OAH 21-0325-35764

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Andrew D. Wiggins,

Complainant,

vs.

Joe Vene,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

This Fair Campaign Practices Complaint (Complaint) is pending before the following panel of three Administrative Law Judges: Kimberly Middendorf (Presiding Judge); James E. LaFave; and LauraSue Schlatter (Panel).

The matter was submitted to the Panel based on the record, including the Complaint, the Order Determining a Prima Facie Violation,[1] and written argument from the parties. The hearing record closed on January 3, 2019.

Andrew Wiggins (Complainant) appeared in this matter on his own behalf and without legal counsel. Joe Vene (Respondent) appeared on his own behalf without legal counsel.

## STATEMENT OF THE ISSUES

1. Did Complainant demonstrate Respondent violated Minn. Stat. § 211A.12 (2018) by accepting a campaign contribution from a committee in excess of $600?

2. Did Complainant demonstrate Respondent violated Minn. Stat. § 211B.04 (2018) by participating in the preparation or dissemination of campaign material that lacked a disclaimer in the required form?

3. If so, what penalty is appropriate?

## SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211A.12 by accepting a campaign contribution in excess of the $600 limit. For this violation, the Panel concludes a $500 penalty is appropriate. Complainant

[1] *See* Notice of Determination of Prima Facie Violation and Order for Prehearing Conference (Nov. 29, 2018).

also established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer in the form required on campaign material. For this violation, the Panel concludes a $250 penalty is appropriate.

## FINDINGS OF FACT

1. Respondent was a candidate for Mayor of Bemidji in the November 6, 2018 general election.

2. The city of Bemidji has a population of less than 100,000.[2]

3. Sometime prior to October 5, 2018, Dean Thompson, a resident of Bemidji, acted with three other individuals to support and promote Respondent's candidacy and the candidacies of Don Heinonen and Michael Beard.[3] Mr. Heinonen and Mr. Beard were candidates for Bemidji City Council.

4. Mr. Thompson met with staff at Pinnacle Marketing Group (Pinnacle) to create a website and other social media initiatives to inform the electorate about Respondent and the other two candidates.[4] The website and a YouTube video used the phrase "Bemidji First" and promoted all three candidates for office.[5]

5. On or about October 5, 2018, Mr. Thompson and three other individuals paid Pinnacle $2,400 for Respondent's share of the costs related to the website and social media services.[6]

6. Respondent has his own campaign committee. According to Respondent's campaign finance reports, his committee is named "Joe Vene for Mayor."[7] Robert Rosch is the treasurer of Respondent's campaign committee.[8]

7. Respondent's campaign website includes a copyright at the bottom of the home page that states: "© 2018 by the Committee to Elect Joe Vene Mayor of Bemidji."[9] The home page of Respondent's campaign website also included the mailing address of Respondent's campaign committee as the address for receipt of campaign contributions.[10]

8. The home page of Respondent's campaign website also included a link to the "Bemidji First alliance" and the Facebook web address for "Bemidji 1st."[11]

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[2] *See* United States Census Bureau data at: https://www.census.gov/quickfacts/bemidjicityminnesota.
[3] Exhibit (Ex.) 2. (This document was originally filed in *Saxton v. Heinonen*, No. 82-0325-35683, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Nov. 16, 2018).
[4] *Id*.
[5] *Id*.; Ex. 4.
[6] Ex. 1; Ex. 2.
[7] Ex. 1.
[8] *Id*.
[9] Ex. 3.
[10] *Id*.
[11] *Id*.

9. Respondent's website did not include a disclaimer identifying who or what committee "prepared and paid for" the campaign website.[12] In addition, the committee listed in the copyright on the home page is not the correct name of Respondent's campaign committee.[13]

10. On or about October 23, 2018, Respondent's committee filed a campaign financial report with the city of Bemidji.[14] The report covered receipts and disbursements made between August 28, 2018 and October 22, 2018.[15] Respondent disclosed the names, addresses and employers or occupations of the four individuals who each gave in-kind contributions of $600 for the cost of Pinnacle's services.[16] The individuals are identified as: Dean Thompson; Mary Ann Thompson; Steven Hill; and Jill Hill.[17]

11. The only expenditure or contribution related to website and social media services reported on Respondent's October 23, 2018 campaign finance report is the $2,400 in-kind contribution from Dean and Mary Ann Thompson, and Steven and Jill Hill.[18]

