OAH 65-0325-40302

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Gregg Peppin,

Complainant,

v.

Lisa Fobbe,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter comes before the following panel of Administrative Law Judges: Ann C. O'Reilly (Presiding Judge), Jim Mortenson, and Megan J. McKenzie (collectively, the Panel), based upon a Fair Campaign Practices Complaint (Complaint) filed with the Office of Administrative Hearings on September 12, 2024.

Gregg Peppin (Complainant) appears on his own behalf and without legal counsel. Alana M. Mosley, Rice, Walther & Mosley, LLP, appears on behalf of Lisa Fobbe (Respondent).

The parties appeared for probable cause hearings on September 20 and 27, 2024.[1] At the probable cause hearing on September 27, 2024, the parties agreed to submit the case to the Panel based upon the Complaint, the record of the case, and the evidence and arguments presented at the probable cause hearings on September 20 and 27, 2024. The record closed at the end of the September 27, 2024 probable cause hearing.

STATEMENT OF THE ISSUES

1. Did Respondent violate Minn. Stat. § 211A.02, subd. 1 (2024) by failing to file an initial financial report within 14 days after receiving campaign contributions in an amount of $750 or more?

2. Did Respondent violate Minn. Stat. § 211A.12 (2024) by accepting a $1,000 contribution on August 26, 2024?

3. If so, what penalty or penalties are appropriate?

[1] The September 27, 2024 probable cause hearing was a continuance of the September 20, 2024 hearing.

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. §§ 211A.02, subd. 1. and 211A.12. A civil penalty of $50 for the section 211A.02 violation and a $500 penalty for the section 211A.12 violation are appropriate under the facts of this matter.

Based on the record and proceedings herein, the undersigned Panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondent is running for Sherburne County Commissioner, District 5, in the November 5, 2024 general election.[2]

Initial Financial Report

2. Respondent's campaign received a $200 contribution from Mary and Scott Lagaard on June 23, 2024, and a $300 contribution from Gary Gray on July 18, 2024.[3] On August 12, 2024, Respondent loaned her campaign $5,000.[4]

3. An initial campaign financial report is required to be filed within 14 days of receiving contributions totaling $750 or more.[5] Respondent exceeded the $750 threshold on August 12, 2024, due to her own $5,000 contribution to her campaign.[6] Fourteen days after August 12, 2024, is August 26, 2024. Therefore, an initial campaign financial report was due to be filed on August 26, 2024.

4. Respondent's initial campaign financial report was received by the Sherburne County (County) Auditor/Treasurer on September 3, 2024.[7]

5. Respondent did not realize that her own contribution to her campaign would count toward the $750 threshold.[8]

6. Respondent concedes that she filed her initial campaign financial report on September 3, 2024, eight days passed the August 26, 2024 deadline.[9]

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[2] Complaint at 2 (Sept. 12, 2024).
[3] Complaint at 3; Attachment (Attach.) 1.
[4] *Id.*
[5] Minn. Stat. § 211A.02, subd. 1(a).
[6] Complaint at 3; Attach. 1.
[7] Attach. 1.
[8] Testimony (Test.) of Lisa Fobbe.
[9] *Id.*

$1,000 Contribution

7. On August 26, 2024, Respondent received an electronic Venmo payment from Barbara Rudquist in the amount of $1,000 as a contribution to Respondent's campaign.[10]

8. Respondent's initial financial report, dated September 3, 3024, documented the contribution of $1,000 from Rudquist, made on August 26, 2024.[11]

9. Respondent does not dispute that the population of District 5 of Sherburne County – the territory of the office for which Respondent is running -- is less than 100,000 people.[12]

10. Complainant filed a Complaint with the Office of Administrative Hearings on September 12, 2024.[13] The Complaint alleged violations of Minn. Stat. §§ 211A.02, 211A.06, and 211A.12 (2024).[14]

11. On September 12, 2024, Rudquist informed Respondent that the $1,000 donation on August 26, 2024, was intended to be from both Rudquist and her spouse, Barry Schreiber.[15]

12. Respondent amended her campaign financial report on September 12, 2024, to reflect that her campaign received $500 from Barbara Rudquist and $500 from Barry Schreiber on August 26, 2024.[16]

