

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kau Guannu,

Complainant,

vs.

Dan Jerzak,

Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING**

On August 4, 2022, Kau Guannu (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Dan Jerzak (Respondent) violated Minn. Stat. § 211B.15 (2022) in connection with his campaign for the Brooklyn Center City Council in the primary election to be held on August 9, 2022.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.15. For the reasons detailed in the Memorandum below, Complainant is permitted to proceed to a probable cause hearing on that claim.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **11:00 a.m. on Friday, August 12, 2022**. The hearing will be held by telephone conference. At the appointed time, the parties are directed to call in to the telephone conference using the following procedure:

- (a) Telephone **1-866-705-2554** and, when prompted,
- (b) Enter pass code: **406954#**.

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2022). Information about the probable cause proceedings and copies of state statutes may be found online at <http://mn.gov/oah> and www.revisor.leg.state.mn.us.

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge. By **12:00 p.m. on Thursday, August 11, 2022**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies of the same

items provided to the opposing party. Any submissions must be received by the Office of Administrative Hearings on or before the deadline.

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **eFiling** through the Office of Administrative Hearings' eFiling system; (2) by **mail**; (3) by **facsimile**; or (4) by **personal delivery**.

The eFiling system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>.

The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

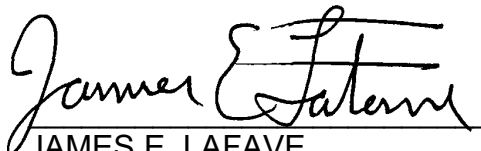
At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the Complaint based on a determination that the Complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the Complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the Complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35 (2022).

If the Administrative Law Judge dismisses the Complaint, the Complainant may seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

A failure by any party to participate and appear by telephone at the probable cause hearing may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2.

Dated: August 9, 2022


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Respondent is a candidate for the Brooklyn Center City Council in the municipal primary election to be held on August 9, 2022. The Complaint alleges that Respondent accepted corporate contributions in violation of Minn. Stat. § 211B.15.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, which entitles a party to a hearing, the complainant must allege sufficient facts to show that a violation of law has occurred.¹ The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).²

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.³ In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.⁴ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of law occurred.⁵

II. Facts Alleged in the Complaint

The Complaint alleges that Respondent violated Minn. Stat. § 211B.15, subd. 2, by accepting contributions from corporations. In support of her Complaint, Complainant attached Respondent's campaign financial report dated July 29, 2022. The report covers the period of June 14, 2022, to July 29, 2022.⁶ The report lists 15 contributions from LLCs, each in the amount of \$600, and one contribution from a corporation in the amount of \$300.⁷ Of the \$ 9,770.00 in contributions Respondent listed in his campaign financial report, \$9,300.00 were corporate contributions.⁸

III. Prima Facie Analysis

Minnesota law forbids a candidate from accepting corporate contributions.⁹ Corporations may not contribute to a political party, organization, committee or individual

¹ Minn. Stat. § 211B.32, subd. 3 (2022).

² *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

³ *Id.*

⁴ *Abrahamson v. St. Louis Cty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).

⁵ *Barry*, 781 N.W.2d at 902.

⁶ Complaint (Aug. 4, 2022).

⁷ *Id.* at Campaign Finance Report.

⁸ *Id.*

⁹ Minn. Stat. § 211B.15, subd. 2(b). A contribution does not include an independent expenditure authorized by subdivision 3,

to promote or defeat an election to a political office.¹⁰ “[A] limited liability company formed under chapter 322C” (LLC) is considered a “corporation” under Minnesota Election Law.¹¹

The statute is clear: a candidate may not accept a contribution from a corporation or LLC. Complainant contends Respondent accepted 16 separate contributions from corporations. Respondent’s Campaign Finance Report documents those contributions.

At this stage of review, the Administrative Law Judge is required to accept the facts alleged as true. The Complaint alleges the Respondent accepted prohibited corporate campaign contributions. The Administrative Law Judge concludes that the Complaint has alleged sufficient facts to support finding a prima facie violation warranting additional proceedings.

IV. Conclusion

Accepting the facts alleged in the Complaint as true, the Administrative Law Judge finds that Complainant has set forth a prima facie violation of Minn. Stat. § 211B.15, subd. 2(b), on the part of Respondent. This claim will proceed to a probable cause hearing as indicated in this Order.

J. E. L.

¹⁰ *Id.* at subd. 2(a).

¹¹ *Id.* at subd. 1(3).