

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Bill Braun,

Complainant,

vs.

**PROBABLE CAUSE ORDER**

Wellington Management, Inc.,

Respondent.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge James E. LaFave on October 29, 2014. This matter was convened to consider a campaign complaint filed under the Fair Campaign Practices Act by Bill Braun on October 22, 2014. The probable cause hearing was conducted by telephone conference call. The probable cause record closed on October 29, 2014.

Bill Braun (Complainant) appeared on his own behalf without counsel. David Zoll, Lockridge, Grindal & Nauen, P.L.L.P., appeared on behalf of Wellington Management, Inc. (Respondent or Wellington).

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 Respondent violated Minn. Stat. § 211B.15, subd. 2, by contributing something of monetary value to candidates Christopher Burns and Julie Ohs when it allowed them to post their campaign signs on corporate property managed by Respondent.

2. This matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges, pursuant to Minn. Stat. § 211B.35.

3. Should the parties decide that an evidentiary hearing is not necessary and that this matter may be submitted to the assigned panel of judges based on this Order, the record created at the probable cause hearing, the file, and final written argument, they must notify the undersigned Administrative Law Judge by **4:30 p.m. on Monday, November 10, 2014**. 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: November 3, 2014

s/James E. LaFave  
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JAMES E. LAFAVE  
Administrative Law Judge

## MEMORANDUM

### Background

Complainant Bill Braun is a candidate for the Woodbury City Council in the November 4, 2014, general election.<sup>1</sup> Respondent is a Minnesota corporation that manages 90 properties in Minnesota, including some in the city of Woodbury.<sup>2</sup> Christopher Burns and Julie Ohs are current Woodbury City Council members and both are seeking re-election in the November 4, 2014, election.<sup>3</sup>

In October 2014, Kathy Bayliss, a Senior Property Manager at Wellington, permitted Mr. Burns and Ms. Ohs to post their campaign signs at corporate properties managed by Respondent, but refused to allow the Mr. Braun to post his signs at the same locations.<sup>4</sup> In addition, Ms. Bayliss directed Wellington employees to remove all other campaign signs, including Mr. Braun's campaign signs, that were posted on the same properties as those posted for Mr. Burns and Ms. Ohs.<sup>5</sup> The Complainant contends that over 50 campaign signs promoting his candidacy were removed from various locations on corporate property managed by Wellington.

In an e-mail to Mr. Braun dated October 16, 2014, Ms. Bayliss stated that Wellington has a policy of allowing only two candidates to post campaign signs on property it manages in order to limit unattractive clutter.<sup>6</sup> Permission to post signs is

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<sup>1</sup> Complaint at p. 1 (October 21, 2014).

<sup>2</sup> Complaint at Ex. 5; Testimony (Test.) of Kathy Bayliss.

<sup>3</sup> Test. of Bill Braun.

<sup>4</sup> Complaint Ex. 4; Test. of K. Bayliss.

<sup>5</sup> *Id.*; Test. of K. Bayliss.

<sup>6</sup> Complaint at Ex. 4; Test. of K. Bayliss.

given on a first-come-first-served basis.<sup>7</sup> Ms. Bayliss explained in her e-mail that Mr. Burns and Ms. Ohs contacted her and requested permission to post their campaign signs on various corporate properties managed by Wellington, and she granted them permission to do so.<sup>8</sup> Ms. Bayliss also stated that she directed Wellington's maintenance employees to remove Mr. Braun's campaign signs.<sup>9</sup>

The complaint alleges that, by permitting Mr. Burns and Ms. Ohs to post their campaign signs on corporate property managed by Wellington and by removing Mr. Braun's campaign signs, Wellington violated Minn. Stat. § 211B.15, subd. 2, which prohibits corporations from making contributions of "thing[s] of monetary value" directly to candidates.<sup>10</sup>

After Mr. Braun protested, Wellington contacted Mr. Burns and Ms. Ohs and requested that they remove their campaign signs from the properties managed by Wellington. Burns and Ohs have complied with this request.<sup>11</sup>

At the close of the Complainant's presentation at the probable cause hearing, Wellington moved for a directed verdict. That motion was denied.

## 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>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. 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 Respondents have 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 both the record as a whole and the applicable evidentiary burdens and standards.

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

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Complaint at p. 2.

<sup>11</sup> Test. of K. Bayless.

<sup>12</sup> *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 standard for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. Ct. App. 1994).

