Inquiry on the Public Notice regarding the Election board Hearing of Thursday, 1/15/09…..

Copy of the Notice? Respond to both verbal and written request?
Proof of the transmittal to the media?
Meeting legal?
Emergency meeting? What grounds for emergency?

IC 5-14-1.5-5
Public notice of meetings Sec. 5.

(a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

(b) Public notice shall be given by the governing body of a public agency by:

(1) posting a copy of the notice at the principal office of the public agency holding the meeting or, if no such office exists, at the building where the meeting is to be held; and

(2) delivering notice to all news media which deliver by January 1 an annual written request for such notices for the next succeeding calendar year to the governing body of the public agency. The governing body shall give notice by one (1) of the following methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax). If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice. In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting. *As added by Acts 1977, P.L.57, SEC.1. Amended by Acts 1979, P.L.39, SEC.2; P.L.67-1987, SEC.3; P.L.8-1989, SEC.22; P.L.3-1989, SEC.29; P.L.46-1990, SEC.1; P.L.251-1999, SEC.4; P.L.90-2002, SEC.17; P.L.200-2003, SEC.1; P.L.177-2005, SEC.14.*

Establishment of the "timeline"…..

Complaint filed on December 18, 2008

There was no activity by either the Clerk's Office or the Election Board or any attempted notification of the defendants regarding the filing of the complaint until….

January 13, 2009 when the County Clerk/Board Secretary certified a mailing to myself, Christopher N. Hiatt as the Incorporator of the Citizens of Delaware County for Property Tax Repeal that contained a one page single-sided letter on the County Clerk's letterhead indicating a complaint had been filed and requesting my appearance before this Board at a Hearing scheduled for Thursday, January 15, 2009, a mere 18 hours before the Election Board Hearing and did not contain a copy of the complaint nor any specifics regarding the complaint…..why?....

Normal processes regarding complaints?

I would like to go on the record that I find it highly suspicious and quite disconcerting that both the Delaware County clerk's office and the Delaware County Election Board received a complaint on December 18, 2008 and didn't timely notify the defendants to the complaint until the very day of the initial hearing on January 15, 2009 other than to request my presence at this venue a mere 18 hours before.

This whole issue reeks to high heaven of a premeditated effort to try and blindside or ambush me and the CDCPTR organization…..and I must keep this fact at the forefront of my responses as we move forward…..

(Specious and illegitimate tribunal?)

Recognition of the filing of our complaint…..stated at last week's hearing ……..

To the first item of concern in Mr. Evans complaint……

In the first sentence, Mr. Evans makes an allegation that we're a Political Action Committee and his complaint is founded on that basis. That, members of the Board is blatantly incorrect. We are a legitimately registered and legal Indiana Non-Profit Domestic Corporation. There is absolutely no disputing of that fact. Here are the documents of incorporation from the Secretary of State. Let's even take a look at the Election Board's Secretary and Delaware County Clerk's letter to me dated January 13th and received on January 14th where he specifically identifies and refers to me as the "Incorporator and Registered Agent"…by virtue of this own Board's written communications, you are recognizing us as a Corporation, which is correct. Our Corporate identity is a legally registered and acknowledged by the Secretary of the State of Indiana and cannot be changed, skewed or conveniently manipulated for purposes of this complaint, by one's perception, opinion or even our very own actions. Mr Evans, or anybody else for that matter, can walk around all day long and draw personal conclusions that any given position or behavior of a Corporation that may mimmick or be similar in nature to something else, but that will not and cannot change the very basic legally registered identity of that corporation. It is for that reason the law recognizes that very fact and specifically spells out, points to, and addresses the issue of corporations and their involvement in election issues in numerous places starting with the very legal definition of a Political Action Committee……Title 3, Article 5, Chapter 2 of the Indiana Statutes spells out all the definitions of Indiana Election Law…..

IC 3-5-2-37
"Political action committee" Sec. 37.

