OAH 65-0325-39618

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Frank Jewell,

Complainant,

v.

Forever Duluth PAC,

Respondent.

ORDER OF DISMISSAL FOR LACK OF PROBABLE CAUSE

This matter came before Administrative Law Judge Ann C. O'Reilly for a probable cause hearing held by telephone on November 9, 2023. The hearing addressed a Fair Campaign Practices Act Complaint (Complaint) filed by Frank Jewell (Complainant) under the Fair Campaign Practices Act.[1] The hearing record closed at the conclusion of the hearing.

Complainant appeared on his own behalf and without legal counsel. Amy Erickson, Lathrop Group GPM, LLP, appeared on behalf of Forever Duluth PAC (Respondent). Patrick Mullen and Terry Lundberg were also present at the hearing.

Based upon the record and proceedings in this matter, and for the reasons explained in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. There is no probable cause to believe that Respondent violated Minn. Stat. § 211A.02, as alleged in the Complaint.

2. The Complaint is **DISMISSED**.

Dated: November 21, 2023

ANN C. O'REILLY
Administrative Law Judge

[1] Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minn. Stat. § 211B.34, subd. 3 (2022), provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two (2) business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 within five (5) business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

I. Factual and Procedural Background

Respondent is a political action committee that supported the election of Roger Reinert for Mayor of the City of Duluth in the general election held on November 7, 2023. The Complaint alleges that Respondent violated campaign financial reporting requirements under Minn. Stat. § 211A.02, subd. 1, by failing to timely file a campaign financial report ten days before the general election.[2] According to the Complaint, Respondent filed its campaign financial report on October 31, 2023.[3] The Complaint also alleges that Respondent violated Minn. Stat. § 211A.02, subd. 2, by listing a corporate donor on the report whose name and address could not be verified by Complainant.[4]

By Order dated November 7, 2023, the Administrative Law Judge found the Complaint set forth prima facie violations of Minn. Stat. § 211A.02 and set the matter on for a probable cause hearing to be held November 9, 2023.[5] The Judge convened the hearing on that date and both parties appeared.

II. Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in

[2] Complaint (Nov. 3, 2023).
[3] *Id*.
[4] *Id*.
[5] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Prima Facie Order) (Nov. 7, 2023).

the complaint.[6] The Administrative Law Judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the complaint at a hearing on the merits.[7] If the Administrative Law Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case, the campaign violation complaint should be allowed to proceed.[8]

A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.[9] As applied to these proceedings, a probable cause hearing is not a preview or a mini version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that a respondent has committed a violation.[10]

III. Analysis

A. Filing of Pre-General Election Report (Minn. Stat. § 211A.02, subd. 1(b)(2))

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.[11] 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.[12] 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.[13] 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.[14]

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[6] *See Weinberger v. Maplewood Review*, 668 N.W.2d 667, 664 (Minn. 2003) ("[I]n civil cases probable cause constitutes a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it") (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)) (internal punctuation omitted); *see also State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976) (explaining operation of probable cause standard in criminal context).

[7] *See In re Hortman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings, Oct. 2, 2006).

[8] In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The court must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. *See, e.g.,* Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

[9] *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976). *See also State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. Ct. App. 1996), *review denied* (Minn. Apr. 16, 1996).

[10] *Florence*, 239 N.W.2d at 903.

[11] 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).

[12] Minn. Stat. § 211A.02, subd. 1(a).

[13] *Id*.

[14] *Id*., at subd. 1(b).

The general election in this case was held November 7, 2023. Ten days prior to the election was October 28, 2023, which was a Saturday. Pursuant to Minn. Stat. § 645.15 (2022), when the last day of the period for doing an act falls on a Saturday, Sunday, or legal holiday, that day is omitted from the computation. Because the deadline for filing pre-general election campaign financial reports fell on a Saturday, the reports were due by Monday, October 30, 2023.

Complainant submitted a copy of Respondent's campaign financial report in support of his Complaint.[15] The report covers the period from August 9, 2023, through October 23, 2023.[16] The report is not dated but Complainant alleged it was filed on October 31, 2023.[17] Therefore, Complainant maintained that Respondent's report was filed late in violation of Minn. Stat. § 211A.02, subd. 1(b)(2).

Prior to the probable cause hearing, Respondent submitted evidence that it timely filed its campaign financial report on Monday, October 30, 2023.[18] Respondent provided copies of an email exchange between Patrick Mullen, the individual who signed and filed Respondent's report, and Alyssa Denham, Duluth's filing officer.[19] In the exchange, Ms. Denham confirmed that the filing deadline for the pre-general campaign financial report was Monday, October 30, 2023.[20] Thereafter, in an email dated October 30, 2023, Ms. Denham confirmed receipt of Respondent's campaign financial report.[21] Complainant does not dispute the veracity of this evidence and concedes that the report was filed timely based on the submitted documentation.[22]

Because the record demonstrates that Respondent timely filed its pre-general election campaign financial report on October 30, 2023, the alleged violation of Minn. Stat. § 211A.02, subd. 1, is **DISMISSED**.

