

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mike Trehus,

Complainant,

vs.

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

The City of Lino Lakes, *et. al.*,

Respondents.

The above-entitled matter came on for an evidentiary hearing at the Office of Administrative Hearings on January 28, 2014, before a panel of three Administrative Law Judges: Steve M. Mihalchick (Presiding Judge), Timothy O'Malley, and LauraSue Schlatter. The Office of Administrative Hearings' record closed on April 10, 2014, with the filing of the parties' post-hearing briefs.

Erick G. Kaardal, Mohrman, Kaardal and Erickson, P.A., appeared for Mike Trehus (Complainant).

Joseph J. Langel and Christian R. Shafer, Ratwik, Roszak & Maloney, P.A., appeared for the City of Lino Lake, *et al.*, (Respondents).

STATEMENT OF ISSUES

1. Are the Respondents a "committee" for purposes of Minn. Stat. ch. 211A?
2. If the Respondents are a "committee," did they make disbursements of more than \$750 and fail to file campaign financial reports in violation of Minn Stat. § 211A.02?

SUMMARY OF CONCLUSIONS

The Panel concludes that the Complainant has established that the Respondents are a committee and failed to file campaign financial reports in violation of Minn. Stat. § 211A.02.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

Background

1. Lino Lakes (City) is a home rule charter city of approximately 20,505 residents located in southeastern Anoka County.¹ The Lino Lakes Charter was adopted in 1983.²

2. The Complainant is a resident of Lino Lakes and served on the City's Charter Commission from 1996 until 2013.³

3. The Charter Commission is a statutory body that works with the City to administer and amend the City Charter.⁴

4. On October 8, 2013, the Complainant filed this Fair Campaign Practices Complaint with the Office of Administrative Hearings. The Complaint alleged that the City, acting through various officials, promoted passage of a proposed charter amendment in the November 2012 election, failed to file campaign finance reports in violation of Minn. Stat. § 211A.02, disseminated false campaign material in violation of Minn. Stat. § 211B.06, and used its official authority to compel political activity in violation of Minn. Stat. § 211B.09.⁵

5. The Complaint was initially assigned to Administrative Law Judge Eric L. Lipman. By Order dated October 11, 2013, Judge Lipman determined that the Complaint set forth a *prima facie* violation of Minn. Stat. § 211A.02, but that it failed to set forth *prima facie* violations of either Minn. Stat. §§ 211B.06 or 211B.09. The section 211B.06 and section 211B.09 allegations were dismissed.⁶

6. By Order dated November 19, 2013, this matter was reassigned to Administrative Law Judge Steve Mihalchick. Following the denial of Complainant's motion for reconsideration,⁷ an evidentiary hearing was held on January 28, 2014, before a panel of three Administrative Law Judges to consider the remaining section 211A.02 allegation.

¹ Respondents' Ex. 1; Complainant's Ex. 7. A charter is a municipal corporation's legal framework. It is similar to a constitution and is adopted by popular vote of the citizenry.

² Respondents' Exs. 1 and 3.

³ Testimony of Mike Trehus at 44-45.

⁴ See, generally, Minn. Stat. Chap. 410.

⁵ The Complaint names the "City of Lino Lakes and/or its officials and/or employees." The Panel refers to the "City" and its employees collectively as the "City." No specific City employee or official was named in the Complaint and it is assumed that all of the employees and officials involved in this matter were acting in their official capacities on behalf of the City.

⁶ *Trehus v. City of Lino Lakes*, Docket No. 8-0325-31026, PRIMA FACIE VIOLATION DETERMINATION AND ORDER FOR EVIDENTIARY HEARING (Oct. 11, 2013).

⁷ *Trehus v. City of Lino Lakes*, Docket No. 48-0325-31026, ORDER DENYING REQUEST FOR RECONSIDERATION (Dec. 11, 2013).

Road Repair and Reconstruction

7. Most Minnesota cities fund public improvements, such as road reconstruction and utility installation, with a combination of special assessments (taxes levied on the benefited private property) and general fund dollars.⁸

8. Special assessments are governed by Minn. Stat. ch. 429. Chapter 429 contains various procedures that a city must follow before levying a special assessment. Cities must, for example, hold two separate hearings prior to levying an assessment.⁹ Cities must provide published notice of each hearing and send a written notice to affected property owners.¹⁰

9. In December 1996, the engineering consulting firm BRW, Inc. (BRW) prepared a report to assist the City with a street reconstruction program. BRW analyzed the condition of the City's streets and made recommendations for managing the City's roadway system.¹¹ The report identified 63 segments of City streets as being in fair to poor condition, with the streets in the southern portion of the City generally in the poorest condition.¹²