(a) **Except as provided in subsection (b)**, "political action committee" means an organization located within or outside Indiana that satisfies all of the following:
(1) The organization proposes to influence:
(A) the election of a candidate for state, legislative, local, or school board office; or
(B) the outcome of a public question.
(2) The organization accepts contributions or makes expenditures during a calendar year:
(A) to influence the election of a candidate for state, legislative, local, or school board office or the outcome of a public question that will appear on the ballot in Indiana; and
(B) that in the aggregate exceed one hundred dollars ($100).
(3) The organization is not any of the following:
(A) An auxiliary party organization.
(B) A legislative caucus committee.
(C) A regular party committee.
(D) A candidate's committee.

(b) A corporation or labor organization that makes a contribution in accordance with IC 3-9-2 or makes an expenditure is not considered a political action committee.

As added by P.L.5-1986, SEC.1. Amended by P.L.3-1987, SEC.8; P.L.7-1990, SEC.1; P.L.3-1995, SEC.5; P.L.3-1997, SEC.13; P.L.2-1998, SEC.2; P.L.176-1999, SEC.3.

So there it is, by the very definition of a Political Action Committee and the exception contained therein, combined with our legally registered and identifiable identity as a Corporation…we ARE NOT a Political Action Committee……

Allow us to dissect this first complaint a little further if you will…Mr. Evans goes on to reference a newspaper advertisement in the Star Press dated October 31, 2008. Well, the fact is, we didn't place an advertisement in the Star Press on October 31, 2008…so with Mr. Evan's first complaint hinging on our being a Political Action Committee, which we are not, and the placement of an advertisement on October 31, 2008, which we did not, these erroneous statements of facts render this first complaint moot and without proper foundation and should be dismissed.

(just as the Board afforded us a whole 7 days to prepare for this hearing, so the complainant had the same time period to amend and perfect their complaint…they did not)

Let’s move on to the second issue involved in Mr. Evans complaint….once again Mr. Evans is making his argument on the basis that we’re a Political Action Committee and citing a statute that involves the reporting requirements of PACs. Well, once again neither Mr. Evans opinion, nor any third party perception can change the legal facts…..we are a Corporation not a PAC. Political Action Committees organize for a very specific reason…to solicit and pass through money and other valuable considerations to specific political interests, candidates, their committees and several other, but very specifically political concerns and to be specifically identifiable as that type of organization…there is a totally separate process for their organizing under Indiana law and subsequently a totally separate reporting process since they are to be held accountable publicly for third party considerations going towards the efforts intended. The CDCPTR has never structured itself in that light, we have never solicited donations for specific political causes and we have never financed or contributed to a candidate, a candidate's committee, a regular party committee, a political action committee, or a legislative caucus committee. It is simple as that. Therefore, since it was never our intent to take on the identity or missions of a Political Action Committee, we organized as an Indiana Corporation. Our recordkeeping requirements are not governed by IC 3-9-4-16, those being for a PAC, but rather by IC 23-17-27, being for Corporations. We have adhered to those requirements. This second complaint is directed towards a legal identity of which we are not, is both frivolous and without merit and should be dismissed.

In Mr. Evans third part of his complaint, the very cite he's referencing is bogus and nonexistent. There is no, and can be no, Article 0 of Title 3 of the Indiana Statutes. I would propose that for that reason and that reason alone just like the alleged date of the advertisement we paid for, this would render this part of his complaint moot and without proper foundation. But in this part of his complaint, Mr. Evans doesn't make reference to a "violation" but rather to a "penalty" that he proposes the Election Board impose.

The fact of the matter is that the law does provide for the Election Board to impose civil penalties and that part of the statutes lie in IC 3-9-4…..now I might remind the Board that this is just speculation on our part for Mr. Evans has left totally in the dark the supporting legal authority for his call to the whipping post of the CDCPTR. But allow us to take a look for a moment at what we "speculate" Mr. Evans was trying to point to…unless of course Mr. Evans (or the Board) would like to stipulate to the correct statutory cite being IC 3-9-4-17….I might hint to everyone that IC 3-9-4-17 is titled "Civil penalties of the County Election Board…..

