committee violated either section 9-8.10(a)(2) or section 9-8.10(a)(9) due to its failure to obtain five votes in support of the respective motions. See 10 ILCS 5/1A-7 (West 2014) ("[five] votes are necessary for any action of the Board to become effective"). Section 9-22 of the Election Code (*id.* § 9-22) provides "any party adversely affected by a judgment of the Board may obtain judicial review." Here, it is clear Cooke was adversely affected by the Board's decision, as it resulted in the denial of relief on his section 9-8.10(a)(2) and (a)(9) claims. The Board's decision is subject to judicial review.

¶ 49 B. Scope of Judicial Review

¶ 50 The parties also do not dispute that the scope of judicial review of the Board's decision includes a review of all questions of law and fact considered by the Board in reaching its decision to deny Cooke relief on his section 9-8.10(a)(2) and (a)(9) claims. Section 9-22 of the Election Code (*id.*) provides judicial review "shall be governed by the provisions of the Administrative Review Law." The scope of review under the Administrative Review Law

includes "all questions of law and fact presented by the entire record before the court." 735 ILCS 5/3-110 (West 2014). Here, judicial review of the Board's decision may be accomplished by examining the comments and reasoning articulated by the Board members at the special meeting on remand. See *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 242, 902 N.E.2d 652, 659 (2009) ("meaningful review of a deadlock vote may be accomplished by examining the reasons of the Board members").

¶ 51 C. Standard of Judicial Review

¶ 52 This appeal involves both the Board's interpretation and application of its enabling statute. We will review the Board's interpretations of the relevant sections of the Election Code *de novo*. *Id.* at 243. Though our review is *de novo*, we will give the Board's interpretations substantial weight and deference where possible. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 16, 998 N.E.2d 1227 ("[A]n agency's interpretation of its *** enabling statute [is] entitled to substantial weight and deference, given that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent." (Internal quotation marks omitted.)). We will review the Board's application of the relevant sections of the Election Code to the established facts for clear error. *Cook County Republican Party*, 232 Ill. 2d at 243-44. The Board's rulings will be deemed clearly erroneous only if we are "left with a definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Id.* at 244.

¶ 53 D. The Board's Interpretations of the Election Code

¶ 54 The parties disagree as to whether the Board properly interpreted section 9-8.10(a)(2) and (a)(9) of the Election Code.

¶ 55 1. *Principles of Statutory Construction*

¶ 56 In examining the Election Code, we are guided by the "same basic principles of statutory construction applicable to statutes generally." *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, ¶ 21, 28 N.E.3d 170. Our primary objective in construing statutory provisions "is to ascertain and give effect to the intent of the legislature." *City of Chicago v. City of Kankakee*, 2019 IL 122878, ¶ 28. "The most reliable indicator of the legislature's intent is the language employed in the statute, which must be given its plain and ordinary meaning." *Wingert v. Hradisky*, 2019 IL 123201, ¶ 43. "Words and phrases should not be construed in isolation but must be interpreted in light of other relevant provisions of the statute." *Van Dyke v. White*, 2019 IL 121452, ¶ 46. We "must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous [citation], avoiding an interpretation which would render any portion of the statute meaningless or void." *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232, 756 N.E.2d 822, 827 (2001). We may "consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute in one way or another." (Internal quotation marks omitted.) *City of Chicago*, 2019 IL 122878, ¶ 28. In doing so, we presume "the legislature did not intend to enact a statute that leads to absurdity, inconvenience, or injustice." *Van Dyke*, 2019 IL 121452, ¶ 46.

¶ 57 2. *Section 9-8.10 of the Election Code*

¶ 58 Section 9-8.10 of the Election Code (10 ILCS 5/9-8.10 (West 2014)) regulates the "[u]se of political committee and other reporting organization funds."

¶ 59 Section 9-8.10(a) provides a variety of ways in which "[a] political committee shall not make expenditures." *Id.* § 9-8.10(a)(1)-(11). In some instances, subsection 9-8.10(a) not only directly prohibits certain expenditures but also provides particulars on how political committee and other reporting organization funds may be used. See *id.* § 9-8.10(a)(3), (a)(9).