10. The 1996 report proposed a street reconstruction program that identified four categories of roadway rehabilitation: (1) "Total reconstruction," which involves the complete removal and replacement of the existing pavement, curb and gutter; (2) "Milling and Overlay," which consists of grinding up or "reclaiming" the existing bituminous pavement, turning it into gravel and paving a new surface on top; (3) "Overlay," which includes the preparation and placement of two inches of a bituminous layer over existing roadways that are beginning to show some distress and deterioration; and (4) "routine maintenance," which involves crack sealing and isolated patching on roadways that are currently in good condition.¹³

11. In 2004, the engineering firm TKDA presented a report to the City Council analyzing the condition of the City's roadways. The City had approximately 84 miles of roadways in 2004.¹⁴ According to TKDA's Pavement Condition Report, 63 percent of the City's roadways were in "adequate" condition in 2004, requiring sealcoating maintenance; 24 percent of roadways were "marginal," requiring overlays; and 13 percent of roadways were in the "problem" category, requiring complete or total reconstruction.¹⁵

12. The 2004 TKDA Pavement Condition Report concluded that the overall condition of the City's roadways would further decline if the City continued its current maintenance practices over the next 10 years, with 28 percent of the City's roadways

⁸ Respondents' Ex. 1.

⁹ Minn. Stat. §§ 429.031, 429.061.

¹⁰ *Id.*

¹¹ Ex. 6.

¹² *Id.* at 3.

¹³ Respondents' Ex. 6 at 4-6; Testimony of Jason Wedel at 220-224.

¹⁴ Respondents' Ex. 7. (By 2013, the City had approximately 95 miles of roadways. See, Ex. 10.)

¹⁵ Respondents' Ex. 7 at 2; Test. of J. Wedel at 227-233.

being in the “problem” category, requiring complete reconstruction at a cost of \$39 million in 2014.¹⁶ If, however, the City increased roadway maintenance and reconstruction resources, the report concluded that roadways could be improved to 81 percent “adequate” for the next 10 years at a cost of \$28 million.¹⁷

13. In an updated Pavement Management Report issued in July 2013, the consulting firm WSB & Associates, Inc., found 72.5 percent of City roadways to be in “adequate” condition, requiring preventative maintenance; 14.4 percent of City roadways to be in “marginal” condition, requiring preservation; and 13.2 percent of City roadways to be in “poor” condition, requiring complete reconstruction.¹⁸ The report concluded that continuing with current maintenance practices would result in 18.5 percent of the City’s roadways requiring complete reconstruction in the next 10 years at a cost of \$45.7 million in 2023.¹⁹

14. The City routinely performs overlaying and seal coating of roadways as part of its pavement management program. These projects are funded each year through the property tax levy as part of the City’s annual budget.²⁰ Unlike road reconstruction projects, road maintenance projects have a minimal effect on property tax rates. These projects are less costly and have a shorter term benefit.²¹

15. About 20 percent of the City’s roadways are eligible for municipal state aid street funds for street repair.²² These funds are provided to the cities as part of their share of the annual state gas tax revenue. This money, however, may be used only on state-aid designated streets.²³ In such cases, since no general funds are expended, a city-wide referendum is not required.²⁴

16. To repair and reconstruct the other 80 percent of the City roadways that are not eligible for municipal state aid, the City needs to find a funding source. If the City proposes to issue bonds and finance the project in part by special assessments, the Charter provisions require a referendum be held.²⁵

17. There are sound fiscal and public service reasons for repairing and reconstructing local roads in a systematic and timely manner.²⁶

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Ex. 10 at 2; Test. of J. Wedel at 233-236.

¹⁹ *Id.*

²⁰ Respondents’ Ex. 8 at 2; Complainant’s Ex. 7; Test. of Michael Grochala at 287.

²¹ Complainant’s Ex. 7.

²² Test. of M. Grochala at 251.

²³ *Id.*

²⁴ Test. of M. Grochala at 251-252.

²⁵ *Id.* at 251-254.

²⁶ Test. of Mayor Jeff Reinert at 210-212; Test. of J. Wedel at 225-233; Test. of M. Grochala at 282; Respondents’ Ex. 10.