13. Respondent admits to violating Minn. Stat. §§ 211A.02, subd. 1 and 211A.12, and apologized.[17]

Waiver of Evidentiary Hearing

14. Judge O'Reilly issued a Notice of Determination of Prima Facie Violation and Notice and Order for Probable Cause Hearing on September 17, 2024.[18] The Judge dismissed the claims brought under Minn. Stat. § 211A.06, but found that the Complaint alleged prima facie violations of Minn. Stat. §§ 211A.02 and 211A.12.[19]

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[10] Affidavit (Aff.) of Barbara Rudquist at ¶3, Ex. A.
[11] Attach. 1.
[12] *See* Test. of L. Fobbe; Respondent's Response to Complaint (Response) (Sept. 19, 2024).
[13] Complaint.
[14] *Id.*
[15] Response at 2; Aff. of B. Rudquist.
[16] *Id.*; *See also* Response, Ex. B.
[17] Test. of L. Fobbe.
[18] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Prima Facie Order) (Sept. 17, 2024).
[19] *Id.*

15. A probable cause hearing was held before Judge O'Reilly on September 20, 2024, and September 27, 2024.[20] By Order dated October 2, 2024, Judge O'Reilly found that the Complainant had established probable cause to believe Respondent violated Minn. Stat. §§ 211A.02 and 211A.12.[21]

16. At the probable cause hearing on September 27, 2024, the parties agreed to submit the case to the Panel for final determination based upon the Complaint, the record of the case, and the arguments, testimony, and evidence provided by the parties at the probable cause hearings on September 20 and 27, 2024.[22] The parties jointly waived their rights to an evidentiary hearing.[23]

Based on the Findings of Fact and the parties' stipulations, the Panel makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings and the Panel has authority to decide this matter pursuant to Minn. Stat. §§ 211B.32 and .35 (2024).

2. Complainant bears the burden of proving the allegations in the Complaint by a preponderance of the evidence.[24]

3. A candidate who receives contributions or makes disbursements of more than $750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than $750.[25]

4. Respondent met the $750 statutory threshold on August 12, 2024.[26] Respondent's initial report should have been filed on or before August 26, 2024.[27] Respondent filed an initial campaign financial report on September 3, 2024, eight days after the statutorily required due date.[28]

5. The evidence establishes that Respondent violated Minn. Stat. § 211A.02, subd. 1(a), by failing to file an initial campaign financial report by August 26, 2024, within 14 days of receiving more than $750 in contributions.

6. Minnesota Statutes section 211A.12, provides:

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[20] Order on Probable Cause (Probable Cause Order) (Oct. 2, 2024).
[21] *Id.*
[22] *See* Digital Recording of Probable Cause Hearing (Sept. 27, 2024), on file and of record with the Off. of Admin. Hrgs.
[23] *Id.*
[24] Minn. Stat. § 211B.32, subd. 4.
[25] Minn. Stat. § 211A.02, subd. 1(a).
[26] Attach 1.
[27] *See* Minn. Stat. § 211A.02, subd. 1(a).
[28] Attach. 1; Test. of Lisa Fobbe.

> A candidate may not accept aggregate contributions made or delivered by an individual or committee in excess of $600 in an election year for the office sought and $250 in other years; except that a candidate or a candidate's committee for an office whose territory has a population over 100,000 may not accept aggregate contributions made or delivered by an individual or committee in excess of $1,000 in an election year for the office sought.[29]

7. On August 26, 2024, Respondent accepted a contribution of $1,000 from Barbara Rudquist.[30] Respondent documented Rudquist's $1,000 contribution on Respondent's initial campaign financial report filed with the County on September 3, 2024.[31]

8. District 5 of Sherburne County has a population of less than 100,000.[32]

9. Respondent violated the campaign contribution limits set forth in Minn. Stat. § 211A.12 when she accepted a $1,000 contribution from Rudquist.

10. Respondent admits that, by accepting Barbara Rudquist's contribution of $1,000, Respondent violated Minn. Stat. § 211A.12.[33]

11. A preponderance of the evidence establishes that Respondent violated Minn. Stat. § 211A.12, by accepting a contribution $1,000 from an individual on August 26, 2024.

12. For these violations, the Panel finds that it is appropriate to impose a civil penalty against Respondent in the total amount of $550: $50 for Respondent's violation of Minn. Stat. § 211A.02, and $500 for Respondent's violation of Minn. Stat. § 211A.12.

13. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference.

Based on the Findings of Fact and Conclusions of Law, and for the reasons stated in the Memorandum below, the Panel makes the following:

ORDER

1. By **4:30 p.m. on November 12, 2024,** Respondent must pay a civil penalty of $50 for violating Minn. Stat. § 211A.02 and $500 for violating Minn. Stat. § 211A.12.

