

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Melissa Schoenberg,

Complainant,

v.

Matt Udermann,

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: Jim Mortenson (Presiding Judge); Eric L. Lipman, and Barbara J. Case (collectively, Panel).

Pursuant to the agreement of the parties, this matter was submitted to the Panel based on the record created at the probable cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, and the Probable Cause Order. The parties were also given the opportunity to submit written argument by 4:30 p.m. on Friday, October 16, 2020. No submissions were received, and the hearing record closed on that date.

STATEMENT OF THE ISSUES

1. Did Respondent violate Minn. Stat. § 211A.12 (2020) by accepting campaign contributions from individuals in excess of \$600?
2. If Respondent violated Minn. Stat. § 211A.12, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Respondent violated Minn. Stat. § 211A.12 by accepting contributions from individuals in excess of \$600. For this violation, a \$50 civil penalty is appropriate.

Based upon the record and proceedings, the undersigned Panel makes the following:

FINDINGS OF FACT

1. Respondent is a first-time candidate for the Carver County Board of Commissioners, District 3 seat, in the general election to be held on November 3, 2020.¹

2. The territory that makes up Carver County District 3 has a population of less than 100,000 people.²

3. Because Carver County District 3 has a population of less than 100,000, the individual campaign contribution limit is \$600.³

4. On May 19, 2020, Respondent accepted a \$1,000 campaign contribution from Shayne Istre and a \$1,000 campaign contribution from Tom Stauber.⁴ On that same date, Respondent also accepted contributions of \$500 each from Jeff Wigen and Todd Anderson.⁵

5. On June 15, 2020, Respondent accepted an additional \$500 contribution from Todd Anderson.⁶

6. On June 29, 2020, Respondent accepted an additional \$500 contribution from Jeff Wigen.⁷

7. Respondent erroneously believed the individual contribution limit for his campaign was \$1,000 based on the population of Carver County as a whole.⁸

8. On September 8, 2020, Complainant filed her Complaint alleging Respondent violated Minn. Stat. § 211A.12.⁹

9. Following notice of the Complaint, Respondent called a Carver County official who advised him that a conservative reading of Minn. Stat. § 211A.12 would require consideration of only the population of District 3 for purposes of campaign contribution limits.¹⁰

10. Immediately after conferring with the Carver County official, Respondent took steps to correct his error.¹¹ On September 9, 2020, Respondent filed an amended

¹ Complaint (Sept. 8, 2020), Exhibit (Ex.) A (Respondent's Campaign Financial Report (May 20, 2020)).

² Complaint at 3; Testimony (Test.) of Mellissa Schoenberg (Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings)).

³ See Minn. Stat. § 211A.12.

⁴ Complaint, Ex. A (Respondent's Campaign Financial Report (May 20, 2020)).

⁵ *Id.*

⁶ Complaint, Ex. B (Respondent's Campaign Financial Report (Aug. 6, 2020)).

⁷ *Id.*

⁸ Test. of Matt Udermann (Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings)).

⁹ Complaint (Sept. 8, 2020).

¹⁰ Test. of M. Udermann (Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings)).

¹¹ *Id.*

campaign financial report.¹² The report now reflects that the four \$1,000 contributions Respondent received from Istre, Stauber, Wigen, and Anderson were joint contributions made on behalf of the four individuals and their respective spouses or significant others.¹³

11. By Order dated September 9, 2020, Presiding Administrative Law Judge Jim Mortenson determined the Complaint alleged a prima facie violation of Minn. Stat. § 211A.12.¹⁴ Judge Mortenson set this matter on for a probable cause hearing to be conducted by telephone on September 14, 2020.¹⁵

12. The Administrative Law Judge convened the probable cause hearing, at which both parties appeared.¹⁶ During the probable cause hearing, the parties agreed to submit the matter to the Panel for a decision on the Complaint based on the Complaint and the record created at the probable cause hearing, without any further evidentiary hearing.¹⁷

13. By Order dated September 17, 2020, the Presiding Administrative Law Judge found probable cause to believe that Respondent violated Minn. Stat. § 211A.12 as alleged.¹⁸ The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated October 5, 2020.¹⁹

14. The record in this matter closed on October 16, 2020, the deadline for submitting written argument.²⁰

Based upon the foregoing Findings of Fact, the undersigned Panel makes the following:

CONCLUSIONS OF LAW

1. The Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2020).

2. Complainant bears the burden of proving the allegations in the Complaint. The standard of proof of a violation of Minn. Stat. § 211A.12 is a preponderance of the evidence.²¹

¹² Email from Matt Udermann to Anne Laska, OAH Legal Assistant (Sept. 14, 2020, 8:18 a.m. CDT) (on file with Minn. Office of Admin. Hearings).

¹³ *Id.*: Test. of M. Udermann (Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings)).

¹⁴ Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Sept. 9, 2020).

¹⁵ *Id.*

¹⁶ Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings).

¹⁷ *Id.*

¹⁸ Order on Probable Cause (Sept. 17, 2020).

¹⁹ Notice of and Order for Panel Assignment and Scheduling Order (Oct. 5, 2020).