¶ 60 Section 9-8.10(b) authorizes the Board to investigate alleged violations of section 9-8.10 and then render rulings and levy fines. *Id.* § 9-8.10(b). As to the ability to levy fines, subsection 9-8.10(b) permits the Board to "levy a fine on any person who knowingly makes expenditures in violation of [section 9-8.10]" "upon the affirmative vote of at least 5 of its members." *Id.*

¶ 61 Finally, section 9-8.10(c) provides: "Nothing in [section 9-8.10] prohibits the expenditure of funds of a political committee controlled by an officeholder or by a candidate to defray the customary and reasonable expenses of an officeholder in connection with the performance of governmental and public service functions." *Id.* § 9-8.10(c).

¶ 62 3. *Section 9-8.10(a)(9) of the Election Code*

¶ 63 Section 9-8.10(a)(9) provides:

> "(a) A political committee shall not make expenditures:
>
> * * *
>
> (9) For the purchase of or installment payment for a motor vehicle unless the political committee can demonstrate that purchase of a motor vehicle is more cost-effective than leasing a motor vehicle as permitted under this item (9). A political committee may lease or purchase and insure, maintain, and repair a motor vehicle if the vehicle will be used primarily for campaign purposes or for the performance of governmental duties. A committee shall not make expenditures for use of the vehicle for non-campaign or non-governmental purposes. Persons using vehicles not purchased or leased by a political committee may be reimbursed for actual mileage for the use of the vehicle for campaign purposes or for the performance of governmental duties. The mileage reimbursements shall be made at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code." *Id.* § 9-8.10(a)(9).

¶ 64 During the special meeting, the Board appears to have split on its interpretation of section 9-8.10(a)(9). The record makes clear the four members who voted in favor of finding violations believed section 9-8.10(a)(9) was the exclusive provision regulating campaign expenditures for vehicles and any expenditure for gas and repairs of a vehicle neither owned nor leased by a committee was a violation of section 9-8.10(a)(9). The record is not as clear as to the reasoning of the four members who voted against finding a violation. It appears that voting bloc believed section 9-8.10(c)—or a combination of section 9-8.10(a)(9) and section 9-8.10(c)—allowed a committee to make direct expenditures for gas and repairs of a personal vehicle used for campaign or governmental purposes.

¶ 65 Before this court, the Committee contends "[t]he only reasonable interpretation of [section 9-8.10(a)(9)] is that it prohibits certain uses of personal vehicles." In support of its interpretation, the Committee relies on the plain language found in section 9-8.10(a)(9). We

find the Committee's interpretation unpersuasive. The Committee states, partially quoting the statutory language found in section 9-8.10(a)(9), that section 9-8.10(a)(9) "prohibits a political committee from making expenditures for a vehicle 'for non-campaign or non-governmental purposes.' " The part of the sentence the Committee omits in its quotation of the statutory language refers to "the vehicle" as opposed to "a vehicle." The sentence comes directly after the sentence explaining a committee may purchase or lease a vehicle and make expenditures to insure, maintain, and repair its leased or purchased vehicle. In context, the sentence prohibits a committee from making expenditures for its purchased or leased vehicle when it is used for noncampaign or nongovernmental purposes. It does not allow a committee to make expenditures for personal vehicles so long as they are used for campaign purposes or for the performance of governmental duties.

¶ 66 The Board interprets section 9-8.10(a)(9) as allowing a committee to make expenditures directly for gas and repairs of a personal vehicle if the personal vehicle is used for campaign purposes or for governmental and public service functions so long as that reimbursement does not exceed the standard reimbursement rate. In support of its interpretation, the Board relies on the plain language from both sections 9-8.10(a)(9) and 9-8.10(c). We find the Board's interpretation unpersuasive. Section 9-8.10(a)(9) authorizes a committee to "insure, maintain, and repair" a vehicle if it is owned or leased by a committee. To adopt the Board's interpretation would be to render this language superfluous, which we may not do. Section 9-8.10(a)(9) also provides a specific manner whereby a committee may make expenditures to an individual who seeks compensation for the use of his or her personal vehicle for campaign or governmental purposes—reimbursement for actual mileage at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code. *Id.* To adopt the Board's interpretation would be to also render this language superfluous.