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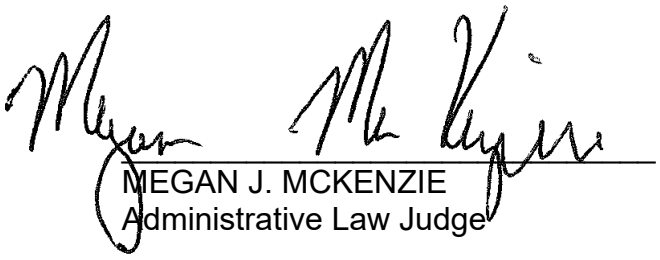
[29] Minn. Stat. § 211A.12.
[30] Attach. 1.
[31] *Id.*
[32] Based on 2023 census data, the population of Sherburne County is over 100,000. *See* https://www.census.gov/quickfacts/fact/table/sherburnecountyminnesota,US/PST045216; U.S. Census Bureau QuickFacts: Sherburne County, Minnesota.
[33] Test. of L. Fobbe.

2. The penalty must be paid by check, payable to: "Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. Docket number 65-0325-40302 should be included on the check in the memo line.

Dated: October 11, 2024

ANN C. O'REILLY
Presiding Administrative Law Judge

JIM MORTENSON
Administrative Law Judge



MEGAN J. MCKENZIE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2024), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2024).

MEMORANDUM

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

A candidate must file an initial financial report within 14 days after receiving contributions in the amount of $750 or more.[34] The purpose of the reporting requirement is to fully inform voters about the sources of election-related contributions and spending.[35]

Respondent's campaign received a $200 contribution from Mary and Scott Lagaard on June 23, 2024; a $300 contribution from Gary Gray on July 18, 2024; and a $5,000 contribution from Respondent herself on August 12, 2024.[36] Respondent met the $750 statutory threshold on August 12, 2024, after donating $5,000 to her own campaign.[37] Thus, Respondent's initial financial report should have been filed on or before August 26, 2024, which was 14 days after August 12, 2024.[38] Respondent's initial campaign financial report was received by the County on September 3, 2024, eight days after the deadline.[39]

The material facts supporting a violation of Minn. Stat. § 211A.02 are not in dispute. Respondent acknowledged that she filed her initial campaign financial report late, took full responsibility for the error, and apologized.[40] Accordingly, Respondent is in violation of Minn. Stat. § 211A.02.

II. Contribution Limits (Minn. Stat. § 211A.12)

Minn. Stat. § 211A.12 provides as follows:[41]

> A candidate or a candidate's committee may not accept aggregate contributions *made or delivered by an individual* or committee in excess of $600 in an election year for the office sought and $250 in other years; except that a candidate or a candidate's committee for an office whose territory has a population over 100,000 may not accept aggregate contributions made or delivered by an individual or committee in excess of $1,000 in an election year for the office sought and $250 in other years.[42]
>
> The following *deliveries* are not subject to the bundling limitation in this section:

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[34] Minn. Stat. § 211A.02, subd. 1.
[35] *See Citizens United v. Federal Elections Comm'n*, 558 U.S. 310 (2010) (rejecting both facial and as-applied challenges to federal disclosure and disclaimer requirements).
[36] Complaint at 3; Attach. 1.
[37] Attach. 1.
[38] *See* Minn. Stat. § 211A.02, subd. 1(a).
[39] Attach. 1.
[40] Test. of L. Fobbe; Response at 1-2.
[41] Emphasis added.
[42] The exception for candidates running for an office with a territory having a population of 100,000 or more does not apply here because Respondent is running for the office of Sherburne County Commissioner in District 5. District 5, a subset of Sherburne County, does not have a population of 100,000 people or more.

(1) delivery of contributions collected by a member of the candidate's committee, such as a block worker or a volunteer who hosts a fundraising event, to the committee's treasurer; and

(2) *a delivery made by an individual on behalf of the individual's spouse.*

Exception 2 to the contribution limit allows an individual to *deliver* to a candidate a campaign contribution on behalf of both the individual donor and that donor's spouse. The delivery is not subject to the individual campaign contribution limitation. In other words, one spouse may deliver a contribution from both spouses in excess of the per person contribution limit, so long as the total contribution, divided by two, does not exceed the contribution amount allowed for each individual (here, $600 each).

