

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Shannon Bruce,

Complainant,

vs.

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

Pam Mortenson and John Tschumperlin,

Respondents.

On December 27, 2018, Shannon Bruce (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Pam Mortenson and John Tschumperlin (Respondents) violated Minn. Stat. §§ 211A.06 and .12 (2018) in connection with the keeping of their campaign accounts and accepting contributions in excess of the contribution limits. Ms. Mortenson and Mr. Tschumperlin were candidates for the Minnetrista City Council in the 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.06 and .12 on the part of the Respondents. For the reasons detailed in the Memorandum below, these allegations will be subject to further proceedings.

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 **2:00 p.m.** on **January 16, 2019**. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**, and when prompted,
- (b) Enter conference code **454 161 2416#**.

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 PO Box 64620, Saint Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: January 2, 2019


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

I. Background

This Complaint is closely related to, and arises out of the same set of facts and circumstances as *In re Shannon Bruce v. Our Minnetrista, David Kolb and Karen Danielson*.¹ In that case Ms. Bruce alleged that “Our Minnetrista” operated as a political committee in 2018. Ms. Bruce further asserted that Our Minnetrista made expenditures of more than \$6,000 related to campaign material on behalf of candidates Mortenson and Tschumperlin. Ms. Bruce also alleged that Our Minnetrista received contributions of more than \$8,000 that it used to support candidates Mortenson and Tschumperlin during the 2018 campaigns for Minnetrista City Council. On December 3, 2018, based on the facts alleged, the Honorable Jessica Palmer-Denig found the complaint in that case set forth violations of Minn. Stat. §§ 211A.02 and 211B.04 (2018).

The Complaint here asserts that Ms. Mortenson and Mr. Tschumperlin failed to properly account for the contributions and expenditures made on their behalf by Our Minnetrista in violation of Minn. Stat. § 211A.06. In addition, the Complaint asserts that Ms. Mortenson and Mr. Tschumperlin each accepted contributions from Our Minnetrista that far exceeded the \$600 limit in violation of Minn. Stat. § 211A.12.

II. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must submit evidence or allege sufficient facts to show that a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2018) has occurred.² For purposes of a prima

¹ *In re Shannon Bruce v. Our Minnetrista, David Kolb, and Karen Danielson*, No. 71-0325-35774 (filed Nov. 28, 2018).

² Minn. Stat. § 211B.32, subd. 3; *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

facie determination, this tribunal must accept facts 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 occurred.⁵

III. Analysis

A. Failure to Keep Account (Minn. Stat. § 211A.06)

Complainant alleges that Ms. Mortenson and Mr. Tschumperlin violated Minn. Stat. § 211A.06 by failing to keep an accurate account of their campaign receipts and disbursements. The Complaint incorporates the allegations made in *In re Shannon Bruce v. Our Minnetrista, David Kolb and Karen Danielson*.⁶ There it was alleged Our Minnetrista made expenditures of over \$6,000 on behalf of candidates Mortenson and Tschumperlin.⁷ The Complaint here alleges those monies were not disclosed in Respondents' Campaign Finance Reports.

Section 211A.06 does not penalize merely inaccurate record-keeping; it penalizes the failure to keep correct accounts of money received for a committee with "the intent to conceal receipts or disbursements," or the "purpose of receipts or disbursements." The focus of a section 211B.06 claim, therefore, is on whether a candidate or committee intentionally kept inaccurate accounts in order to conceal the source or purpose of contributions or disbursements.

Complainant alleges that Respondents' contributions from Our Minnetrista were either concealed, misrepresented, or fraudulently recorded on their respective financial reports as coming from individuals rather than the Our Minnetrista committee.⁸ At this stage, the Administrative Law Judge must accept the facts alleged in the Complaint as true. Under this standard, the Administrative Law Judge finds the Complaint establishes a prima facie violation of Minn. Stat. § 211A.06.

B. Contribution Limits (Minn. Stat. § 211A.12)

The Complaint alleges that Respondents each violated Minn. Stat. § 211A.12 by accepting contributions from Our Minnetrista in excess of \$600.⁹ Minn. Stat. § 211A.12 prohibits candidates for office whose territory has a population of 100,000 or less from

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.

⁶ *In re Shannon Bruce v. Our Minnetrista, David Kolb, and Karen Danielson*, No. 71-0325-35774 COMPLAINT (Nov. 28, 2018).

⁷ *Id.* at 3.

⁸ Complaint at 3.

⁹ *Id.*

accepting contributions by an individual or committee in excess of \$600 in an election year, and \$250 in other years. The City of Minnetrista has a population of less than 100,000.

Complainant has set forth sufficient facts to support a prima facie violation of Minn. Stat. § 211A.12 on the part of Respondents. Based on the Complaint and the exhibits it appears Respondents accepted contributions from a committee in excess of \$600. This claim will proceed to a prehearing conference as indicated in this Order.

IV. Conclusion

The Administrative Law Judge finds that Complainant has alleged sufficient facts to support finding prima facie violations of Minn. Stat. §§ 211A.06 and .12 by Respondents Mortenson and Tschumperlin. Accordingly, Complainant may proceed on these claims.

J. E. L.