18. The City budgeted \$467,250 in 2012 for road maintenance seal coating and overlay projects.²⁷

19. The City's 2014 road maintenance budget for seal coating and overlay projects is \$490,000.²⁸

Lino Lakes' Charter

20. Lino Lakes is the only city in Minnesota that has a charter provision requiring a citywide referendum if the City proposes using a combination of special assessments and general fund dollars to fund improvements.²⁹

21. Under the City's current Charter, if a public improvement project is proposed that is not funded 100 percent by special assessments and instead uses a combination of special assessments and general fund dollars, the City must hold a public hearing on the proposed project and provide notice to affected property owners 14 days before that hearing. In the notice, the City must provide an estimate of individual and total assessment amounts for the project. Affected residents have 60 days to petition for or against the project. During that 60 day period, the City may not take "any further action."³⁰

22. If more than 50 percent of affected residents petition in support of the project, the Charter requires passage of a city-wide referendum for the project to proceed.³¹

23. If a majority of voters do not approve the project during the election, the City cannot proceed with the project or propose the project again for at least one year.³²

24. Between 1997 and 2011, the City held three referendums to reconstruct certain aging local roads. All three referendums failed.³³

Proposed Charter Amendment

25. In 2007, a Citizen's Task Force reviewed the City's Charter provisions pertaining to public improvements and drafted a report on pavement management policies and recommendations.³⁴ The Citizen's Task Force recommended that Section 8 of the City Charter be amended to remove the citywide referenda required for public improvement and reconstruction projects. The Citizen's Task Force proposed, instead,

²⁷ Complainant's Ex. 7.

²⁸ Ex. 10 at 2; Test. of M. Grochala at 249.

²⁹ Test. of M. Grochala at 262; Respondents' Ex. 9 at 6; Complainant's Ex. 7.

³⁰ Respondents' Ex. 3 at 20; Test. of M. Grochala at 270.

³¹ Respondents' Ex. 1; Test. of M. Grochala at 254, 266-270; Test. of M. Trehus at 48, 54-55.

³² Respondents' Ex. 3 at 20. Due to other provisions in the Charter, this one year waiting period requires the City to wait at least two years before putting the referendum to another city-wide vote.

³³ Test. of M. Grochala at 274.

³⁴ Respondents' Ex. 9.

that those directly affected by the project have the final say as to whether an improvement project is approved.³⁵

26. In 2012, the City Council considered amending Chapter 8 of the City Charter as it relates to public improvements and special assessments.³⁶ City staff reviewed the 2007 Citizen's Task Force report and worked with the City's legal consultant to draft revisions to the process of approving public improvement projects such as local road reconstruction.³⁷

27. Ultimately, the City proposed amending Chapter 8 of the Charter so that a citywide referendum would no longer be automatically required if the City proposed to use special assessments and general fund dollars to fund a public improvement.³⁸

28. At the March 12, 2012, City Council meeting, Michael Grochala, the City's Community Development Director, summarized the proposed ordinance (Ordinance No. 05-12) and its amendments to Chapter 8 of the City Charter.³⁹

29. Under the City's proposed amendment to Chapter 8 of the Charter, a public hearing would still be required to be held on proposed public improvement projects. However, unlike the current process, residents opposed to the project would have to file written objections with the city clerk prior to the hearing or present such objections at the hearing. The 60 day period in which to petition for or against the proposal was eliminated. If more than 50 percent of the property owners abutting the named streets petitioned against the project, the amended process would require the City to hold a second "special" hearing to take additional testimony. The second hearing would be required to be held at least 45 days after the first hearing and the City would be required to publish notice of the second hearing at least 10 days prior to the date of the hearing. Affected residents would then have an additional 30 days after the second hearing to stop the project by petition. If, however, more than 50 percent of residents petitioned in support of the project after the initial hearing, the project could proceed unless a requisite number of registered city voters petitioned for a city-wide referendum within 30 days of the initial hearing.⁴⁰ The City refers to the provision allowing residents to petition for a city-wide referendum as a "reverse referendum."⁴¹

30. The first reading of the proposed ordinance was approved at the March 12, 2012 City Council meeting, and the Council referred the proposed ordinance to the City's Charter Commission for its review.⁴²

³⁵ Respondents' Ex. 9 at 9; Test. of M. Grochala at 263.

³⁶ Complainant's Ex. 2 (March 12, 2012, City Council Agenda Item 6B).

³⁷ Respondent's Ex. 4; Complainant's Ex. 2; Test. of M. Grochala at 263-264.

³⁸ Complainant's Ex. 6; Test. of M. Grochala at 263.

³⁹ Ex. 4.

⁴⁰ Respondents' Exs. 1 and 4; Complainant's Exs. 4, 6 and 7; Test. of M. Grochala at 263-273. The proposed amendment would have required 12 percent of registered voters from the last general municipal election to petition for a citywide referendum.

