OAH 28-0325-40408

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Clayton Kearns,

Complainant,

v.

Lori Saroya,

Respondent.

ORDER FOR DISMISSAL DUE TO LACK OF PROBABLE CAUSE

This matter came before Administrative Law Judge Joseph C. Meyer for a probable cause hearing held by telephone on Friday, November 8, 2024. The hearing record closed at the conclusion of the proceeding on that day. The hearing addressed a Fair Campaign Practices Act complaint (Complaint) filed by Clayton Kearns (Complainant) on October 31, 2024.

Kevin D. Hofman, Messerli & Kramer, PA, appeared on behalf of Complainant, who was also present. Jordan S. Kushner, Law Office of Jordan Kushner, appeared on behalf of Lori Saroya (Respondent), who was also present.

Complainant's Exhibit 1, a copy of the Complaint, filed on November 7, 2024, was not accepted into evidence as the Complaint is already sworn and part of the record. Respondent's exhibits filed on November 7, 2024, a copy of a handwritten volunteer list and a campaign leaflet, were accepted into evidence.

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 issues the following:

ORDER

1. There is no probable cause to believe that Respondent Lori Saroya violated Minn. Stat. §§ 211B.04 or 211B.13 (2024).

2. The Complaint is **DISMISSED**.

Dated: November 14, 2024

JOSEPH C. MEYER
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minn. Stat. § 211B.34, subd. 3 (2024) 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 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 (2024) within five 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 (2024), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2024).

MEMORANDUM

I. Background

When the Complaint was filed on October 31, 2024, the Respondent was a sitting Blaine City Council member and was running for re-election in the general election held November 5, 2024.[1] The Complaint alleges that Respondent distributed teddy bear gifts "to potential voters seeking to induce them to vote for her."[2] In support, the Complainant included screen shots of Respondent's social media posts which included a photograph of the teddy bear gifts along with the following message:

> The kids we meet at the doors-the ones who stand next to their parents and listen intently-always amaze me. My 8-year-old doorknocks with me and this year, she assigned herself the role of youth outreach coordinator. She engages the kids in conversation ("What is your favorite thing to do in Blaine?" "Do you want to run for office when you grow up?") and gives them goodie bags. It's so heartwarming to witness these sweet conversations and know that our future is in good hands.[3]

The teddy bear gifts appear wrapped in a clear plastic bag.[4] The bear is wearing a shirt that reads "Lori Saroya."[5] Sitting in front of the bear is what appears to be a card that reads "Re-elect Lori Saroya for Blaine City Council WWW.VOTESAROYA.COM".[6] Neither the shirt nor the card include a disclaimer as described in Minn. Stat. § 211B.04.

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[1] Complaint.
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *Id.*
[6] *Id.*

On November 4, 2024, the Administrative Law Judge found that these allegations were sufficient to establish a prima facie violation of Minn. Stat. §§ 211B.04 and 211B.13.[7] As a result, a Probable Cause hearing was held on November 8, 2024.

At the Probable Cause hearing, the Complainant argued that the teddy bear gifts were campaign material requiring a disclaimer and that giving a gift is a clear violation of Minn. Stat. § 211B.13. The Complainant believes, based on the wording of the social media post, that something was given out during the Respondent's door knocking efforts.

The Respondent testified that no teddy bear gifts were distributed as suggested in the social media post.[8] Rather, the Respondent stated that she considered handing out the teddy bear gifts and one such gift, the one pictured in the post, was prepared as a sample.[9] Ultimately, the Respondent claimed that she decided that her child giving out these teddy bear gift bags "didn't feel right" and "wasn't feasible" given the thousands of doors the Respondent would knock as part of her campaign.[10] Instead, the Respondent included the bears in candy pails and gave them to her campaign volunteers and staff around Halloween.[11] The Respondent claims that no one of voting age received the candy pails other than one parent who was given a bear for participating in a billboard photo shoot.[12] The Respondent included a leaflet in the candy pails and the leaflet included a disclaimer.[13]

As to the disclaimer requirement, the Respondent argues that a disclaimer was not required to be included with the teddy bear gifts because these were given internally to her campaign volunteers and staff and not to potential voters. Even if a disclaimer was required, the Respondent testified that the candy pails given to campaign volunteers included a leaflet with the required disclaimer. As to the gift, the Respondent argues that without some evidence that Respondent gave or caused a teddy bear to be given to a potential voter to induce them to vote, there is insufficient evidence to find probable cause for a violation of Minn. Stat. § 211B.13.

