OAH 60-0325-38566

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kau Guannu,

Complainant,

v.

Dan Jerzak,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Fair Campaign Practices complaint (Complaint) is pending before the following panel of three Administrative Law Judges: James E. LaFave (Presiding Judge), Kimberly Middendorf, and Christa L. Moseng (Panel).

Complainant Kau Guannu and Respondent Dan Jerzak appeared on their own behalf without legal counsel.

The matter was submitted to the Panel based on the record created at the probable cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and written submissions from the parties. The hearing record closed on September 16, 2022.

STATEMENT OF THE ISSUES

1. Did Respondent accept prohibited corporate contributions in violation of Minn. Stat. § 211B.15, subd. 2(b) (2022)?

2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.15, subd. 2(b) by accepting prohibited corporate contributions. For this violation, Respondent must pay a $1,200 civil penalty.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondent is a candidate for Brooklyn Center City Council.[1] This is his first campaign.[2]

2. On May 20, 2022, Respondent filed for his candidacy with the Brooklyn Center City Clerk and received a 2022 Campaign Manual.[3] At the time, Respondent asked the City Clerk about campaign contribution limits. The City Clerk told him that he could receive $300 per person, $600 per couple, or $600 per corporation.[4]

3. On June 10, 2022, Respondent emailed the City Clerk to confirm the contribution limits. The City Clerk replied, "Yes it is $300 per person, $600 for married couples, $600 for corporations, and if the corporations are separate business's [sic] they can each give $600."[5]

4. On or about July 29, 2022, Respondent filed a campaign financial report.[6] The report was filed by Respondent's campaign committee, "Neighbors for Dan Jerzak," and covers the period June 14, 2022, to July 29, 2022.[7] The report includes attached spreadsheets identifying contributions Respondent received from June 17, 2022, through July 16, 2022, and disbursements Respondent made from June 13, 2022, through July 26, 2022.[8]

5. Respondent's campaign financial report lists sixteen corporate contributions he received between June 17, 2022, and July 2, 2022: Fifteen contributions are from the following limited liability companies (LLCs), each for $600: Granite Shores, LLC, West End Apartments, LLC, Lux Apartments, LLC, Imperial Gates Apartments, LLC, Lake Pointe Apartments, LLC, Second Street Station, LLC, Garden Gates Apartments, LLC, Melrose Gates LLC, Park Trails Apartments, LLC, Colonial Terrace SLP, LLC, Uptown Square Apartments, LLC, Granite Cliffs, LLC, Granite Peaks, LLC, Granite City Apartments, LLC, Granite Ridge, LLC, and Dragon Property Management, Inc. One contribution is from Dragon Property Management, Inc. in the amount of $300.[9]

6. Respondent received $9,300.00 in corporate contributions from June 14, 2022, through July 29, 2022, out of $9,770 in total contributions.[10]

7. According to the campaign financial report, Respondent used campaign funds, in part, for media ads. The report identifies a $525 campaign expenditure for

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[1] Complaint (Aug. 4, 2022).
[2] Testimony (Test.) of Dan Jerzak (Test. of D. Jerzak).
[3] *Id.*; Ex. B.
[4] Test. of D. Jerzak.
[5] Ex. A.
[6] Complaint, Attachment 1 (Campaign Financial Report).
[7] *Id.*
[8] *Id.*
[9] *Id.*; Complaint, Attachment 2 (Business Record Details).
[10] Campaign Financial Report.

"Media Ad" on June 20, 2022, and a $168.75 expenditure for a "Media Ad" on July 14, 2022. The report also lists a $2,295.04 expenditure for "printing" on June 30, 2022.[11]

8. On August 4, 2022, Complainant filed this Complaint against Respondent. Complainant alleged that Respondent accepted corporate campaign contributions in violation of Minn. Stat. § 211B.15 (2022).[12]

9. Following receipt of the Complaint, Respondent contacted the City Clerk for additional clarification. The City Clerk again stated that corporate donations to campaigns were limited to $600.[13]

10. On August 5, 2022, Respondent refunded all the corporate campaign contributions his campaign received and filed an amended campaign financial report.[14]

11. The Brooklyn Center primary election was held on August 9, 2022. Respondent received the most votes and was one of four candidates that advanced to the general election.[15]

