

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Dean Heng,

Complainant,

vs.

Susan Pha for City Council,

Respondent

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

On October 5, 2016, Dean Heng (complainant) filed a complaint with the Office of Administrative Hearings alleging that the Susan Pha for City Council campaign committee (respondent) violated Minn. Stat. §§ 211B.12 and 211B.13 (2016) in connection with Susan Pha's campaign for Brooklyn Park City Council.

Following a review of both the complaint and the documents submitted by the complainant in support, the undersigned administrative law judge has determined that the complaint sets forth prima facie violations of Minn. Stat. §§ 211B.12 and 211B.13. For the reasons detailed in the memorandum below, the complainant is permitted to proceed to a probable cause hearing on these claims.

**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 Friday, October 7, 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: **685 684 1864#**

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](http://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 **12:00 p.m. on October 7, 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 any documents that a party wishes to make part of the hearing record, may be filed in 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)).<sup>1</sup>

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

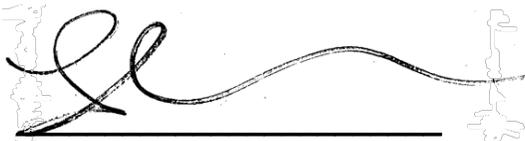
The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

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: October 6, 2016



JIM MORTENSON  
Administrative Law Judge

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<sup>1</sup> Please note mail is not a viable service or filing option for the probable cause hearing.

## MEMORANDUM

Susan Pha is seeking election to the Brooklyn Park City Council - West District. The complaint alleges that Ms. Pha's campaign committee donated \$200 to Brooklyn Avenues, a nonprofit 501(c)(3) organization in violation of Minn. Stat. 211B.12(6), which limits the charitable contributions campaigns can make.

The complaint also alleges that on a number of occasions the Susan Pha for City Council campaign committee purchased food for volunteers, some of whom are Brooklyn Park residents. The complaint asserts that some of these food purchases occurred as early as May of 2016, which was before the primary filing date for candidates. Finally, the complaint alleges that the Susan Pha for City Council committee purchased and delivered several pizzas and other food items to potential voters attending the Brooklyn Park West District National Night Out event on Tuesday, August 2, 2016. The complaint asserts that the provision of food to potential voters by Ms. Pha's campaign committee violated the prohibition against "bribery, treating and solicitation" at Minn. Stat. § 211B.13.

The complainant has attached to the complaint the respondent's campaign financial reports covering the period of January 1, 2016, through July 26, 2016.

### Standard for Prima Facie Determinations

To establish 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.<sup>2</sup> The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B (2016).<sup>3</sup>

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.<sup>4</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>5</sup>

### Legal Expenditures

Minnesota Statutes section 211B.12 governs campaign expenditures. The statute provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;

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<sup>2</sup> Minn. Stat. § 211B.32, subd. 3.

<sup>3</sup> *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$100 to any charity organized under section 501(c)(3) of the Internal Revenue Code annually, except that the amount contributed is not limited by this clause if the political committee, political fund, party unit, principal campaign committee, or campaign fund of a candidate for political subdivision office that made the contribution dissolves within one year after the contribution is made; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

Thus, under Minn. Stat. § 211B.12, candidates may only use campaign funds for expenditures that are reasonably related to the conduct of an election campaign or for permissible “noncampaign disbursements,” and candidates must not convert campaign funds to personal uses.

Minnesota Statutes § 10A.01, subd. 26 (2016), defines “noncampaign disbursements” to include, among other things, payment for “food and beverages consumed by a candidate or volunteers while they are engaged in campaign activities.”<sup>6</sup>

### **Bribery, Treating, and Solicitation**

Minnesota Statutes section 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election. The statute provides, in relevant part:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. ... Refreshments 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 under this section.<sup>7</sup>

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<sup>6</sup> See Minn. Stat § 10A.01, subd. 26(7).

<sup>7</sup> Minn. Stat § 211B.13, subd. 1.

## Analysis

Accepting the facts alleged in the complaint as true, the administrative law judge concludes that the complainant has set forth a prima facie violation of Minn. Stat. § 211B.12(6) with respect to respondent's alleged \$200 donation to a charity organized under section 501(c)(3) of the Internal Revenue Code. The law limits charitable contributions to \$100. Thus, this claim will proceed to a probable cause hearing.

The complaint fails to allege a prima facie violation of Minn. Stat. § 211B.13 with respect to the claim that Respondent purchased food for volunteers on numerous occasions. Payment of food and beverages consumed by a candidate or volunteers while engaged in campaign activities is a permissible "noncampaign disbursement" under Minn. Stat. §§ 211B.12 and 10A.01, subd. 26. The complaint does not allege that the volunteers were not engaged in campaign activities at the time the food was provided. The fact that some of these purchases occurred prior to the primary filing date is not definitive as to whether the activities were campaign related. Accordingly, this claim is dismissed.

The complaint has, however, alleged sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.13 with respect to the purchase of pizzas for the West District National Night Out gathering. The complaint alleges that food was purchased by the Susan Pha for City Council Campaign and provided to potential voters in the West District of Brooklyn Park on Tuesday, August 2, 2016, National Night Out. An assessment of the monetary worth of an item is made from the perspective of a voter receiving the item, not the person offering it.<sup>8</sup>

Prior decisions have closely examined the circumstances in which the items were given. For example, administrative law judges have held that tossing penny candy at a parade, giving notepads imprinted with the candidate's name and office, or providing bottled water did not violate Minn. Stat. § 211B.13.<sup>9</sup> In contrast, a candidate's donation of chicken dinners to residents at a senior housing complex following a candidates' forum was found to violate the statute.<sup>10</sup>

The alleged provision of pizza "and other food items" to a gathering of neighbors in the Brooklyn Park West District could be valued at more than five dollars permitted under section 211B.13. Therefore, the administrative law judge finds that the complaint alleges a prima facie violation of Minn. Stat. § 211B.13 and this claim will also proceed to a probable cause hearing.

**J. R. M.**

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<sup>8</sup> *United States v. Garcia*, 719 F.2d 99, 201 (5<sup>th</sup> Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

<sup>9</sup> See *Kalil v. Knutson*, OAH Docket No. 3-6302-16119, ORDER DENYING RECONSIDERATION (Sept. 2, 2004); *Schauer v. Gillpasie*, OAH Docket No. 3-6371-17570, ORDER OF DISMISSAL, (Oct. 11, 2006); *Campbell v. Grant County Republican Party of Minnesota*, OAH Docket No. 12-0320-19820, ORDER OF DISMISSAL (Aug. 4, 2008).

<sup>10</sup> *Wyckoff and Laine v. Peterson and Willians*, OAH Docket No., 7-6301-16405 ORDER (Apr. 25, 2005).