

February 3, 2023

VIA EMAIL ONLY

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Citizens for Responsible Govt
Red Wing CRG
c/o Tom Drazkowski
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tdraz@yahoo.com

Re: *In the Matter of Carol A. Overland (Recall City Hall, Citizens for Responsible Government, Janie M. Farrar, Ron Goggin, Donald Kliewer, Ted Seifert, and Jason Snyder*
OAH 8-0325-38828

Dear Parties:

Enclosed and served upon you please find the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** in the above-entitled matter.

Parties
February 3, 2023
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If you have any questions, please contact me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,

A handwritten signature in black ink that reads "Michelle Severson". The signature is written in a cursive, flowing style.

MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Carol A. Overland,

Complainant,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Recall City Hall, Citizens for Responsible
Government, Janie M. Farrar, Ron
Goggin, Donald Kliewer, Ted Seifert,
Jason J. Snyder

Respondents.

This Fair Campaign Practices complaint (Complaint) is pending before the following panel of three Administrative Law Judges: Eric L. Lipman (Presiding Judge), James E. LaFave, and Kristien R. E. Butler (Panel).

This matter was submitted to the Panel based upon the record from the probable cause hearing and the underlying written record; which includes the Complaint, the Prima Facie Determination, the Probable Cause Order, and final written argument. The record closed on January 20, 2023.

Carol A. Overland, the Complainant, appeared on her own behalf and without counsel. Paul Kampe, Founder, appeared on behalf of the Recall City Hall committee. Thomas Drazkowski, Organizer, appeared on behalf of the Citizens for Responsible Government committee. Janie M. Farrar, Ron Goggin, Donald Kliewer, Ted Seifert, and Jason J. Snyder, each appeared on their own behalf and without counsel.

STATEMENT OF THE ISSUES

1. Did Complainant demonstrate by a preponderance of the evidence that the Respondents, in their separate campaign finance reports, failed to report correct amounts, as required by Minn. Stat. § 211A.02, subd. 2 (2022)?

2. Did Complainant demonstrate by a preponderance of the evidence that the Respondents, in their separate campaign finance reports, failed to report correct amounts “with the intent to conceal receipts or disbursements” or “the purpose of receipts or disbursements,” in violation of Minn. Stat. § 211A.06 (2022)?

3. Did Complainant demonstrate by a preponderance of the evidence that the Respondents failed to include proper disclaimers on campaign material in violation of Minn. Stat. § 211B.04 (2022)?

4. Did Complainant demonstrate by a preponderance of the evidence that Respondent Goggin, accepted a prohibited corporate contribution in violation of Minn. Stat. § 211B.15, subd. 2 (2022)?

5. If any violation was established, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

The Complainant, Ms. Overland, established that Respondents, in their separate campaign finance reports, failed to report contributions and disbursements accurately. Ms. Overland did not, however, establish that the misreporting was done deliberately to conceal the nature of those amounts.

Ms. Overland established that Respondent Citizens for Responsible Government circulated campaign material in support of certain candidates for local office, that was created independently of those candidates, but did not include a proper disclaimer.

Lastly, Complainant did establish that Respondent Goggin accepted a prohibited corporate contribution in violation of Minn. Stat. § 211B.15, subd. 2.

The Panel concludes that monetary penalties, as imposed separately below, are appropriate for these violations.

Based upon the record and proceedings herein, the undersigned Panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondents Janie M. Farrar, Ron Goggin, Ted Seifert and Jason J. Snyder were each candidates for election to the City Council of Red Wing, Minnesota, in the General Election on November 8, 2022. Respondent Don Kliewer was elected to the Red Wing City Council at a Special Election held on August 9, 2022.¹

2. Respondent Recall City Hall is a political committee that supported recall of incumbent members of the Red Wing City Council in 2021 and through the Special Election in 2022.²

3. Respondent Citizens for Responsible Government is the political committee that advocated for election of Ms. Farrar and Messrs. Goggin, Seifert and Snyder to the Red Wing City Council in the November 2022 General Election.³

¹ Complaint at 9.

² *Id.* at 30.

³ *Id.* at 6, 32.

