

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Tim Magdik,

Complainant,

vs.

ORDER OF DISMISSAL

Scott R. Bromley,

Respondent.

This matter came on for a probable cause hearing under Minn. Stat. § 211B.34, before Administrative Law Judge Bruce H. Johnson on November 8, 2012, to consider a complaint filed by Tim Magdik on October 31, 2012. The probable cause hearing was conducted by telephone conference call. The record closed later on November 8, 2012, upon receipt of an exhibit that had been received in evidence.

Both Tim Magdik (“Complainant”) and Scott R. Bromley (“Respondent”) appeared on their own behalf and without counsel.

The Complaint alleged that the Respondent violated Minn. Stat. § 211A.02 by failing to file accurate and complete campaign financial reports and also violated Minn. Stat. § 211B.15 by causing a corporation in which he has an ownership interest to make a prohibited contribution.

On November 5, 2012, the Administrative Law Judge issued an Order determining that the Complainant had set forth enough facts in his Complaint to indicate that violations of Chapters 211A and 211B of Minnesota Statutes may have occurred. The probable cause hearing was held to determine whether there was sufficient evidence of the alleged violations requiring resolution at an evidentiary hearing.

Based on the record and all of the proceedings in this matter, including the Memorandum incorporated herein,

IT IS ORDERED, that there is not probable cause to believe that Respondent violated Minn. Stat. § 211A.02 or § Minn. Stat. 211B.15, as alleged in the Complaint, and this matter is accordingly DISMISSED.

Dated: November 15, 2012

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complainant and the Respondent are both residents of Coon Rapids. The Respondent was a candidate for the office of Anoka County Commissioner in the November 6, 2012, general election. The Complaint alleged that the Respondent violated Minn. Stat. § 10A.09 by failing to include required information in his statement of economic interest; that he violated Minn. Stat. § 211A.02 by filing two inaccurate campaign finance reports; and that he violated Minn. Stat. § 211B.15 by causing Bromley Printing to make improper corporate in-kind contributions to his campaign.

Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that violations of law have occurred as alleged in the complaint.¹ In making that determination, the Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.² Under those standards, one must determine whether, given the facts disclosed in the record at the probable cause hearing, it is fair and reasonable to require the respondent to go to full evidentiary hearing on the merits.³ A “fact” is something that must be “capable of being

¹ Minn. Stat. § 211B.34, subd. 2; *Posuta v. Wojchowski*, OAH 3-6385-17601-CV (Nov. 6, 2006).

² *State v. Florence*, 239 N.W.2d 892 (Minn. 1976); see also Black’s Law Dictionary 1219 (7th ed. 1999) (defining “probable cause” as “[a] reasonable ground to suspect that a person has committed or is committing a crime”).

³ *State v. Florence*, 239 N.W.2d at 902.

proved true or false.”⁴ In other words, a finding of probable cause must be supported by evidence with probative value.

Minnesota Statutes § 211A.02

Minn. Stat. § 211A.02, subd. 1, provides:

(a) A committee or a candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750 and shall continue to make the reports listed in paragraph (b) until a final report is filed.

(b) The committee or candidate must file a report by January 31 of each year following the year when the initial report was filed and in a year when the candidate's name or a ballot question appears on the ballot, the candidate or committee shall file a report:

- (1) ten days before the primary or special primary;
- (2) ten days before the general election or special election; and
- (3) 30 days after a general or special election.

Minn. Stat. § 211A.02, subd. 2, provides in relevant part:

The report to be filed by a candidate or committee must include:

* * *

- (3) the total cash on hand;
- (4) the total amount of receipts and expenditures for the period from the last previous report to five days before the current report is due;
- (5) the amount, date, and purpose for each expenditure;

The Complaint alleges that the Respondent failed to include on his August 3, 2012 report all of the contributions that he necessarily must have received in order to make the \$1,192.25 in expenditures that he reported. The Complaint also alleges that the Respondent failed to list all of the contributions he necessarily must have received in order to make the \$3,154.83 in expenditures that the Respondent reported on his October 25, 2012 report. Thus, the Complainant charges that the Respondent violated Minn. Stat. § 211A.02 by failing to list on his campaign finance reports all of the contributions that he received during those reporting periods.

⁴ *Id.* at 896.

The Respondent testified that between August 8 and September 14, 2012, he received five cash contributions, totaling \$950.00,⁵ and that those were the only cash or in-kind contributions he received prior to October 21, 2012, the last date covered by his second report. He further asserted that he will report any additional contributions he may receive between October 21 and December 6, 2012, on the upcoming third report. The Respondent also testified that to the extent that the total contributions he receives are insufficient to pay for his campaign expenditures, he will pay for those expenses out of his own pocket. Nothing in Minn. Stat. Ch. 211A prohibits candidates from using their own money to pay for campaign expenditures.

The Complainant inferred that the Respondent underreported the contributions he has received because they were insufficient to cover expenditures reported to date. He offered no direct evidence that the Respondent has failed to report all of the contributions he has received. A mere inference is insufficient to raise a fact question to establish probable cause.⁶ A finding of probable cause must be supported by evidence with probative value.⁷ Based on the evidence presented at the probable cause hearing, the Administrative Law Judge concludes that probable cause does not now exist to believe that Respondent violated Minn. Stat. § 211A.02. What the evidence may, or may not, show regarding the Respondent's campaign contributions and expenditures as of December 6, 2012, is not at issue in this proceeding.

Minnesota Statutes § 211B.15

Minn. Stat. § 211B.15, subd. 2, provides in relevant part:

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 major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office.

There are no expenditures recorded in the two campaign finance reports that Respondent has filed that correlate explicitly to the printing of the Respondent's lawn signs and mailed campaign material. The Complainant notes that on the Respondent's Statement of Economic Interest⁸ he indicates that he serves as Vice President of Marketing for Bromley Printing. The Complainant therefore inferred that the cost of printing the lawn signs and mailing were in-kind corporate contributions to the Respondent from Bromley Printing in violation of Minn. Stat. § 211B.15, subd. 2. Other

⁵ Ex. 5.

⁶ *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

⁷ *State v. Florence*, 239 N.W. 2d 892 Minn. (1976).

⁸ Ex. 1.

than this inference, there is no probative direct evidence that the Respondent received in-kind printing contributions from Bromley Printing.⁹

On the other hand, the Respondent testified under oath that his lawn signs and mailing were not printed by Bromley Printing, and that he has not yet paid the company that printed them. He further testified that he has not received any types of in-kind contributions from Bromley Printing. As previously discussed, mere inference or speculation is insufficient to raise a fact question to establish probable cause.¹⁰ A finding of probable cause must be supported by evidence with probative value.¹¹ The Administrative Law Judge therefore also concludes that at this time, the evidence does not establish that there is probable cause that Respondent violated Minn. Stat. § 211B.15.

For the reasons discussed above, there is insufficient probative evidence to establish probable cause that the Respondent has violated any provision of Chapters 211A or 211B of Minnesota Statutes. The complaint must therefore be dismissed.

B. H. J.

⁹ The copy of the Respondent's August 3, 2012 campaign finance report attached to the complaint contains the following handwritten notation: "Was printing of signs & postcards done @ Bromley printing[?]" (Ex. 2) However, that is not a notation written on the report by the Respondent. Rather, it is a question in the Complainant's handwriting written on a copy of the report that the Complainant obtained. It is therefore not evidence of an in-kind corporate contribution.

¹⁰ *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

¹¹ *State v. Florence*, 239 N.W. 2d 892 Minn. (1976).