## Fair Campaign Practices Act

Minnesota Statutes section 211B.15, subdivision 2, prohibits corporations from making direct or indirect political contributions to candidates, and provides as follows:

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. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Minnesota Statutes section 211B.15, subdivision 3, states that "independent expenditure" has the meaning given it in section 10A.01, subdivision 18. That section defines "independent expenditures" as:

an expenditure expressly advocating the election or defeat of a clearly identified candidate, if the expenditure is made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent. An independent expenditure is not a contribution to that candidate. An independent expenditure does not include the act of announcing a formal public endorsement of a candidate for public office, unless the act is simultaneously accompanied by an expenditure that would otherwise qualify as an independent expenditure under this subdivision.<sup>14</sup>

## Analysis

Wellington is organized as a domestic business corporation and meets the definition of a "corporation" for purposes of section 211B.15. Wellington manages, but does not own, the properties where the campaign signs were posted. Each property is owned by a limited liability company.<sup>15</sup> Wellington is paid management fees to maintain the property, lease space, hire vendors, and respond to tenant requests.<sup>16</sup>

Wellington argues that the Complaint should be dismissed because it does not own the properties, and therefore was not capable of conferring the prohibited corporate contribution. Wellington also argues that Mr. Braun has failed to establish, by way of

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<sup>14</sup> Minn. Stat. § 10A.01, subd. 18.

<sup>15</sup> Complaint Ex. 5; Test. of K. Bayliss.

<sup>16</sup> Test. of K. Bayliss.

photographic evidence or otherwise, that the signs at issue were in fact on corporate property and not on an easement or public property. Finally, Wellington asserts that it was unaware that its practice of allowing candidates to post signs was unlawful under section 21B.15. Because the statute carries potential criminal penalties, Wellington contends that the Rule of Lenity applies and requires a narrow construction in favor of Wellington.<sup>17</sup> A key purpose of the Rule of Lenity is to assure that citizens have clear warning of the conduct the legislature has prohibited.

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.<sup>18</sup> A “disbursement” is defined, as “an act through which money, property, office, or position or *other thing of value is directly or indirectly promised, paid, spent, contributed, or lent*, and any money, property, office or position or other thing of value so promised or transferred..<sup>19</sup> Similarly, “contribution” is defined as “*anything of monetary value* that is given or loaned to a candidate or committee for a political purpose....”<sup>20</sup>

There is no requirement that a 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. Allowing a campaign sign to be placed on corporate property is a contribution having some monetary value to a candidate.

Based on the record presented, Mr. Braun has demonstrated probable cause to believe that Wellington violated Minn. Stat. § 211B.15, subd. 2. Ms. Bayliss testified that she had the authority to permit the posting of campaign signs on corporate property managed by Wellington. In addition, she stated in her e-mail to Mr. Braun and in her testimony at the probable cause hearing that she spoke with both Mr. Burns and Ms. Ohs and gave permission to them to post their campaign signs at the corporate properties. Ms. Bayliss also stated that she directed Wellington employees to remove the Complainant’s signs as well as signs for any candidates other than Mr. Burns and Ms. Ohs.<sup>21</sup>

Mr. Braun has established that, by permitting the posting of campaign signs on corporate property, Wellington contributed something of monetary value to Mr. Burns’ and Ms. Ohs’ campaigns in violation of Minn. Stat. § 211B.15, subd. 2. Ms. Bayliss’ testimony and her e-mail to the Complainant (Exhibit 4) support finding that Wellington exercised sufficient control over the corporate properties to be capable of contributing something of value to candidate in violation of Minn. Stat. § 211B.15, subd. 2. The facts in this case are distinguishable from those in *Moses v. Roseville Properties*

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<sup>17</sup> *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003) (The rule of lenity states that “[w]hen the statute in question is a criminal statute, courts should resolve ambiguity concerning the ambit of the statute in favor of lenity.”).

<sup>18</sup> Minn. Stat. § 211B.15, subd. 2.

<sup>19</sup> Minn. Stat. § 211B.01, subd. 5 (emphasis added).

<sup>20</sup> Minn. Stat. § 211A.01, subd. 5 (emphasis added).

<sup>21</sup> Test. of K. Bayliss; Respondent’s Ex. A.

*Management Company*,<sup>22</sup> where the complainant failed to present any evidence that the management company controlled the properties where the campaign signs were posted and the properties were owned by partnerships rather than corporations.<sup>23</sup>

The circumstances giving rise to the violation, the intentions of corporate officials and the impact, if any, the signs had upon voters are all matters that go to the appropriate penalty if a violation is proved after an evidentiary hearing. Those items are premature at this stage of the proceeding.

The Administrative Law Judge finds that it is reasonable to allow this matter to proceed to a panel of three Administrative Law Judges to determine whether the Respondent violated Minn. Stat. § 211B.15, subd. 2, and, if so, what penalty is appropriate.

Should the parties decide to waive the evidentiary hearing and submit the matter based upon the existing record with further written submissions, they must notify the Administrative Law Judge by **4:30 p.m. on Monday, November 10, 2014.**

**J. E. L.**

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<sup>22</sup> OAH 7-6361-16924 (October 27, 2005).

<sup>23</sup> *Id.* at \*3.