12. Complainant filed this campaign complaint on November 18, 2018. The Complaint alleges Respondent violated campaign laws by accepting campaign contributions in excess of the limit, disseminating campaign material without the required disclaimer, and accepting a prohibited corporate contribution.[19]

13. By Order dated November 29, 2018, the Presiding Administrative Law Judge found the Complaint alleged prima facie violations of Minn. Stat. §§ 211A.12, 211B.04 with respect to contribution limits and disclaimers.[20] The Presiding Judge found the Complaint failed to allege a prima facie violation of Minn. Stat. § 211B.15 regarding prohibited corporate contributions, and dismissed that claim.[21]

14. On December 18, 2018, the Presiding Administrative Law Judge conducted a prehearing conference by telephone with the parties.[22] During the prehearing conference, the parties agreed to waive the evidentiary hearing and to submit written argument related to what penalty, if any, is appropriate should Respondent be found to have violated Minn. Stat. §§ 211A.12, 211B.04.[23]

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[12] *Id*.
[13] *Id*.
[14] Ex. 1.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *See* Complaint (Nov. 26, 2018).
[20] *See* Notice of Determination of Prima Facie Violation and Order for Prehearing Conference (Nov. 29, 2018).
[21] *Id*.
[22] *See* Prehearing Order (Dec. 20, 2018).
[23] *Id*.

15. On December 26, 2018, this matter was assigned to the Panel for a final determination based on the record. The record closed on January 3, 2019, with the receipt of all the submissions from the parties.[24]

Based upon the foregoing Findings of Fact, the undersigned panel of Administrative Law Judges makes the following:

## CONCLUSIONS OF LAW

1. The Administrative Law Judge panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2018).

2. Complainant bears the burden of proving the allegations in the complaint by a preponderance of the evidence.[25]

3. Under Minn. Stat. § 211A.02, subd. 1 (2018), 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.

4. A "contribution" is defined to mean "anything of monetary value that is given or loaned to a candidate or committee for a political purpose."[26] An "in-kind" contribution refers to anything of value that is given, other than money.[27]

5. A "committee" is defined, in part, to mean "a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate."[28]

6. Mr. Thompson and the three individuals who paid the $2,400 cost of the webpage and other social media services promoting Respondent's candidacy acted together to influence the election of Respondent. They therefore meet the definition of a "committee" for purposes of Minn. Stat. § 211A.01, subd. 4 (2018).

7. Minn. Stat. § 211A.12 prohibits local candidates in voting districts that have fewer than 100,000 residents from accepting more than $600 in contributions from any individual or committee. The statute reads in pertinent 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

[24] *Id*. In his final written submission, Complainant alleges for the first time that Respondent also violated Minn. Stat. § 211A.02 by failing to fully identify his donors. As this claim was not alleged in the Complaint, it is not considered by the Panel. See Complainant's written submission (Dec. 28, 2018).
[25] Minn. Stat. § 211B.32, subd. 4 (2018).
[26] Minn. Stat. § 211A.01, subd. 5 (2018).
[27] *See generally* Minn. Stat. § 10A.01, subd. 13 (2018).
[28] Minn. Stat. § 211A.01, subd. 4.

delivered by an individual or committee in excess of $1,000 in an election year for the office sought and $250 in other years.[29]

8. Complainant established that Respondent violated Minn. Stat. § 211A.12 by accepting a $2,400 in-kind contribution from a committee.

9. Based on Respondent's violation of Minn. Stat. § 211A.12, it is appropriate to require Respondent pay a civil penalty in the amount of $500.

10. Minn. Stat. § 211B.01, subd. 2 (2018), defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

11. Respondent's campaign website and the Bemidji First YouTube video are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

12. Minn. Stat. § 211B.04 makes it unlawful for a person to participate in the preparation or dissemination of most types of campaign material that does not disclose the person or committee causing the material to be prepared or disseminated.[30]

13. Pursuant to Minn. Stat. § 211B.04, subd. 1, the disclaimer is required to be substantially in the following form: "Prepared and paid for by the _____ committee _____ (address)."[31] The committee's address may be either the committee's mailing address, or the committee's website, if the home page of the website includes the committee's mailing address.[32]

14. Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04, subd. 1(b) with respect to his campaign website. Respondent's campaign website fails to include a disclaimer substantially in the form required. The home page does not include a disclaimer identifying who or what committee "prepared and paid for" the website.

