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May 17, 2024

David P. Buerger  
Staff Counsel  
Wisconsin Ethics Commission

RE: In re: Friends of Adam Steen  
FINDING OF PROBABLE CAUSE AND REFERRAL TO DISTRICT ATTORNEY PURSUANT TO  
WIS. STAT. § 19.49(2)(b)9.  
Case Nos. 2022-ETH-74,  
2023-ETH-42

Dear Attorney Buerger:

On December 2, 2022, a complaint was filed with the Wisconsin Ethics Commission alleging that "there was collusion between Adam Steen, several county parties + others to funnel money + services to his campaign to avoid contribution limits." On April 10, 2024, I received an electronic referral from the Commission which contained a document titled, "Finding of Probable Cause and Referral to District Attorney pursuant to Wis. Stat. §19.49(2)(b)9." I was further advised in the email that, "This matter...was originally referred to the Racine County District Attorney on February 21, 2024. That office subsequently declined to prosecute this matter." The Waukesha County District Attorney's Office was selected in a random drawing to refer the matter to next.

Pursuant to §19.49(2)(b)13, Wis. Stats., I am hereby notifying the Commission that I will not commence a prosecution.

In the Finding which I received, the Commission ordered the matter be referred for "investigation and prosecution of Respondent Friends of Adam Steen and any other person the District Attorney deems appropriate."

Wisconsin State law allows criminal prosecutions to be commenced against persons and corporations or limited liability companies. See §§969.04 and 968.05, Wis. Stats. I do not believe it

is possible to charge a campaign committee, such as Friends of Adam Steen, with the commission of a criminal offense.

Furthermore, while the Commission did also request the investigation and prosecution of “any other person” I deem appropriate, I do not have the necessary resources, nor do I have investigators with jurisdiction to act in Racine County. The investigation which was conducted by the investigators hired by the Commission is substantially incomplete in many aspects. Before any reasonable decision could be reached on the merits of a criminal prosecution of other persons, a significant, lengthy and professional investigation would have to be completed. As stated, I do not have the resources to complete that task.

Additionally, I have previously expressed my concerns with the lack of credible and legally sufficient information on which to proceed as I stated in my decision in “In re: Janel Brandtjen, Case Nos. 2022-ETH-79 and 2023-ETH-42.”

The complaint that was originally filed specifically directed the Commission to a media post at: <https://www.wisconsinrightnow.com/adam-steen-save-america/> which contained audio recordings purported to be telephone conversations between Mr. Steen and others. According to this media post, Wisconsin Right Now was “given access” to the recorded calls by “...a whistleblower who was concerned that potential campaign finance crimes might be captured on the calls...”

It appears the first persons interviewed by the investigators hired by the Commission were two staffers working on the Adam Steen campaign. At least one of them appeared to be in a position of authority. Following this interview, one of the staffers turned over to the investigators 34 audio recordings from Steen’s campaign phones. The staffer reported that Steen routinely recorded all calls into his office and granted her permission to access them via an app. The veracity and authenticity of the recordings was never determined by the investigators.

I conclude these recorded calls were not obtained by legal means and could not be used in a criminal prosecution. While it is true that according to §968.31(2)(c), Wis. Stats. that it is not unlawful for a person to intercept an oral communication where the person is a party to the communication or where one of the parties to the communication has given prior consent (which is the claim of the staffer), disclosure and use of the intercepted communication is a different question.

“Interception is one thing; disclosure as evidence in court is another. In declaring interceptions with consent of one party ‘not unlawful’ the act recognizes the need of this investigative tool to detect crime, but in denying its use as evidence the statute recognizes in the balance the right of privacy of free people. Consequently, such activities by the police may well be excepted from the penalties of sec. 968.31 but it does not follow from this exception that the results of such interceptions stand on an equal footing with those authorized by the court under sec. 968.30, Stats., and are therefore admissible in evidence.”

*State ex rel. Arnold v. County Court of Rock County*, 51 Wis. 2d 434, 442–43, 187 N.W.2d 354, 358–59 (1971).



The Court went on to say, "only communications 'intercepted in accordance with' the state law may be disclosed by being admitted in evidence."

*State ex rel. Arnold v. County Court of Rock County*, 51 Wis. 2d 434, 442, 187 N.W.2d 354, 358 (1971).

The intercepted communications vital to this complaint were not authorized by §§968.28 to 968.33, Wis. Stats. Thus, they could not be used in a potential prosecution. Furthermore, any information derived from the intercepted communication could not be used.

This decision does not clear those involved of any wrongdoing; I am only concluding there is insufficient evidence on which to base a charging decision.

Finally, it is worth noting that the Commission only had to act upon a finding of reasonable suspicion initially to authorize an investigation and then probable cause to make a referral. These burdens are substantially lower than proof beyond a reasonable doubt which is necessary for a criminal conviction. The Commission could, at its discretion, prosecute a civil violation of the law pursuant to §19.49(2)(a), Wis. Stats., where the burden of proof and constitutional rights of the accused are far less stringent.

For all these reasons, I will not commence a criminal prosecution.

Very truly yours,



Susan L. Opper  
District Attorney