

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Abram Sauer,

Complainant,

vs.

**ORDER FINDING
PROBABLE CAUSE**

Randy Staver,

Respondent.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge Jeanne M. Cochran on November 7, 2016. This hearing was convened to consider a campaign complaint filed under the Fair Campaign Practices Act by Abram Sauer (Complainant) on November 4, 2016. The hearing was conducted by telephone conference call. The probable cause record closed on November 7, 2016.

Complainant appeared on his own behalf and without counsel. Paul H. Grinde, Ryan & Grinde, LTD, appeared on behalf of Randy Staver (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 probable cause to believe that Respondent violated Minn. Stat. § 211A.12 (2016) by accepting an "in-kind" contribution from an individual exceeding \$1000 in value in an election year related to a campaign event held on September 13, 2016.

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 for a decision based on the file and the record created at the probable cause hearing, they should notify the undersigned Administrative Law Judge by **4:30 p.m.** on **November 17, 2016**. 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 10, 2016



Jeanne M. Cochran
Administrative Law Judge

MEMORANDUM

Factual and Procedural Background

Respondent sought re-election to the office of Rochester City Council in the November 8, 2016 election. The complaint alleges that Respondent violated Minn. Stat. § 211A.12 by accepting an in-kind contribution from an individual, Joe Powers, in excess of the \$1,000 contribution limit.¹

According to the complaint, a campaign fundraising event for Respondent was held on September 13, 2016, at the Maywood Stone Barn in Rochester.² The Maywood Stone Barn is operated by Powers Ventures. The complaint further alleges that the fundraising event was catered by companies that are also owned by Powers Ventures – specifically, Pinnacle Catering and Canadian Honker.³ Powers Ventures is, in turn, owned by Joe Powers.⁴ Nick Powers, Joey Powers, and Melissa Walker are Joe Powers’ adult children.⁵ Additionally, the complaint alleges that at least two children are employed by Canadian Honker.⁶

Respondent’s campaign financial report covering the period August 3, 2016 through October 28, 2016 lists three “in-kind” contributions of \$933.33, \$933.33, and \$933.34 for “restaurant” from Nick Powers, Joey Powers, and Melissa Walker respectively.⁷ The “in-kind” contributions are dated as being received on September 15, 22 and 25, 2016.⁸ Complainant contends that the “in-kind” contributions are really from Joe Powers as owner of Powers Ventures and exceeded the \$1,000 contribution limit for individuals in violation of section 211A.12.

By way of an order dated November 3, 2016, the undersigned Administrative Law Judge determined that the complaint set forth sufficient facts to allege a prima facie violation of section 211A.12.

¹ Complaint (Compl.) Attachment.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Compl. (Respondent Campaign Financial Report).

⁸ *Id.*

At the Probable Cause Hearing, Complainant noted that filings made by Joe Powers' children were for food and beverages, but not the use of the facility.⁹ Additionally, Complainant testified that according to the Mayowood Stone Barn website, the space charges up to \$5,500 per event and \$2,500 for a weekday wedding.¹⁰ Complainant argued that Respondent received a contribution in excess of \$1000 from Joe Powers when Respondent was not charged for use of the Mayowood Stone Barn by Powers Ventures for the September 13, 2016 event.

With regard to the donations made for the food and beverages, the Complainant noted that food and beverages were provided at cost.¹¹ The total cost was \$2800, \$1600 for food and \$1200 for alcohol.¹² Each of the three children paid one-third of the total, or approximately \$933 each.¹³

The food included a variety of appetizers for 250 people.¹⁴ According to the Complainant, the appetizers listed on the Banquet Event Order for the September 13, 2016 event would normally be charged at a rate of approximately \$10 per person. Complainant based this statement on the information provided on the Mayowood Stone Barn website.¹⁵ The Complainant also noted that no sales tax was charged for the food or beverage.¹⁶ In addition, according to the Complainant, the Mayowood normally charges a 3 percent credit card processing fee, but no such fee was added on to the credit card charges for Nick Powers or Joey Powers.¹⁷ Melissa Walker paid by check.¹⁸

Complainant argued that if the sales tax and credit card charges had been added to the bills, the contributions by Nick Powers, Joey Powers, and Melissa Walker would have exceeded of \$1000 each. Complainant also argued that the amount of the contributions should reflect the fair market value, not the discounted rate the children paid. Finally, the Complainant argued that Joe Powers is in fact the contributor of the food and beverage and the contribution exceeded \$1000.

Respondent argued there is no probable cause to find a donation in excess of \$1000 by Joe Powers. In support of this claim, Respondent provided documents showing that the amounts reported on Mr. Staver's Campaign Finance Report match the amounts the Powers children were invoiced by Powers Ventures for the food and beverages.¹⁹ Respondent also provided proof of the payments made paid by Nick Powers, Joey Powers, and Melissa Walker,²⁰ along with affidavits from each stating that they received no money from their father or any corporation to cover these costs.²¹ Each of the Powers children stated that they personally donated to the Randy Staver

⁹ Testimony (Test.) of Abram Sauer.

