

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Baker,

Complainant,

v.

**PROBABLE CAUSE  
ORDER**

Ken Tschumper, Dennis DeKeyrel, and  
Precision Plus, Inc. ,

Respondents.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge (ALJ) Richard C. Luis on September 20, 2012. This matter was convened to consider a campaign complaint filed under the Fair Campaign Practices Act by Doug Baker on September 12, 2012. The probable cause hearing was conducted by telephone conference call. The probable cause record closed on Monday, September 24, 2012, with the Respondents' written submissions.

R. Reid LeBeau II, Attorney at Law, Jacobson Buffalo, appeared on behalf of Doug Baker (Complainant). Respondent Ken Tschumper appeared on his own behalf without counsel. Respondent Dennis DeKeyrel appeared on his own behalf and on behalf of Precision Plus, Inc. without counsel.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum incorporated herein, the Administrative Law Judge makes the following:

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. There is probable cause to believe that Respondents Ken Tschumper and Dennis DeKeyrel violated Minn. Stat. § 211B.04 with respect to the disclaimer on the radio advertisement promoting Mr. Tschumper's campaign for the Minnesota House of Representatives District 28B seat.

2. There is probable cause to believe that Respondents Precision Plus, Inc. and Dennis DeKeyrel, as President of Precision Plus, Inc., violated Minn. Stat. §

211B.15 by contributing money to pay for a block of advertising time promoting Mr. Tschumper's candidacy.

3. 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.

4. Should the Parties decide that this matter may be submitted to the assigned Panel of Judges based on this Order and the record created at the Probable Cause hearing and subsequent filings, without an evidentiary hearing, they should notify the undersigned Administrative Law Judge by **12:00 p.m. on Wednesday, October 3, 2012**. If both Parties do not agree to waive their right to an evidentiary hearing, this matter will be scheduled for an evidentiary hearing in the near future.

Dated: September 26, 2012

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

### MEMORANDUM

Respondent Ken Tschumper is the DFL Party's endorsed candidate for Minnesota House of Representatives from District 28B.<sup>1</sup> Respondent Dennis DeKeyrel is the manager of Mr. Tschumper's campaign committee and the chairman of the Fillmore County DFL Party. Mr. DeKeyrel is also the chief executive officer of Precision Plus, Inc., a registered Minnesota corporation.<sup>2</sup>

On August 1, 2012, Mr. DeKeyrel, as Mr. Tschumper's campaign manager, went to the KFIL radio station in Preston to record a radio advertisement promoting Mr. Tschumper's campaign and to purchase a block of advertising time to broadcast the advertisement.<sup>3</sup> The radio station charged the Tschumper campaign \$224 for running the radio advertisement for four weeks. Because Mr. DeKeyrel had left his personal check book at home, he paid for the advertising time with a check drawn on Precision Plus Inc.'s checking account.<sup>4</sup> On the radio station's "Agreement Form for Political Candidate Advertisements" Mr. DeKeyrel represented that the broadcast time was being paid for by the "Ken Tschumper for the Minnesota House" campaign committee.<sup>5</sup>

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<sup>1</sup> House District 28B includes all of Fillmore and Houston Counties and the city of Lanesboro.

<sup>2</sup> Complaint Ex. C; Testimony of Ken Tschumper and Dennis DeKeyrel.

<sup>3</sup> Respondents' Ex. D; Tschumper and DeKeyrel Testimony.

<sup>4</sup> DeKeyrel Test.

<sup>5</sup> Complainant's Ex. A.

On August 1, 2012, Mr. DeKeyrel sent an email to Mr. Tschumper informing him that he had written a check in the amount of \$224 for the advertisements. On August 2, 2012, Mr. Tschumper sent an email to the Treasurer of his campaign committee, Sarah Goff, and told her to send Mr. DeKeyrel a check for \$224 for the KFIL radio advertisements “ASAP.”<sup>6</sup> On August 5, 2012, Ms. Goff wrote a check for \$224 to Mr. DeKeyrel from the “Ken Tschumper for Minnesota House” campaign committee’s account.<sup>7</sup> Mr. DeKeyrel deposited the check into his personal checking account on or about August 9, 2012. As of September 20, 2012, Mr. DeKeyrel had not reimbursed the \$224 to Precision Plus Inc.<sup>8</sup>

The KFIL radio station broadcast the campaign advertisement promoting Mr. Tschumper’s candidacy between August 3, 2012 and August 23, 2012. Each advertisement closed with a statement that the advertisement was paid for by the Ken Tschumper for Minnesota House campaign committee.

The Complaint alleges that Respondents Keyrel and Precision Plus violated Minn. Stat. § 211B.15, subd. 2, which prohibits corporations from making contributions of “thing[s] of monetary value” directly to candidates. The Complaint also asserts that Respondent Tschumper violated Minn. Stat. § 211B.04 by inaccurately claiming that the radio advertisements were prepared and paid for by his campaign committee when they were in fact paid for by Precision Plus, Inc.

## Legal Standard

The purpose of a probable cause determination is to determine whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits.<sup>9</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>10</sup> A judge’s function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. 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.

