

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jay Cyril Mastrud

Complainant

v.

**FINDING OF NO PROBABLE CAUSE,  
ORDER OF DISMISSAL**

Keith Ellison,

Respondent

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Steve M. Mihalchick on September 20, 2004, by telephone to consider a complaint filed by Jay Cyril Mastrud on September 13, 2004 (the Complaint), alleging campaign violations by Keith Ellison.

Complainant Jay Cyril Mastrud, 1336 Russell Ave N, Minneapolis, MN 55411 appeared on his own behalf. Respondent Keith Ellison, 1629 Bryant Ave N, Minneapolis, MN 55411 appeared on his own behalf.

Based upon the record and all of the proceedings in this matter, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

**FINDINGS AND CONCLUSIONS**

1. The Web site maintained by Respondent's campaign committee complied with the disclaimer requirement of Minn. Stat. § 211B.04 in that it prominently included the name and address of Respondent's committee and despite the fact that it did not, until the last few days, contain the words, "Prepared and paid for by . . ."

2. The flyer distributed by Respondent inviting the public to constituent meetings during the past legislative session at which Respondent and another legislator reported on legislative activities, and that was paid for by the House of Representatives, was not "campaign material" as defined by Minn. Stat. § 211B.01 and, therefore, was not subject to the disclaimer requirement of Minn. Stat. § 211B.04.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. There is no probable cause to believe that Respondent violated Minn. Stat. § 211B.04 as alleged in the Complaint.

2. The Complaint is **DISMISSED**.

Dated: September 21, 2004

s/Steve M. Mihalchick  
STEVE M. MIHALCHICK  
Administrative Law Judge

### **NOTICE OF RECONSIDERATION RIGHTS**

Minn. Stat. § 211B.34, subd. 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under section 211B.35 within five business days after granting the petition.

### **MEMORANDUM**

Respondent is the current State Representative in District 58B and seeking reelection. Complainant is also running for the seat. Complaint alleges that Respondent violated Minn. Stat. § 211B.04 because there were no disclaimers on Respondent's Web site or upon a flyer that Respondent distributed for constituent meetings he held.

Respondent's Web site, [www.keithellison.org](http://www.keithellison.org), is paid for by his campaign committee, the Committee to Elect Keith Ellison, which is now also referred to as the Committee to Reelect Keith Ellison. Until the Complaint was filed, none of the pages on the site contained the words, "Paid for by The Committee to Elect Keith Ellison." That statement is now contained at the bottom of the home page and "contact us" page. Since before the Complaint, the site has had a "donate" page, accessible from a prominent "donate" button near the top of the home page. On the donate page, the committee requests help in the form of volunteering and donations. It lists methods of donating and then states:

If you prefer, you can send your check or money order, made out to "Committee to Reelect Keith Ellison", to

Kim D. Ellison, Treasurer  
Committee to Reelect Keith Ellison  
1629 Bryant Avenue North  
Minneapolis, MN 55411

The site has also had a "contact us" page accessed from prominent buttons on the home page. It states, in part:

**Contact us**

You can contact Keith by phone at 612.588.9122 or by email at keith@KeithEllison.org

You can also volunteer to be part of Keith's reelection campaign. You can get in touch with Keith's Election Committee at:

email us at: info@KeithEllison.org  
call us at: 612.529.1412  
or write us at: Committee to Elect Keith Ellison  
1629 Bryant Avenue North  
Minneapolis, MN 55411

Campaign Bataala-ra McFarlane  
co-managers: Makeda Zulu Gillespie

Thank you for your support.

For questions/comments about this site, please email our webmanager

Minn. Stat. § 211B.04 states, in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, .....(address)" for material prepared and paid for by a principal campaign committee, . . .

The name and address of both Respondent and his committee are prominently displayed on the Web site. Complainant argues that, nonetheless, it is not absolutely clear who prepared and paid for the site. The statute itself only requires substantial compliance. Anyone looking at the site can see that the committee is the organization asking for money and volunteers to support Respondent and is the organization that, along with Respondent himself, prepared the content of the site. And the site lists all

the regular and email addresses and phone numbers necessary for anyone who might have questions about the site. The site complies with the requirements of Minn. Stat. § 211B.04.

Last spring, during the past legislative session, Respondent conducted a number of meetings with constituents. He prepared and distributed several 5 ¼ by 8 ½ inch flyers to promote the meetings. The flyers were paid for by the House of Representatives. They were distributed about the District. They have a picture of Respondent and state that he “meets with constituents on the Second Saturday of each month from 9:30 a.m. – 11:30 a.m.,” at a certain place and that he is joined at each meeting by the State Senator from the District. The flyers have a drawing of the Capitol dome and end by inviting people to come for a few minutes or for the full two hours. There is no information on the flyer as to who printed or paid for the flyers.

Respondent had the Second Saturday meetings to talk about activities at the Legislature and maintain constituent contact. He ended the meetings when the Legislature adjourned in mid-May. Some of the flyers were left out in various locations, but his committee has picked them up since the Complaint was filed.

“Campaign material” is now defined as 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.<sup>[1]</sup>

The Second Saturday flyer contains nothing intended to influence an election; it only invites people to a meeting. So it is not campaign material. In some sense, any material distributed by an incumbent can be viewed as having some impact on any subsequent election, if only by increasing name recognition. But legislators must be allowed talk to their constituents and invitations to such talks must also be allowed without unnecessary restrictions. In this case, the meetings and flyers were appropriate to the legislative session and quite remote from the next election. The flyers were not campaign material.

S.M.M.

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<sup>[1]</sup> Minn. Stat. § 211B.01 (2004).