¹⁰ *Id.*

¹¹ Exhibits (Exs.) 3, 5, 7.

¹² Exs. 3, 5, 7.

¹³ Exs. 3-8.

¹⁴ Ex. 1.

¹⁵ Test. of A. Sauer.

¹⁶ Test. of A. Sauer; Exs. 3, 5, 7.

¹⁷ Test. of A. Sauer; Ex. 1, 3-6.

¹⁸ Ex. 8.

¹⁹ Exs. 2, 3, 5, 7.

²⁰ Exs. 4, 6, 8, 9.

²¹ Exs. 11, 12, 13.

campaign.²² Respondent also provided an affidavit of Joe Powers' legal counsel, which states that "none of Joe Powers' family members have ever had a legal interest in [his] business ventures."²³

Standard for Probable Cause Determination

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.²⁴ The Administrative Law Judge must decide whether, given the facts in the record, it is fair and reasonable to require the respondent to go to hearing on the merits.²⁵ 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 in a like civil case, a motion to dismiss a campaign violation complaint for lack of probable cause should be denied.²⁶

Analysis

Under Minn. Stat. § 211A.12, subd. 1,

"A candidate 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."

A "contribution" is defined to mean anything of monetary value that is given or loaned to a candidate or committee for a political purpose.²⁷ "Contribution" does not include a service provided without compensation by an individual.²⁸ An "in-kind" contribution refers to anything of value that is given, other than money.²⁹

²² Exs. 11, 12, 13.

²³ Ex. 10.

²⁴ See *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 674 (Minn. 2003) ("[I]n civil cases probable cause constitutes a *bona fide* belief in the existence of the facts essential under the law for the action, and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it") (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990) (internal punctuation omitted.); see also *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976) (explaining operation of probable cause standard in criminal context).

²⁵ See *Hortman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings Oct. 2, 2006).

²⁶ In civil cases, a motion for 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; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

²⁷ Minn. Stat. § 211A.01, subd. 5 (2016).

²⁸ *Id.*

²⁹ See generally Minn. Stat. § 10A.01, subd. 13 (2016).

There is sufficient evidence in the record to support finding probable cause to believe that Respondent violated Minn. Stat. § 211A.12 by accepting an “in-kind” contribution of event space from Joe Powers for the September 13, 2016 fundraiser. The Mayowood Stone Barn space is something of “monetary value” that was loaned to Respondent and therefore, meets the definition of a “contribution.”³⁰ The fact that there was no facility fee charged does not exempt the “contribution” from the limits of Minn. Stat. § 211A.12. Complainant testified that the Mayowood Stone Barn website provides a price of \$2500 for a weekday wedding.³¹ Record also shows that the fundraising event, which was held on Tuesday September 13, 2016, had use of this event facility from 3:30 p.m. (Arrive Time) until 8 p.m.³² In addition, Joe Powers was a host of the event.³³ These facts are sufficient to find probable cause to believe that the use of the facility was a contribution by Joe Powers exceeding \$1000.

In addition, Complainant has set forth sufficient facts to support a finding that Joe Powers made an “in kind contribution” related to the food and beverages provided at the September 13, 2016 event. While the record is clear that the Powers children paid approximately \$933 each for the food and beverages, the children were not charged the regular, commercial rate for the food and beverages. Rather, the food and beverages were billed “at cost.”³⁴ A discount from a firm’s regular pricing, of goods that it sells in the open market at a higher price, which is “given or loaned to a candidate or committee for a political purpose,” is a “contribution.”³⁵ In this case, there is sufficient evidence to find probable cause that Joe Powers provided a contribution to the Randy Staver campaign equal to the value of the discount from the regular pricing for the food and beverages. The contribution of the discount amount would be from Joe Powers or Powers Ventures, rather than the Powers children, because Powers Ventures sold the goods at the reduced price for the event.³⁶

Accordingly, the Complainant’s allegation that Respondent or his campaign committee received a contribution from Joe Powers in excess of the \$1000 in an election year will proceed to a panel of three administrative law judges for a final determination. The Complainant will have the burden of proof to show a violation of Minn. Stat. § 211A.12, including the value of any “in-kind” contributions.

An order assigning the panel will be issued within two weeks.

J. M. C.

³⁰ Minn. Stat. § 211A.01, subd. 5.

³¹ Test. of A. Sauer.

³² Ex. 1 (Mayowood Stone Barn Banquet Event Order form for the Randy Staver event on Tuesday, September 13, 2016).

³³ Test. of A. Sauer; Test. of Randy Staver.

³⁴ Exs. 3, 5, 7.

³⁵ Minn. Stat. § 211A.01, subd. 5.

³⁶ See Exs. 3, 5, 7.