15. Complainant failed to put forward sufficient evidence to establish that Respondent participated in the creation of the YouTube video and that the video lacked a disclaimer substantially in the form required under Minn. Stat. § 211B.04, subd. 1(c) for broadcast media.

Based upon the record, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

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[29] Minn. Stat. § 211A.12.
[30] *See* Minn. Stat. § 211B.04, subd. 1(a) and (b).
[31] Minn. Stat. § 211B.04, subd. 1(a), (b). Emphasis added.
[32] Minn. Stat. § 211B.04, subd. 1(b), 4.

## ORDER

1. By 4:30 p.m. on March 1, 2019, Respondent Joe Vene shall pay a civil penalty of $750 for violating Minn. Stat. §§ 211A.12, 211B.04.

2. The penalty shall be paid by a check made to the order of "Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 21-0325-35764, should be included on the check.

Dated: January 11, 2019

KIMBERLY MIDDENDORF
Presiding Administrative Law Judge

JAMES E. LAFAVE
Administrative Law Judge

LAURASUE SCHLATTER
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2018), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2018).

## MEMORANDUM

As an initial matter, Respondent's campaign treasurer filed a letter requesting the Complaint be dismissed based on the fact that the Complaint filed by Complainant was not notarized. Minn. Stat. § 211B.32, subd. 3 (2018), requires that the complaint be in writing and submitted under oath. The complaint form includes an oath, and Complainant signed his name under the oath affirming that the statements included in the complaint are true and correct to the best of his knowledge. Although the complaint form includes the direction that the form be signed in front of a notary, the statute does not require that the form be notarized. Therefore, Complainant's failure to have the form notarized did not violate the statute and is, at most, a harmless error that does not require dismissal of the Complaint.

### I. Excessive Campaign Contribution

Respondent admitted accepting an in-kind contribution of $2,400 from the Bemidji First committee, in violation of the contribution limits allowed by statute.[33] Respondent states that his campaign committee only became aware of Bemidji First's activities after they were completed.[34] Respondent maintains that his committee accurately reported the in-kind contribution after-the-fact, in an attempt to be transparent and to make the best of a bad situation.[35] Respondent acknowledges he made a mistake. He contends the mistake was inadvertent, but concedes it may have had some impact on voters. Respondent contends that a penalty in the range of $400-600 is appropriate.[36]

Complainant asserts that Respondent's acceptance of the in-kind contribution was negligent and likely misled many voters.[37] Complainant urges the Panel to assess a civil penalty in an amount of $2,000 for Respondent's violation.[38]

The purpose of contribution limits is to protect against corruption and the appearance of corruption in the electoral process.[39] In *Buckley v. Valeo*,[40] the United States Supreme Court found the prevention of corruption and the appearance of corruption to be a "constitutionally sufficient justification" for campaign contribution limits.[41] The Court held that Congress could legitimately conclude that the avoidance of the appearance of improper influence is critical to the integrity of our electoral process.[42]

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[33] Letter from Respondent to Administrative Law Judge Middendorf (Dec. 31, 2018). *See* Minn. Stat. § 211A.12.
[34] Letter from Respondent to Administrative Law Judge Middendorf (Dec. 31, 2018).
[35] *Id*.
[36] *Id*.
[37] Complainant's written submission (Dec. 28, 2018).
[38] *Id*.
[39] *See McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 187, 134 S.Ct. 1434, 1437 (2014), *citing Buckley v. Valeo,* 424 U.S. 1, 26-27, 96 S.Ct. 612 (1976).
[40] 421 U.S. 1, 96 S.Ct. 612 (1976).
[41] *Buckley,* 421 U.S. at 25-26.
[42] *Id*. at 26-27. *See also Federal Election Comm'n v. National Right to Work Comm*., 459 U.S. 197, 208, 103 S. Ct. 552, 74 L.Ed.2d 364 (1982).

