

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

David S. Day,

Complainant,  
vs.

PROBABLE CAUSE  
ORDER

State Senator Michael Jungbauer,

Respondent.

On September 19, 2006, a probable cause hearing under Minnesota Statutes § 211B.34 was held by telephone conference call before Administrative Law Judge Barbara L. Neilson to consider a complaint filed by David Day on September 13, 2006. The record with respect to the probable cause hearing closed at the conclusion of the hearing on September 19, 2006.

David Day, 421 Rice Street, Anoka, MN 55303, appeared on his own behalf without counsel. Matthew W. Haapoja, Attorney at Law, Trimble & Associates, Ltd., 10201 Wayzata Boulevard, Suite 130, Minneapolis, MN 55305, appeared on behalf of Senator Michael Jungbauer (Respondent).

Based on the record and all of the proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge finds that there is probable cause to believe that the Respondent violated Minnesota Statutes §§ 211B.12 and 211B.15.

**ORDER**

**IT IS ORDERED:**

1. That there is probable cause to believe that Respondent violated Minnesota Statutes §§ 211B.12 and 211B.15 as alleged in the Complaint.

2. That this matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges pursuant to Minnesota Statute § 211B.35.

Dated: September 22, 2006

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s/Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

Tape recorded (one tape).

## MEMORANDUM

The Complaint<sup>1</sup> alleges that the Respondent violated Minn. Stat. § 211B.15 by accepting a \$600 contribution from Anoka Air Charters, Inc., a domestic corporation registered with the Minnesota Secretary of State's Office.<sup>2</sup> The contribution was made at a February 22, 2006, fundraising event held by the Respondent's campaign committee. The Complainant attached a copy of the campaign finance report filed by the Respondent's campaign committee with the Campaign Finance and Public Disclosure Board on August 29, 2006, which lists the contribution.<sup>3</sup>

The Complaint alleged a violation of Minn. Stat. § 211B.15 without specifying a particular subdivision. Minn. Stat. § 211B.15, subd. 2, prohibits corporations from making contributions to an individual to promote the individual's candidacy or election to political office. Subdivision 2 is directed at corporations; it does not prohibit individuals from accepting corporate contributions. However, under Minn. Stat. § 211B.15, subd. 13, individuals are prohibited from aiding, abetting or advising a violation of Section 211B.15.<sup>4</sup>

In addition to the copy of the campaign finance report, the Complainant submitted two on-line news articles to support his claim that Respondent Jungbauer violated Minn. Stat. § 211B.15. In a September 6, 2006, article that appeared in "*Minnesota Monitor*," an on-line political publication, Senator Jungbauer is quoted as stating that the \$600 contribution was a personal donation from Mike Hayes and his wife, the owners of Anoka Air Charters, and not a corporate contribution.<sup>5</sup> In a September 15, 2006, article that appeared in "*Hometown Source*," an on-line political publication from the suburban newspaper chain ECM Publishers, Senator Jungbauer acknowledged that his campaign committee accepted and deposited a check from Anoka Air Charters, Inc., but stated that the money had been returned.<sup>6</sup>

Prior to the probable cause hearing, the Respondent submitted a copy of a letter he sent to the Minnesota Campaign Finance and Public Disclosure Board dated September 19, 2006. In that letter, Respondent acknowledged that his campaign committee had accepted a \$600 contribution from Anoka Air Charters on February 22, 2006. Respondent states that it was not until after his campaign finance report was filed on August 29, 2006, that he became aware of the contribution. Respondent asserts that once he was made aware of the contribution, he returned the funds to Anoka Air Charters.<sup>7</sup>

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<sup>1</sup> Ex. 1.

<sup>2</sup> Ex. 3.

<sup>3</sup> Ex. 2.

<sup>4</sup> In addition, Minn. Stat. § 211B.13, subd. 2, prohibits individuals from knowingly receiving disbursements that are prohibited under section 211B.15. The Complainant did not allege a violation of Minn. Stat. § 211B.13.

<sup>5</sup> Ex. 9.

<sup>6</sup> Ex. 10.

<sup>7</sup> Ex. 7.