Campaign Finance Reporting Obligations Under Minn. Stat. §§ 211A.06, 211A.06

4. The hearing record establishes that each of the Respondents – Recall City Hall, Citizens for Responsible Government, Ms. Farrar and Messrs. Goggin, Seifert and Snyder – filed campaign finance reports between 2021 and 2022 that did not accurately state the nature of the contributions received or disbursements made.⁴

5. Each of the Respondents made reporting errors and was obliged to file an amended report that retabulated and restated the contributions received and disbursements made.⁵

6. It is clear from the hearing record that the reporting obligations for Respondents were undertaken by local volunteers who did not have strong backgrounds in either accounting or campaign finance reporting before making the filings. The best understanding of the evidence in the hearing record is that the reporting errors were unintentional.⁶

7. Ms. Overland did not establish by a preponderance of the evidence that any of the misreported detail was submitted with the intent to “conceal receipts or disbursements” or “the purpose of receipts or disbursements....”⁷

Disclaimer Practice Under Minn. Stat. § 211B.04

8. In October of 2022, Thomas Drazkowski, operating as the organizer of the Citizens for Responsible Government, circulated a mailer that urged the election of Respondents Farrar, Goggin, Seifert and Snyder.⁸

9. Citizens for Responsible Government prepared and circulated 6,500 copies of the mailer, which, among other matters, asserted that it was:

[W]ritten [and] produced by Citizens for Responsible [Government] P.O. Box 519 Red Wing, MN 55066[,] without any candidate involvement or endorsement.⁹

10. Minn. Stat. § 211B.04, subd. 2, requires the following disclaimer be placed on written campaign material that follows from an independent expenditure:

⁴ See Complaint at 17-30, 48-69; Response of Recall City Hall; Response of Janie Farrar; Response of Ronald Goggin; Response of Ted Siewert; Response of Jason Snyder.

⁵ See *e.g.*, Complaint at 17-30, 48-69.

⁶ *Id.*; Prehearing Conference Digital Recording (Dec. 14, 2022) (on file with the Minn. Office of Admin. Hearings).

⁷ Minn. Stat. § 211A.06(4).

⁸ See Response of Response of Recall City Hall.

⁹ *Id.* at 1, 5-6; see *also* Complaint at 32.

This is an independent expenditure prepared and paid for by (name of entity participating in the expenditure), (address). It is not coordinated with or approved by any candidate nor is any candidate responsible for it.¹⁰

11. The October 31, 2022, mailer developed by Thomas Drazkowski and Citizens for Responsible Government did not include the disclaimer text required by Minn. Stat. § 211B.04, subd. 2.¹¹

12. Likewise, for the first time in her response papers, Ms. Overland asserts that the disclaimer used by the Citizens for Responsible Government was defective, because mail sent to the referenced Post Office Box in November of 2022, was returned as undeliverable.¹² In light of its holding in Finding 11, finding the disclaimer defective, the Panel does not reach the question of whether the Post Office Box was operational at the time the campaign literature was circulated.

13. Ms. Overland maintains for the first time in her response papers that Respondents Farrar, Goggin, Kliewer, Seifert and Snyder failed to have proper disclaimers on their respective lawn signs, in violation of Minn. Stat. § 211B.04. Yet, these claims were not pled in her original Complaint.¹³

14. Even if those claims had been properly included in the Complaint, the photographs referenced by Ms. Overland¹⁴ do not establish that the lawn signs depicted in those photos did not have the required disclaimers.

Receipt of Prohibited Contributions Under Minn. Stat. § 211B.15

15. In the Complaint, Ms. Overland asserted that Mr. Goggin's receipt of a \$100 campaign contribution from Demorett Enterprises, Inc., violated Minn. Stat. § 211B.15.¹⁵

16. Under Minn. Stat. § 211B.15, subd. 2, a "political party, organization, committee, or individual may not accept a contribution" from a corporation "to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office."¹⁶

17. The claim is uncontested, although Mr. Goggin notes that when the error was called to his attention, the contribution was promptly returned to Demorett Enterprises, Inc.¹⁷

¹⁰ Minn. Stat. § 211B.04, subd. 2.

¹¹ Complaint at 32.

¹² Complainant's Response at 13.

¹³ Compare Complaint at 7 with Complainant's Response at 15.

¹⁴ See Complaint at 7; Complainant's Response at 15.

¹⁵ Complaint at 10.

¹⁶ Minn. Stat. § 211B.15, subd. 2(a),(b).

¹⁷ See Response of Ronald Goggin at 2.

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. As the Complainant, Ms. Overland bears the burden to prove the claimed violations of Chapters 211A and 211B by a preponderance of the evidence.¹⁸

3. Ms. Overland demonstrated by a preponderance of the evidence that the Respondents, in their separate campaign finance reports, failed to report correct amounts, as required by Minn. Stat. § 211A.02, subd. 2.

4. The Panel concludes that the accounting errors in the various reports were “negligent, ill-advised and ill-considered,” although likely had little impact upon the voters of Red Wing, Minnesota.¹⁹

5. Ms. Overland did not, however, establish that the misreporting was done deliberately to conceal the nature of those amounts.²⁰

6. Minn. Stat. § 211A.06 does not penalize merely inaccurate record-keeping; it penalizes the failure to keep correct accounts of money received for a committee with “the intent to conceal receipts or disbursements,” or the “purpose of receipts or disbursements.” The focus of a section 211A.06 claim, therefore, is on whether a candidate or committee intentionally kept inaccurate accounts to conceal the source or purpose of contributions or disbursements.²¹

7. Under such circumstances, the Panel concludes that the resulting penalty for the reporting errors (under Minn. Stat. § 211A.02) is \$50 for each Respondent.

