

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Melissa Meach,

Complainant,

v.

Dakota County United Educators,

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); Jessica A. Palmer-Denig; and Joseph C. Meyer (Panel).

The 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, the Probable Cause Order, and final written submissions from the parties. The hearing record closed on December 19, 2023.

Melissa Meach (Complainant) appeared on her own behalf, without legal counsel. Meg Luger-Nikolai, Education Minnesota, appeared on behalf of Dakota County United Educators (Respondent).

STATEMENT OF THE ISSUES

1. Did Respondent fail to report certain campaign expenditures in violation of Minn. Stat. § 211A.02, subd. 2 (2022)?
2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211A.02. For this violation, a \$100 civil penalty is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondent, a local affiliate of Education Minnesota, endorsed and supported candidates running for the Independent School District 196, Rosemount-Apple Valley-Eagan School District school board election held November 7, 2023.¹

2. In September 2023, Katie Schmidt, on behalf of Respondent, contacted Education Minnesota to request production of lawn signs supporting Respondent's endorsed candidates.² Education Minnesota provided an estimate for the work and Ms. Schmidt approved the expense.³

3. In early October 2023, Ms. Schmidt, on behalf of Respondent, requested that Education Minnesota print and mail post cards to support Respondent's endorsed candidates.⁴ Respondent did not receive an estimate when it placed the order for post cards.⁵ Ms. Schmidt acknowledged that she has ordered printed campaign materials from Education Minnesota for a long time and knows approximately how much a print order will cost.⁶

4. On October 18, 2023, Education Minnesota sent an email to their local affiliates, including Respondent, reminding them to file their campaign finance reports by October 27, 2023.⁷ In the email, Education Minnesota specifically advised: "[I]f you have not received invoices yet, you do not need to file until you receive them."⁸

5. Respondent filed a campaign financial report on October 26, 2023.⁹ The report covers the period from June 3, 2023 through October 26, 2023. This report did not include expenditures for the postcards, flyers, and lawn signs that were ordered and disseminated prior to that date.¹⁰

6. On October 31, 2023, Complainant filed this Complaint against Respondent.¹¹ Complainant alleged that Respondent violated campaign financial reporting requirements under Minn. Stat. § 211A.02 because Respondent did not include expenditures for the postcards, flyers, and lawn signs in its campaign financial report filed on October 26, 2023.¹²

¹ Complaint (Compl.); Testimony (Test.) of Katie Schmidt.

² Affidavit of Katie Schmidt (Schmidt Aff.).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Test. of K. Schmidt.

⁷ Resp. Ex. H.

⁸ *Id.*

⁹ Resp. Ex. I.

¹⁰ Compl. at 2; Test. of K. Schmidt; Resp. Exs. K-O.

¹¹ Compl.

¹² *Id.*

7. Respondent requested expedited invoices from Education Minnesota after receiving the Complaint.¹³ Respondent received the invoices on Friday, November 3, 2023 and Monday, November 6, 2023.¹⁴

8. Respondent filed amended campaign financial reports on October 30, 2023 and November 6, 2023 to include the expenditures for the postcards, flyers, and lawn signs.¹⁵

9. By Order dated November 3, 2023, Presiding Judge Kimberly Middendorf determined the Complaint supported finding a prima facie violation of Minn. Stat. § 211A.02, subd. 2.¹⁶

10. Presiding Judge Middendorf set this matter on for a probable cause hearing to be conducted by telephone on November 7, 2023.¹⁷

11. The Presiding Judge convened the probable cause hearing at which both parties appeared. During the probable cause hearing, Respondent conceded that it was not their practice to report expenditures for printed campaign materials purchased through Education Minnesota until after the receipt of an invoice.¹⁸

12. Following the probable cause hearing, the parties notified the Presiding Judge that they would waive an evidentiary hearing and submit this matter to the Panel for further proceedings based on the record and subsequent written argument.¹⁹

13. By Order dated November 14, 2023, the Presiding Judge found probable cause to believe that Respondent violated Minn. Stat. § 211A.02, by failing to report expenditures for printed campaign materials when Respondents made the promise to use funds for campaign purposes.²⁰

14. The Presiding Judge gave the parties a deadline of November 21, 2023, to inform the Presiding Judge whether they would waive the evidentiary hearing and submit the matter to the assigned Panel based on the record with subsequent written argument.²¹ Both parties informed the Presiding Judge they waived the evidentiary hearing and would submit this matter on the record.²²

15. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated December 5, 2023.²³

¹³ Schmidt Aff.; Test. of K. Schmidt.

¹⁴ Schmidt Aff.

¹⁵ Resp. Exs. J and P.