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 the complaint.[14] The Administrative Law Judge must decide whether, given the facts

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[7] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Nov. 4, 2024).
[8] Testimony of Lori Saroya (Saroya Test.).
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.; Ex. 2.
[14] *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).

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.[15] 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.[16]

A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.[17] 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.[18]

III. Analysis

Under Minn. Stat. § 211B.04, subd. 1, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[19] The statute requires inclusion of a disclaimer providing the name and address of the committee that prepared and paid for the material, and the disclaimer must read substantially as follows: "Prepared and paid for by the _____ committee, _____ (address)."[20] The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.[21]

"Campaign material" is defined, in relevant part, as any literature, publication, or material disseminated for the purpose of influencing voting.[22] The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[23]

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[15] *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).

[16] 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).

[17] *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).

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

[19] Minn. Stat. § 211B.04, subd. 1(a). The word "prominent" is not defined in the statute. However, Minn. Stat. § 211B.04, subd. 5 provides that for written communications other than an outdoor sign, website, or social media page, the disclaimer must be in 8-point font or larger.

[20] *Id*. at subd. 1(b).

[21] *Id*.

[22] Minn. Stat. § 211B.01, subd. 2 (2024).

[23] *Hansen v. Stone*, OAH No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Off. Admin. Hearings Oct. 28, 2005).

Minn. Stat. § 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election or to induce the voter not to cast a vote. The statute provides, in relevant part:

> 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. . . . 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.[24]

To find a violation of Minn. Stat. § 211B.13, it is not enough that a candidate gave someone something of value. A complainant must also offer evidence that the candidate gave that item as an inducement to a voter to vote a particular way or to refrain from voting.

Here, the record lacks any direct evidence that the teddy bear gift was "disseminated for the purpose of influencing voting" such that it would require a disclaimer. In addition, there is no direct evidence that the Respondent gave the teddy bear gifts to a person to induce a vote, as was implied in the social media post.

Even when taken in the light most favorable to the Complainant, the social media post alone is insufficient to connect the Respondent to the dissemination of the teddy bear gifts to potential voters in light of Respondent's sworn testimony to the contrary. Absent direct evidence that the Respondent did, in fact, distribute a teddy bear gift to potential voter while campaigning - such as an affidavit from a potential voter - there is insufficient evidence to sustain the reasonable belief that Respondent distributed teddy bear gifts lacking a disclaimer in violation of Minn. Stat. §§ 211B.04 or 211B.13.

This decision is not made based on an assessment of the relative credibility of testimony given at the probable cause hearing. Rather, it is based on a comparison of Respondent's *direct* evidence (Respondent's sworn testimony) with the Complainant's *circumstantial* evidence (the social media post) and argument about inferences that Complainant has drawn from the circumstantial evidence. When considering this evidence, there is not a reasonable belief that a violation has occurred.

IV. Conclusion

Because the Complainant did not establish that the Respondent distributed teddy bear gifts lacking a disclaimer for the purpose of inducing a voter to vote a certain way, there is no probable cause to believe Respondent is in violation of Minn. Stat. §§ 211B.04 or 211B.13. As a result, it would not be reasonable to require Respondent to appear for

[24] Minn. Stat. § 211B.13, subd. 1.

a hearing on the merits of the Complaint. For the foregoing reasons the Complaint in this matter is **DISMISSED**.

J. C. M.