OAH 71-0325-37188

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

John Jordan,

Complainant,

vs.

Boyd Morson,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND ORDER FOR PREHEARING CONFERENCE

On November 9, 2020, John Jordan (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Boyd Morson (Respondent) violated Minn. Stat. § 211B.15 (2020), by accepting a prohibited corporate campaign contribution.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint establishes a prima facie violation of Minn. Stat. § 211B.15. For the reasons detailed in the Memorandum below, this allegation will proceed to a hearing before a panel of three administrative law judges. The Administrative Law Judge will hold a prehearing conference to set a date for such further proceedings and to discuss other preliminary matters.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a prehearing conference to be held before the undersigned Administrative Law Judge at **10:00 a.m.** on **Monday**, **November 30, 2020**. The prehearing conference will be held by telephone, and the parties must call in for the conference. At the appointed time, the parties are directed to:

(a) Telephone **1-888-742-5095**, and, when prompted,

(b) Enter the conference code: **396 255 8115#**.

At the prehearing conference, the Administrative Law Judge will address issues related to the hearing, including scheduling the hearing date, identifying the issues to be resolved, and discussing the number of potential witnesses and exhibits. The Administrative Law Judge will also address whether the matter may be disposed of on a written record without an evidentiary hearing.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, Saint Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

A failure by any party to participate and appear by telephone at the prehearing conference may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2 (2020).

Dated: November 13, 2020

JESSICA A. PALMER-DENIG
Administrative Law Judge

MEMORANDUM

Respondent was a candidate for the Brooklyn Park City Council, Ward C seat, in the general election held on November 3, 2020. The Complaint alleges that Respondent violated Minn. Stat. § 211B.15, subd. 2(b), by accepting a $500 contribution from a Minnesota corporation.[1] In support of the Complaint, Complainant submitted a copy of Respondent's campaign finance report dated October 27, 2020.[2] That report identifies a $500 contribution to Respondent's campaign from an "EZ Stop Food Mkt."[3] According to the Complaint, EZ Stop Food Market, Inc. is registered with the Minnesota Secretary of State as a domestic corporation owned by Edoh Akakpo, 2885 Brookdale Drive, Brooklyn Park, Minnesota 55444.[4]

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must allege sufficient facts to show that a violation of law has occurred.[5] The

[1] Complaint (Nov. 9, 2020).

[2] *Id*., Exhibit (Ex.) 1 (Respondent's campaign finance report (Oct. 27, 2020)).

[3] *Id*.

[4] *Id*., Ex. 2 (Minnesota Secretary of State Business Record Detail for EZ Stop Food Market).

[5] Minn. Stat. § 211B.32, subd. 3 (2020).

complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of 211A.01-.14, 211B.01-.37 (2020).[6]

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[7] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[8] A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of law.[9]

II. Prohibited Corporate Contributions (Minn. Stat. § 211B.15)

Minn. Stat. § 211B.15, subd. 2, prohibits corporations[10] from making political contributions and political entities and individuals from receiving such contributions. The statute provides as follows:

> Subd. 2. **Prohibited contributions**.
>
> (a) A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.
>
> (b) A political party, organization, committee, or individual may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making under paragraph (a).
>
> (c) For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee

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[6] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

[7] *Id*.

[8] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).

[9] *Barry,* 781 N.W.2d at 902.

[10] Under Minn. Stat. § 211B.15, subd. 1, "corporation" is defined to mean: (1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.

> established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Minn. Stat. § 211B.15, subd. 3, states that "independent expenditure" has the meaning given it in section 10A.01, subdivision 18 (2020). That section defines "independent expenditures" to mean:

> an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate. An independent expenditure does not include the act of announcing a formal public endorsement of a candidate for public office, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure under this subdivision.[11]

III. Conclusion

Based on the Complaint and attachments, it appears Respondent or his campaign committee accepted a prohibited contribution directly from a corporation doing business in this state. Accepting all allegations in the complaint as true, as required by the prima facie standard, Complainant has alleged sufficient facts to support finding Respondent violated Minn. Stat. § 211B.15, subd. 2. This matter will advance to a hearing for a final determination. Alternatively, the matter may be determined based upon written submissions from the parties. The parties are directed to participate in an initial prehearing conference regarding the schedule and format for further proceedings, as noted in the Order above.

J. P. D.

[11] Minn. Stat. § 10A.01, subd. 18.