¹⁶ Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Prima Facie Order) (Nov. 3, 2023).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant's correspondence (Nov. 16, 2023); Respondent's correspondence (Nov. 21, 2023).

²⁰ Order on Probable Cause (Nov. 14, 2023).

²¹ *Id.*

²² Complainant's correspondence (Nov. 28, 2023); Respondent's correspondence (Nov. 27, 2023).

²³ Notice of and Order for Panel Assignment (Dec. 4, 2023).

16. The record in this matter closed on December 19, 2023, upon receipt of the parties' written arguments.²⁴

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

CONCLUSIONS OF LAW

1. The Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2022).

2. Complainant bears the burden of proving the allegations in the Complaint. The standard of proof of a violation of Minn. Stat. § 211A.02 is a preponderance of the evidence.²⁵

3. Under Minn. Stat. § 211A.02, subd. 1, 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.²⁶

4. A candidate or committee who receives contributions or makes disbursements of more than \$750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750.²⁷ Thereafter, the candidate or committee shall continue filing the reports listed in Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed.²⁸

5. Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in a campaign financial report. Candidates or committees are required to report their total cash on hand, the total amount of contributions and disbursements, and the amount, date, and purpose of each disbursement.²⁹

6. A "disbursement" is defined as "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent."³⁰

7. Respondent violated Minn. Stat. § 211A.02, subd. 2, by failing to report expenditures for printed campaign materials when the order was placed, the associated expenses were incurred, and Respondent made a promise to pay.

²⁴ *Id.*; Complainant's correspondence (Dec. 19, 2023); Respondent's correspondence (Dec. 19, 2023).

²⁵ Minn. Stat. § 211B.32, subd. 4 (2022).

²⁶ The "filing officer" is the officer authorized to accept affidavits of candidacy or nominating petitions for an office. See Minn. Stat. § 211A.01, subd. 7 (2022).

²⁷ Minn. Stat. § 211A.02, subd. 1(a).

²⁸ *Id.*

²⁹ *Id.*, subd. 2(3)-(5).

³⁰ *Id.*, subd. 6.

8. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of \$100.

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

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

ORDER

1. By **4:30 p.m. on Monday, January 22, 2024**, Respondent shall pay a civil penalty of \$100 for violating Minn. Stat. § 211A.02.

2. The penalty shall be paid by check made payable to: Treasurer, State of Minnesota,” and remitted to the Office of Administrative Hearings. The docket number, 82-0325-39619, should be included on the check memo line.

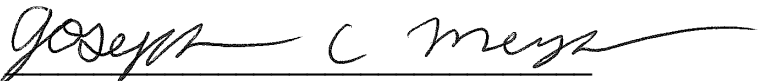
Dated: December 21, 2023



KIMBERLY MIDDENDORF
Presiding Administrative Law Judge



JESSICA A. PALMER-DENIG
Administrative Law Judge



JOSEPH C. MEYER
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2022), 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 (2022).

MEMORANDUM

I. Campaign Financial Reporting (Minn. Stat. § 211A.02)

Under Minn. Stat. § 211A.02, subd. 1, a committee or a candidate who receives contributions or makes disbursements of over \$750 in a calendar year must file financial reports with the appropriate filing officer.³¹ A committee is defined as “a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate.”³² A committee or candidate who receives contributions or makes disbursements of more than \$750 in a calendar year must submit an initial report to the filing officer within 14 days after the committee receives or makes disbursements of more than \$750.³³

Thereafter, the committee or candidate shall continue filing the reports listed in Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed.³⁴ These reports include a report filed ten days before the primary election, ten days before the general election, and 30 days after the general election.³⁵

Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in a campaign financial report. Candidates or committees are required to report their total cash on hand, the total amount of contributions and disbursements, and the amount, date, and purpose of each disbursement.³⁶ A “disbursement” is defined as “money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent.”³⁷

Complainant argues that Respondent was required to report expenditures related to the printed campaign material when it ordered the materials and incurred the obligation to pay for them. Complainant notes that under section 211A.01, subdivision 6, “disbursement” is defined to include anything promised or pledged. Moreover, Complainant alleges the materials were prepared and disseminated prior to October 26, 2023, the date when Respondent submitted its campaign finance report. Therefore, Complainant maintains Respondent violated section 211A.02, subdivision 2, by failing to include the expenditures related to preparing and printing the materials on its October 26, 2023 financial report.³⁸

Respondent argues that “promised” and “pledged” as described under the statutory definition of “disbursement” are more akin to a financial act, such as the creation of a promissory note or testamentary pledge, as opposed to a speech act. Following this

³¹ Minn. Stat. § 211A.01, subd. 7.

³² Minn. Stat. § 211A.01, subd. 4.

³³ Minn. Stat. § 211A.02, subd. 1(a).