Respondent argues that the allegation that he violated Minn. Stat. § 211B.15 should be dismissed for lack of probable cause because the corporate contribution prohibition contained in Subdivision 2 simply prohibits corporations from making contributions, and does not make it a violation for an individual to receive such contributions. In addition, Respondent asserts that the Complainant cannot show that he in any way aided and abetted the corporate contribution under subdivision 13 because Respondent maintains he had no knowledge of the contribution and did not participate in the contribution. Instead, Respondent contends that his former campaign manager collected and deposited the corporate check without his knowledge or acquiescence.

The Complaint also alleges that some of the expenses reported on Respondent's August 29, 2006, campaign finance report do not qualify as legal expenditures under Minn. Stat. § 211B.12.

Minn. Stat. § 211B.12 provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

In the campaign finance report, the Respondent's campaign committee listed as campaign expenditures the amounts of \$812.00 for "Aviation Insurance," \$704.14 for "airplane models" and \$37.25 for "airplane model." The Complainant contends that these expenditures are not reasonably related to the conduct of Respondent's election campaign and thereby violates Minn. Stat. § 211B.12(7).

Respondent asserts that the expenditures identified by the Complainant are reasonably related to his campaign and were simply mischaracterized in his

committee's campaign finance report. The Respondent states that the payment of \$812 for "Aviation Insurance" was actually a reimbursement for property insurance to insure the location of the February 22, 2006, fundraising event. The event was held at the Golden Wings Museum at the Anoka County Airport.<sup>8</sup> According to Respondent, the reimbursement was paid to an Eric Gunderson of Eagan, and the third party payee was Star Insurance Agency of White Bear Lake.<sup>9</sup>

Respondent now asserts that the \$704.14 and \$37.25 expenditures at issue are for airplane models that will be used for a silent auction at a future fundraising event for his campaign committee. As such, Respondent argues that these expenditures are reasonably related to his campaign. However, the Complainant points out that earlier the Respondent explained these expenditures differently. In the *Minnesota Monitor* article, the Respondent is quoted as saying that the expenditures on aviation insurance and airplane models were for insurance coverage for the fundraising event and that his report incorrectly identified these costs as being for "airplane models" because the owner of the building where the event took place is a seller of aviation models.<sup>10</sup>

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>11</sup> The focus for the Presiding Judge is to answer the question whether, given the facts disclosed by the record, it is fair and reasonable to require the respondent to go to hearing on the merits.<sup>12</sup> If the Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, a motion to dismiss for lack of probable cause should be denied.<sup>13</sup> A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. When a respondent offers either testimonial or non-testimonial evidence to controvert the facts appearing in the record, a motion to dismiss must be denied unless the evidence introduced by the respondent

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<sup>8</sup> Exs. 12 and 13.

<sup>9</sup> Ex. 7.

<sup>10</sup> Ex. 9. The exact quote attributed to the Respondent is as follows: "The insurance was for an aviation fundraiser that we put on. The building that we rented for the fund raiser was owned by historic aviation, a seller of aviation models, so in the title of the receipt/billing, it says aviation models."

<sup>11</sup> Minn. Stat. § 211B.34, subd. 2; see also Black's Law Dictionary 1219 (7<sup>th</sup> ed. 1999) (defining "probable cause" as "[a] reasonable ground to suspect that a person has committed or is committing a crime.")

<sup>12</sup> *Compare State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

<sup>13</sup> *Id.* at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

makes “inherently incredible” the facts that appear in the record and are necessary to establish an essential element of the violation alleged.<sup>14</sup>

As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondent has committed a violation. At a hearing on the merits, a panel has the benefit of a more fully developed record and the ability to make credibility determinations in evaluating whether a violation has been proved, considering the record as a whole and the applicable evidentiary burdens and standards.

In this case, the Complainant has submitted sufficient evidence that reasonably tends to show the existence of a violation of Minn. Stat. § 211B.15, subd. 13, and § 211B.12(7). Whether the Respondent aided or abetted the prohibited corporate contribution from Anoka Air Charter Inc., and whether Respondent simply made reporting errors and mischaracterized the expenditures at issue as “Aviation Insurance” and spending on “airplane models” requires factual determinations and assessments of credibility that must be left to a panel of administrative law judges to decide, particularly in light of the absence of any corroborating evidence from the Respondent. Accordingly, this matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges for an evidentiary hearing.

**B. L. N.**

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<sup>14</sup> *State v. Florence*, 239 N.W.2d at 903.