At any rate let's move on and explore and defend against Mr. Evans contentions and ridiculously unfounded request for punitive measures assuming we're focused on the correct statute….First I want to point the statute he's apparently intended on citing and bring your attention specifically that the 17th section of the law that Mr. Evans, we believe, is referencing because it's the only part of the statute that ties directly with the penalties he is seeking from the Board……

IC 3-9-4-17
Civil penalties; county election board

Sec. 17. (a) In addition to any other penalty imposed, a person who does any of the following is subject to a civil penalty under this section:

(1) Fails to file with a county election board a report in the manner required under IC 3-9-5.

(2) Fails to file a statement of organization required under IC 3-9-1.

(3) Is a committee or a member of a committee who disburses or expends money or other property for any political purpose before the money or other property has passed through the hands of the treasurer of the committee.

(4) Makes a contribution other than to a committee subject to this article or to a person authorized by law or a committee to receive contributions in the committee's behalf.

(5) Is a corporation or labor organization that exceeds any of the limitations on contributions prescribed by IC 3-9-2-4.

(6) Makes a contribution in the name of another person.

(7) Accepts a contribution made by one (1) person in the name of another person.

(8) Is not the treasurer of a committee subject to this article, and pays any expenses of an election or a caucus except as authorized by this article.

(9) Commingles the funds of a committee with the personal funds of an officer, a member, or an associate of the committee.

(10) Wrongfully uses campaign contributions in violation of IC 3-9-3-4.

(11) Fails to designate a <u>contribution</u> as required by IC 3-9-2-5(c).

(12) Violates IC 3-9-3-5.

(13) Serves as a treasurer of a committee in violation of any of the following:

(A) IC 3-9-1-13(1).

(B) IC 3-9-1-13(2).

(C) IC 3-9-1-18.

(b) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for filing a defective report or statement. If the county election board determines that a person

failed to file the report or a statement of organization not later than noon five (5) days after being given notice under section 14 of this chapter, the county election board may assess a civil penalty. The penalty is ten dollars ($10) for each day the report is late after the expiration of the five (5) day period, not to exceed one hundred dollars ($100) plus any investigative costs incurred and documented by the board. The civil penalty limit under this subsection applies to each report separately.

(c) This subsection applies to a person who is subject to a civil penalty under subsection (a)(1) or (a)(2) for a delinquent report or statement. If the county election board determines that a person failed to file the report or statement of organization by the deadline prescribed under this article, the board shall assess a civil penalty. The penalty is fifty dollars ($50) for each day the report is late, with the afternoon of the final date for filing the report or statement being calculated as the first day. The civil penalty under this subsection may not exceed one thousand dollars ($1,000) plus any investigative costs incurred and documented by the board. The civil penalty limit under this subsection applies to each report separately.

(d) This subsection applies to a person who is subject to a civil penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or (a)(10). If the county election board determines that a person is subject to a civil penalty under subsection (a), the board may assess a civil penalty of not more than one thousand dollars ($1,000), plus any investigative costs incurred and documented by the board.

(e) This subsection applies to a person who is subject to a civil penalty under subsection (a)(5). If the county election board determines that a person is subject to a civil penalty under subsection (a)(5), the board may assess a civil penalty of not more than three (3) times the amount of the contribution in excess of the limit prescribed by IC 3-9-2-4, plus any investigative costs incurred and documented by the board.

(f) This subsection applies to a person who is subject to a civil penalty under subsection (a)(11). If the county election board determines that a corporation or a labor organization has failed to designate a contribution in violation of IC 3-9-2-5(c), the board shall assess a civil penalty equal to the greater of the following, plus any investigative costs incurred and documented by the board:

(1) Two (2) times the amount of the contributions undesignated.

(2) One thousand dollars ($1,000).

(g) This subsection applies to a person who is subject to a civil penalty under subsection (a)(12). If the county election board determines, by unanimous vote of the entire membership of the board, that a person has violated IC 3-9-3-5, the board may assess a civil penalty of not more than five hundred dollars ($500), plus any investigative costs incurred and documented by the board.

(h) This subsection applies to a person who is subject to a civil penalty under subsection (a)(13). If the county election board determines, by unanimous vote of the entire membership of the board, that a person has served as the treasurer of a committee in violation of any of the statutes listed in subsection (a)(13), the board may assess a civil penalty of not more than five hundred dollars ($500), plus any investigative costs incurred and documented by the board.

