OAH 21-0325-35764

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Andrew D. Wiggins,

Complainant,

vs.

Joe Vene,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND ORDER FOR PREHEARING CONFERENCE

On November 26, 2018, Andrew Wiggins (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Joe Vene (Respondent) violated Minn. Stat. §§ 211A.12, 211B.04, and .15 (2018), in connection with his campaign for election to the office of Mayor of Bemidji in the November 6, 2018, general election.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. §§ 211A.12 and 211B.04. For the reasons detailed in the Memorandum below, these allegations will proceed to a prehearing conference. The alleged violation of Minn. Stat. § 211B.15 is dismissed.

THEREFORE, IT IS HEREBY ORDERED that this matter is scheduled for a prehearing conference to be held by telephone before the undersigned Administrative Law Judge at **11:00 a.m.** on **Tuesday, December 18, 2018.** At the appointed time, the parties are directed to:

(a) Telephone **1-888-742-5095**, and when prompted,

(b) Enter conference code: **929-609-1686#**

At the prehearing conference, preliminary matters will be addressed, such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining whether the matter may be disposed of on a written record without an evidentiary hearing.

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, Saint Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 29, 2018

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

Respondent was a candidate for Mayor of Bemidji in the November 6, 2018, general election. The Complaint alleges that Respondent accepted an in-kind contribution from a committee in excess of the $600 limit in violation of Minn. Stat. § 211A.12. The Complaint also alleges that Respondent participated in the preparation or dissemination of campaign material that lacked disclaimers in violation of Minn. Stat. § 211B.04. Finally, the Complaint alleges that Respondent accepted a prohibited corporate contribution in violation of Minn. Stat. § 211B.15.

I. 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.[1] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of 211A.01-.14, 211B.01-.37 (2018).[2]

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.[3] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[4] 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 Minnesota Statutes, chapter 211A or 211B.[5]

[1] Minn. Stat. § 211B.32, subd. 3 (2018).
[2] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[3] *Id*.
[4] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[5] *Barry,* 781 N.W.2d at 902.

II. Campaign Contribution Limits (Minn. Stat. § 211A.12)

The Complaint alleges that Respondent violated Minn. Stat. § 211A.12 by accepting an in-kind contribution of $2,400 from a committee. Minn. Stat. § 211A.12 prohibits candidates for office whose territory has a population of 100,000 or less from accepting contributions by an individual or committee in excess of $600 in an election year, and $250 in other years. The City of Bemidji has a population of less than 100,000. A "committee" is defined, in relevant part, as "persons acting together to influence the nomination, election or defeat of a candidate."[6]

Complainant has submitted with the Complaint a copy of Respondent's campaign financial report dated October 23, 2018.[7] On this report, Respondent disclosed receiving $600 from four individuals.[8] Complainant maintains that the four individuals were members of a committee. Complainant has submitted a copy of a sworn statement of Dean Thompson that was filed in a related campaign complaint matter.[9] In the statement, Mr. Thompson admits to facilitating a marketing plan known as "Bemidji First" to be used by three candidates.[10] Mr. Thompson states that he and three other individuals paid the costs of the campaign marketing and social media services as an in-kind contribution to the candidates.[11]

Complainant has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211A.12 on the part of Respondent. Based on the Complaint, Respondent's campaign financial report, and Mr. Thompson's statement, it appears Respondent accepted an in-kind contribution from a committee in the amount of $2,400. This claim will proceed to a prehearing conference as indicated in this Order.

III. Disclaimer Requirement (Minn. Stat. § 211B.04)

Minn. Stat. § 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[12] The statute requires the disclaimer provide the name and address of the committee that prepared and paid for the material, and must read substantially as follows: "Prepared and paid for by the _____ committee _____ (address)."[13] The statute was recently amended to allow the committee's address to be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.[14]

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[6] Minn. Stat. § 211A.01, subd. 4.
[7] Complaint Exhibit (Ex.) 1.
[8] *Id*.
[9] Ex. 2. (This document was originally filed in *Saxton v. Heinonen*, No. 82-0325-35683 (Minn. Office Admin. Hearings).
[10] *Id*.
[11] *Id*.
[12] Minn. Stat. § 211B.04, subd. 1(b).
[13] *Id*.
[14] Minn. Stat. § 211B.04, subd. 1(b). *See* 2018 Minn. Laws ch. 119, § 33.

"Campaign material" is defined, in relevant part, as any material disseminated for the purpose of influencing voting.[15] The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[16]

Complainant attached screenshots of the "Bemidji First" website that promoted Respondent's candidacy along with two other candidates.[17] These materials do not appear to include a disclaimer. Assuming Respondent participated in the preparation of the campaign material at issue, Complainant has alleged sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.04.

IV. Prohibited Corporate Contributions (Minn. Stat. § 211B.15)

The Complaint asserts that Respondent violated Minn. Stat. § 211B.15, subd. 2, by accepting an in-kind contribution from a committee related to the webpage and social media services provided by Pinnacle Marketing Group (Pinnacle). Pinnacle Marketing is presumably a corporation doing business in Minnesota. As noted above, Complainant submitted a copy of a sworn statement of Dean Thompson that was filed in a related campaign complaint matter.[18] In the statement, Mr. Thompson admits to facilitating the Bemidji First marketing plan with Pinnacle to be used by certain candidates.[19] Mr. Thompson states that Pinnacle charged its normal rates for its services and that he and three other individuals paid the costs as an in-kind contribution to the candidates.[20]

The Complaint fails to allege any facts to support the claim that Respondent accepted a prohibited corporate contribution from a committee or Pinnacle in violation of Minn. Stat. § 211B.15, subd. 2. Instead, Mr. Thompson's statement indicates that he and three other individuals paid Pinnacle what it ordinarily charges for its services.[21] Paying a corporation its market rate for services is not a contribution within the meaning of Minn. Stat. § 211A.01, subd. 5.[22] Because Complainant has failed to put forward any facts to suggest that Respondent accepted a prohibited corporate contribution from Pinnacle or a committee, this claim must be dismissed. Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.15, subd. 2 on the part of the Respondent.

V. Conclusion

The Administrative Law Judge finds that Complainant has alleged sufficient facts to support finding prima facie violations of Minn. Stat. §§ 211A.12 and 211B.04 on the

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[15] Minn. Stat. § 211B.01, subd. 2.
[16] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).
[17] Ex. 3.
[18] Ex. 2. (This document was originally filed in *Saxton v. Heinonen*, No. 82-0325-35683 (Minn. Office Admin. Hearings).
[19] *Id*.
[20] *Id*.
[21] Ex. C.
[22] *See Field v. Van Denburgh,* No. 8-0325-33898, FINDINGS OF FACT, CONCLUSIONS AND ORDER (Minn. Office Admin. Hearings Nov. 16, 2016); and Minn. Stat. § 211A.01, subd. 5.

part of Respondent. Accordingly, these claims will proceed to a prehearing conference as indicated in this Order. The alleged violation of Minn. Stat. § 211B.15 is dismissed.

K. M.