²⁰ *Id.*

²¹ Minn. Stat. § 211B.32, subd. 4 (2020).

3. For purposes of Minn. Stat. § 211A.12, “candidate” is defined as an individual who seeks nomination or election to a county, municipal, school district or other political subdivision office.²²

4. Minn. Stat. § 211A.12 prohibits candidates for an office with a territory of fewer than 100,000 residents, from accepting more than \$600 in contributions from any individual. 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 delivered by an individual or committee in excess of \$1,000 in an election year for the office sought and \$250 in other years.²³

5. Minn. Stat. § 211A.12(2) exempts from the contribution limitation a delivery made by an individual on behalf of the individual's spouse.

6. Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211A.12, by accepting contributions from individuals in excess of \$600 in an election year.

7. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of \$50.

8. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference.

Based on the hearing record, and for the reasons stated in the following Memorandum, the Panel makes the following:

²² See Minn. Stat. § 211A.01, subd. 3.

²³ Minn. Stat. § 211A.12.

ORDER

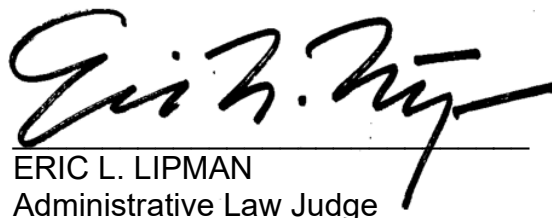
1. By **4:30 p.m. on Friday, November 20, 2020**, Respondent shall pay a civil penalty of \$50 for violating Minn. Stat. § 211A.12.

2. The penalty shall be paid by check made to the order of: "Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 5-0325-37069, should be included on the check.

Dated: October 21, 2020



JIM MORTENSON
Presiding Administrative Law Judge



ERIC L. LIPMAN
Administrative Law Judge



BARBARA J. CASE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2020), 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 (2020).

MEMORANDUM

There is no factual dispute to resolve in this case, only a determination of penalty. Respondent's violation arose due to a misunderstanding of the law, which he readily corrected when alerted of the error.

Every Minnesota county is governed by a board of commissioners.²⁴ Counties are divided into districts for the purposes of representation on the board of commissioners.²⁵ As a result, when someone seeks election to a county board, they run to represent the county district in which they reside.²⁶ Respondent is running to represent District 3 on the Carver County Board of Commissioners.

Minnesota limits the contributions individuals can make to a candidate for county office.²⁷ The contribution limit is either \$600 or \$1000 per year in an election year.²⁸ The contribution limit is determined based on the population of the “territory” of the office sought by the candidate.²⁹ If the territory of the office contains over 100,000 people, the higher limit applies.³⁰ The statute links the size of the electoral constituency that a candidate must reach with election-related communications with the election year contribution limits. Electoral constituencies of more than 100,000 persons allow for higher contribution limits.

Respondent misinterpreted the statute, believing that, because he was running for county office, the “territory” was the entire county.³¹ While it is commendable that Respondent regards his candidacy as aimed at serving the entire county, the best reading of the statutory language, “an office whose territory” – is the district from which a candidate receives votes.

Respondent did not contest the complaint and conceded that, due to his misinterpretation of the statute, he accepted contributions that exceeded the limit in violation of section 211A.12. He points out that he immediately took action to correct his error by reaching out to the individual contributors to see if they would be willing to indicate that their contributions should also be attributed to their spouses or partners.³² According to Respondent, all four donors indicated that their \$1,000 donations could be considered joint contributions and Respondent revised his campaign financial reports accordingly.³³

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

²⁴ See Minn. Stat. § 375.01 (2020).

²⁵ Minn. Stat. § 375.025.

²⁶ *Id.* at subd. 4.

²⁷ Minn. Stat. § 211A.12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Based on the most recent census in 2010, the population of Carver County is 95,562. <https://www.sos.state.mn.us/about-minnesota/minnesota-in-profile/population/>. However, the current estimate of the County is from 2019. That number is 107,179. <https://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/>. We do not address which number is applicable here.

³² Test. of M. Udermann (Probable Cause Hearing Digital Recording (Sept. 14, 2020) (on file with Minn. Office Admin. Hearings)).

³³ *Id.*; See Email from Matt Udermann to Anne Laska, OAH Legal Assistant with hyperlink to revised campaign financial report (Sept. 14, 2020, 8:18 a.m. CDT) (on file with Minn. Office of Admin. Hearings).

the violation upon voters.³⁴ Because every case is unique, however, the Panel may depart from the presumptive penalty listed in the matrix.³⁵

The Panel finds Respondent's violations were not willful but were due to a misunderstanding of the applicable statute, which he immediately rectified upon learning of the error. Furthermore, there was no impact on voters because Respondent was able to legally keep the aggregate amount of the excessive contributions when they were attributed to more individuals. For these reasons, the Panel determines that a \$50 civil penalty is appropriate in this case.

J. R. M., E. L. L., B. J. C.

³⁴ 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).

³⁵ *Id.*