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<sup>6</sup> Respondents’ Ex. D.

<sup>7</sup> *Id.*

<sup>8</sup> DeKeyrel Test.

<sup>9</sup> *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

<sup>10</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 standard for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

## **Fair Campaign Practices Act**

Minnesota Statutes § 211B.15, subd. 2, prohibits corporations from making direct or indirect political contributions to candidates. Precision Plus, Inc. is a for-profit subchapter S corporation doing business in Minnesota. It meets the definition of “corporation” in Minn. Stat. § 211B.15, subd. 1(1), and it provided a contribution to Mr. Tschumper’s campaign by paying for Mr. Tschumper’s radio advertisements.

Minnesota Statutes § 211B.04 requires campaign material to prominently include the name and address of the person or committee causing the material to be prepared or disseminated. The disclaimer is required to provide the name and address of the candidate’s committee that prepared and paid for the signs and must read substantially as follows: “Prepared and paid for by the \_\_\_\_\_ committee \_\_\_\_\_ (address).” The purpose of the disclaimer requirement is to identify who or what committee prepared, disseminated, and paid for the campaign material.

## **Arguments**

At the probable cause hearing, the Respondents conceded that the radio advertisements were paid for by a check written on Precision Plus, Inc.’s checking account. They contend, however, that it was done in error and quickly corrected. The Respondents point out that Mr. Tschumper’s campaign committee reimbursed Mr. DeKeyrel the \$224 cost of the advertisements within four days.

In a post-hearing filing, Respondents DeKeyrel and Precision Plus argue that they never intended to make a corporate contribution to Mr. Tschumper’s campaign. Mr. DeKeyrel insists that he wrote the check when the radio station demanded immediate payment and he was caught “flatfooted” without his personal checkbook. Respondents contend that a showing of intent is necessary in order to find a corporation violated § 211B.15, and Respondents insist that such a showing is lacking here.

Respondents DeKeyrel and Precision Plus also assert that they did not violate Minn. Stat. § 211B.04 because it was never their intent to pay for the radio advertisements. According to the Respondents, the disclaimer accurately stated that the advertisement was prepared and paid for by the Tschumper campaign committee.

In his post-hearing submission, Respondent Tschumper argues that the Complaint should be dismissed because the Complainant, Doug Baker, did not appear at the probable cause hearing, which deprived the Respondents of an opportunity to cross examine him regarding “relevant details.”

## **Analysis**

A corporation is prohibited from contributing “anything of monetary value” to a candidate or committee to promote or defeat the candidacy of an individual for election to public office. A “disbursement” is defined, in relevant part, as promising, paying,

spending, contributing or lending anything of monetary value.<sup>11</sup> Similarly, contribution is defined to mean “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.”<sup>12</sup> There is no requirement that the corporate contribution be intentional or knowing in order to violate Minn. Stat. § 211B.15. Instead, the statute strictly prohibits a corporation from making contributions directly or indirectly to a candidate or committee to promote the election or defeat of a candidate for office.

In addition, with respect to Mr. Tschumper’s motion to dismiss the Complaint because the Complainant, Doug Baker, did not appear in person, the Administrative Law Judge concludes that there is no requirement that the Complainant make a personal appearance at the probable cause hearing when represented by counsel. If an evidentiary is held and Mr. Baker does not appear, the Respondents may make an offer of proof as to why they believe his presence is necessary and what testimony they would seek to elicit from him.

Based on the record presented, the Complainant has demonstrated probable cause to believe that Respondents DeKeyrel and Precision Plus, Inc. violated Minn. Stat. § 211B.15, and that Respondents Tschumper and DeKeyrel violated Minn. Stat. § 211B.04. The circumstances giving rise to the violation and the speed with which the violation may have been corrected goes to the issue of penalty. In addition, the Administrative Law Judge notes that as of September 20, 2012, Mr. DeKeyrel had yet to reimburse Precision Plus for the cost of the advertisements.

The Administrative Law Judge finds that it is reasonable to require the Respondents to go to hearing on the merits and to allow a panel of three Administrative Law Judges to determine whether the Respondents violated Minn. Stat. §§ 211B.15 and 211B.04, and if so, what penalty is appropriate. Should the Parties decide to waive the evidentiary hearing and submit the matter on the record made at the Probable Cause hearing with further written submissions, they must notify the ALJ by **12:00 p.m. on Wednesday, October 3, 2012.**

The Administrative Law Judge notes that the Complainant filed an “Amended Complaint” adding Mr. Tschumper’s Campaign Committee as a party in violation of Minn. Stat. § 211B.04, and alleging for the first time a violation of Minn. Stat. § 211B.13 as against Mr. Tschumper and his Campaign Committee for accepting a prohibited corporate contribution. The Complainant is directed to file a new Complaint which, in the event a *prima facie* violation is found and probable cause demonstrated, may be joined with this Complaint prior to the evidentiary hearing.

**R.C.L.**

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<sup>11</sup> Minn. Stat. § 211B.01, subd. 5.

<sup>12</sup> Minn. Stat. § 211A.01, subd. 5.