

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Kevin Hagen,

Complainant,

vs.

ORDER OF DISMISSAL

Patrick Evens,

Respondent.

The above-entitled matter came on for a probable cause hearing on October 20, 2005, before Administrative Law Judge Eric L. Lipman to consider a complaint filed by Kevin Hagen on October 16, 2006. The hearing was held by telephone conference call and the record with respect to the probable cause hearing closed on October 23, 2006, with the filing of post-hearing submissions from both parties.

Kevin Hagen, 230 First Street SW, Richmond, MN 56368, participated by telephone, on his own behalf and without counsel (Complainant).

Patrick Evens, 545 First Street NW, Richmond, MN 56368, participated by telephone, on his own behalf and without counsel (Respondent).

Based upon the record and all of the proceedings in this matter, including the Memorandum incorporated herein, the Administrative Law Judge finds that there is no probable cause to believe that Patrick Evens violated Minnesota Statutes § 211B.13 by providing ice cream to Casey's General Store in Richmond, Minnesota, for its "Customer Appreciation Days" event.

**ORDER**

IT IS HEREBY ORDERED:

That there is no probable cause to believe that Patrick Evens violated Minnesota Statutes § 211B.13, as alleged in the Complaint, and therefore the Complaint is DISMISSED.

Dated: October 26, 2006.

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

## NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, 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 Minnesota Statutes § 211B.35 within five business days after granting the petition.

## MEMORANDUM

### Background Facts:

Respondent Patrick Evens is a candidate for mayor of Richmond, Minnesota. Evens is also the owner of Horseshoe Ice Company; a firm that sells ice and food products to various retail establishments, as well as selling its own retail concessions of products at community events.<sup>1</sup>

In early October, during one of his regular morning visits to Casey's General Store in Richmond, Minnesota, Evens was approached by Joan Willenbring. Ms. Willenbring is the General Manager of Casey's General Store.<sup>2</sup> Ms. Willenbring asked Evens if he would like to donate an item for the upcoming "Customer Appreciation Days" at Casey's General Store.<sup>3</sup> Recalling that he had Kemp's brand soft-serve ice cream left over from his concession business, Respondent Evens agreed to donate this ice cream to the customer appreciation event at Casey's General Store.<sup>4</sup> Respondent determined that because of the colder temperatures in October, he was unlikely to sell this ice cream as part of his regular concession trade before the expiration dates on the ice cream passed.<sup>5</sup>

While the Complaint was more sharply worded as to Evens' role in advertising his donation,<sup>6</sup> at the probable cause hearing both parties agreed that when Mr. Evens was asked by Ms. Willenbring how he would like the General Store to list his donation, Mr. Evens replied that it was a decision for Ms. Willenbring to make.<sup>7</sup>

On October 13, 2006, as part of "Customer Appreciation Days" at Casey's General Store, Ms. Willenbring made and posted a sign that read "Ice Cream Donated

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<sup>1</sup> Testimony of P. Evens.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Exhibit 1 at 2 (Joan Willenbring told Kevin Hagen "that Pat Evens requested that a sign be put on the machine stating that he donated the ice cream").

<sup>7</sup> Testimony of K. Hagen; Testimony of P. Evens.

by Pat Evens.”<sup>8</sup> This sign was placed by Ms. Willenbring on the soft serve ice cream machine at Casey’s General Store.<sup>9</sup>

Following the probable cause hearing, Respondent obtained and filed a list of the Richmond-area vendors that participated in Casey’s “Customer Appreciation Days” by donating items. The list reveals that twenty-two vendors participated in the customer appreciation event.<sup>10</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>11</sup> The task of the Administrative Law 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>12</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 in a like civil case, a motion to dismiss a campaign violation complaint for lack of probable cause should be denied.<sup>13</sup>

While Minnesota Statutes § 211B.13 prohibits persons from providing food and other things of monetary value “in order to induce a voter to refrain from voting, or to vote in a particular way, at an election,” Mr. Hagen has failed to allege sufficient facts to support his claim that Mr. Evens provided the ice cream as an inducement to support his candidacy. Mr. Hagen appears to argue that any donation of food from someone who is also a candidate for public office violates section 211B.13. Mr. Hagen asserts that, particularly in small towns like Richmond, Minnesota, where the candidates for public office are well known, it follows that donations from candidates are necessarily related to the election bids of the donors.

Such a conclusion overstates the prohibition in section 211B.13. If the Legislature had intended to prohibit all donations from candidates for public office, it would have stated this intent directly. Instead, section 211B.13 draws the prohibition more narrowly, banning only those gifts that are rendered with the purpose of inducing voters to either refrain from voting, or to vote in a particular way. In this respect, this case is different, and in contrast to other “inducement cases,” where the connections

<sup>8</sup> Testimony of P. Evens; see also, Photographs attached to Exhibit 1.

<sup>9</sup> Testimony of P. Evens.

<sup>10</sup> Exhibit A (Respondent’s Post-Hearing Submission).

<sup>11</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)).

<sup>12</sup> See, *Hortman v. Republican Party of Minnesota*, OAH Docket No. 15-0320-17530-CV, at 2-3 (October 2, 2006) (<http://www.oah.state.mn.us/aljBase/032017530.Prob.Cause.htm>).

<sup>13</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).

between the provision of food items and the candidates' electioneering efforts were clear.<sup>14</sup>

In this case, the only claim is that the donor of the ice cream is also a candidate for office. Moreover, both parties agree that it was the General Manager of the store, and not the Respondent, who wrote and placed the sign on the machine crediting the Respondent for the ice cream donation. The record demonstrates that what occurred was a routine donation solicited from, and given by, a business; rather than a bribe, or inducement for votes, given by a candidate.

These facts fall short of stating a violation of the state campaign bribery laws, or a claim that should oblige Mr. Evens to appear at a hearing on the merits. For all of these reasons, the complaint in this matter is dismissed.

E.L.L.

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<sup>14</sup> Compare, *Wyckoff v. Peterson*, OAH Docket No. 7-6301-16405-CV (2005) (the provision of 20 chicken dinners on the evening following a "meet the candidates" forum, and three days before the election, violated section 211B.13) (<http://www.oah.state.mn.us/aljBase/630116405.fdg.htm>); compare also, *Jones v. Bly*, OAH Docket No. 12-0320-17052-CV (2006) (a complaint that was dismissed as otherwise untimely alleged that the Respondent served pie at a campaign event in support of bid for state representative) (<http://www.oah.state.mn.us/aljBase/032017052.DISM.OR.smm.htm>).