

November 12, 2024

**VIA EMAIL & US MAIL**

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**VIA EMAIL & US MAIL**

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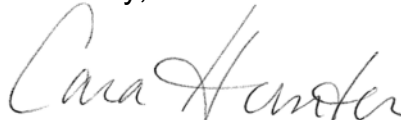
**Re: *In the Matter of Carol A. Overland (Gary Iocco)*  
OAH 21-0325-40437**

Dear Parties:

Enclosed and served upon you please find the **PRIMA FACIE DETERMINATION AND ORDER FOR PREHEARING CONFERENCE** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7970, [cara.hunter@state.mn.us](mailto:cara.hunter@state.mn.us), or via facsimile at (651) 539-0310.

Sincerely,



CARA HUNTER  
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Carol A. Overland,  
Complainant,

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION AND  
ORDER FOR PREHEARING  
CONFERENCE**

vs.

Gary Iocco,  
Respondent.

On November 6, 2024, Carol A. Overland (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Gary Iocco (Respondent) violated provisions of the Fair Campaign Practices and Finance Acts<sup>1</sup> with respect to placement of a rooftop campaign sign on corporate property for less than fair market value, in Red Wing, Minnesota, that was previously erected as part of Respondent's campaign for Mayor of Red Wing.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint establishes prima facie violations of Minn. Stat. §§ 211A.02 and 211B.15, subd. 2(b). For the reasons detailed in the Memorandum below this matter will proceed to a prehearing conference.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN** that this matter is scheduled for a prehearing conference to be held before the undersigned Administrative Law Judge at **1:30 p.m. on December 9, 2024**. The prehearing conference will be held by telephone, and the parties must call in for the conference. At the appointed time, the parties are directed to call **1-651-395-7448** and, when prompted, enter conference code: **585 748 644#**.

At the prehearing conference, the Judge will address issues related to the hearing, including scheduling the hearing date, identifying the issues to be resolved, and discussing the number of potential witnesses and exhibits. The Judge will also address whether the matter may be disposed of on a written record without an evidentiary hearing.

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.

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<sup>1</sup> Minn. Stat. §§ 211A.06, 211B.015 (2024).

To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call 651-361-7900.

**A failure by any party to participate and appear by telephone at the prehearing conference may result in a finding of default, and the Complaint may be dismissed or the case disposed of pursuant to Minn. Stat. § 211B.35, subd. 2 (2024).**

Dated: November 12, 2024

  
KIMBERLY MIDDENDORF  
Administrative Law Judge

## MEMORANDUM

The Complainant focuses on a rooftop campaign sign that read, “Gary locco for Mayor,” located on a building adjacent to Highway 61 in Red Wing, Minnesota.<sup>2</sup> Gary locco was a candidate in the mayoral race in the general election that took place on November 5, 2024. The sign, and the underlying claims in the Complaint, were initially addressed in a prior complaint filed by Complainant on September 11, 2024 (Complaint #1).<sup>3</sup> Respondent was dismissed from the prior matter after the Complainant failed to appear for the probable cause hearing.<sup>4</sup> The sign was taken down, and Complainant requested that the Complaint be dismissed.<sup>5</sup>

The allegations in this second Complaint (Complaint #2) are that Respondent failed to remedy the underlying violations of Minn. Stat. §§ 211A.02 and 211B.15, subd. 2(b), resulting in the Complainant initiating this second case.<sup>6</sup> The alleged facts remain the same: Respondent allegedly accepted a below-market lease for the rooftop sign from a corporation, and then failed to correct the August 5, 2024 report to acknowledge the actual value of the prohibited corporate donation.

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<sup>2</sup> Compl. Form for Violations of the Fair Campaign Prac. Act or Campaign Fin. Act (Complaint) at 3-7 (Nov. 6, 2024).

<sup>3</sup> See *In re Carol A. Overland v. Gary locco, et. al.*, No. 21-0325-40299 (Minn. Office Admin. Hearings, Sept. 11, 2024).

<sup>4</sup> *Id.*, THIRD ORDER FOR PROBABLE CAUSE HEARING (Oct. 14, 2024).

<sup>5</sup> *Id.* at ORDER FOR DISMISSAL (OCT. 16, 2024).

<sup>6</sup> Complaint at 2.

## I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient facts to show that a violation of law has occurred.<sup>7</sup> 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.<sup>8</sup>

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in a complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

## II. Financial Reports (Minn. Stat. § 211A.02)

Minn. Stat. § 211A.02 requires any candidate “who receives contributions or makes disbursements of more than \$750 in a calendar year” to submit financial reports.<sup>12</sup> Pursuant to subdivision 2 of that statute, a candidate must report “the total amount of contributions and disbursements for the period from the last previous report to five days before the current report is due” and “the name, address, and employer, or occupation if self-employed, of any individual or committee that during the year has made one or more contributions that in the aggregate exceed \$100, and the amount and date of each contribution.”<sup>13</sup>

“Contributions” are broadly defined as “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.”<sup>14</sup> “Contribution” does not include a service provided without compensation by an individual.<sup>15</sup> A lease of property for less than fair market value would, under this definition, constitute a contribution that must be reported accurately.

The Complainant alleges that the \$1.00 reported by Respondent on the August 5, 2024 campaign finance report constitutes an in-kind donation, and that Respondent failed to report that contribution at its fair market value.<sup>16</sup> The Judge finds that these facts, taken as true, are sufficient to make a prima facie case for a violation of Minn. Stat. § 211A.02.

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<sup>7</sup> Minn. Stat. § 211B.32, subd. 3 (2024).

<sup>8</sup> *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.*, 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>9</sup> *Id.*

<sup>10</sup> *Abrahamson v. St. Louis Cty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).

<sup>11</sup> *Barry*, 781 N.W.2d at 902.

<sup>12</sup> Minn. Stat. § 211A.02, subd. 1(a) (2024).

<sup>13</sup> *Id.* at subd. 2.

<sup>14</sup> Minn. Stat. § 211A.01, subd. 5.

<sup>15</sup> Minn. Stat. § 211A.01, subd. 5.

<sup>16</sup> Complaint at 6-7; Exhibit A.

### **III. Prohibited Corporate Contributions (Minn. Stat. § 211B.15)**

Complainant contends that the below-market lease was a contribution made by a corporation, specifically, the Dehn Oil Company.<sup>17</sup> 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 nomination, election, or appointment to political office.”<sup>18</sup> Additionally, a political party, organization, committee, or individual “may not accept a contribution or an offer or agreement to make a contribution that a corporation is prohibited from making” by that same statute.<sup>19</sup>

For the purposes of this prima facie determination, the Complainant has alleged sufficient facts to state a prima facie case that Respondent accepted a prohibited corporate donation in violation of Minn. Stat. § 211B.15, subd. 2(b).

### **IV. Conclusion**

The Complainant established prima facie violations of Minn. Stat. §§ 211A.02, subd. 2, and 211B.15, subd. 2(b). These claims will proceed to a prehearing conference.

**K. J. M.**

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<sup>17</sup> Complaint at 6-7; Exhibit A.

<sup>18</sup> Minn. Stat. § 211B.15, subd. 2(a).

<sup>19</sup> *Id.*, subd. 2(b).