⁴¹ Test. of M. Grochala at 263, and 278-279.

⁴² Complainant's Ex. 2.

31. On April 12, 2012, the Charter Commission approved a resolution requesting an additional 90 days for review of the City Council's proposed ordinance.⁴³

32. On July 12, 2012, the Charter Commission voted to reject the proposed ordinance.⁴⁴

33. At the August 13, 2012, City Council meeting, Mr. Grochala reported on the proposed amendment of Chapter 8 of the City Charter.⁴⁵ At the close of the meeting, the City Council approved a resolution (Resolution No. 12-76) calling for a special election on the proposed Charter amendment.⁴⁶

34. Pursuant to the resolution calling for the special election, the City Clerk prepared the ballot, which asked voters of the City the following question:

Shall chapter 8 of the city of Lino Lakes charter be amended as described below?

Chapter 8 is amended to provide that the city may undertake public improvements financed in whole or in part with special assessments generally using the procedures in state law, except that: (a) if more than 50% of the property owners abutting the named streets file a timely objection, the city must hold a second meeting to take additional testimony; (b) if the council orders the improvement after the second meeting, more than 50% of the affected owners may stop the improvements by filing objections within 30 days after the city council action; and (c) if the cost of any improvement is to be paid in part from ad valorem taxes, the improvement is subject to city-wide referendum if a timely petition is filed by registered voters equal to at least 12 percent of the votes cast in the last general municipal election, The amendment also eliminates three special zones where state law special assessment rules apply; instead chapter 8 as amended applies throughout the city.⁴⁷

City's Flyer

35. In October 2012, the City's Economic Development Coordinator, Mary Devine, prepared a one page (two-sided) flyer about the proposed charter amendment ballot question and the City's reasons for proposing changes to the charter.⁴⁸

⁴³ Complainant's Ex. 6 at 4-5.

⁴⁴ Complainant's Ex. 5; Test. of M. Trehus at 49. (Ten members of the Commission voted in favor of the motion to reject the proposed ordinance and two members opposed the motion. Three other members were absent on the day of the vote.)

⁴⁵ Complainant's Ex. 6.

⁴⁶ *Id.*

⁴⁷ Complainant's Ex. 6.

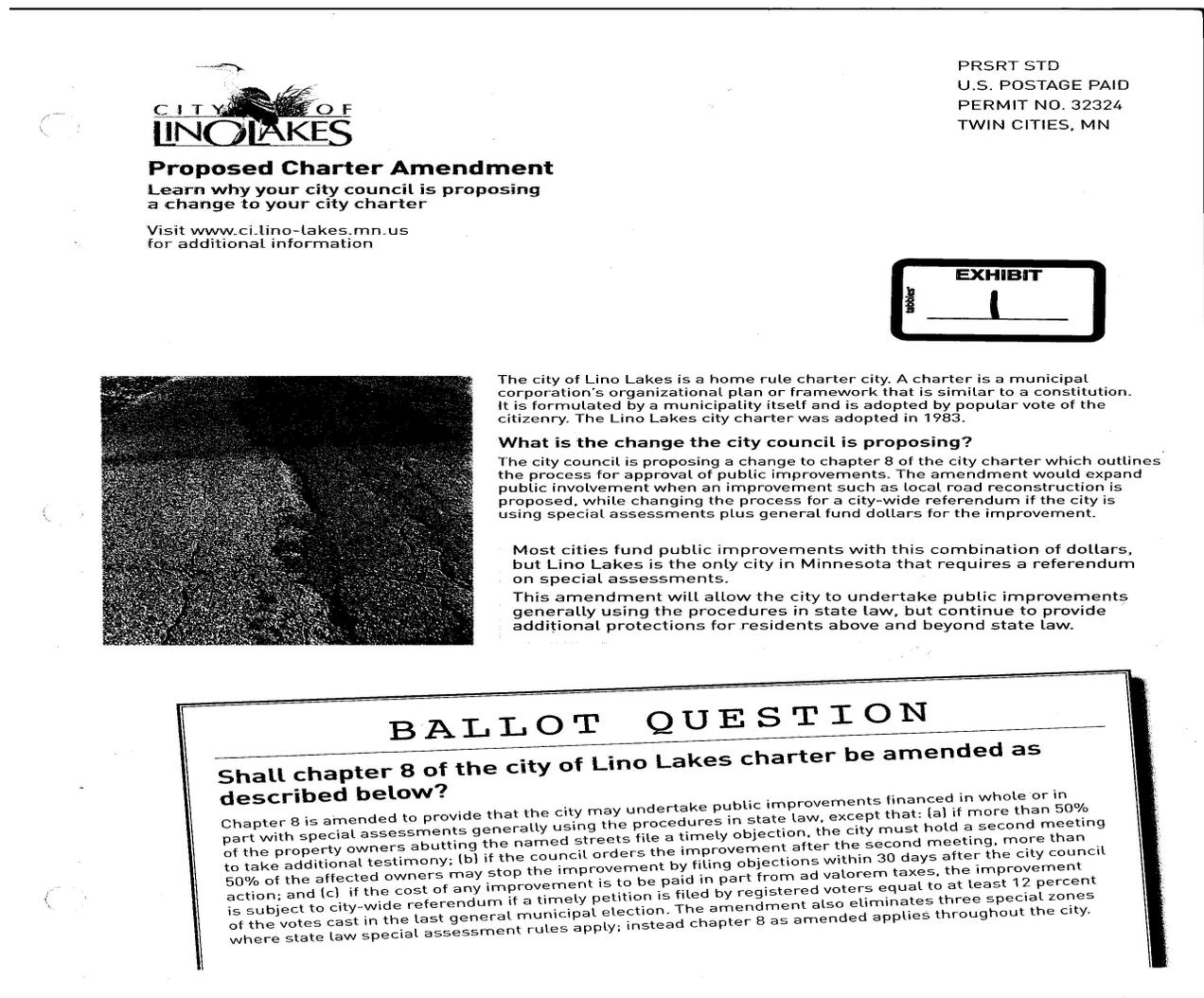
⁴⁸ Respondents' Ex. 1; Test. of M. Grochala at 135.