¶ 67 Cooke interprets section 9-8.10(a)(9) as "prohibit[ing] committees from making expenditures for gas and repairs of a vehicle unless the vehicle is owned or leased by the committee and used primarily for campaign purposes or the performance of governmental duties." In support, Cooke relies on the plain language in section 9-8.10(a)(9). We find Cooke's interpretation persuasive. Section 9-8.10(a)(9) not only directly prohibits certain expenditures but also provides particulars on how political committee and other reporting organization funds may be used. A plain reading of section 9-8.10(a)(9) authorizes a committee to (1) lease a vehicle used primarily for campaign purposes or for the performance of governmental duties; (2) purchase a vehicle for campaign purposes or for the performance of governmental duties if it can prove doing so is more cost effective than leasing; (3) insure, maintain, and repair a leased or purchased vehicle; and (4) reimburse individuals who use a vehicle not leased or owned by the committee for actual mileage used for campaign purposes or for the performance of governmental duties at a rate not to exceed the standard mileage rate method for computation of business expenses. A plain reading of section 9-8.10(a)(9) does not authorize a committee to make expenditures to a third party for gas and repairs of a personal vehicle used for campaign purposes or for the performance of governmental duties. The fact the legislature authorized only mileage reimbursement for a committee's use of a personal vehicle makes sense. Mileage reimbursement (1) assures an individual is only compensated for fuel and associated wear and tear from the use of a personal vehicle for campaign or governmental purposes and (2) creates transparent and detailed records of use of committee funds.

¶ 68 We find section 9-8.10(a)(9) is the exclusive provision regulating campaign expenditures on vehicles and does not permit, and therefore effectively prohibits, any expenditure to a third party for gas and repairs of vehicles neither owned nor leased by a committee.

¶ 69 4. *Section 9-8.10(a)(2) of the Election Code*

¶ 70 Section 9-8.10(a)(2) of the Election Code (*id.* § 9-8.10(a)(2)) provides:

> "(a) A political committee shall not make expenditures:
>
> ***
>
> (2) Clearly in excess of the fair market value of the services, materials, facilities, or other things of value received in exchange."

¶ 71 During the special meeting, the Board appears to have agreed section 9-8.10(a)(2) regulates not only the amount but also the purpose for which an expenditure is used. The Board members who voted in favor of finding violations clearly believed the purpose for which an expenditure is used may be relevant in determining whether a section 9-8.10(a)(2) violation has occurred. Vice Chairman Keith, who voted against finding a violation, suggests in his response to Member Linnabary's question he held the same belief—indicating he needed to "know what happened to that $30." Member McGuffage, who also voted against finding a violation, made comments suggesting he believed the purpose for which an expenditure is used may be relevant in determining whether a section 9-8.10(a)(2) violation has occurred—noting without amended reports he was unable to determine "which was campaign expenditures, which was personal expenditures."

¶ 72 Before this court, however, both the Committee and the Board interpret section 9-8.10(a)(2) as regulating only the amount of a specific expenditure and not its purpose. They suggest, so long as a committee pays market value for a particular item, the purpose for which that item is actually used is irrelevant. We find the interpretation of the Committee and the Board unpersuasive. As Cooke argues, the plain language of section 9-8.10(a)(2) does not regulate only the amount of a specific expenditure. An expenditure for a particular item or service used for an improper purpose would be an expenditure clearly in excess of the fair market value of what the committee received in exchange, which would be nothing. This interpretation makes sense. It prohibits committees from paying market value for a particular item or service and then allowing that item or service to be used for a purpose unrelated to campaign or governmental duties.