The material facts with respect to this violation are also not in dispute. Respondent admits that she accepted a Venmo donation from Rudquist on August 26, 2014, in the amount of $1,000.[43] Respondent further admits that she initially reported the $1,000 donation as an individual donation from Rudquist on her initial campaign financial report, filed with the County on September 3, 2024.[44]

On the same date that the Complaint was filed, Rudquist advised Respondent that the $1,000 donation was intended to be from Rudquist and her spouse, Barry Schreiber.[45] As a result, Respondent amended her initial financial report on September 12, 2024, to reflect two $500 contributions on August 26, 2024, one from Rudquist and one from Schreiber.[46]

It is undisputed that Respondent accepted the $1,000 donation from Rudquist on August 26, 2024, and she reported the donation as an individual donation from Rudquist alone on Respondent's initial campaign finance report dated September 3, 2024. It was only after the Complaint was filed that Respondent amended her report to reflect that the $1,000 contribution was from both Rudquist and Schreiber.

Minn. Stat. § 211A.02 states: "*A candidate* or a candidate's committee *may not accept* aggregate contributions made or delivered by an individual or committee in excess of $600. . . ."[47] Under the express language of the statute, the prohibition applies to the candidate's acceptance of the donation, not the donor's intent in making the donation.

While Respondent was legally able to accept $1,000 from Rudquist and Schreiber, jointly, as a married couple, she was not legally permitted to accept $1,000 from Rudquist alone. Respondent admits she accepted the $1,000 from Rudquist and reported the same as an individual donation on her initial financial report of September 3, 2024. Thus, by accepting the $1,000 donation from Rudquist on August 26, 2024, Respondent violated Section 211A.02 – a fact that Respondent readily admits. Had Respondent informed Rudquist that Respondent could not accept more than $600 when the donation was

[43] Attach. 1.
[44] *Id.*, *See also* Attach. 1.
[45] Aff. of B. Rudquist at ¶ 5.
[46] Response (Sept. 19, 2024) at Ex. A.
[47] Emphasis added.

made, and had Rudquist clarified that it was really two contributions, Respondent would have avoided this violation. But that is not what happened.

III. Penalty Assessment

To ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings uses a "penalty matrix" to guide decision-making. The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters and is set forth as follows:[48]

Willfulness	Gravity of Violation		
	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney	$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	$250 - 600	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	$0 - 250	$400-600	$600 - 1,200

Because every case is unique, the Panel may depart from the presumptive penalty listed in the matrix.[49]

The Panel concludes that neither of the violations are serious and both fall into the lowest category of gravity on the matrix. There is no evidence that either violation had an impact on voters and both violations were easily countered well in advance of the election. Respondent filed her initial campaign complaint on September 3, 2024 – more than two months before the election, thereby providing voters plenty of time to review the filing. In addition, Respondent amended the report on September 12, 2024, again providing voters plenty of time to review the information prior to the election. Respondent also admitted to, and accepted responsibility for, both violations.

With respect to the violation of Minn. Stat. § 211A.02, the Panel finds that Respondent's violation was inadvertent. Respondent wrongly believed that her loan of $5,000 would not count toward the $750 contribution threshold, which triggered the reporting requirement. Respondent admitted this error. Nonetheless, Respondent filed the initial report and she did so only eight days later than she should have filed it. There is no evidence that Respondent has ever failed to file, or failed to timely file, financial reports, making this an isolated incident. Therefore, the Panel finds that Respondent's violation of Section 211A.02: (1) was not serious and had no impact on voters; and

[48] *See* Penalty Matrix (https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).
[49] *Id.*

(2) was inadvertent, isolated, and promptly corrected. Respondent took immediate and full responsibility for the error and, as such, the Panel imposes a fine of $50.

With respect to the violation of Minn. Stat. § 211A.12, the Panel finds that Respondent's actions were negligent, not merely inadvertent. Respondent is an experienced candidate and should know the campaign contribution limits applicable to her candidacy. Respondent accepted a contribution from an individual in excess of $600. On the same date that the Complaint was filed, she quickly amended the financial report. While the amendment of the report reduced the gravity of the violation, it did not remedy it. The Panel concludes that a $500 fine for this violation is appropriate.

In sum, the Panel concludes that Respondent shall pay a penalty of $50 for the violation of Minn. Stat. § 211A.02 and $500 for the violation of Minn. Stat. § 211A.12.

A. C. O., J. M., M. J. M.