36. Mr. Grochala reviewed and approved the flyer and it was distributed to residents of the City prior to the November 6, 2012, election.⁴⁹

37. The City spent approximately \$2,052 to prepare and disseminate the flyer to City residents.⁵⁰

38. Mr. Grochala and Ms. Devine were aware that materials prepared and distributed by the City about the proposed referendum had to be informational and not promotional.⁵¹

39. The flyer included two photos of roads in poor condition with cracked and crumbling pavement.⁵² A scanned copy of the front-side of the flyer appears below:



⁴⁹ *Id.*

⁵⁰ Complainant's Ex. 17.

⁵¹ Test. of M. Grochala at 137-141.

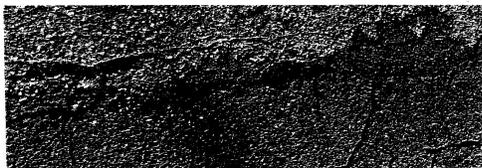
⁵² Respondent's Ex. 1.

40. On the front side of the flyer, the City stated that the proposed change to Chapter 8 of the Charter would “expand public involvement when an improvement such as local road construction is proposed.”⁵³ The City also stated that the proposed amendment would “allow the city to undertake public improvements generally using the procedures in state law, but continue to provide additional protections for residents above and beyond state law.”⁵⁴

41. The phrases “expand public involvement” and “provide additional protections for residents” referred to the additional public hearing and resulting opportunity for additional public input and dialogue with City officials that was provided by the proposed amendment.⁵⁵

42. Below is a scanned copy of the back side of the flyer:

Why is the city council proposing this change?
 When the city charter was adopted in 1983, most of the local streets in Lino Lakes were relatively new. Since then, some local streets have reached a point where normal periodic maintenance has lost its effectiveness, and restoration is necessary.
 Since 1997, the city has held four referendums to reconstruct certain aging local roads. Three have failed. If a referendum fails, the road cannot be reconstructed. The city council recognizes that streets are a major asset to a city and that it's every city's responsibility to keep streets safe and in good condition. A systematic pavement management program is the most cost-effective and efficient way to maintain our city streets.



Will this amendment take away my right to stop a road reconstruction project that I don't want? **No.**

A **YES** vote will amend the city charter
 A **NO** vote will leave the city charter unchanged

PUBLIC IMPROVEMENT PROCESS
 Either neighborhood petitions for, or city council proposes, a public improvement
 A public hearing is held
 Neighborhood has 60 days to petition for or against it

CURRENT CHARTER PROCESS	PROPOSED CHARTER PROCESS
<p>51% of the neighborhood petitions against it</p> <p>Project is stopped</p>	<p>51% of the neighborhood petitions against it</p> <p>Second hearing is held to take additional testimony</p> <p>Neighborhood has an additional 30 days to stop the project by petition</p>
<p>51% of neighborhood petitions for it</p> <p>Charter requires a city-wide referendum for the project to proceed</p>	<p>51% of neighborhood petitions for it</p> <p>Project can proceed unless a requisite number of registered city voters petition for a city-wide referendum within 30 days</p>

