

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Eric Mahutga,

Complainant,

v.

Bill Schulz,

Respondent

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

**TO: Eric Mahutga, 7560 Viking Boulevard, N.W., Anoka, MN 55303;
Honorable Bill Schulz, 18509 Baugh Street, N.W., Elk River, MN 55330.**

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 19, 2012, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on the same day.

The Complaint alleged that Mr. Schulz, a candidate for Mayor of the City of Nowthen, Minnesota, violated Minn. Stat. § 211B.11. Specifically, the Complaint asserts that Mr. Schulz parked a truck that had a magnetic sign on the passenger-side door which urged Schulz's re-election as Mayor, within 100 feet of a polling site. The Complaint alleges that the truck with the campaign sign was parked near the polling site on October 1, November 1 and November 3, 2012.

Following a review of the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.11 – and that Mr. Mahutga should be permitted to proceed to a probable cause hearing on this claim.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **11:00 a.m.** on **Friday, November 30, 2012.** The hearing will be held by “meet me” telephone conference call. At the appointed hour, the parties are directed to:

- (a) Telephone 1-888-742-5095
- (b) Enter the Conference Code: 566-872-4759#

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us 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 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. By **4:30 p.m.** on **Thursday, November 29, 2012**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party. Documents may be faxed to Judge Eric L. Lipman at (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 Minn. Stat. § 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 Minn. Stat. § 211B.34, subd. 3.

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. 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: November 26, 2012

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

To establish a *prima facie* violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.¹

¹ Minn. Stat. § 211B.32, subd. 3.

The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B.²

For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.³ 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.⁴

Minn. Stat. § 211B.11 prohibits the posting of campaign signs immediately adjacent to polling locations on the day of a primary or general election. The statute provides in part:

A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, or anywhere on the public property on which a polling place is situated, **on primary or election day** to vote for or refrain from voting for a candidate or ballot question.... ***This section applies to areas established by the county auditor or municipal clerk for absentee voting as provided in chapter 203B.***⁵

As noted above, the Complaint alleges that the truck with the sign was parked near the polling site on October 1, November 1 and November 3, 2012. These dates are not days on which a state primary or general election was held. The state primary occurred on August 14, 2012 and the general election occurred on November 6, 2012.

However, Saturday, November 3, 2012, was a day on which in-person absentee voting was authorized under Minn. Stat. § 203B.85. The Complaint implies that the building that is pictured in the photograph which accompanies the filing was a polling site. Additionally, it is possible that this building was a site designated by the County Auditor for the receipt of absentee ballots during the 46-day period that precedes the general election.⁶ To learn whether these facts are true, or would lead a cautious person to believe them to be true, must await a probable cause hearing. Yet today, resolving all of these doubts in Mr. Mahutga's favor, he is entitled to proceed to a hearing on his claim.

E. L. L.

² *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. App. 2010).

³ *Id.*

⁴ *Id.*

⁵ Minn. Stat. § 211B.11, subd. 1 (emphasis added).

⁶ Minn. Stat. § 203B.081.