

OFFICE OF DISTRICT ATTORNEY

Milwaukee County

E. MICHAEL McCANN • District Attorney

November 2, 2006

Attorney Thomas L. Frenn
Petrie & Stocking S.C.
111 East Wisconsin Avenue, Suite 1500
Milwaukee, WI 53202-4808

Re: DA Case No. 2006EL049-F

Dear Mr. Frenn:

As you know, in a letter dated October 10, 2006, Senator Reynolds complained that a flier sent to Reynolds' contributors by the State Senate Democratic Committee (SSDC) contained false information in violation of Wis. Stats. §§12.05 and 942.01. The essence of both of these crimes is the publication of false statements. This letter sets forth this office's findings concerning that complaint. Lawyers for both the SSDC and Senator Reynolds have requested that I forthwith issue these findings upon the completion of the investigation.

The flier at issue contained the following assertion:

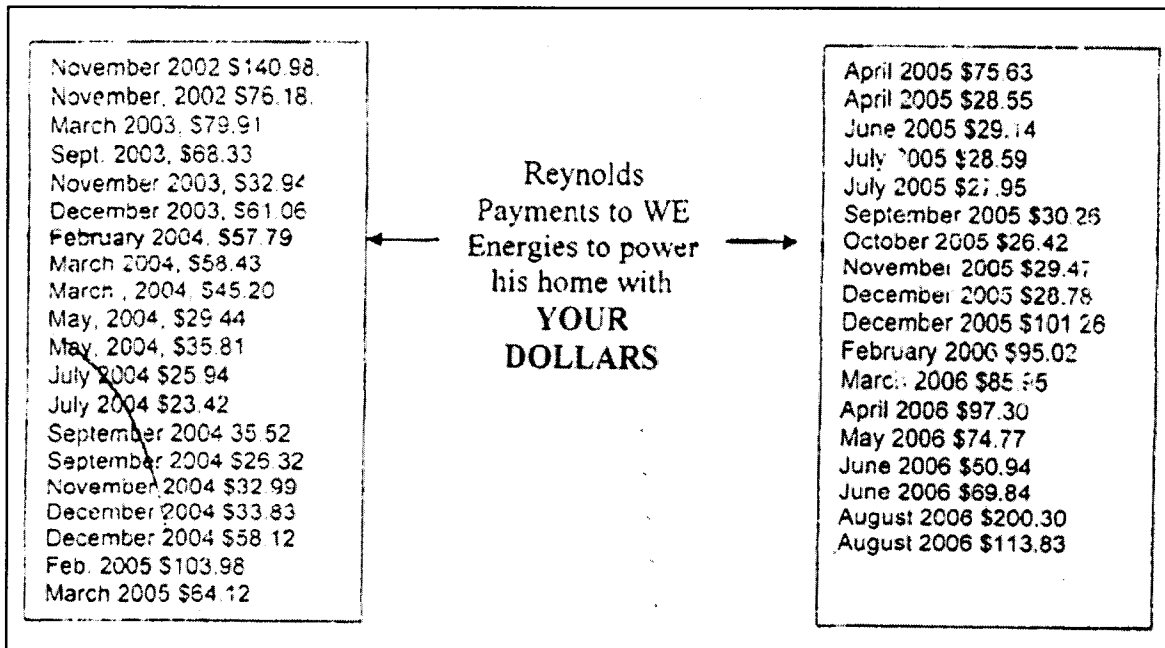


Figure 1

The assertion contained in Figure 1 is false. These payments were not made to power Senator Reynolds' home. WE Energies cooperated in the expedited response to a subpoena for records concerning these campaign finance expenditures. The payments in Figure 1 were

