OAH 8-0325-33798

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Joe Field,

Complainant,

vs.

Marsha Van Denburgh,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND NOTICE OF AND ORDER FOR PROBABLE CAUSE HEARING

On September 12, 2016, Mr. Field filed a Complaint with the Office of Administrative Hearings alleging that Respondent, Ms. Van Denburgh, violated several sections of Minnesota's Fair Campaign Practices Act.

Following a review of both the Complaint, and the documents Mr. Field submitted in support of the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. §§ 211A.02 and 211A.12 (2016). For the reasons detailed in the Memorandum below, Mr. Field should be permitted to proceed to a probable cause hearing on these claims. (*See* Alleged Violations 1, 2, 4, and 5).

The Administrative Law Judge further concludes that Mr. Field has not stated a prima facie violation of Minn. Stat. §§ 211B.05 (2016) (Paid Advertisements in News) (Alleged Violation 3) or 211B.09 (2016) (Prohibited Public Employee Activities) (Alleged Violation 7). These claims are dismissed.

Lastly, the alleged violation of the Internal Revenue Code's provisions on exempt purposes, is also dismissed. This Office does not have jurisdiction over such a claim.[1]

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **2:00 p.m**. on **Thursday, October 6, 2016.** The hearing will be held by call-in telephone conference. At the appointed time, the parties are directed to:

(a) Telephone **1-888-742-5095**
(b) Enter the Conference Code: **566-872-4759#**

[1] *See* Minn. Stat. § 211B.32, subd. 1 (2016), (the Office of Administrative Hearings has jurisdiction over matters "alleging a violation of chapter 211A or 211B"); *compare generally* Alleged Violation 6 with 26 C.F.R. § 1.501(c)(3)-1(d)(1) (2016).

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2016). Information about the probable cause proceedings and copies of state statutes may be found online at http://mn.gov/oah and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. By **4:30 p.m.** on **Monday, October 3, 2016**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies of the same items to the opposing party.

Any document filed with the Office of Administrative Hearings, or that a party wishes to make part of the hearing record, may be filed in any one of the following ways: (1) by **e-Filing** through the Office of Administrative Hearings' e-Filing system; (2) by **mail**; (3) by **facsimile** (if less than 50 pages total); or (4) by **personal delivery**. (*See* 2015 Minn. Laws. Ch. 63, § 7; Minn. R. 1400.5550, subp. 5 (2015)).

The e-Filing system is accessible at: http://mn.gov/oah/forms-and-filing/efiling/

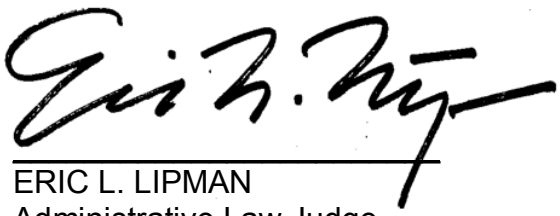
The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35 (2016).

If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: September 14, 2016



ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

Standard for Prima Facie Determinations

To assert a prima facie violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.[2] The party must either submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes chapters 211A or 211B (2016).[3]

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the Complaint as if they were true without further proof.[4]

A complaint must be dismissed if it does not include evidence or allege facts that, if they were accepted as true, would prove a violation of Minnesota Statutes, chapters 211A or 211B (2016).[5]

Required Financial Reports (Minn. Stat. § 211A.02)

Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over $750 in a calendar year must file financial reports with the appropriate "filing officer."[6]

A "disbursement" is defined as "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent".[7] "Disbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.[8]

A "contribution" is defined to mean "anything of monetary value that is given or loaned to a candidate or committee for a political purpose."[9] "Contribution" does not include a service provided without compensation by an individual.[10] An "in-kind" contribution refers to anything of value that is given, other than money.[11]

Minn. Stat. § 211A.02, subd. 2, requires campaign financial reports to include the following:

(1) the name of the candidate or ballot question;

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[2] Minn. Stat. § 211B.32, subd. 3 (2016).
[3] *Barry, et al., v. St. Anthony-New Brighton Indep. Sch. Dist., et al*., 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[4] *Id.*
[5] *Id.*
[6] Minn. Stat. § 211A.01, subd. 7, defines "filing officer" to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.
[7] Minn. Stat. § 211A.01, subd. 6.
[8] *Id*.
[9] Minn. Stat. § 211A.01, subd. 5.
[10] *Id*.
[11] *See generally* Minn. Stat. § 10A.01, subd. 13 (2016).

