OAH 8-0325-35997

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michelle Anderberg,

Complainant,

v.

Michael Magnuson and Magnuson Incorporated,

Respondents.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION

AND

ORDER FOR PREHEARING CONFERENCE

On March 19, 2019, Michelle Anderberg (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Mr. Magnuson and his company, Magnuson Incorporated, unlawfully used corporate resources directly to support candidates for election to township office and to induce voters to support those candidates in the balloting.[1] The Princeton Township election was completed on March 12, 2019.[2]

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.11 (2018). For the reasons detailed in the Memorandum below, these allegations will proceed to a prehearing conference.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a prehearing status and scheduling conference to be held by telephone before the undersigned Administrative Law Judge at **1:30 p.m.** on **Monday, April 1, 2019.** The conference will be held by call-in telephone conference. At the appointed time, the parties are directed to:

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

(b) Enter conference code **566-872-4759#**.

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 an evidentiary hearing, possible dates for that hearing, and whether the matter may be resolved on a written record without an evidentiary hearing.

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[1] *See* Complaint, OAH Docket No. 8-0325-35846 at 2 (Mar. 19, 2019) (Complaint).
[2] *Id*.

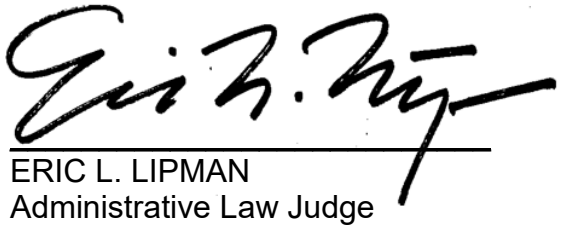
Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **eFiling** through the Office of Administrative Hearings' eFiling system; (2) by **mail**; (3) by **facsimile**; or (4) by **personal delivery**.

The eFiling system is accessible at http://mn.gov/oah/forms-and-filing/efiling/.

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

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: March 25, 2019



ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

I. Factual Background

The Complainant, Ms. Anderberg, alleges that Mr. Magnuson unlawfully used corporate resources in support of the election of David Persing and William Whitcomb to the Princeton Township Board of Supervisors. Specifically, she asserted that:

> Mike Magnuson used his place of business, MoonShine Bar and Grill, to hold a political rally for, and to ask patrons to vote for two candidates he endorsed . . . . Dave Persing and Bill Whitcomb. There was no charge to the candidates – Mike Magnuson let these candidates use his business free of charge while soliciting votes for his candidates of choice.
>
> [Mr. Magnuson also] offered free drinks to any patron that came in with [an] "I voted" sticker on election night.[3]

In support of her claims, Ms. Anderberg attached a screen shot from a posting that Mr. Magnuson apparently made to a local Facebook group, "Princeton MN Bulletin Board." The posting read:

[3] Complaint at 2.

> One last reminder to please get out and vote! Bring your voted sticker into MoonShine for a free Domestic Tap Beer, rail drink or Margarita. Coffee or pop is also offered! Regardless of who you voted for let's celebrate a record turnout this year and we still have another 3 hours to go! Polls close at 8pm tonight.
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> Location: Township hall directly across from Long Siding Bar.[4]

II. 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.[5] The complaining party must submit evidence or allege facts that, if accepted as true, would prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2018).[6]

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.[7]

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.[8] A complaint is dismissed at the initial review stage only if it does not allege facts that, if accepted as true, would prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[9] If there is enough evidence to support a prima facie determination, the Administrative Law Judge must set the case on for additional proceedings.[10]

III. Use of the MoonShine Bar and Grill as a Corporate Contributions

Minn. Stat. § 211B.15, subd. 2(a), provides:

> A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or **thing of monetary value** to a political party, organization, committee, or individual **to promote or defeat the candidacy of an individual for** nomination, **election**, or appointment to a political office.[11]

This tribunal has concluded that with respect to commercial actors who provide goods or facilities to candidate committees, while also selling those same items to the public, any discount in prices in favor of a particular candidate results in an in-kind

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[4] *Id.* at 9.
[5] Minn. Stat. § 211B.32, subd. 3 (2018).
[6] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[7] *Id.*
[8] *Abrahamson v. St. Louis Cnty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).
[9] *Barry,* 781 N.W.2d at 902.
[10] *See* Minn. Stat. § 211B.33, subd. 2.
[11] *See* Minn. Stat. § 211B.15, subd. 2(a) (emphasis added).

contribution.[12] In this context, the amount of the discount is something of value that is given to the candidate or committee and qualifies as a contribution.

The implication of Ms. Anderberg's allegation that the corporately owned restaurant space was given to two candidates "free of charge" is that other candidates, or members of the public, would not have access to this space on the same terms. At this stage of the proceedings, this feature of the complaint must be assumed to be true.

Ms. Anderberg has stated a prima facie violation of Minn. Stat. § 211B.15, subd. 2(a).

IV. Offering Complimentary Drinks to Voters

Minn. Stat. § 211B.13, subd. 1, provides:

> 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. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. 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.[13]

Ms. Anderberg maintains that Mr. Magnuson circulated the offer for free beverages and that his restaurant is owned by the corporate entity, Magnuson Incorporated.[14] Yet, Ms. Anderberg does not allege that any voters were induced by the offering to vote in a particular way or refrain from voting.[15] Likewise, Ms. Anderberg does not allege that Mr. Magnuson subjectively intended that the drink offer operate as a bribe.[16] Without such claims, the complaint simply fails to allege willful misconduct.

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[12] *Field v. Van Denburgh,* No. 8-0325-33798, 2016 WL 6921556, at 6 (Minn. Office Admin. Hearings Nov. 16, 2016); Sauer *v. Staver*, No. 68-0325-33952, 2016 WL 6921568, at 6 (Minn. Office Admin. Hearings Nov. 10, 2016)
[13] Minn. Stat. § 211B.13, subd. 1 (emphasis added).
[14] Complaint at 2, 3, 9.
[15] *Id.* at 2.
[16] *Id.*

This is true even if one regards the drinks as a "thing of monetary value." The alleged inducement available to any voter "[r]egardless of who you voted for," is too attenuated to be regarded as inducement "to vote in a particular way." Mr. Magnuson should not be put to the burdens of an evidentiary hearing on that claim.[17]

For these reasons, Ms. Anderberg's Minn. Stat. § 211B.15 corporate contribution claim will proceed to a hearing, but her bribery claim shall be dismissed.

An evidentiary hearing on the corporate contribution claim shall be heard before a panel of three administrative law judges. The date of the hearing shall be set at the prehearing conference.

E. L. L.

[17] *See generally 281 Care Comm. v. Arneson*, 766 F.3d 774, 792-93 (8th Cir. 2014), *cert. denied*, 135 S. Ct. 1550 (2015) ("The burdens of the OAH proceedings themselves greatly impact electoral speech and are cause for concern . . . . Putting in place potential criminal sanctions and/or the possibility of being tied up in litigation before the OAH, or both, at the mere whim and mention from anyone who might oppose your view . . . is wholly overbroad and overburdensome and chills otherwise protected speech.").