- Robert D. Donohoo
- Jon N. Reddin
- Patrick J. Kenney
- Lovell Johnson, Jr.
- James J. Martin
- Thomas A. Schulz
- Alexander G. Sklenarz
- William J. Moltor
- Donald S. Jackson
- Gale G. Shelton
- Terry Magowan
- Gary D. Mahkorn
- David Robles
- Peg Tarrant
- Douglas J. Simpson
- Cynthia G. Brown
- Norman A. Gahn
- Stephanie Gineris Rothstein
- Carol E. Janick
- Steven H. Glamm
- Mary Anne Smith
- Mark S. Williams
- Linda Johnson
- John M. Stoiber
- Thomas L. Potter
- David Feiss
- Rayann Chandler Szychliński
- Carole Manchester
- Kenneth R. Berg
- Warren D. Zier
- Timothy J. Cotter
- Carol Berry Crowley
- Steven V. Licata
- Brad Vorpahl
- Jane Carroll
- Paul Tiffin
- Miriam S. Falk
- Phyllis M. DeCarvalho
- Dennis P. Murphy
- Christine M. Kraus
- Phillip A. Arieff
- Thomas J. McAdams
- Bruce J. Landgraf
- Denis J. Stingl
- David M. Lerman
- Janet C. Protasiewicz
- DeAnn L. Heard
- Patricia A. McGowan
- Irene E. Parthum
- Karen A. Loebel
- Nancy Ettenheim
- Ronald S. Dague
- Lori S. Kornblum
- Karlene O'Byrne
- Maria Dorsey
- James W. Frisch
- Kurt B. Benkley
- James C. Griffin
- William P. Pipp
- Audrey Skwierawski
- Joanne L. Hardtke
- John T. Chisholm
- Christopher A. Liegel
- Megan P. Carmody
- Laura A. Crivello
- Shawn Pompe
- Kevin R. Shomin
- Jennifer Marlock
- Beth D. Zirgibel
- Karen A. Vespalec
- Rebecca F. Dallet
- Mark A. Sanders
- Paul C. Dedinsky
- David T. Malone
- Kelly L. Hedge
- Jeffrey J. Altenburg
- Rachael Stencel
- Patti Wabitsch
- Kent L. Lovern
- Bruce W. Becker
- Michael T. Mahoney
- Mary M. Sowinski
- Kathryn K. Samer
- Jeanette Corbett
- Jeffrey P. Greipp
- David Maas
- Jeremy L. Resar
- Daniel J. Gabler
- Sara P. Scullen
- T. Christopher Dee
- Katharine Kucharski
- Lisa P. Fricker
- Tiffany J. Harris
- Daniel R. Humble
- Jacob D. Corr
- Joy Hammond
- Trevor A. Sisk
- Andrew J. Maier
- Heidi E. Galvan
- Nancy A. Nost
- Elisabeth Mueller
- Megan J. Thomas
- Grant I. Huebner
- Stephan Eduard Nolten
- Christine M. Quinn
- Michelle Ackerman Havas
- Adam J. Levin
- Jennifer K. Rhodes
- Claire Starling
- Zach Whitney
- Rebecca A. Kiefer
- Matthew J. Torbenson
- Katryna L. Childs
- Jason M. Kieckhefer
- Carah Helwig
- Gilbert Urfer
- Jenna Merten
- Anthony White
- Antoni Apollo
- Julia Driscoll
- Nicole Dondingier
- Erin Karshen
- Lucy Kronforst
- William Anthony Bell, Jr.
- Erin Dineen
- Maureen A. Brackett
- Monica J. Awe
- Michael J. Lonski
- Paul M. Hauer

made to an account identified as 0486-041-776.¹ WE Energies records show that this account relates to an outbuilding at the rear of income property owned by Reynolds and his wife at 9500 West Schlinger Avenue, West Allis. Senator Reynolds' home is located at 9430 West Schlinger Avenue. The building is separately metered and no part of the WE Energies utility bills for that account relate to Reynolds' home.

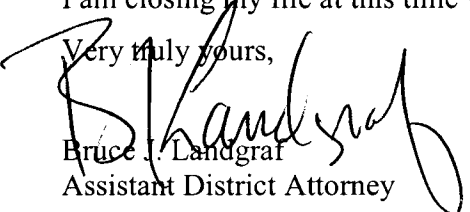
While the assertion in Figure 1 is false, it is not a crime unless the falsehood was made knowingly. That is, if the assertion is made with a belief that it is true, there is no crime under Wis. Stats. §12.05. In this instance, we need look no further than the materials filed with the State Elections Board in order to conclude that there was a basis to mistakenly believe that Reynolds' campaign funds were used to pay home WE Energies bills. On the Campaign Registration Statement (Form EB-1) filed with the State Elections Board on June 8, 2006, the Campaign Committee Address is listed as the Reynolds' home, 9430 West Schlinger Avenue, West Allis. Recent Campaign Finance Reports (CFRs) list 9430 West Schlinger Avenue as the campaign committee address. On many CFRs filed over the past months, payments to WE Energies are documented as "[u]tilities [payments] for campaign headquarters." Since multiple campaign filings list Senator Reynolds' campaign address as the Reynolds' residence, and since the CFRs state that campaign funds were used to pay WE Energies bills at "campaign headquarters," there is a reasonable basis for the SSDC to contend that the false statement contained in Figure 1 (i.e., that campaign funds were used to pay home WE Energies bills) was made unknowingly.

This leaves the issue of whether or not the false statement made by the SSDC is criminally defamatory within the meaning of Wis. Stats. §942.01. While the elements of a §942.01 prosecution are distinct from that of §12.05, it is my judgment that this is not the appropriate fact situation on which to base a criminal defamation action. *See, e.g., Tatur v. Solsrud*, 167 Wis.2d 266, 481 N.W.2d 657 (Ct. App. 1992).

While I have suggested to the attorney for the SSDC that a letter to the Reynolds' contributors admitting this error would be appropriate under these circumstances, I have no means of compelling the committee to do so.

I am closing my file at this time without further prosecution.

Very truly yours,



Bruce J. Landgraf
Assistant District Attorney

BJL/bl

cc: Attorney Jeremy Levinson
Attorney for the State Senate Democratic Committee

¹ While a few of the thirty-eight payments listed in Figure 1 are not expressly accounted for by WE Energies as of this writing, Senator Reynolds has provided me with an affidavit and other documentary evidence that, taken together, satisfy me that, when the campaign paid WE Energies utility bills, the campaign was making payments on Account 0486-041-776.