Will the passing of this amendment to the charter raise my property taxes? **No.**

Passing the amendment will not increase taxes, however, in the future, rebuilding streets could impact property taxes. If voters do not pass this amendment and referendums continue to fail, over the years, streets eventually will have to be rebuilt anyway. In that case, a combination of special assessments and property taxes can't be used and the city would likely have to rely solely on funds from the general tax levy. Your taxes could potentially be even higher because benefitting property owners will not be assessed and the cost of the project could be directly apportioned to all Lino Lakes residents.

More background information is available at www.ci.lino-lakes.mn.us
 Cable channel 16 will broadcast information about the proposed amendment at noon and 7 p.m. Tuesday through Saturday during October
 If you have questions call community development director Mike Grochala at 651-982-2427 or email michael.grochala@ci.lino-lakes.mn.us

⁵³ Respondent's Ex. 1.

⁵⁴ *Id.*

⁵⁵ Test. of M. Grochala at 265-273.

43. On the back side of the flyer, the City posed questions about the referendum and supplied answers. In response to the question, “Why is the city council proposing this change?” the City provided the following explanation:

When the city charter was adopted in 1983, most of the local streets in Lino Lakes were relatively new. Since then, some local streets have reached a point where normal periodic maintenance has lost its effectiveness, and restoration is necessary.

Since 1977, the city has held four referendums to reconstruct certain aging local roads. Three have failed. If a referendum fails, the road cannot be reconstructed.

The city council recognizes that streets are a major asset to a city and that it’s every city’s responsibility to keep streets safe and in good condition. A systematic pavement management program is the most cost-effective and efficient way to maintain our city streets.⁵⁶

44. In response to the question, “Will the passing of this amendment to the charter raise my property taxes?” the City stated:

Passing the amendment will not increase taxes, however, in the future, rebuilding streets could impact property taxes. If voters do not pass this amendment and referendums continue to fail, over the years, streets eventually will have to be rebuilt anyway.

In that case, a combination of special assessments and property taxes can’t be used and the city would likely have to rely solely on funds from the general levy.

Your taxes could potentially be even higher because benefitting property owners will not be assessed and the cost of the project could be directly apportioned to all Lino Lakes residents.⁵⁷

45. In response to the question, “Will this amendment take away my right to stop a road reconstruction project that I don’t want?” the City stated only: “No.”⁵⁸

46. The backside of the flyer also included a diagram comparing the current charter process with the proposed charter process. The diagram incorrectly indicated that the proposed process retained the 60 day period in which residents could petition for or against a proposed public improvement, when in fact the proposed process eliminated the 60 day petition period.⁵⁹ Instead, under the proposed charter process, residents would be required to file objections to a public improvement project prior to the

⁵⁶ Respondent’s Ex. 1.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

initial hearing or present them at the initial hearing.⁶⁰ The City maintains staff mistakenly placed this inaccurate information in the flyer.⁶¹

47. The City did not state anywhere on the flyer that the proposed amendment would eliminate the 60 day period in which to petition for or against a proposed improvement project.⁶²

48. The City did not state “vote yes” on the amendment or ballot question anywhere on the flyer. The City did state that “a YES vote will amend the city charter” and “a NO vote will leave the city charter unchanged.”⁶³

49. The City did not state anywhere on the flyer that the Charter Commission had voted to reject the proposed ordinance and it did not present the Charter Commission’s position or any other differing or opposing viewpoints on the proposed ordinance.⁶⁴

City’s Website

50. The City maintains a website at www.ci.lino-lakes.mn.us. In September 2012, the City included on its homepage a banner that was highlighted with stars and stripes and colored red, white and blue that stated: “Election 2012 Proposed City Charter Amendment.” A link to information on the proposed City charter amendment was directly under the banner.⁶⁵ That link directed persons to a page entitled “Election 2012 Proposed City Charter Amendment.”⁶⁶

51. The City’s webpage devoted to the proposed City Charter amendment contained the following information above the language of the proposed charter amendment:

The Lino Lakes City Council recently proposed an amendment to the Lino Lakes City Charter that would change the City’s process for funding public improvements, including road reconstruction. The proposed amendment eliminates the need for every local road reconstruction project to go to a citywide vote. Instead, it gives more control to the residents living on the street, while continuing to protect the rights of all residents in Lino Lakes.

