

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Kurt Naumann,

Complainant,

**PROBABLE CAUSE  
ORDER**

vs.

Marv Stai,<sup>1</sup>

Respondent.

On October 11, 2006, a probable cause hearing under Minnesota Statutes § 211B.34 was held by telephone conference call before Administrative Law Judge Eric L. Lipman to consider a complaint filed by Kurt Naumann on October 6, 2006. The record with respect to the probable cause hearing closed at the conclusion of the hearing on October 11, 2006.

Kurt Naumann, 9401 – 460<sup>th</sup> Street, Harris, MN 55032, appeared on his own behalf without counsel (Complainant). Marv Stai, 5206 – 429<sup>th</sup> Street, Harris, MN 55032, appeared on his own behalf without counsel (Respondent).

Based on the record and all of the proceedings in this matter, and for the reasons set forth in the Memorandum below, the Administrative Law Judge finds that there is probable cause to believe that the Respondent violated Minnesota Statutes § 211B.10.

**ORDER**

**IT IS ORDERED:**

1. That there is probable cause to believe that Respondent violated Minnesota Statutes § 211B.10 as alleged in the Complaint.
2. 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: October 16, 2006

/s/ Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Tape recorded (one tape).

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<sup>1</sup> The caption in this matter has been changed from “Stais” to “Stai” to reflect the correct spelling of the Respondent’s last name.

## MEMORANDUM

The Complaint alleges that Respondent Stai violated Minnesota Statute § 211B.10 by accepting \$400 in cash, and the promise of both a future appointment to a post in city government and favorable zoning consideration for a property owned by the Respondent, in return for his withdrawal from the race for Mayor of Harris, Minnesota.<sup>2</sup>

### Brief Summary of the Evidence:

For a time, Marv Stai, the owner and operator of a motor-cross track in Harris, Minnesota, was a candidate for Mayor of Harris. Respondent Stai had announced his candidacy, began regularly attending City Council meetings so as to further educate himself about city operations, and told friends and associates that he was a candidate for Mayor.<sup>3</sup> Mr. Stai does not believe that the current incumbent, Mayor Richard Smisson, shares his beliefs, values or vision for Harris.<sup>4</sup>

Before the close of filings for the office of Mayor for the City of Harris,<sup>5</sup> Mr. Stai was visited at his home by Ken Kebanek and Marcus Shelander.<sup>6</sup> While Mr. Kebanek and Mr. Shelander had earlier signaled their support for Mr. Stai's candidacy, on this occasion they urged him to withdraw from the mayoral race and to support Larry Nelson's candidacy.<sup>7</sup> Mr. Stai testified that during their conversation, Kebanek and Shelander expressed doubt that Mr. Stai, as the operator of a motor-cross track, could prevail over the incumbent mayor in an election and they were worried that the incumbent, Mr. Smisson, would be re-elected if the votes of those who wanted a change in the Mayor's office were divided between Mr. Nelson and Mr. Stai.<sup>8</sup>

There is a dispute as to the events that followed: The Complainant testified that Mr. Stai told him that Mr. Kebanek offered him money and a future appointment to a city job in exchange for his withdrawal as a candidate for mayor. Mr. Stai testified that Mr. Kebanek, in a "gentlemanly way," offered him cash to help defray the expenses he incurred during his campaign for Mayor.<sup>9</sup> Mr. Stai testified that he incurred costs for "his time and gas" while campaigning. The dispute is whether the offer of money was related to, or conditioned upon, Mr. Stai's announcement that he would withdraw as a candidate for Mayor.

It is not disputed that sometime following the Stai-Kebanek-Shelander meeting that Mr. Stai sent his roommate to "Big Daddy's Bar and Grill" in Harris, Minnesota, for the purpose of collecting an envelope that had been left for Mr. Stai.<sup>10</sup> Big Daddy's Bar

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<sup>2</sup> Ex. 1.

<sup>3</sup> Testimony of M. Stai.

<sup>4</sup> Testimony of M. Stai.

<sup>5</sup> Compare, *Minnesota Statutes* §§ 205.13 (1a) (2004).

<sup>6</sup> Testimony of M. Stai.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Compare, Ex. 1 with Testimony of M. Stai.

<sup>10</sup> Testimony of M. Stai.

and Grill is an establishment that is owned by Mr. Kebanek.<sup>11</sup> The envelope that had been left for Mr. Stai contained \$400 in cash.<sup>12</sup>

Similarly, Mr. Stai testified that Kebanek and Shelander told him that if Larry Nelson was successful in defeating the incumbent Mayor, Mr. Stai could be considered for some other city office – either as a member of the Harris City Council or as a member of the Harris Planning Commission – and that the new city officials would look favorably upon zoning matters involving the motor-cross track.<sup>13</sup> Again, as above, the sequence of these discussions is disputed: Mr. Stai disputes that these offers were made as an inducement for him to withdraw, but instead followed, as gratuities, after his decision to withdraw was firmly made.<sup>14</sup>

### **Probable Cause Analysis:**

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 that is alleged in the complaint has occurred.<sup>15</sup> The task of the Presiding Judge in these matters is to answer an important question: Given the facts in the record, it is fair and reasonable to require the respondent to go to hearing on the merits?<sup>16</sup> If the Presiding 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, a motion to dismiss a campaign violation complaint for lack of probable cause should be denied.<sup>17</sup>

The Presiding Judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony from witnesses. Such matters are for a later hearing on the merits. Moreover, in the ordinary case, a motion to dismiss a campaign violation complaint is proper only if the Respondent has introduced evidence which makes "inherently incredible" the facts and evidence that go to elements of the alleged violation.<sup>18</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> See, Ex. 1, Testimony of K. Naumann and Testimony of M. Stai.

<sup>13</sup> See, Ex. 1 and Testimony of M. Stai.

<sup>14</sup> Testimony of M. Stai.

<sup>15</sup> See, *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 674 (Minn. 2003) ("in 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)); compare also, *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (probable cause is the "fair probability that contraband or evidence of a crime will be found in a particular place") (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)); *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (probable cause is a collection of objective facts and circumstances that would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that a crime has been committed).

<sup>16</sup> See, *Hortman v. Republican Party of Minnesota*, OAH Docket No. 15-0320-17530-CV, at 2-3 (Probable Cause Order, October 2, 2006) (<http://www.oah.state.mn.us/aljBase/032017530.Prob.Cause.htm>).

<sup>17</sup> 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; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975). Compare also, *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976).

<sup>18</sup> Compare, e.g., *State v. Florence*, 239 N.W.2d 892, 903 n.24 (Minn. 1976).

In this case, the Complainant, Mr. Naumann, has submitted sufficient evidence that reasonably tends to show the existence of a violation of Minnesota Statutes § 211B.10, subdivision 1. This statute provides:

A person may not reward or promise to reward another in any manner to induce the person to be or refrain from or cease being a candidate. A person may not solicit or receive a payment, promise, or reward from another for this purpose.

Further, while the versions of events offered by the parties are different, there is nothing that Mr. Stai submitted at the Probable Cause hearing which tends to make Mr. Naumann's description of events "inherently incredible." Accordingly, this matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges for further proceedings.

The parties indicated at the Probable Cause hearing that they were willing to forgo an evidentiary hearing and allow the panel to make its decision based upon the record made at the probable cause hearing. The panel will decide whether the taking of further testimony and evidence at an evidentiary hearing is necessary or whether this matter may be determined based on the record already created.

**E. L. L.**