¶ 73 We find section 9-8.10(a)(2) regulates not only the amount but also the purpose for which an expenditure is used.

¶ 74 E. The Board's Application of the Election Code

¶ 75 The parties disagree as to whether the Board properly applied section 9-8.10(a)(2) and (a)(9) of the Election Code.

¶ 76 1. *Burden of Proof*

¶ 77 It is undisputed Cooke had the burden to prove his claims by a preponderance of the evidence. See *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33, 870 N.E.2d 273, 293 (2006) ("[A] plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden."); *People ex rel. Rusch*

v. Fusco, 397 Ill. 468, 473, 74 N.E.2d 531, 534 (1947) (noting the petitioner's claim alleging the respondents violated the election law "would have to be proved by a preponderance of the evidence"). "A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true." *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191, 835 N.E.2d 801, 856 (2005).

¶ 78 2. *Section 9-8.10(a)(9) Violations*

¶ 79 During the special meeting, the Board members who voted against finding a violation of section 9-8.10(a)(9) asserted they did so because Cooke failed to present sufficient evidence of a violation and any conclusion to the contrary would be speculative. For the reasons previously discussed, they reached their decision based on an erroneous interpretation of section 9-8.10(a)(9).

¶ 80 Neither the Committee nor the Board suggests the Board's decision may be sustained under the proper interpretation of section 9-8.10(a)(9) based on the evidence presented. The evidence presented at the public hearing showed the Committee (1) did not own or lease any vehicles and (2) made expenditures to Happy's for gas and vehicle repairs. This evidence was clearly sufficient to establish by a preponderance of the evidence the Committee made expenditures to a third party for gas and repairs of personal vehicles in violation of section 9-8.10(a)(9). The Board's decision to the contrary is clearly erroneous. We reverse the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(9) based on the expenditures for gas and repairs of personal vehicles at Happy's and remand for the Board to address the matter of fines under section 9-8.10(b). See *Cooke*, 2018 IL App (4th) 170470, ¶ 93 (declining to consider for the first time on appeal whether the Committee may be subject to additional fines under the Election Code if the Board found in favor of Cooke on any of his section 9-8.10 claims).

¶ 81 3. *Section 9-8.10(a)(2) Violations*

¶ 82 During the special meeting, the Board members unanimously agreed Cooke failed to establish a violation of section 9-8.10(a)(2) based on the expenditures reported to the Bank for election-day expenses. The Board members disagreed as to whether Cooke presented sufficient evidence to establish violations of section 9-8.10(a)(2) based on the expenditures for gas and repairs of personal vehicles at Happy's as well as the expenditures reported to the Bank for travel expenses.

¶ 83 As an initial matter, Cooke broadly asserts the Board clearly erred when it found he failed to establish a violation of section 9-8.10(a)(2) based on the expenditures to the Bank "in whole dollar amounts that were purportedly used for campaign expenses to undisclosed third parties, while not returning any of the withdrawn cash." Cooke then focuses his argument on the expenditures reported to the Bank for travel expenses. At no point does Cooke specifically address the expenditures for election-day expenses. To the extent he attempts to contest the Board's ruling concerning the election-day expenses, we find Cooke's claim to be forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing). We affirm the Board's decision to the extent it ruled Cooke failed to establish

a violation of section 9-8.10(a)(2) based on the expenditures reported to the Bank for election-day expenses.

¶ 84 The Committee asserts the Board's decision rejecting Cooke's section 9-8.10(a)(2) claim as it related to expenditures for gas and repairs to personal vehicles was not clearly erroneous as the evidence failed to show the gas and repairs were used for personal purposes. The evidence established the Committee made expenditures to Happy's for gas and repairs of personal vehicles over a 15-year period. As Cooke argues, we find it would be inevitable at least some portion of the gas and repairs were for personal use. Cooke established it is more probably true than not that the Committee made expenditures for gas and repairs for personal purposes. By making expenditures for gas and repairs for personal purposes, the Committee made expenditures in excess of the fair market value for what it received in exchange, which was nothing. The Board's decision to the contrary is clearly erroneous. We note, had the Committee made expenditures for personal vehicle use in the manner authorized by section 9-8.10(a)(9), the Committee would have likely avoided any violations of section 9-8.10(a)(2), as reimbursements at a rate not to exceed the standard mileage rate method for computation of business expenses under the Internal Revenue Code effectively serves as a fair-market-value protection. We reverse the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(2) based on the expenditures to Happy's and remand for the Board to address the matter of fines under section 9-8.10(b).