12. By Order dated August 9, 2022, Presiding Judge LaFave determined the Complaint alleged prima facie violations of Minn. Stat. § 211B.15.[16] The Judge ordered that this matter would be set for a probable cause hearing on August 12, 2022.[17]

13. On August 12, 2022, Presiding Judge LaFave conducted a probable cause hearing, which was held by telephone, and both parties appeared.[18] During the probable cause hearing, Respondent admitted that his campaign received corporate campaign contributions totaling $9,300. However, Respondent explained that he relied on communications with the City Clerk regarding corporate contributions in advance of receiving these campaign contributions.[19]

14. The parties agreed to waive their right to an evidentiary hearing and submit this matter to the Panel for further proceedings based on the record and subsequent written argument.[20]

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[11] *Id.*
[12] Complaint.
[13] Test. of D. Jerzak.
[14] *Id.*; Ex. C.
[15] *See* Minnesota Secretary of State municipal primary election results: https://electionresults.sos.state.mn.us/results/Index?ErsElectionId=148&scenario=LocalMunicipality&FipsCode=07948&show=Go (last accessed Sept. 21, 2022).
[16] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Aug. 9, 2022).
[17] *Id.*
[18] Probable Cause Order (Aug. 18, 2022).
[19] *Id.*
[20] Test. of D. Jerzak and K. Guannu.

15. By Order dated August 18, 2022, Presiding Judge LaFave found probable cause to believe that Respondent violated Minn. Stat. § 211B.15 by accepting campaign contributions from 16 corporate entities.[21]

16. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated September 7, 2022.[22]

17. The record in this matter closed on September 16, 2022, the deadline for submitting written argument. Complainant submitted a written statement on September 16, 2022. Respondent submitted a written statement on September 3, 2022.

18. Any portion of the Memorandum below that constitutes a Finding of Fact is incorporated as such herein.

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS OF LAW

1. The Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2022).

2. Complainant bears the burden of proving the allegations in the Complaint. The standard of proof of a violation of Minn. Stat. § 211B.15 is a preponderance of the evidence.[23]

3. A "contribution" is defined as "anything of monetary value that is given or loaned to a candidate or committee for a political purpose."[24]

4. Minn. Stat. § 211B.15 prohibits corporations from contributing "anything of monetary value" to a candidate or committee to promote or defeat the candidacy of an individual for election to political office.[25]

5. The term "corporation" includes:

(1) a corporation organized for profit that does business in this state;

(2) a nonprofit corporation that carries out activities in this state; or

(3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.[26]

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[21] Probable Cause Order.
[22] Notice of and Order for Panel Assignment and Scheduling Order (Sept. 7, 2022).
[23] Minn. Stat. § 211B.32, subd. 4 (2022).
[24] Minn. Stat. § 211A.01, subd. 5 (2022).
[25] *See* Minn. Stat. § 211B.15, subd. 2(a). A contribution does not include an "independent expenditure" as authorized by Minn. Stat. § 211B.15, subd. 3.
[26] Minn. Stat. § 211B.15, subd. 1.

6. Minn. Stat. § 211B.15, subd. 2(b), prohibits political committees or individuals from accepting a contribution that a corporation is prohibited from making.

7. Respondent accepted 16 prohibited corporate campaign contributions.[27]

8. Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.15, subd. 2(b).

9. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of $1,200.

10. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

ORDER

1. By **4:30 p.m.** on **Friday, October 21, 2022,** Respondent shall pay a civil penalty of $1,200 for violating Minn. Stat. § 211B.15, subd. 2(b).

2. The penalty shall be paid by check made payable to: Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 60-0325-38566, should be included on the check memo line.

Dated: September 21, 2022

James E. LaFave
Presiding Administrative Law Judge

Kimberly Middendorf
Administrative Law Judge

Christa L. Moseng
Administrative Law Judge

[27] Campaign Financial Report; Business Record Details.