The four basic changes to the City Charter proposed in the amendment include:

⁶⁰ Respondents’ Ex. 4.

⁶¹ Respondents’ Post-Hearing Brief at 22.

⁶² Respondents’ Ex. 1.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Test. of M. Trehus at 50-51; Respondents’ Ex. 7.

⁶⁶ *Id.*

- 1) Providing additional opportunity for residents to discuss the size, scope and cost of the project with the City Council before a decision is made to proceed with the project.
- 2) Preserving the neighborhood's right to petition against the improvements and stop the project.
- 3) Creating a 'reverse referendum' process that gives citizens the opportunity to request that the proposed project be put on the ballot for a citywide vote.
- 4) Eliminating the City's three Charter exempt zones, making this new process applicable to all properties in the City.⁶⁷

52. The City's webpage dedicated to the proposed charter amendment did not present the position or concerns of the Charter Commission, or any other individual or group opposed to the proposed amendment.⁶⁸

53. The webpage also included a link to a video of an interview with Mayor Jeff Reinert and Mr. Grochala regarding the proposed Charter amendment that was conducted by and aired on North Metro cable television.⁶⁹ During his interview, Mayor Reinert unequivocally endorsed passage of the charter amendment.⁷⁰ During the month of October 2012, this video was broadcast on North Metro cable television (channel 16) two times a day, Tuesday through Saturday.⁷¹

54. The City is part of a consortium of cities that receive fees from North Metro Television based on cable subscriptions.⁷²

55. The City's webpage also included a link to "Frequently Asked Questions." Included among the questions was the following: "Will residents who will be specially assessed lose their right to protest?" In response to this question, the City states:

No. Under the current Charter, the City Council holds a public hearing on a proposed road reconstruction, and then affected residents have a 60-day window to petition against the project. Under the proposed process, the City Council holds a public hearing, and if more than 50% of the affected residents oppose it, there is a second public hearing to take additional testimony. At this point the project could be modified or the project would be stopped if more than 50% of those residents still oppose it and petition against it within 30 days. This gives affected residents more input into the process and more opportunity to understand and adjust the scope and cost of the project if they desire.

⁶⁷ Ex. 7 at 2.

⁶⁸ Ex. 7; Test. of M. Trehus at 61 and 65.

⁶⁹ Complainant's Ex. 9; Test. of M. Trehus at 51.

⁷⁰ Test. of J. Reinert at 194; Complainant's Ex. 8.

⁷¹ Respondents' Ex. 1; Test. of M. Trehus at 75.

⁷² Test. of Jeff Karlson at 180.

City Council Meetings

56. Mr. Grochala gave presentations on the proposed City Charter amendment at City Council meetings on September 24, 2012, October 8, 2012, and October 22, 2012.⁷³ During at least one of these City Council meetings, Mayor Reinert stated his opinion that people should vote yes on the proposed amendment to the City Charter.⁷⁴

57. All City Council meetings are aired on local cable television and all Council meetings have an “open mic” portion where members of the public may comment.⁷⁵

Roeser Flyer

58. Prior to the election, City Councilmember Dave Roeser prepared and disseminated a flyer to residents of the City encouraging them to vote yes on the proposed charter amendment.⁷⁶ Councilman Roeser paid for the preparation and dissemination of the flyer with his own funds.⁷⁷

Election Results

59. The election on the proposed charter amendment was held on November 6, 2012. The City Charter requires 51 percent of voters to approve an amendment to the Charter.⁷⁸ The referendum received approximately 50.4 percent of the votes and thus failed to garner the 51 percent required to pass.⁷⁹

60. Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211A.02, is a preponderance of the evidence.⁸⁰

3. Minn. Stat. § 211A.01, subd. 4, defines “committee” as:

a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a

⁷³ Test. of M. Grochala at 177.

⁷⁴ Test. of J. Reinert at 193-194; Test. of Shawn Turcotte at 108-109.

⁷⁵ Test. of M. Grochala at 175; 282-283.

⁷⁶ Complainant's Ex. 15.

⁷⁷ *Id.* (A disclaimer on the flyer states: “This message was paid personally by Dave Roeser 6179 Partridge Ct, Lino Lakes, MN.”)

⁷⁸ Test. of J. Reinhart at 210; See, Minn. Stat. 410.12, subd. 4.

⁷⁹ *Id.*

⁸⁰ Minn. Stat. § 211B.32, subd. 4.

ballot question. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.⁸¹

4. The word “promote” means to “urge the adoption of” or “advocate.”⁸²

5. Under Minn. Stat. § 211A.02, subd. 1, a committee or candidate acting to promote or defeat a ballot question who receives contributions or makes disbursements of over \$750 in a calendar year, must file financial reports with the appropriate filing officer.