¶ 85 The Committee also asserts the Board's decision rejecting Cooke's section 9-8.10(a)(2) claim as it related to expenditures to the Bank for travel expenses was not clearly erroneous, as the evidence failed to show any cash was used for personal purposes. The evidence showed (1) the cash was obtained prior to travel by Mautino, (2) the cash was obtained in whole dollar amounts, (3) Mautino would sometimes not return receipts after traveling, (4) the Committee's treasurer did not recall an instance where Mautino deposited cash with the Bank when he returned from travel with receipts for expenses totaling an amount less than the amount of cash previously obtained from the Bank, (5) Mautino did not seek additional cash for unexpected traveling expenses, and (6) Mautino did not disclose any contributions relating to his personal payment of unexpected traveling expenses. Without needing to consider any possible adverse inference from Mautino's refusal to testify, we find the manner in which the Committee paid for travel expenses over a 15-year period inevitably led to at least some portion of the cash being used for personal purposes. By making expenditures to withdraw cash used for personal purposes, the Committee made expenditures in excess of the fair market value for what it received in exchange, which was nothing. The Board's decision to the contrary is clearly erroneous. We reverse the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(2) based on the expenditures to the Bank for travel expenses and remand for the Board to address the matter of fines under section 9-8.10(b).

¶ 86 F. Knowing Violations

¶ 87 As a final matter, we recognize some members of the Board who voted against finding violations of section 9-8.10(a)(9) suggested they did so because they concluded any violation was not "knowingly" committed. On appeal, Cooke contends the evidence established the Committee committed knowing violations and the Board's decision to the contrary is clearly erroneous. Neither the Committee nor the Board addresses Cooke's argument. We need not address Cooke's argument. Section 9-8.10(b) provides: "The Board may levy a fine on any

person who knowingly makes expenditures in violation of [section 9-8.10] ***." 10 ILCS 5/9-8.10(b) (West 2014). The Board, quoting section 9-8.10(b), asserts, "If a section 9-8.10 violation is found, section 9-8.10(b) states that the Board 'may levy a fine on any person who knowingly' made improper expenditures." The Board's assertion supposes the determination of whether a person knowingly made expenditures in violation of section 9-8.10 is a determination concerning the imposition of fines that is made only after a determination of whether a violation occurred. The Committee does not address the Board's interpretation of section 9-8.10(b). Absent any argument to the contrary, we agree with the Board's interpretation. Having now concluded the evidence established violations of section 9-8.10(a)(2) and (a)(9), the Board on remand can address whether the violations were knowingly committed in considering the matter of fines under section 9-8.10(b).

¶ 88 III. CONCLUSION

¶ 89 We affirm the Board's decision to the extent it ruled Cooke failed to establish a violation of section 9-8.10(a)(2) based on the Committee's expenditures to the Bank for election-day expenses. We reverse the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(2) based on the Committee's expenditures to the Bank for traveling expenses and to Happy's for gas and repairs of personal vehicles. We also reverse the Board's decision to the extent it ruled Cooke failed to establish violations of section 9-8.10(a)(9) based on the Committee's expenditures to Happy's for gas and repairs of personal vehicles. We remand with directions for the Board to address the matter of fines under section 9-8.10(b).