(2) the printed name, address, telephone number, signature, and e-mail address, if available, of the person responsible for filing the report;

(3) the total cash on hand designated to be used for political purposes;

(4) the total amount of contributions and disbursements 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 disbursement; and

(6) the name, address, and employer, or occupation if self-employed, of any individual or committee that during the year has made one or more contributions that in the aggregate exceed $100, and the amount and date of each contribution. The filing officer must restrict public access to the address of any individual who has made a contribution that exceeds $100 and who has filed with the filing officer a written statement signed by the individual that withholding the individual's address from the financial report is required for the safety of the individual or the individual's family.

Mr. Field maintains that the information provided in Ms. Van Denburgh's most recent campaign financial report is inaccurate. The accounting of the costs of the printed tee-shirts, or the rental arrangements for the events at the Fountains of Ramsey Event Center and the New Life Church, are not clear from the campaign finance report dated July 25, 2016.

The Administrative Law Judge finds that, although Mr. Field did not specifically identify a violation of section 211A.02 on the complaint form, the gravamen of the complaint is that sums for these items are not reflected on the required financial report. The complaint has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211A.02, subd. 2.

Limitations on Contributions (Minn. Stat. § 211A.12)

Minn. Stat. § 211A.12 provides in relevant part:

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.

Mr. Field maintains, by pointing to the contribution schedules accompanying Ms. Van Denburgh's July 29, 2016 campaign finance report, that Pamela Deal made two

contributions of $600 during the reporting period – one on June 9, 2016 and another on June 23, 2016.

The Administrative Law Judge finds that the complaint has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211A.12.

Requirements for Paid Advertisements (Minn. Stat. § 211B.05)

Minn. Stat. § 211B.05 provides as follows:

> Subdivision 1. Acceptance of paid advertisements. A newspaper, periodical, or magazine may not intentionally accept for insertion in the newspaper, magazine, or periodical a political advertisement unless the words "PAID ADVERTISEMENT," and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement. The disclaimer must be in a legible text size and font. A radio station, television station, or cable system may not accept for broadcast a political advertisement unless the words "PAID ADVERTISEMENT" are included at the beginning or end of the advertisement.
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> Subd. 2. Advertising rates. Rates charged for advertising to support or oppose a candidate or ballot question must be the same as the charges made for any other political candidate and may be no greater than charges made for any other comparable purpose or use according to the seller's rate schedule.
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> Subd. 4. Unpaid material identification. Unpaid material published in a newspaper, magazine, or other publication that is: (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

Section 211B.05 places certain duties on newspapers, magazines, or other publications as defined in subdivisions 1 and 3 of the statute. The Respondent, Ms. Van Denburgh, is not one of the entities that is regulated by this statute. Therefore, because the Complaint is directed at the candidate benefitting from the advertisement, and not the *St. Francis Courier*, it fails to allege a prima facie violation of Minn. Stat. § 211B.05. This claim is dismissed.

Prohibited Public Employee Activities (Minn. Stat. § 211B.09)

Minn. Stat. § 211B.09 provides:

> An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for

> membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A political subdivision may not impose or enforce additional limitations on the political activities of its employees.

The Complaint avers that Ms. Van Denburgh used a government electronic mail account to announce to employees of Independent School District Number 15 that she was a candidate for County Commissioner. The complaint fails to state a violation of Minn. Stat. § 211B.09 because it does not allege that Ms. Van Denburgh compelled any of the persons who received this message, or anyone else, to join, contribute to, or undertake, any political activity.[12] Alleged Violation Number 7 is dismissed.

This matter will proceed to a probable cause hearing on Alleged Violations 1, 2, 4, and 5.

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[12] *Compare, e.g., Burns v. Valen*, 400 N.W. 2d 123, 127 (Minn. Ct. App. 1987) (the display of campaign literature by government employees at the county courthouse did not "compel" fellow employees to participate in campaign activities); *McDonald v. Newstrom,* 2010 WL 1286049, at *1 (Minn. Off. Admin. Hrgs. 2010) (unpublished) (Complainant failed to allege sufficient facts that would support finding a prima facie violation of Minn. Stat. § 211B.09 where the complaint does not "allege any facts which suggest that Ms. Newstrom compelled any person to undertake any action - least of all of actions relating to the campaign for election to the post of Town Clerk").