

District Attorney
Susan L. Opper

Deputy District Attorneys
Lesli S. Boese
Michael D. Thurston
Abbey L. Nickolie

Office Services Coordinator
Julie A. Moelter

Victim/Witness Program
Jennifer S. Dunn, Coord.

Support Staff Supervisor
Rebecca L. Gifford



Waukesha County

Office of the District Attorney

Assistant District Attorneys
Mary C. Brejcha
Lindsey H. Hirt
Melissa J. Zilavy
Kristina J. Gordon
Jack A. Pitzo
Molly M. Schmidt
Zachary A. Wittchow
Randolph P. Sitzberger
Claudia P. Ayala Tabares
Peter M. Tempelis
Edward M. Bremberger
Andrew M. Nesheim
Chelsea C. Thompson
Alyssa M. Schaller
Alyssa M. Jay
J.J. Crawford
Ted S. Szczupakiewicz
Jack A. Rieder
Nikole M. Kane
Alexis P. Werthmann
Brooke E. Schultz

April 19, 2024

David P. Buerger
Staff Counsel
Wisconsin Ethics Commission

RE: In re: JANEL BRANDTJEN
FINDING OF PROBABLE CAUSE AND REFERRAL TO DISTRICT ATTORNEY PURSUANT TO
WIS. STAT. § 19.49(2)(b)9.
Case Nos. 2022-ETH-79.
2023-ETH-42

Dear Attorney Buerger:

Pursuant to §19.49(2)(b)16, Wis. Stats., I am reporting to the Commission concerning the action taken in this matter. The action that I am taking is to decline prosecution based on insufficient evidence.

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 February 21, 2024, I received an electronic referral from the Commission which contained only the Findings of Fact and Final Order issued by the Commission. On March 1 and March 6, 2024, I received by US Mail a thumb drive containing the investigatory records from the Commission after I requested them.

In the referral, I was asked to determine if criminal action was appropriate on the very narrow issue of the conduct of Representative Janel Brandtjen, who resides in Waukesha County.

The complaint that was filed did specifically direct 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...”

The Commission considered the complaint and responses at its meeting on February 22, 2023, and found reasonable suspicion that a violation had occurred and ordered an investigation. On August 3, 2023, the Commission decided to hire an independent investigator.

Rep. Brandtjen was not specifically named in the original complaint and was not a named Respondent in the matter before the Commission. Accordingly, it appears Rep. Brandtjen was not given notice of the investigation, nor was she given the opportunity to respond per §19.49(2)(b)1, Wis. Stats. Furthermore, Rep. Brandtjen was never contacted or interviewed by the investigators. Likewise, I was never given notice of the investigation as required by §19.49(2)(b)3, Wis. Stats. §19.49(2)(b)11, Wis. Stats., allows that if an investigator in the course of an investigation discovers evidence that another violation outside the scope of the investigation has occurred, the investigator may present that evidence to the Commission and the Commission may authorize an additional or separate investigation. It appears that is what happened here.

I have reviewed fully the materials provided to me by the Commission that were completed or collected by the investigator.

It appears the first persons interviewed by the investigators 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. Amongst the recordings were 4 conversations purported to be oral communications between Adam Steen and Rep. Brandtjen. The veracity and authenticity of the recordings was never determined by the investigators. Based on these recorded conversations, the Commission concluded there was probable cause to believe that Rep. Brandtjen committed a crime.

It is these same recorded calls that lead me to conclude that there is not proof beyond a reasonable doubt to support 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. I conclude that under the established case law cited below, the State of Wisconsin would be precluded from using the intercepted communications in any prosecution of Rep. Brandtjen.

“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).

“Although one-party consent tapes are lawful, they are not “authorized by ss. 968.28 to 968.33” and therefore the contents cannot be admitted as evidence in chief.”

State v. Waste Mgmt. of Wisconsin, Inc., 81 Wis. 2d 555, 572, 261 N.W.2d 147, 154 (1978).

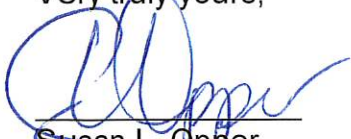
The intercepted communications vital to this complaint were not authorized by §§968.28 to 968.33, Wis. Stats. Thus, they could not be used in a potential prosecution of Rep. Brandtjen. Furthermore, any information derived from the intercepted communication could not be used. Without the intercepted communications, the knowledge and intent of Rep. Brandtjen necessary to sustain a conviction cannot be proven, nor could a conspiracy be established.

Nothing in this decision should be interpreted as a conclusion that the actions of Rep. Brandtjen were lawful nor laudable. I do not reach such a conclusion. I am simply concluding that I cannot prove charges against her. While the intercepted communications may be compelling in the court of public opinion, they are not in a court of law. In short, this decision does not clear Rep. Brandtjen of any wrongdoing; there is just not enough evidence to move forward to let a factfinder decide.

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.

This file is being closed at this time as a No Pros.

Very truly yours,



Susan L. Oppen
District Attorney