

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Dan Haglin,

Complainant,

vs.

Robert Cunniff and Cunniff for
State House Committee,

Respondents.

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

TO: Above Parties on the Attached Service List:

On October 18, 2012, Dan Haglin filed a Campaign Complaint with the Office of Administrative Hearings alleging that Robert Cunniff and the Cunniff for State House Committee violated Minnesota Statutes § 211B.04 of the Fair Campaign Practices Act in connection with Mr. Cunniff's 2012 campaign for the Minnesota House of Representatives District 8B seat.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minn. Stat. § 211B.04. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that a probable cause hearing regarding the alleged violation of Minn. Stat. § 211B.04 shall be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m.** on **Thursday, October 25, 2012.** The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter **544-169-9282#** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. 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, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law

Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Cochran at JeanneCochran@state.mn.us or faxed to 651-361-7936.

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 Minnesota Statutes § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order 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).

Dated: October 22, 2012

s/Jeanne M. Cochran
JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

Robert Cunniff is a candidate for the Minnesota House of Representatives for District 8B.¹ The Complaint alleges that on or about October 3, 2012, Mr. Cunniff's campaign committee began running radio advertisements promoting his campaign.

Dan Skogen is a candidate for the Minnesota Senate for District 8. The Complaint alleges that on or about October 3, 2012, Mr. Skogen began running radio advertisements supporting his campaign. Mr. Skogen and/or his campaign committee purchased the radio advertising time from radio stations in Alexandria.²

¹ Minnesota House District 8B includes northeast Douglas and eastern Otter Tail counties.

² Complaint Exs. B-D.

The Complaint alleges that one of the radio advertisements that began airing in early October is a joint political communication advocating for the election of both Mr. Cunniff and Mr. Skogen. The Complaint asserts that the advertisement was prepared by Mr. Cunniff and that Mr. Cunniff narrates the joint advertisement. In that advertisement, Mr. Cunniff identifies himself and encourages listeners to support his candidacy as well as the candidacy of Mr. Skogen. At the end of the advertisement a disclaimer states that it was paid for by candidate Skogen's campaign committee.³ It does not state that it was paid for by Mr. Cunniff's campaign committee.

Minnesota Statutes Chapter 10A governs campaign financial reporting for candidates seeking election to state constitutional and legislative offices.⁴ Under Minn. Stat. § 10A.27, subd. 9, candidates are prohibited from accepting a contribution from another candidate's campaign committee unless that committee is being dissolved. Since Mr. Skogen is a candidate for the Minnesota Senate and his campaign committee is not in the process of being dissolved, Mr. Cunniff and his committee are prohibited from accepting a contribution from Mr. Skogen's committee. Therefore, the Complainant asserts that the disclaimer on the radio advertisement was incorrect and should have indicated that it was prepared and paid for by Mr. Cunniff's committee as well as Mr. Skogen's committee.

The Complaint maintains that Mr. Cunniff and his campaign committee were responsible for the preparation and dissemination of the radio advertisement and that they violated Minn. Stat. § 211B.04 by not including a disclaimer indicating that it was "paid for by the Cunniff for State House Committee."

Legal Standard

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁵ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁶ 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 chapter 211A or 211B.⁷

Minnesota Statutes § 211B.04 (disclaimer requirement)

Campaign material is defined to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."⁸ Campaign material

³ Complaint Ex. A (transcription of radio advertisement).

⁴ The Minnesota Campaign Finance and Public Disclosure Board has jurisdiction over violations of Chapter 10A.

⁵ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁶ *Id.*

⁷ *Id.*

⁸ Minn. Stat. § 211B.01, subd. 2.

is required, under Minn. Stat. § 211B.04,⁹ to include a disclaimer identifying the name and address of the person or committee that prepared and disseminated the material. In the case of broadcast media, the required form of disclaimer is: “Paid for by the _____ committee.”¹⁰ Any person who prepares or disseminates campaign material that does not prominently include a disclaimer substantially in the form provided in § 211B.04 is in violation of the statute.

The Administrative Law Judge concludes that the Complaint does allege sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.04 as against the Respondents.

This matter will proceed to a probable cause hearing on the alleged violations of Minn. Stat. § 211B.04 as indicated in this Order.

J.M.C.

⁹ Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2.

¹⁰ Minn. Stat. § 211B.04(c).