

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Dean Heng,

**ORDER OF DISMISSAL FOR LACK OF
PROBABLE CAUSE**

Complainant,

vs.

Susan Pha for City Council,

Respondent

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge Jim Mortenson on October 7, 2016. This matter was convened to consider a campaign complaint filed under the Fair Campaign Practices Act by Dean Heng on October 5, 2016. The probable cause hearing was conducted by telephone conference call. The probable cause hearing record closed on October 7, 2016.

Dean Heng (complainant) appeared on his own behalf and without counsel. Mai Moua, Mai N. Moua Law Office, appeared on behalf of the Susan Pha for City Council committee (respondent).

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 no probable cause to believe that the respondent violated Minn. Stat. § 211B.12 (2016) by contributing more than \$100 to a charity. This claim is **DISMISSED** without prejudice

2. There is no probable cause to believe that the respondent violated Minn. Stat. § 211B.13 (2016) by providing food to potential voters. This claim is **DISMISSED** with prejudice.

Dated: October 11, 2016



JIM MORTENSON
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes, section 211B.34, subdivision 3 (2016), 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 Minn. Stat. § 211B.35 (2016) 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 (2016), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2016).

MEMORANDUM

At a probable cause hearing under Minn. Stat. § 211B.34 (2016), the administrative law judge must determine: whether the complaint is frivolous or there is no probable cause to believe that the alleged violation occurred; or that there is probable cause to believe the alleged violation occurred.¹

The complaint alleged that the respondent violated Minn. Stat. § 211B.12 by contributing \$200 to a charity in July 2016. The complaint also alleged that the respondent violated Minn. Stat. § 211B.13 by providing food to potential voters during National Night Out on August 2, 2016. Probable cause is defined as a “reasonable ground to suspect that a person has committed or is committing” the alleged violation.² If probable cause is found, the matter will proceed to an evidentiary hearing.³ If there is no probable cause, the case will be dismissed.⁴

Charitable Contribution

There is no dispute that the Susan Pha for City Council committee provided \$200 to Brooklyn Avenues on July 25, 2016. There is also no dispute that Brooklyn Avenues is a charity organized under section 501(c)(3) of the Internal Revenue Code.

Minnesota Statutes, section 211B.12 limits charitable contributions from money collected for political purposes to \$100 per year.⁵ An exception to this rule, which leaves a contribution amount unlimited, is when the campaign committee dissolves within one year after the contribution is made.⁶

¹ Minn. Stat. § 211B.34, subd. 2.

² Black’s Law Dictionary 1219 (7th ed. 1999).

³ Minn. Stat. § 211B.34, subd. 2(b).

⁴ Minn. Stat. § 211B.34, subd. 2(a).

⁵ Minn. Stat. § 211B.12.

⁶ *Id.*

Respondent argues that because one year has not passed since the \$200 contribution was made, the claim is not ripe. The administrative law judge agrees. If the Susan Pha for City Council committee dissolves before July 25, 2017, there will be no violation. Thus, pending the anniversary of the \$200 donation, there are no grounds to suspect a violation. The issue is properly dismissed without prejudice because if the committee does not dissolve by July 25, 2017, there will be a viable claim after that date that Minn. Stat. § 211B.12 was violated.

Provision of Food

Complainant states that three individuals contacted him reporting that Susan Pha appeared at four National Night Out events in the city and brought pizzas for the people at each event. Susan Pha states that she did attend the four National Night Out events. These events were neighborhood pot-luck gatherings. Thus, according to Ms. Pha, she brought a \$5 Little Caesar's pizza to each one. She was also accompanied by a neighbor who brought a pizza to each one. Ms. Pha stated that her pizzas were placed on pot-luck tables where all food was shared.

Minnesota Statutes, section 211B.13 prohibits the improper inducement of voters through, among other things, the provision of food.⁷ However, “[r]efreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited” by Minn. Stat. § 211B.13.⁸

Bringing an inexpensive dish to a pot-luck is not a violation of Minn. Stat. § 211B.13. Respondent brought a \$5 pizza to each of the four pot-luck dinners she visited. A neighbor accompanying her also brought a pizza to each event. The evidence provided by the complainant does not demonstrate reasonable cause to believe a violation occurred, because respondent was attending neighborhood pot-lucks, sharing in food all attendees brought, and the value of the food she brought to each event did not exceed \$5. Further, no evidence was presented by the complainant that Ms. Pha attempted to induce potential voters to vote a certain way or refrain from voting in any election. Thus, there is no probable cause that a violation occurred.

J. R. M.

⁷ Minn. Stat. § 211B.13, subd. 1.

⁸ *Id.*