B. Reporting Corporate Contribution (Minn. Stat. § 211A.02, subd. 2(6))

Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in the 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.[23] They are also required to provide the name, address, employer, or occupation (if self-employed), of each individual contributor who made a contribution that exceeds $100.[24]

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[15] Complaint Ex. 1 (Respondent's campaign financial report).
[16] *Id*.
[17] *Id*.; Complaint at 2.
[18] Respondent's Response to Complaint (Nov. 8, 2023), Exhibits (Ex.) A, B (email communications from city filing officer confirming receipt of Respondent's campaign financial report on October 30, 2023).
[19] Respondent's Exs. A, B. *See* Minn. Stat. § 211A.01, subd. 7 (2022) (defining "filing officer").
[20] Ex. A.
[21] Ex. B.
[22] See Digital Recording of Probable Cause Hearing (Nov. 9, 2023), on file and of record with the Off. of Admin. Hrgs.
[23] Minn. Stat. § 211A.02, subd. 2(3)-(5).
[24] *Id*. at subd. 2(6).

Respondent's campaign financial report identifies a total of $132,000 in contributions received and $26,394.16 in cash on hand.[25] The report also identifies a list of contributions and disbursements in two separate attachments to the report.[26] Included in the list are two contributions of $10,000 each made by Exodus Life, LLC.[27] The first contribution was made on August 25, 2023, and the second contribution was made on September 8, 2023.[28]

Complainant alleges that Respondent violated section 211A.02, subd. 2(6), by failing to report a verifiable corporate entity and address for Exodus Life, LLC. Complainant asserts that he could not locate Exodus Life, LLC on the Minnesota Secretary of State's website database as an entity registered to do business in the State of Minnesota.[29] Complainant argues that Respondent's report should identify Exodus Life LLC's "principal place of business" or otherwise provide information that could allow the entity to be verified.

Inherent in the statutory obligation to provide the name and address of all contributors that donate over $100, is the requirement that the information provided on the report is accurate and not fabricated. There is no requirement under section 211A.02, however, that corporate contributors to political committees be registered with the Minnesota Secretary of State's Office or that the address provided for a corporation be its principal place of business. Complainant explained during the probable cause hearing that he believed the address Respondent provided for Exodus Life on Respondent's campaign financial report was "made up" and that the company did not exist.[30]

During the probable cause hearing, the Administrative Law Judge took judicial notice of the fact that Exodus Life, LLC is registered and in good standing with the South Dakota Secretary of State's Office.[31] According to filings posted on the South Dakota Secretary of State's website, Exodus Life, LLC maintains its principal office in Rapid City, South Dakota.[32] According to annual reports filed with the South Dakota Secretary of State's Office, Seth Oliver was a manager for the company.[33] Respondent states that the address provided for Exodus Life, LLC on Respondent's campaign financial report is associated with Mr. Oliver, a Duluth resident.[34] According to Respondent, Exodus Life, LLC maintains an office and receives mail at 525 Lake Avenue South in Duluth, which is the address supplied on Respondent's campaign financial report.[35]

Because the entity identified on Respondent's campaign financial report does exist and the address provided is associated with the entity (or its former manager),

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[25] Ex. 1.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] *Id*. at 2.
[30] Test. of Frank Jewell.
[31] *See also* Respondent's Response to Complaint at 2.
[32] *See* South Dakota Secretary of State Monae L. Johnson - Business (sd.gov).
[33] *Id*.
[34] Probable Cause Hearing (Nov. 9, 2023) (Digital recording on file with the Office of Admin. Hearings).
[35] *Id*.; Respondent's Response to Complaint at 2.

Complainant has failed to support his claim that Respondent violated section 211A.02, subd. 2(6), by providing an inaccurate address for Exodus Life LLC. This claim is, therefore, **DISMISSED**.

To avoid campaign complaints, which are filed to determine the validity of a corporate donor, it is recommended that reporting candidates and committees clearly identify corporate entities in their reports and provide an address that reflects the official address of the entity. This would allow the public an opportunity to verify the entity's existence without bringing a campaign complaint. While there is no express requirement in Minnesota law to include the address of a corporation's principal place of business or the address for its authorized agent for service, including the official address for the corporation would avoid legal actions, like this, which seek to determine the validity of the contributors listed on the report.[36] This would also avoid the expense involved in bringing and responding to campaign complaints.

IV. Conclusion

At the prima facie stage of a campaign complaint matter, the tribunal accepts the facts alleged in the complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible, and draws reasonable inferences in the light most favorable to the complainant.[37] The record is viewed more stringently when the matter proceeds to a probable cause determination, and a respondent is able to provide additional information to rebut claims made by the complainant.

The evidence submitted by Respondent to rebut Complainant's claims was credible, documented, and unrefuted. Based upon this evidence, there is no probable cause to support a finding that Respondent violated Minn. Stat. § 211A.02, as alleged in the Complaint. Therefore, the Complaint is **DISMISSED**.

A. C. O.

[36] Voters' ability to validate the identity of a contributor is often the first step in evaluating a contribution's legality under Minn. Stat. § 211A.12, for example. This matter does not determine the legality of the reported contributions as the Complaint is limited in scope to the specific issues alleged in the Complaint.

[37] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010); *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).