OAH 60-0325-38567

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kau Guannu,

Complainant,

v.

Teneshia Kragness,

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 Teneshia Kragness 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 the Respondent's first campaign.[2]

2. Dan Jerzak is also a candidate for Brooklyn Center City Council.[3] On June 10, 2022, Mr. Jerzak emailed the City Clerk to confirm the campaign contribution limits. In an email, the City Clerk stated, "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."[4]

3. On or about August 1, 2022, Respondent filed a campaign financial report.[5] The report was filed by Respondent's campaign committee, "Friends for Teneshia Kragness," and covers the periods from July 1, 2022, to July 31, 2022.[6] The report includes an attachment identifying contributions Respondent received in July 2022, and disbursements Respondent made from July 13, 2022, through July 25, 2022.[7]

4. Respondent's campaign financial report lists eight corporate contributions they received, each in the amount of $600, from the following entities: Melrose Gates Apartments, Colonial Terrace Apartments, Lake Pointe Apartments, Uptown Square Apartments, Park Trails Apartments, Garden Gates Apartments, Imperial Gates Apartments, and Second Street Station Apartments.[8]

5. Respondent received $4,800 in corporate contributions from July 1, 2022, through July 31, 2022, out of $5,325 total campaign contributions.[9]

6. According to the campaign financial report, Respondent used campaign funds, in part, for printing campaign signs. The report identifies a $2,125.14 expenditure on July 15, 2022, for printing campaign signs.[10]

7. 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).[11] That same day, Respondent refunded all corporate contributions her campaign received and filed an amended campaign financial report.[12]

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[1] Complaint (Aug. 4, 2022).
[2] Testimony (Test.) of Teneshia Kragness (Test. of T. Kragness).
[3] *Id.*
[4] *Id.*; Ex. B.
[5] Complaint, Attachment 1 (Campaign Financial Report).
[6] *Id*.
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] Complaint.
[12] Test. of T. Kragness; Exs. C-D.

8. The Brooklyn Center primary election was held on August 9, 2022. Respondent received the second highest number of votes and was one of four candidates that advanced to the general election.[13]

9. By Order dated August 9, 2022, Presiding Judge LaFave determined the Complaint alleged prima facie violations of Minn. Stat. § 211B.15.[14] The judge ordered that this matter would be set for a probable cause hearing on August 2, 2022.[15]

10. On August 12, 2022, Presiding Judge LaFave conducted a probable cause hearing, which was held by telephone, and both parties appeared.[16] During the probable cause hearing, Respondent explained that she accepted corporate campaign funds after reviewing portions of the campaign manual and receiving a copy of the email communication from the City Clerk to Dan Jerzak on campaign contributions.[17]

11. 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.[18]

12. By Order dated August 19, 2022, Presiding Judge LaFave found probable cause to believe that Respondent violated Minn. Stat. § 211B.15 by accepting campaign contributions from eight corporate entities.[19]

13. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated September 7, 2022.[20]

14. The record in this matter closed on September 16, 2022, the deadline for submission of written argument. Complainant and Respondent submitted written statements on September 16, 2022.

15. 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:

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[13] *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).
[14] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Aug. 9, 2022).
[15] *Id.*
[16] Probable Cause Order (Aug. 19, 2022).
[17] *Id.*
[18] Test. of T. Kragness and K. Guannu.
[19] Probable Cause Order.
[20] Notice of and Order for Panel Assignment and Scheduling Order (Sept. 7, 2022).

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.[21]

3. A "contribution" is defined as "anything of monetary value that is given or loaned to a candidate or committee for a political purpose."[22]

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.[23]

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.[24]

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 eight corporate campaign contributions.[25]

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:

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[21] Minn. Stat. § 211B.32, subd. 4 (2022).
[22] Minn. Stat. § 211A.01, subd. 5 (2022).
[23] *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.
[24] Minn. Stat. § 211B.15, subd. 1.
[25] Campaign Financial Report.

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, 60-0325-38567, 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

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.[26] 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.[27]

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.[28]

Respondent's campaign financial report lists contributions received from eight businesses that qualify as corporations.[29] During the probable cause hearing, Respondent acknowledged that she received contributions from these entities.[30] Respondent explained that this was an error on her part due to a misunderstanding of information in the campaign manual and reliance on statements from the City Clerk.[31] She asserted that she did not engage in an intentional or deliberate violation.[32] Respondent apologized for her actions but emphasized that she rectified the situation when she immediately refunded the corporate contributions upon receipt of the Complaint.[33] She urges the Panel to issue no penalty, or if the Panel determines one is necessary, then she requests a minimum penalty.[34]

Complainant contends that all candidates have a duty to follow the laws and rules governing campaign practices. Complainant points out that Respondent committed eight violations, accepting $4,800 in prohibited corporate contributions, which she used, in part, to pay for over $2,000 in printing costs for campaign signs in July 2022. Complainant maintains that the prohibited contributions made up most of Respondent's campaign funds, placing other candidates at an unfair advantage. Complainant argues that these violations warrant imposition of a civil penalty in the amount of $5,000, and referral of the matter to the Hennepin County Attorney.[35]

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,

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[26] *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.
[27] Minn. Stat. § 211B.15, subd. 1.
[28] Minn. Stat. § 211B.15, subd. 2(a)-(b).
[29] Complaint; Campaign Financial Report.
[30] Test. of T. Kragness.
[31] *Id.*
[32] *Id.*
[33] Respondent's Closing Statement (Sept. 16, 2022); Ex. C.
[34] Respondent's Closing Statement.
[35] Complainant's Closing Statement (Sept. 16, 2022).

it may issue a reprimand, impose a civil penalty of up to $5,000, or refer the complaint to the appropriate county attorney.[36]

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:[37]

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.[38]

The record shows that Respondent accepted, and had the benefit of, eight prohibited corporate contributions during the month leading up to the primary election. Respondent used almost half of the received funds for campaign signs. 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. Most of Respondent's campaign funding came from corporate contributions, which created an unfair advantage for her relative to the other candidates shortly before the primary election. Respondent's violations more likely than not had a significant impact on voters.

Respondent has taken responsibility for the violations but maintains that her campaign accepted the contributions based on a misunderstanding of information in the campaign manual and an email communication the City Clerk sent to a fellow candidate. 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."[39] Minn. Stat. § 211B.15 establishes an absolute

[36] *See* Minn. Stat. § 211B.35, subd. 2.
[37] *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).
[38] *Id.*
[39] *Lewison v. Hutchinson*, 929 N.W.2d 444, 449 (Minn. Ct. App. 2019).

bar prohibiting candidates from accepting corporate contributions. The statute is clear and there are no exceptions.

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.