OAH 8-0325-38828

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Carol A. Overland,

Complainant,

vs.

Recall City Hall, Citizens for Responsible Government, Janie M. Farrar, Ron Goggin, Donald Kliewer, Ted Seifert, Jason J. Snyder

Respondents.

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

On November 14, 2022, Carol A. Overland (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that each of the Respondents violated the campaign finance reporting requirements of the Fair Campaign Practices Act. Additionally, the Complainant asserts that the Citizens for Responsible Government violated the disclaimer requirement of Minnesota law and Ron Goggin improperly accepted a corporate contribution for his candidate committee.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint establishes prima facie violations of Minn. Stat. §§ 211A.02, 211A.06, 211B.04 and 211B.15 (2022), but not Minn. Stat. § 211B.06 (2022). With two exceptions, and for the reasons detailed in the Memorandum below, Ms. Overland's claims will proceed to a prehearing conference.

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 **1:30 p.m.** on **Wednesday, December 14, 2022.** The prehearing will be held by telephone conference, for which the parties must call in. At the appointed time, the parties are directed to:

(a) Telephone **1-877-304-9269** and, when prompted,

(b) Enter the conference code: **318425#**

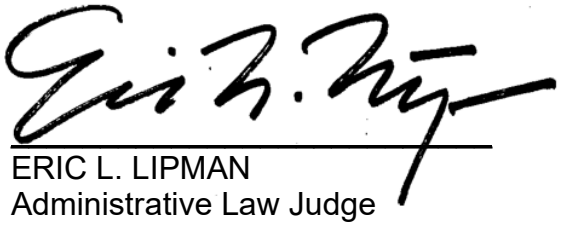
At the prehearing conference, preliminary matters will be addressed, such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining

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, St. 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. (2022).

Dated: November 17, 2021



ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

Respondents Janie M. Farrar, Ron Goggin, Ted Seifert and Jason J. Snyder were each candidates for election to the City Council of Red Wing, Minnesota, in the General Election on November 8, 2022.[1] Respondent Don Kleiwer was elected to the Red Wing City Council at a Special Election held on August 9, 2022.[2] Respondent Recall City Hall is a political committee that supported recall of incumbent members of the Red Wing City Council in 2021 and through the Special Election in 2022.[3] Respondent Citizens for Responsible Government is an unregistered political association that advocated for election of Ms. Farrar and Messrs. Goggin, Seifert and Snyder to the Red Wing City Council in the November 2022 General Election.[4]

Ms. Overland maintains that each of the Respondents either failed to file the required campaign finance reports or failed to accurately report their campaign-related contributions and disbursements.[5] Additionally, she interposes an improper disclosure claim and a false literature claim against the Respondent Citizens for Responsible

[1] Complaint at 9.
[2] *Id*.
[3] *See id.* at 30.
[4] *Id.* at 6, 32.
[5] *Id.* at 5-14.

Government.[6] Lastly, Ms. Overland asserts that Mr. Goggin unlawfully accepted a corporate contribution in violation of Minn. Stat. § 211B.15.[7]

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.[8] The complaining party must submit evidence or allege facts that, if accepted as true, would prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).[9]

For purposes of a prima facie determination, this tribunal must accept the facts alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[10] 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.[11] 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 Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[12]

II. Campaign Financial Reporting (Minn. Stat. § 211A.02)

Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make campaign-related disbursements of over $750 in a calendar year must file financial reports with the appropriate filing officer.[13] A Report must be filed within 14 days after the candidate or committee receives or makes the disbursement of more than $750.[14] Thereafter, the candidate or committee must continue filing the reports listed in Minn. Stat. § 211A.02, subd. 1(b) until a final report is filed.[15]

Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in the campaign financial report, which includes the total amount of contributions and disbursements.[16]

A "disbursement" is defined as "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent."[17] A "contribution" is defined as "anything of

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[6] *Id.* at 7-9.
[7] *Id.* at 10.
[8] Minn. Stat. § 211B.32, subd. 3 (2022).
[9] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[10] *Id*.
[11] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[12] *Barry,* 781 N.W.2d at 902.
[13] The "filing officer" is the officer authorized to accept affidavits of candidacy or nominating petitions for an office. See Minn. Stat. § 211A.01, subd. 7.
[14] Minn. Stat. § 211A.02, subd. 1(a).
[15] *Id*.
[16] Minn. Stat. § 211A.02, subd. 2(1-6).
[17] Minn. Stat. § 211A.01, subd. 6.

monetary value that is given or loaned to a candidate or committee for a political purpose."[18]

Construing the Complaint in the light most favorable to Ms. Overland, her allegations that the Citizens for Responsible Government "mailed thousands of flyers" to voters in the city of Red Wing,[19] but has not filed a campaign finance report,[20] is equivalent to alleging that the committee spent more than $750 on campaign-related expenses. Ms. Overland has stated a prima facie violation of Minn. Stat. § 211A.02.