¶ 90 Affirmed in part and reversed in part; cause remanded with directions.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

In the Matter Of:	)	
	)	
David W. Cooke,	)	
	)	
Complainant(s),	)	
vs.	)	16 CD 093
	)	
Committee for Frank J. Mautino,	)	
	)	
Respondent(s).	)	

FINAL ORDER ON REMAND

TO: David W. Cooke
1 Ridge Place
Streator, IL 61364

Committee for Frank J. Mautino
P.O. Box 36
Spring Valley, IL 61362

This matter coming to be heard this 10th day of July, 2018, following the order of the Illinois Court of Appeals, 4th District, in Case Number 4-17-0470 in an opinion issued May 22, 2018 which remanded the matter back to the Board to issue rulings on the merits of Complainant Cooke's allegations that the Respondent violated 10 ILCS 5/9-8.10(a)(2) and 5/9-8.10 (a)(9) following a Public Hearing as a result of a Complaint filed pursuant to "An Act to Regulate Campaign Financing" (Illinois Compiled Statutes, 10 ILCS 5/9-1 *et seq.*, herein referred to as the "Act"), alleging that the Respondent violated 10 ILCS 5/9-7 and 5/9-8.10 in that the Respondent committee made expenditures in excess of the fair market value and made improper expenditures for the repair and maintenance of motor vehicles not owned or leased by the Respondent; and the State Board of Elections now being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Based on the failure of the Board to achieve 5 votes upon motions to find that Complainant has met the burden of proof to find that:
   a) Respondent violated Section 5/9-8.10(a)(2), and
   b) Respondent violated Section 5/9-8.10(a)(9),

   the Board does not find that Respondent violated either of said Sections; and
2. The effective date of this Order is July 16, 2018; and
3. This is a Final Order subject to review under the Administrative Review Law and Section 9-22 of the Election Code.

DATED: 7/16/2018

William J. Cadigan, Chairman

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

In the Matter Of:	)	
	)	
David W. Cooke,	)	
	)	
Complainant(s),	)	
vs.	)	16 CD 093
	)	
Committee for Frank J. Mautino,	)	
	)	
Respondent(s).	)	

FINAL ORDER ON COMPLAINT

TO:	David W. Cooke	Committee for Frank J. Mautino
	1 Ridge Place	P.O. Box 36
	Streator, IL 61364	Spring Valley, IL 61362

This matter coming to be heard this 15th day of May, 2017, following a Public Hearing as a result of a Complaint filed pursuant to "An Act to Regulate Campaign Financing" (Illinois Compiled Statutes, 10 ILCS 5/9-1 *et seq.*, herein referred to as the "Act"), alleging that the Respondent violated 10 ILCS 5/9-7 and 5/9-8.10 in that the Respondent committee failed to keep a detailed and accurate account of contributions and expenditures and made expenditures in excess of the fair market value; and the State Board of Elections having read the report of the Hearing Officer and hearing the recommendation of the Hearing Officer and the General Counsel and now being fully advised in the premises,

THE BOARD FINDS:

1. On February 16, 2016, Complainant filed his Complaint against the Respondent; following filing of the same, the Board appointed James Tenuto, Hearing Officer, to conduct a closed hearing for the purpose of determining whether the complaint was filed on justifiable grounds; and
2. On April 29, 2016, the Hearing Officer filed his report, finding that the complaint was filed on justifiable grounds and recommending that the matter proceed to a public hearing unless the Respondent filed amended campaign disclosure report to detail certain expenditures made to Happy's Super Service and Spring Valley City Bank; and
3. On May 18, 2016, the Board adopted the Hearing Officer's recommendation finding justifiable grounds for filing the complaint, and issued an Order directing the Respondent

to amend its campaign disclosure reports to provide an accurate breakdown between gas and repair, indicate whether vehicles involved were owned or leased by the Committee or were privately owned, and identify the actual recipient of each itemized expenditure as well as the specific purpose for each one; such amendments were to be completed no later than July 1, 2016; and