(i) All civil penalties collected under this section shall be deposited with the county treasurer to be deposited by the county treasurer in a separate account to be known as the campaign finance enforcement account. The funds in the account are available, with the approval of the county fiscal body, to augment and supplement the funds appropriated for the administration of this article.

(j) Money in the campaign finance enforcement account does not revert to the county general fund at the end of a county fiscal year.

(k) **Proceedings of the county election board under this section are subject to IC 4-21.5**.

As added by P.L.3-1993, SEC.90. Amended by P.L.3-1995, SEC.75; P.L.3-1997, SEC.197; P.L.66-2003, SEC.24; P.L.14-2004, SEC.73.

Now, this is real interesting…after trying to stick us with a fictitious identity as a Political Action Committee for the purpose of supporting his first two complaints, Mr. Evans is now identifying us as a Corporation! What's it going be? A Political Action Committee or a Corporation?? And…he's indicating in this complaint that we've made a contribution! Even as you read this statute and follow it all around to its various other statutory references Mr. Evans has now switched identity associations relative to our Organization for the hypocritical convenience of trying to make his case… IC 3-9-4-17 subsection (f) make reference and points to IC 3-9-4-17 subsection (a)(11) where once again we are accused of making a contribution, but both of these subsections make reference and point to IC 3-9-2-5(c). Let's chase all this down and try and tie it all together…..

IC 3-9-2
Chapter 2. Campaign Contributions

IC 3-9-2-1
Application of chapter
Sec. 1. (a) Except as provided in subsections (b) and (c), this chapter applies to candidates in all elections and caucuses and to the following types of committees:
(1) Candidate's committees.
(2) Regular party committees.
(3) Political action committees.
(4) A legislative caucus committee.
(b) Sections 2 through 10 of this chapter do not apply to elections for precinct committeeman or delegate to a state convention.
(c) Section 9 of this chapter applies to a candidate only if the candidate is required to file a written instrument designating a principal committee under IC 3-9-1-5 or IC 3-9-1-5.5.
(d) Sections 9 and 10 of this chapter apply to an auxiliary party organization.
As added by P.L.5-1986, SEC.5. Amended by P.L.3-1987, SEC.143; P.L.3-1993, SEC.85; P.L.3-1995, SEC.66; P.L.3-1997, SEC.175; P.L.26-2000, SEC.12.

IC 3-9-2-2
Candidates
Sec. 2. Except as otherwise provided in this article, a candidate may make a voluntary payment of money to a treasurer of a committee for a purpose permitted by this article.
As added by P.L.5-1986, SEC.5.

IC 3-9-2-3
Corporations, labor organizations, and national banks
Sec. 3. (a) Notwithstanding IC 23-15-5 or any other statute, a corporation or labor organization may make a contribution to aid in the:
(1) election or defeat of a candidate; or
(2) the success or defeat of:
(A) a political party; or
(B) a public question submitted to a vote in an election.
(b) Contributions by a corporation or labor organization are limited to those authorized by sections 4, 5, and 6 of this chapter.
(c) A national bank or a corporation organized by authority of any law of Congress must comply with contribution restrictions applicable to Indiana elections under 2 U.S.C. 441b.

As added by P.L.5-1986, SEC.5. Amended by P.L.11-1987, SEC.3; P.L.7-1990, SEC.29; P.L.14-1992, SEC.1; P.L.3-1997, SEC.176.

IC 3-9-2-4
Corporations or labor organizations; limitation on contributions
Sec. 4. During a year a corporation or labor organization may not make total contributions in excess of:

(1) an aggregate of five thousand dollars ($5,000) apportioned in any manner among all candidates for state offices (including a judge of the court of appeals whose retention in office is voted on by a district that does not include all of Indiana);

(2) an aggregate of five thousand dollars ($5,000) apportioned in any manner among all state committees of political parties;

(3) an aggregate of two thousand dollars ($2,000) apportioned in any manner among all candidates for the senate of the general assembly;

(4) an aggregate of two thousand dollars ($2,000) apportioned in any manner among all candidates for the house of representatives of the general assembly;

(5) an aggregate of two thousand dollars ($2,000) apportioned in any manner among regular party committees organized by a legislative caucus of the senate of the general assembly;

(6) an aggregate of two thousand dollars ($2,000) apportioned in any manner among regular party committees organized by a legislative caucus of the house of representatives of the general assembly;

(**7) an aggregate of two thousand dollars ($2,000) apportioned in any manner among all candidates for school board offices and local offices;** and

(8) an aggregate of two thousand dollars ($2,000) apportioned in any manner among all central committees other than state committees.