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2022), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

Minn. Stat. § 211B.15 prohibits corporations from contributing "anything of monetary value" to a candidate or committee to promote or defeat the candidacy of an individual for election to political office.[28] By law, the term "corporation" includes:

(1) a corporation organized for profit that does business in this state;

(2) a nonprofit corporation that carries out activities in this state; or

(3) a limited liability company formed under chapter 322C, or under similar laws of another state, that does business in this state.[29]

Candidates have their own corresponding prohibition under Minn. Stat. § 211B.15, subd. 2(b): they may not accept a contribution that a corporation is prohibited from making.[30]

Respondent's campaign financial report lists contributions received from 16 businesses that qualify as corporations.[31] These contributions were made over the course of about a month and a half beginning in mid-June 2022.[32] During the probable cause hearing, Respondent acknowledged that he received contributions from these entities.[33] Respondent explained that this was an error on his part due to his reliance on statements from the City Clerk, and that he had not engaged in an intentional or deliberate violation.[34] Respondent apologized for his actions, but asserted that his violation was unintentional and as a result, he should not be fined or should face only a minimal penalty for his mistake.[35]

Complainant contends that all candidates have a duty to follow the laws and rules governing campaign practices. Complainant points out that Respondent committed 16 violations, accepting $9,300 in prohibited corporate contributions, which constituted almost all of his reported campaign funds. Complainant maintains that this placed him at an unfair advantage compared to other candidates at a critical stage in the campaign.

[28] *See* Minn. Stat. § 211B.15, subd. 2(a). A contribution does not include an "independent expenditure" as authorized by Minn. Stat. § 211B.15, subd. 3.
[29] Minn. Stat. § 211B.15, subd. 1.
[30] Minn. Stat. § 211B.15, subd. 2(a)-(b).
[31] Complaint; Campaign Financial Report.
[32] Campaign Financial Report.
[33] Test. of D. Jerzak.
[34] *Id.*
[35] Respondent's Final Statement (Sept. 3, 2022).

Complainant argues that these violations warrant imposition of a civil penalty in the amount of $5,000 and referral to the Hennepin County Attorney.[36]

The Panel's authority with respect to disposition of campaign complaints is governed by Minn. Stat. § 211B.35. If the Panel finds a violation of chapter 211A or 211B, it may issue a reprimand, impose a civil penalty of up to $5,000, or refer the complaint to the appropriate county attorney.[37]

To ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings uses a "penalty matrix" to guide decision-making. The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters and is set forth as follows:[38]

Willfulness	Gravity of Violation		
	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney	$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	$250 - 600	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	$0 - 250	$400-600	$600 - 1,200

Because every case is unique, however, the Panel may depart from the presumptive penalty listed in the matrix.[39]

The record shows that Respondent accepted, and had the benefit of, 16 prohibited corporate contributions over the course of a month and a half leading up to the primary election on August 9, 2022. During that time, Respondent spent more than $2,000 on printing for his campaign and $500-600 on media ads, among other expenditures. Had it not been for Complainant's review of Respondent's campaign financial report and her decision to file the Complaint, these violations might not have been addressed. Without these corporate contributions, Respondent would have had nominal campaign funds available for his campaign's communications and advertising prior to the primary election. Receipt of these prohibited contributions created a significant unfair advantage over the other candidates and, more likely than not had an impact on more than several voters and corrupted the process.

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[36] Complainant's Written Argument (Sept. 16, 2022).
[37] *See* Minn. Stat. § 211B.35, subd. 2.
[38] *See* Penalty Matrix (https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).
[39] *Id.*

Respondent has apologized for the violations. He maintains he accepted the contributions based on his reliance on statements from the City Clerk and selected pages of the campaign manual. However, the Minnesota Court of Appeals has stated that "[e]very political candidate must know—indeed, is presumed to know—the laws governing campaign practices, which are published in publicly available statutes."[40] Minn. Stat. § 211B.15 establishes an absolute bar prohibiting candidates from accepting corporate contributions. The statute is clear and there are no exceptions. Campaign laws are intended to protect the electoral process, promote transparency in campaigns, and ensure voters are informed. Regardless of Respondent's intent, his violations run afoul of these crucial goals.

The Panel concludes that imposition of a civil penalty is warranted. The Panel declines to impose the maximum penalty for each violation and instead finds that a penalty in the total amount of $1,200 is appropriate in this case.

J. E. L., K. J. M., C. L. M.

[40] *Lewison v. Hutchinson*, 929 N.W.2d 444, 449 (Minn. Ct. App. 2019).