4. On June 1, 2016, a Motion to Stay was filed by the Respondent requesting that the Board stay its proceedings in the instant matter pending resolution of a parallel federal criminal investigation; and
5. On June 15, 2016, an Order on Motion to Stay was entered continuing hearing on the Motion to Stay to July 11, 2016 at 10:30 a.m., and the July 1, 2016 deadline to file amended reports was extended to July 11, 2016 at 10:30 a.m., at which time the Respondent committee was ordered to be prepared to file amended reports *instanter;* and
6. On July 13, 2016, the Board issued an Order again directing the Respondent to amend its campaign disclosure reports to detail the expenditures made to Happy's Super Service and Spring Valley City Bank, with the amendments to be completed no later than July 25, 2016; and
7. The Respondent did not file amended campaign disclosure reports as ordered, and pursuant to the July 13, 2016 Order, Hearing Officer Phil Krasny was appointed for the purpose of holding a timely public hearing; and
8. On September 6, 2016, another Motion to Stay was filed by the Respondent, requesting that the Board stay its proceedings in the public hearing pending resolution of a federal investigation; and
9. On September 9, 2016, the Complainant filed a Motion for Additional Time to Respond to Respondent's most recent Motion to Stay; and
10. On September 21, 2016, the Board denied both the Respondent's Motion to Stay and the Complainant's Motion for Additional Time to Respond, and remanded the matter back to the appointed Hearing Officer for public hearing; and
11. A public hearing was held on April 20, 2017, and a recommendation submitted to the Board by the appointed Hearing Officer, which recommendation was considered and heard, along with the arguments of counsel for Complainant and Respondent, at the Board's meeting of May 17, 2017; and
12. The evidence presented at public hearing established that the Respondent violated Section 9-8.10 of the Illinois Election Code by filing disclosure reports that were insufficient with regard to documentation, amount and accuracy of reported expenditures to Spring Valley City Bank and Happy's Super Service; and
13. Insofar as whether the Respondent committee has willfully violated the Board's Order of May 18, 2016, the evidence at public hearing established that the Respondent has not violated the Order(s) in regard to any disclosure reports filed prior to 2014, since those records were lawfully destroyed. However, the evidence shows the Respondent willfully violated the Board's Order(s) in the following particulars: (a) by failing to provide information regarding the ownership or lease of vehicles repaired or serviced with committee funds, (b) by failing to amend disclosure reports filed in 2014 and 2015 to reflect an accurate breakdown between gas and repair made to Happy's Super Service, (c) by failing to amend disclosure reports filed in 2014 and 2015 to identify the actual recipient of each itemized expenditure made to Happy's Super Service, and (d) by failing to amend

disclosure reports filed in 2014 and 2015 to identify the specific purpose of expenditures made to Spring Valley City Bank.

IT IS HEREBY ORDERED:

1. Hearing Officer and the General Counsel recommendations numbered one and three are adopted; and
2. Hearing Officer and the General Counsel recommendation number two is not adopted; and
3. For its willful violation of the Board's May 18, 2016 Order ordering it to provide information as to the ownership or lease of repaired or serviced vehicles, and to amend its disclosure reports filed in 2014 and 2015 to reflect an accurate breakdown between gas and repairs made to Happy's Super Service, and to identify the specific purposes of expenditures made to Spring Valley City Bank, the Respondent is hereby assessed a civil penalty in the amount of $5000.00; and
4. The effective date of this Order is May 18, 2017; and
5. This is a Final Order subject to review under the Administrative Review Law and Section 9-22 of the Election Code.

DATED: 5/18/2017

Charles W. Scholz, Chairman

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE ILLINOIS STATE BOARD OF ELECTIONS

David W. Cooke,
Petitioner

Appellate Court No. 4-18-0502
Board File No. 16 CD 093

v.

Illinois State Board of Elections, et al
and Committee for Frank J. Mautino,
Respondents

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Transaction ID: 4-18-0502
File Date: 11/6/2018 10:50 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE ILLINOIS STATE BOARD OF ELECTIONS

David W. Cooke,
Petitioner

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE ILLINOIS STATE BOARD OF ELECTIONS

David W. Cooke,
Petitioner

Appellate Court No. 4-18-0502
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v.

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Respondents

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