As added by P.L.5-1986, SEC.5. Amended by P.L.3-1987, SEC.144; P.L.10-1988, SEC.66.

IC 3-9-2-5
Contributions or donations to specific candidate or committee
Sec. 5. (a) **A contribution**:

(1) authorized under subsection (c) or section 4 of this chapter;

(2) **to a committee by a corporation** or labor organization; and

(3) **designated by that corporation or labor organization for disbursement to a specific candidate, central committee, or other regular party committee; is subject to the limitations in section 4 of this chapter.**

(b) **A corporation** or labor organization may make a donation to cover any amount of administrative costs (as described in IC 3-5-2-15(e)) to a political action committee established and controlled by the corporation or labor organization. A donation made under this subsection is not considered a contribution or an expenditure by the corporation or labor organization.

(c) A corporation or labor organization may make a contribution to a political action committee if the contribution:

(1) does not exceed any of the limits prescribed under section 4 of this chapter; and

(2) is designated for disbursement to a specific candidate or committee listed under section 4 of this chapter.

As added by P.L.5-1986, SEC.5. Amended by P.L.10-1988, SEC.67; P.L.3-1995, SEC.67; P.L.8-1995, SEC.36; P.L.2-1996, SEC.96; P.L.3-1997, SEC.177.

I honestly think we're in a real pickle now…..for according to Mr. Evan's first two complaints identifying us as a Political Action Committee and now through his third complaint and request for sanctions, as a Corporation…according to this law…we can't even write a check to ourselves unless its controlled by section 4 of this statute!…..

Now, we'd like to clear the air and fully exonerate ourselves on this issue but first allow us to apply Mr. Evan's contention in his third complaint that we're a Corporation….which we are for the record….to our defense of his second complaint about reporting requirements for a Political Action Committee. If Mr. Evans' third complaint is founded on our being a corporation, I would suggest that Mr. Evans' second complaint is put to bed in our favor by Mr. Evan's own written references, citations and admissions…..

Okay, so here we are…we finally have Mr. Evans acknowledging us by our true legal identity as a Corporation, but now he's trying to hang his hat on the accusation that we've made a contribution (as opposed to an expenditure)…

In order for us to get the issue of whether this was an "expenditure" as we contend, as opposed to a "contribution", as Mr. Evans contends, we need to back track to Mr. Evans first complaint…..

Mr. Evans alleges in his first complaint that the Star Press published an advertisement and that said advertisement did not sufficiently reveal or disclose who had paid for and authorized the advertisement. Well, by virtue of the fact that Mr. Evans has filed this complaint against the CDCPTR, there certainly appears to be no confusion with Mr. Evans as to who is responsible. But more importantly, Mr. Evans in the second sentence of his complaint describes a specific "transaction". He names the Star Press as the "provider", "carrier" or "vendor" however you want to classify them and some unnamed source as the "payer", or "Star Press Customer" or however you might want to qualify them….but let's assume (and rightfully so) that this unnamed source of payment in Mr. Evans first complaint is the CDCPTR. Most importantly, what Mr. Evans has described in the second sentence of his first complaint is both a legitimate and at arm's length legal transaction between two unrelated parties neither of which are either a candidate, a candidate's committee, a regular party committee, a political action committee, or a legislative caucus committee. And by the very definition of the law meets the qualifications of an "expenditure…. Let's look again at the definitions law…..once again back to the definitions statute…..IC 3-5-2….let's first look at the definition for expenditure…

IC 3-5-2-23
"Expenditure" Sec. 23.