Respondent's acceptance of the $2,400 in-kind contribution from a committee is well in excess of the $600 contribution limit allowed under Minn. Stat. § 211A.12. While this is a violation of the Fair Campaign Finances Act, the Panel is persuaded that Respondent did not intentionally attempt to evade the contribution limits. As in the related case, *Saxton v. Heinonen*,[43] the Panel finds Respondent's prompt disclosure of the $2,400 in-kind contribution on his campaign finance report supports Respondent's assertion that his acceptance of the contribution was due to a misunderstanding of the law, rather than deliberate misconduct.

In order to ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings uses a "penalty matrix" to guide decision making. The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters.[44]

The Panel concludes Respondent's conduct in accepting the committee's $2,400 in-kind contribution was negligent and likely had some impact on voters. Respondent promptly reported the contribution and has accepted responsibility for his error. Complainant did not put forward sufficient evidence to support his claim that Respondent's acceptance of the in-kind contribution misled many voters and corrupted the process. Based on this record, the Panel concludes that a civil penalty in the amount of $500 is appropriate for Respondent's violation.

## II. Disclaimer Requirement

Complainant attached a screen shot of the home page of Respondent's campaign website to support his claim that Respondent's campaign material lacked a disclaimer in violation of Minn. Stat. § 211B.04.[45] The home page includes a copyright at the bottom that states in part: "© 2018 by the Committee to Elect Joe Vene Mayor of Bemidji."[46] The top right corner of the home page lists the mailing address for Respondent's campaign committee for receipt of campaign contributions.[47]

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.[48] 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)."[49] The purpose of the disclaimer requirement

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[43] *See Saxton v. Heinonen*, No. 82-0325-35683, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings Nov. 16, 2018).
[44] *See* Penalty Matrix (https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).
[45] Ex. 3.
[46] *Id*.
[47] *Id*.; *See also* Ex. 1.
[48] Minn. Stat. § 211B.04, subd. 1(b).
[49] *Id*.

is to "identify who or what committee prepared, disseminated and paid for the campaign material."[50]

Minn. Stat. § 211B.04 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.[51] According to Minn. Stat. § 211B.04, subd. 4, the disclaimer requirements are satisfied for an entire website or social media page "when the disclaimer required in subdivision 1 or 2 appears once on the home page of the site."[52]

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 with respect to his campaign website. The home page lacks a disclaimer identifying who or what committee "prepared and paid for" the site.[53] Based on Respondent's October 28, 2018 campaign finance report, it appears that the website was paid for by the $2,400 in-kind donation from the Bemidji First committee.[54] But even if the website was paid for by Respondent's own campaign committee, the home page does not accurately identify the name of his committee.[55] As stated above, the purpose of the disclaimer requirement is to identify who or what committee prepared and paid for the campaign material. Respondent's website fails to have a disclaimer substantially in the form required to meet this purpose. The Panel concludes that a civil penalty in the amount of $250 is appropriate for this violation. Respondent's failure to include a complete disclaimer in the form required was negligent or ill-advised and may have had some minimal impact on voters.

The Panel notes that in his closing statement, Complainant refers to a Bemidji First website that he alleges had only a partial disclaimer stating: "Paid for by Concerned Citizens of Bemidji and Beltrami County" and no mailing address.[56] This allegation, however, was not asserted in the original Complaint and Complainant did not include an image of this website as an exhibit in support of his Complaint. Therefore, the Panel did not consider this in determining whether Respondent violated section 211B.04.

The Panel also concludes that the record in this case is insufficient to support finding Respondent violated the disclaimer requirement with respect to the YouTube video. Complainant submitted only a screen shot of the beginning of the YouTube video.[57] The Panel is unable to determine from the screen shot whether the video included a disclaimer that met the requirements for broadcast media under Minn. Stat. § 211B.04, subd. 1(c). Therefore, this alleged violation of Minn. Stat. § 211B.04 is dismissed.

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[50] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).
[51] Minn. Stat. § 211B.04, subd. 1(b); *See* 2018 Minn. Laws ch. 119, § 33.
[52] Minn. Stat. § 211B.04, subd. 4.
[53] Ex. 3.
[54] Ex. 1.
[55] Ex. 3.
[56] Complainant's written submission (Dec. 28, 2018).
[57] Ex. 4.

## III. Conclusion

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211A.12, by accepting an in-kind contribution in excess of $600, and § 211B.04, by failing to include a disclaimer in the form required on his campaign website. Respondent is assessed a civil penalty in the amount of $750 for these violations.

**K. M., J. E. L., L. S.**