

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Robyn West,

Complainant,

vs.

**PROBABLE CAUSE  
ORDER**

Mike Bourke,

Respondent.

Robyn West, Complainant, filed a complaint under the Fair Campaign Practices Act on November 1, 2010, against Mike Bourke, Respondent.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Beverly Jones Heydinger on November 5, 2010. The probable cause hearing was conducted by telephone conference call.

Complainant appeared on her own behalf and without counsel. Brian Rice, Attorney at Law, appeared for Respondent Mike Bourke.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge concludes that there is probable cause to believe that Respondent Mike Bourke violated Minnesota Statute § 211B.06 by stating in campaign material that Complainant voted for the expansion of the Anoka County Airport in Blaine, and spent taxpayer money on the expansion.

**ORDER**

**IT IS HEREBY ORDERED THAT:** This matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minnesota Statute § 211B.35.

Dated: November 10, 2010

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

## MEMORANDUM

Complainant Robyn West is District 3 Anoka County Commissioner. She was first elected to that office in 2006. She won reelection on November 2, 2010. Respondent Mike Bourke is a Blaine City Councilmember. He challenged Complainant for District 3 Anoka County Commissioner in the November 2010 election. Complainant alleges that Mike Bourke disseminated two pieces of campaign literature that contain false statements pertaining to the expansion of the Anoka County airport in Blaine. The first flyer states in part, "Robyn West and the county board spent 20 million of your money to bring more aircraft to Blaine," and "Robyn and friends used your money to lengthen the runway to 5,000 feet." The second flyer pictures Mike Bourke and lists a number of reasons to vote for him based on his record as Councilmember. On the right-hand side, under the heading "West," the card has a bulleted list of items for which Complainant voted. It states in part:

Voted:

- Anoka County airport expansion
- 20 million dollar bond (taxpayer \$)
- Jet aircraft
- More aircraft noise

Underneath the bulleted statements, the flyer states in part, "STOP West from spending taxpayer money....Vote Bourke for Anoka County Commissioner."

Complainant alleges the statements included on the flyers are false because she never voted to approve the airport projects and because the airport expansion was voted on and nearly completed before she took office in January 2007. Attached to the Complaint, Complainant included copies of two Memos issued by the City of Blaine in 2005 and 2006 regarding the airport improvement project. She also included minutes of a Blaine "workshop" meeting that occurred on September 8, 2005. The minutes indicate Respondent was in attendance at the workshop while the airport improvement project was discussed. Complainant also included minutes of the Blaine City Council meeting on June 16, 2005, that indicate Respondent was present in his capacity as Councilmember and that the airport improvement project was discussed during the meeting.

At the probable cause hearing, Complainant introduced a number of exhibits. The Anoka County Board Minutes from June, July and August 2005, show that the Board was working to expand the Anoka County Airport during that time.<sup>1</sup> On June 14, 2005, the Board approved a Memorandum of Agreement between Anoka County, the Metropolitan Airports Commission (MAC), and the City of Blaine, to finance, construct and install improvements to the Anoka County Airport.<sup>2</sup> On July 21, 2005, the Blaine City Council approved that Memorandum of Agreement.<sup>3</sup> On August 9, 2005, the Board

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<sup>1</sup> Probable Cause Exs. 5, 7, and 8.

<sup>2</sup> Probable Cause Ex. 5.

<sup>3</sup> Probable Cause Ex. 6.

formally approved a Joint Powers Agreement between the County, the MAC, and the City of Blaine to expand the airport.<sup>4</sup>

Respondent introduced evidence at the probable cause hearing to show that the Anoka County Board unanimously approved the funding and construction of an additional airplane parking ramp at the Anoka County Airport on March 25, 2008, and May 13, 2008, while Complainant was in office.<sup>5</sup> Respondent also introduced evidence to show that the Anoka County Board adopted a resolution to amend the original Joint Powers Agreement between Anoka County, the City of Blaine and the MAC, on June 24, 2008.<sup>6</sup> Respondent testified that he believed Complainant's 2008 votes on the airplane parking ramp and the amendment to the Joint Powers Agreement demonstrate her participation in the expansion of the airport. He testified that he relied on Complainant's 2008 votes when preparing his campaign literature, and also on his knowledge of the matter obtained via his position as Blaine City Councilmember. He believes the statements at issue regarding Complainant's approval of, and expenditures for, the expansion are true.

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.<sup>7</sup> 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.<sup>8</sup> The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.<sup>9</sup> If the Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, were one to be made, a motion to dismiss for lack of probable cause should be denied.<sup>10</sup> A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation or dissemination of campaign material that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false. The term "reckless disregard" was added to the statute in 1998 to expressly incorporate

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<sup>4</sup> Probable Cause Ex. 8.

<sup>5</sup> Probable Cause Exs. 1 and 2.

<sup>6</sup> Probable Cause Ex. 3.

<sup>7</sup> Minn. Stat. § 211B.34, subd. 2 (2008).

<sup>8</sup> *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

<sup>9</sup> *Id.*; see also Black's Law Dictionary 1219 (7<sup>th</sup> ed. 1999) (defining "probable cause" as "[a] reasonable ground to suspect that a person has committed or is committing a crime").

<sup>10</sup> *State v. Florence*, at 903. 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 judge 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; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the test for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. App. 1994).

the “actual malice” standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.<sup>11</sup> Based upon this standard, the Complainant has the burden at the hearing to show by clear and convincing evidence that the Respondent prepared or disseminated the material knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the material or acted “with a high degree of awareness” of its probable falsity.<sup>12</sup>

The evidence in the record is insufficient to resolve the question whether Respondent intentionally prepared campaign material that he either knew was false or communicated to others with reckless disregard of whether it was false. The interpretation of the documents he offered is not entirely logical or compelling. A panel of three judges should have the opportunity to determine whether he prepared or disseminated the material knowing that it was false or did so with reckless disregard of its truth or falsity. Complainant has submitted sufficient evidence to persuade a reasonable jury that the Respondent violated Minn. Stat. § 211B.06. The Administrative Law Judge concludes that it is fair and reasonable to require Respondent to address Complainant’s allegation at a hearing on the merits. Accordingly this matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges for an evidentiary hearing.

**B. J. H.**

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<sup>11</sup> *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

<sup>12</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); see also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), *rev. denied* (Minn. 2006).