III. Failure to Keep Accounts of Campaign Finances (Minn. Stat. § 211A.06)

Minn. Stat. § 211A.06 addresses the failure of a treasurer or other individual who receives money for a committee to keep correct accounts, preserve financial information, or provide financial information to a candidate. Minn. Stat. § 211A.06 does not penalize merely inaccurate record-keeping; it penalizes the failure to keep correct accounts of money received for a committee with "the intent to conceal receipts or disbursements," or the "purpose of receipts or disbursements." The focus of a section 211A.06 claim, therefore, is on whether a candidate or committee intentionally kept inaccurate accounts to conceal the source or purpose of contributions or disbursements.[21]

At this stage of review, however, the Administrative Law Judge is required to accept the facts alleged as true. To the extent that the Complaint alleges the failure of the Citizens for Responsible Government to file a report recounting campaign-related income and expenditures,[22] Ms. Overland has alleged a prima facie violation of Minn. Stat. § 211A.06.

Similarly, to the extent that Ms. Overland has detailed omissions of detail on donors, contributions, and expenditures in the Respondents' campaign finance reports, she has alleged prima facie violations against Recall City Hall, Janie M. Farrar, Ron Goggin, Donald Kliewer, Ted Seifert and Jason J. Snyder.[23]

Lastly, Ms. Overland asserts that Mr. Goggin's October 2022 campaign finance report is incomplete because it does not include required employment information for John and Susan Guerber.[24] The Guerbers were contributors to Mr. Goggin's campaign.[25] This claim fails to state a prima facie violation of Minn. Stat. § 211A.06 because it does not allege that either or both of the Guerbers are employed.[26]

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[18] Minn. Stat. § 211A.01, subd. 5.
[19] Complaint at 6.
[20] *Id*.
[21] *See e.g., Magan v. Bihie,* OAH Docket No. 21-0325-38329 (Minn. Off. Admin. Hrgs. 2022).
[22] Complaint at 6.
[23] *Id.* at 4-7, 9-15.
[24] *Id.* at 10.
[25] *Id*. at 57.
[26] *See also* Minn. Stat. § 211A.02, subd. 2(6).

IV. Disclaimer Requirement (Minn. Stat. § 211B.04)

Under Minn. Stat. § 211B.04, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated. Campaign material is defined as any material disseminated for the purpose of influencing voting.[27]

In the case of campaign material that is created independently of a candidate or candidate committee, the statute requires the disclaimer provide the name and address of the committee that prepared and paid for the material, and must read as follows:

> This is an independent expenditure prepared and paid for by ..... (name of entity participating in the expenditure), ... (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.[28]

The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[29]

The "Dear Red Wing Voters" mailer meets the definition of "campaign material."[30] To the extent that the mailer contends that it was "written [and] produced . . . without any candidate involvement or endorsement,"[31] the mailer itself asserts that it followed from an independent expenditure. As an independent expenditure, the printed mailer was required to include the disclaimer set forth in Minn. Stat. § 211B.04, subd. 2. Because the mailer did not include the required text, Ms. Overland alleged a prima facie violation of Minn. Stat. § 211A.04.

V. False Political and Campaign Material (Minn. Stat. § 211B.06)

Ms. Overland asserts the circulation of the "Dear Red Wing Voters" mailer contains "unsubstantiated and false" claims in violation of Minn. Stat. § 211B.06.[32]

Even if one assumes that the flyer contains false information regarding members of the Red Wing City Council, and that members of the Citizens for Responsible Government knew that this detail was false when the flyer was circulated, this claim would still not be actionable under Fair Campaign Practices Act. The prohibition on placing false information in campaign material in Minn. Stat. § 211B.06 was declared void and unenforceable by the federal courts in 2014.[33] A void statute cannot be the basis for relief. Thus, to the extent that the Complaint includes a false literature claim under Minn. Stat. § 211B.06, that claim is dismissed.

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[27] *See* Minn. Stat. § 211B.01, subd. 2.
[28] Minn. Stat. § 211B.04, subd. 2.
[29] *Hansen v. Stone*, OAH Docket No. 4-6326-16911, Findings of Fact, Conclusions of Law and Order at 4 (Minn. Office Admin. Hrgs. 2005).
[30] *Compare* Minn. Stat. § 211B.01, subd. 2 with Complaint at 32.
[31] *Compare* Minn. Stat. § 211B.04, subd. 2 with Complaint at 32.
[32] Complaint at 8.
[33] *See 281 Care Committee v. Arneson*, 766 F.3d 774, 789 (8th Cir. 2014), *cert. denied* 575 U.S. 912 (2015).

VI. Improper Corporate Contribution from (Minn. Stat. § 211B.15)

Ms. Overland asserts that Mr. Goggin's receipt of a $100 campaign contribution from Demorett Enterprises, Inc. violated Minn. Stat. § 211B.15.[34]

Minn. Stat. § 211B.15 provides in relevant part:

> (a) A corporation may not 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 … 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 … that a corporation is prohibited from making under paragraph (a).[35]

Ms. Overland has alleged a prima facie violation of Minn. Stat. § 211A.15.

The Administrative Law Judge finds that Complainant has alleged sufficient facts to set forth prima facie violations of Minn. Stat. §§ 211A.02, 211A.06, 211B.04 and 211B.15 on the part of one or more of Respondents. Therefore, these claims will proceed to a prehearing conference as ordered above.

Because some or all of the disputes listed above might be susceptible to out-of-court settlements, the parties are encouraged to explore possible settlement of claims (and amendments to earlier-filed campaign finance reports) before the prehearing conference.

E. L. L.

[34] Complaint at 10.
[35] Minn. Stat. § 211B.15, subd. 2.