8. The disclaimer requirements for those undertaking independent expenditures (under Minn. Stat. § 211B.04, subd. 2) are more demanding than the disclaimer requirements for persons or candidate committees circulating campaign material under Minn. Stat. § 211B.04, subd. 1. Independent expenditures must include the exact text of the required disclaimer, and not merely language that is “substantially similar.”²²

¹⁸ Minn. Stat. § 211B.32, subd. 4 (2022).

¹⁹ See Penalty Matrix (<https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp>).

²⁰ Minn. Stat. § 211A.06.

²¹ See e.g., *Magan v. Behie*, OAH Docket No. 21-0325-38329 (Minn. Off. Admin. Hrgs. 2022).

²² Compare Minn. Stat. § 211B.04, subd. 1, with Minn. Stat. § 211B.04, subd. 2.

9. Because the October 31, 2022, mailer circulated by Citizens for Responsible Government did not include the exact disclaimer text required by Minn. Stat. § 211B.04, subd. 2, imposition of a penalty is appropriate.²³

10. The Panel concludes that the failure to use the text required by the statute was “negligent, ill-advised and ill-considered,” but likely had little impact upon the voters of Red Wing, Minnesota.²⁴

11. Under such circumstances, the Panel further concludes that the resulting penalty for the disclaimer error on a mailer that was circulated to 6,500 potential voters is \$200.

12. Ms. Overland established by a preponderance of the evidence that Respondent Goggin violated Minn. Stat. § 211B.15 by receiving a \$100 campaign contribution from Demorett Enterprises, Inc.

13. The Panel concludes that the failure to carefully examine contribution checks before depositing them was “negligent, ill-advised and ill-considered,” but because it was a modest amount and promptly returned, had little discernable impact upon the electoral process.²⁵

14. Under such circumstances, the Panel further concludes that the resulting penalty for the reviewing error is \$50 – half of the contributed amount.

Based upon the record herein, and for the reasons stated in the following Memorandum, the Panel makes the following:

ORDER

1. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Recall City Hall committee shall pay a civil penalty of **\$50** for violating Minn. Stat. § 211A.02.

2. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Citizens for Responsible Government committee shall pay a civil penalty of **\$250** for violating Minn. Stat. §§ 211A.02, 211B.04, subd. 2.

3. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Farrar shall pay a civil penalty of **\$50** for violating Minn. Stat. § 211A.02.

4. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Goggin shall pay a civil penalty of **\$100** for violating Minn. Stat. §§ 211A.02, 211B.15.

5. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Kliewer shall pay a civil penalty of **\$50** for violating Minn. Stat. § 211A.02.

²³ Complaint at 32.

²⁴ See Penalty Matrix.

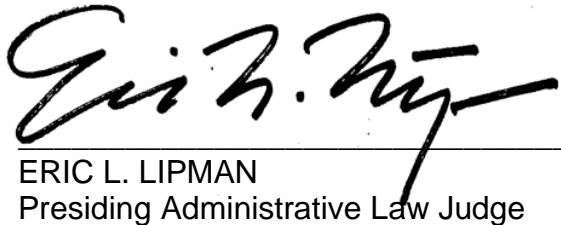
²⁵ See Penalty Matrix.

6. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Seifert shall pay a civil penalty of **\$50** for violating Minn. Stat. § 211A.02.

7. By **4:30 p.m. on Friday, February 24, 2023**, Respondent Snyder shall pay a civil penalty of **\$50** for violating Minn. Stat. § 211A.02.

8. The penalties shall be paid by check made to the order of: "Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number OAH 8-0325-38828, should be included on the check.

Dated: February 3, 2023


ERIC L. LIPMAN
Presiding Administrative Law Judge


JAMES E. LAFAVE
Administrative Law Judge


KRISTIEN R. E. BUTLER
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

In order to encourage greater care by candidates and committees in the development of campaign literature and reporting of campaign finances, the Panel concludes that some penalty should be imposed for the violations in this matter.

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 in such matters.²⁶ The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters.²⁷ It reads as follows:

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.²⁸

In the view of the Panel, the matrix phrases that best describe the misconduct in this case was “negligent, ill-advised and ill-considered,” and that the shortcomings had little impact on the electoral process or the choices of voters. The careful balancing in this opinion best supports the purposes of the Fair Campaign Practices Act.

E. L. L., J. E. L., K. R. E. B.

²⁶ See Penalty Matrix (<https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp>).

²⁷ See *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).

²⁸ *Id.*