

Hergert Impeachment: Day Two



Former University of Nebraska Regent Don Blank testified Tuesday at the trial of the man accused of breaking campaign finance laws to beat him in the 2004 election.

Blank testified at Regent David Hergert's impeachment trial before the state Supreme Court. Blank said that Hergert's late reporting of what he had spent on his campaign prevented Blank from getting matching state funds to combat attack ads that had been paid for by Hergert in the week or so before the election.

"There were many allegations about how I was neglecting my duties," Blank said. "There was just no way in ... in the last 10 days that I could counteract the message. I was just unable to get any message out."

David Domina, hired by the Legislature to prosecute Hergert, detailed a time line during which he alleged that Hergert purposely designed his campaign to prevent Blank from accessing public money.

Under the law, candidates for state offices have voluntary spending caps. For regents races, the cap is \$25,000 for the primary and \$50,000 overall.

Those who agree to abide by the limits qualify for public funds if their opponents exceed the cap.

Candidates who do not abide by the caps must estimate what they will spend and inform the accountability commission when they reach 40 percent of that total in order to trigger the release of matching funds.

Hergert did not agree to the cap and spent \$65,000 in the primary, thus qualifying Blank for \$40,000 in public funds.

Hergert, an agribusinessman from Mitchell, then estimated that he would spend \$40,000 for the general election.

Hergert exceeded the cap but did not notify the commission by the deadline, thus depriving Blank of \$15,000 in matching funds in the closing days of the campaign.

Hergert spent much of his money on advertising that attacked Blank.

Blank, who won the primary by 18 percentage points, lost the general election by 11 percentage points.

After the election, Hergert reported spending nearly \$90,000 on the campaign -- more than twice his estimate.

Under the law, candidates must report expenditures when they contract for the services, not when the services are rendered.

Hergert failed to report some \$50,000 for advertising, strategy research and other services until after he paid for them -- the day after one of the reporting deadlines, Domina said.

Frank Daley, head of the state Accountability and Disclosure Commission, answered detailed questions Tuesday about the rules candidates must follow when reporting their expenditures.

Daley said that after Hergert missed a filing deadline in the general election, his agency warned him in a letter about a reporting deadline for the general election.

Daley said the letter was the first of its kind he could recall being sent to any Nebraska candidate.

"I can't recall a letter ... exactly like this one," Daley said

Hergert is charged with filing false campaign finance reports in 2004 and violating his oath of office.

Hergert's lawyers have argued that the articles of impeachment adopted by the Legislature should be dismissed because the case revolves around actions during the campaign -- before he took office.

But Domina has countered that Hergert would not have been elected if he had followed campaign finance law and therefore the offenses are inexorably tied to his holding office.

One key to the case is the period from Jan. 4 through Jan. 11, 2005.

A State Patrol report released earlier said Hergert might have broken the law by filing a false campaign financial statement with the Accountability and Disclosure Commission.

According to the report, Hergert signed the report Jan. 4. He was sworn in Jan. 6. He turned in the report on Jan. 11.

The Legislature is asking the Supreme Court to remove Hergert from office for failing to comply with "technical campaign finance reporting requirements," said Sean Brennan, one of Hergert's lawyers.

There is no evidence that he bought votes, coerced votes or stuffed ballot boxes, Brennan said.

Hergert won the election through hard work and campaigning, but he did not improperly influence any votes, Brennan said.

Hergert reached a settlement with the accountability commission last year in which he acknowledged accepting an illegal campaign loan and failing to report a late contribution and file two affidavits on time. He agreed to pay more than \$33,000 in fines but not face any criminal charges.

One of the articles of impeachment accuses Hergert of violating his oath of office by swearing that he had "not improperly influenced in any way the vote of any elector."

Hergert was immediately suspended from his post as regent when the Legislature voted 25-22 last month to impeach him. Five of seven Supreme Court judges would have to find Hergert guilty in order to remove him from office.

The last Nebraska official to be impeached was Attorney General Paul Douglas in 1984 over his conduct in office and his personal dealings with a former officer of the failed Commonwealth Savings Co. of Lincoln. He was acquitted by the state Supreme Court but resigned after his law license was suspended.