³⁴ *Id.*

³⁵ *Id.*, at subd. 1(b).

³⁶ *Id.*, subd. 2(3)-(5).

³⁷ Minn. Stat. § 211A.01, subd. 6.

³⁸ *Id.*; Exs. A-G.

reasoning, Respondent states that the creation of a promissory note – the act of writing the check – had not occurred prior to the receiving of the invoice with the actual cost of expenditures.

The Panel determines that the terms “promised” and “pledged” are not so narrowly circumscribed. The Legislature has directed that words in statutes are construed according to their common and approved usage unless they qualify as technical terms and have acquired a special meaning.³⁹ The Legislature also chose to use broad terms in defining “disbursement” to ensure that anything of value that is directly or indirectly transmitted to another person is subject to the disclosure requirements. Defining the terms as narrowly as Respondent suggests is inconsistent with the statute.

Further, Education Minnesota was able to produce invoices in an “expedited” manner at the request of Respondent, strongly suggesting that the printing costs were readily available and easily determined. While Education Minnesota and Respondent historically calculated the precise costs sometime after printing and distributing the materials,⁴⁰ no evidence presented suggests Respondent was prevented from determining the actual costs when an order for materials was placed and payment promised.

Respondent acknowledged that it requested printed campaign materials from Education Minnesota in late September and early October. Ms. Schmidt received estimates and approved mark-ups of the work prior to the production and dissemination of the campaign materials. In addition, Ms. Schmidt, based on her repeated use of Education Minnesota printing services over previous years, acknowledged she could estimate the cost of the printed materials. She considered the costs, and Respondent’s budget, prior to approving the orders. In other words, Respondent did not merely have a “general intent to pay [] formed in [its] heart or mind.”⁴¹ Rather, Respondent had made a definite promise or pledge to pay an obligation it incurred when it placed the order. The lack of an invoice is not an insurmountable obstacle to determining the cost of printing.

The preponderance of the evidence supports the conclusion that Respondent technically violated section 211A.02 by failing to report expenditures for printed campaign materials when the promise to use funds for campaign purposes was made. In this case, the promise was made when Respondent agreed to purchase and pay for printed materials from Education Minnesota in late September/early October, prior to the filing of the October 26, 2023 campaign finance report. This promise falls within the definition of a disbursement and is, therefore, subject to reporting. The Panel also notes that in its handbook for candidates seeking election to state offices, the Campaign Finance and Public Disclosure Board (Campaign Finance Board) advises that the date that a campaign expenditure is reportable is the date when the committee made the commitment to spend

³⁹ Minn. Stat. § 645.08(1) (2022).

⁴⁰ Because Respondent and Education Minnesota are affiliated entities, it appears that they did not approach the financial arrangement in the same manner as independent parties in an arms-length transaction in the marketplace.

⁴¹ Respondent’s correspondence at 3 (Nov. 27, 2023).

the money, not when the bill was actually paid.⁴² While not controlling, the Campaign Finance Board’s opinion is instructive.⁴³ To conclude otherwise would create a loophole in the statute, allowing less well-intentioned campaign committees to effectively conceal their spending until after the election.

II. Penalty Assessment

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 and is set forth as follows:⁴⁴

Willfulness	Gravity of Violation		
	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	\$600 - 1,200	\$1,200 – 2,400 and/or Refer to County Attorney	\$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	\$250 - 600	\$600 - 1,200	\$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	\$0 - 250	\$400-600	\$600 - 1,200

Because every case is unique, however, the Panel may depart from the presumptive penalty listed in the matrix.⁴⁵

The Panel concludes Respondent’s failure to report the expenditures for its printed campaign materials was a technical violation due to a misinterpretation of the definition of “disbursement”. The Panel determines that this qualifies as an “inadvertent” violation. Following the Complaint, Respondent rectified the error by requesting expedited invoices and amending the campaign financial report to include the expenses for the printed campaign materials ordered from Education Minnesota. Respondent filed amended financial reports prior to the election, thereby accepting its responsibility to disclose. There is no evidence that Respondent’s failure to identify the expenditures for these campaign materials impacted voters.

⁴² See Minnesota Campaign Finance Board’s Legislative and Constitutional Office Candidate Handbook at 32 (last revised March 7, 2022).

⁴³ See also Minn. Stat. § 10A.01, subd. 9 (2022), defining “campaign expenditure” for candidates seeking election to state offices. An expenditure is considered made in the year in which the candidate made the purchase of goods or services or incurred an obligation to pay for goods or services.

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 *Id.*

The Panel concludes that a civil penalty in a total amount of \$100 is appropriate for Respondent's reporting violation.

K. J. M.; J. P. D.; J. C. M.