(a) **"Expenditure" means a disbursement** (whether characterized as an advance, a deposit, a distribution, a gift, a loan, **a payment, a purchase**, or a contract or promise to make a disbursement) **of property** (as defined in IC 35-41-1) that:

(1) is made for the purpose of influencing:

(A) the nomination or election to office of a candidate;

(B) the election of delegates to a state constitutional convention; or

(C) the outcome of a public question; and

(2) is made by

(A) an individual, except that a contribution made by an individual is not considered to be an expenditure;
(B) a candidate's committee;
(C) a regular party committee; or
(D) a political action committee.

(b) Whenever funds are transferred from one committee to another, the disbursing committee is considered to be making an expenditure in the amount of the funds transferred.
As added by P.L.5-1986, SEC.1.

And while were at it and since the Expenditure definition refers to "property" let's enter into the record the definition of "property"

IC 35-41-1-23
"Property" defined

Sec. 23. (a) **"Property" means anything of value.** The term includes:
(1) a gain or advantage or anything that might reasonably be regarded as such by the beneficiary;
(2) **real property, personal property, money, labor, and services;**
(3) intangibles;
(4) commercial instruments;
(5) written instruments concerning labor, services, or property;
(6) written instruments otherwise of value to the owner, such as a public record, deed, will, credit card, or letter of credit;
(7) a signature to a written instrument;
(8) extension of credit;
(9) trade secrets;
(10) contract rights, choses-in-action, and other interests in or claims to wealth;
(11) electricity, gas, oil, and water;
(12) captured or domestic animals, birds, and fish;
(13) food and drink; and
(14) human remains.
(b) Property is that "of another person" if the other person has a possessory or proprietary interest in it, even if an accused person also has an interest in that property.
As added by P.L.311-1983, SEC.24.

And since Mr. Evans want to try and paint this as a contribution let's look at the legal definition of a "Contribution……

IC 3-5-2-15
"Contribution"

Sec. 15. (a) "Contribution" means <u>a donation</u> (whether characterized as an advance, a deposit, a gift, a loan, a subscription, or a contract or promise to make a donation) <u>of property</u> (as defined in IC 35-41-1) that satisfies both of the following:
(1) The donation is made for the purpose of influencing any of the following:
(A) The nomination or election to office of a candidate.

(B) The election of delegates to a state constitutional convention.
(C) The outcome of a public question.
(2) The donation is accepted by any of the following:
(A) A candidate.
(B) A candidate's committee.
(C) A regular party committee.
(D) A political action committee.
(E) A legislative caucus committee.
(b) Whenever funds are transferred from one (1) committee to another, the accepting committee is considered to be receiving a contribution in the amount of the funds transferred.
(c) Whenever a candidate or a committee accepts the personal services of a person whose compensation is being paid by a third person, the candidate or committee is considered to be receiving a contribution from the third person in the amount of the compensation paid.
(d) Notwithstanding subsection (a), whenever a candidate or a committee accepts the personal services of a volunteer who is not being compensated, the candidate or committee is not considered to be receiving a contribution.
(e) Notwithstanding subsection (a), whenever a political action committee accepts a donation of:
(1) rent;
(2) office expenses;
(3) management fees;
(4) costs of solicitations of contributions; or
(5) other administrative costs; the committee is not considered to be receiving a contribution.
As added by P.L.5-1986, SEC.1. Amended by P.L.3-1987, SEC.4; P.L.5-1989, SEC.2; P.L.3-1997, SEC.6.

Now it's important to note that the definition of "Expenditure" specifically points to payments and purchases, while the legal definition of "Contribution" does not. We think that is relatively self-explanatory. Another few things of note in these definitions is that while the definition of "Contribution" speaks to a donated transfer of property, which could include money as defined by IC 35-41-1, it MUST be accepted and received by either a candidate, a candidate's committee, a regular party committee, a political action committee, or a legislative caucus committee. Back to the terminology involved in the definition of "Expenditure" where one will see that by the very definition it DOES NOT have to be made to, by and/or through a candidate, a candidate's committee, a regular party committee, a political action committee, or a legislative caucus committee. So let's jump back once again to the second sentence of the Mr. Evans first complaint where he has described transaction between two unrelated parties, the Star Press and the CDCPTR <u>AND NO OTHER PARTIES, JUST THOSE TWO</u> neither of which are either a candidate, a candidate's committee, a regular party committee, a political action committee, or a legislative caucus committee. Gentlemen…this transaction was an "expenditure" with no exception. Allow me to support that fact with the submission of copies of The Star Press billing for the advertisement and the CDCPTR payment of the same.

Now as if I haven't already demonstrated effectively that this request for sanctions is both fallacious and unfounded……I think it is very important to speak to one more thing regarding this issue and to do that we need to go back to the law……

IC 3-9-4-17
Civil penalties; county election board Sec. 17.
(listing of several penalties and fines)……..

(k) **Proceedings of the county election board under this section are subject to IC 4-21.5**.

As added by P.L.3-1993, SEC.90. Amended by P.L.3-1995, SEC.75; P.L.3-1997, SEC.197; P.L.66-2003, SEC.24; P.L.14-2004, SEC.73.

With Mr. Evans filing of his complaint that includes a request for sanctions as provided by IC 3-9-4-17 and the Board subsequently hearing his complaint, the Board has legally entered into the territory of IC 4-21.5. This portion of Mr. Evan's complaint and the associated statute that provides for the Board to levy punitive measures in the form of fines, acting with the authority of a legitimate Court of Law…but because of that….and because of the fact that this Board is not a true Court of Law and none of you sit with the specific jurisprudence or punitive authority of a Judge, the statute specifically provides for the proceedings under this statute to be subject to IC 4-21.5. And IC 4-21.5 is the statute that provides for the proper and legal oversight and most importantly legal due process for the accused or defendants subject to those types of orders by non-judicial board of this nature…..

This statute….and now I'm referring to IC 4-21.5… provides for a much more formal and stringent set of guidelines to conduct this hearing under as if we might be conducting this hearing in a actual Court of Law. Some of the most basic remedies and protections afforded in an actual Court of Law are addressed in this Statute. Including, but not exclusively, challenges, disqualification summary judgment filings, rules of evidence, notices, service of process, discovery, burden of proof, cross examination findings of fact and conclusions of law and of course, rights of appeal as well as many other types of injunctive relief as may be provided by law…..and it all begins with the appointment of an Administrative Law Judge….

And in the area of this law dealing with notices (or lack thereof) and service of process (or lack thereof) as well as sworn testimony under oath amongst a multitude of other areas that we've already tread….you have in fact, Board Members, already violated our rights and due process of law.

So my question to the Board is this…..how are you going to correct the violations of our legal rights and rights to due process under IC 4-21.5 that you've already taken from us. How do you go about restoring those rights you've already denied us?

So as we are sure that you will do whatever you see fit, it is our formal position that we've been subjected to an illegal venue and an unlawful process, the complaint and sanctions request has no merit or foundation to begin with and the Board has proceeded in hearing it outside of IC 4-21.5. We would like our Objection so notated on the record, please.

And finally to Mr. Evans last complaint concerning

IC 3-14-1-3

Circulation or publication of anonymous campaign material

Sec. 3. An individual, an organization, or a committee that circulates or publishes material in an election without the statement required under IC 3-9-3-2.5 commits a Class A misdemeanor.
As added by P.L.5-1986, SEC.10. Amended by P.L.10-1988, SEC.206; P.L.5-1989, SEC.71; P.L.3-1997, SEC.400.

(Please hold up our advertisement if you will…) What in the world is "anonymous" about that???

I would propose that this statutes and subsequent penalty is targeted at truly anonymous publications. And I would also propose that if we're in violation of nondisclosures with our advertisement, that the Building Trades advertisement is far more egregious in that nature as the entity as identified in their advertisement doesn't even exist…..

It is also our position that the last complaint is contingent upon the merits of the previous three complaints, which we believe are frivolous, unfounded and without merit.

If it's the Board's sustained position that our advertisement is "anonymous", which we contend it is not, then I would suspect that the Board is inclined to ignore the obvious and forward to the appropriate authorities to get their glean this issue. If that should be the case, then I would have to unfortunately concur that may be the only resolve to the issue and the merits of this complaint.

So with all that said and done, I appreciate your attention and we'll close our defense of Mr. Evans' complaint…….

We are, for the record, at this time prepared to move forward on our complaint against the East Central Indiana Building Trades if the Board is inclined to do so……