6. “Disbursement” means money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. “Disbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.⁸³

7. Election-related expenses authorized by law include such expenses as compensation for election judges and sergeants-at-arms, the cost of printing ballots, providing ballot boxes, and equipping polling places.⁸⁴

8. The Complainant established by a preponderance of the evidence that the Respondents promoted the charter amendment ballot question at issue.

9. The Respondents made disbursements of over \$750 in calendar year 2013 on the flyer that was prepared and disseminated to residents of the City.⁸⁵

10. The costs associated with preparing and disseminating the flyer were disbursements and were not election-related expenditures required or authorized by law.

11. The Complainant established by a preponderance of the evidence that Respondents are a committee and failed to file campaign financial reports in violation of Minn. Stat. § 211A.02.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

⁸¹ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

⁸² *Abrahamson v. St. Louis County School District, et al.*, 819 N.W.2d 129, 136 (Minn. 2012), citing *American Heritage Dictionary* 1410 (5th ed. 2011).

⁸³ Minn. Stat. § 211A.01, subd. 6.

⁸⁴ Minn. Stat. § 204B.32, subd. 1(c).

⁸⁵ Respondents’ Ex. 1.

ORDER

IT IS ORDERED:

1. That Respondents are reprimanded for violating the campaign finance reporting requirements of Minn. Stat. § 211A.02.
2. That, by **June 30, 2014**, Respondents file the required campaign financial reports with the City filing officer and the Office of Administrative Hearings.

Dated: April 24, 2014

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Presiding Administrative Law Judge

s/Timothy O'Malley

TIMOTHY O'MALLEY
Administrative Law Judge

s/LauraSue Schlatter

LAURASUE SCHLATTER
Administrative Law Judge

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The issue before the Panel is whether the City is a “committee” within the meaning of chapter 211A and subject to the chapter’s campaign-finance reporting requirements.

Minnesota Statutes section 211A.02 requires that a “committee” or a candidate who receives contributions or makes disbursements of more than \$750 in a calendar year submit an initial finance report to the filing officer within 14 days after the receipt or disbursement of more than \$750, and that the candidate or committee continue to make reports until a final report is filed.

A “committee” is defined under chapter 211A to mean:

a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to *promote or defeat a ballot question*. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.⁸⁶

A municipality is a “corporation” within the meaning of Section 211A.02 and may be considered a “committee” for campaign financial reporting requirements if it “acts to promote or defeat a ballot question.”⁸⁷ Thus, the threshold question before the Panel is whether the City “promoted” the ballot question.

Arguments of the Parties

The Complainant argues first that, by its plain language, the definition of “committee” unambiguously deems the placement of a referendum on a ballot to be promotion.⁸⁸ Because the City placed the charter amendment question on the November 2012 ballot, the Complainant contends the City is a “committee” and is subject to the campaign financial reporting requirements.

The Panel is not persuaded by the Complainant’s reading of Section 211A.01, subdivision 4, and will not hold that the City’s act of placing the charter amendment on the ballot, which it is legally authorized to do, amounted to promotion of the ballot question.⁸⁹ The Panel finds that the sentence at issue in the definition of “committee” more aptly applies to citizen groups that campaign to qualify or prevent a proposition from qualifying for placement on the ballot, rather than municipalities or school districts that are legally authorized or required to place referendum questions on the ballot. For example, gathering signatures on a petition would be an act of “qualifying” an issue for placement on the ballot. The City’s placement of the proposed charter amendment on the ballot is within its legal authority and that act does not amount to promotion subjecting the City to campaign finance reporting requirements.

Moreover, the Panel notes that in *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*,⁹⁰ the Minnesota Court of Appeals affirmed the dismissal of a campaign complaint on the grounds that it failed to allege specific facts to support its claim that the school district’s expenditures and communications were made to *promote* passage of a ballot question.⁹¹ In *Barry*, the school district caused an election to be held on four separate ballot questions regarding four separate bond issues. The complaint alleged that the school district promoted passage of the ballot questions through the use of public funds and failed to file campaign financial reports. In dismissing the complaint,

⁸⁶ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

⁸⁷ *Abrahamson v. St. Louis County Sch. Dist.*, 819 N.W.2d 129, 134-35 (Minn. 2012).

⁸⁸ Minn. Stat. § 211A.01, subd. 4.

⁸⁹ See, Minn. Stat. § 410.12, subd. 5.

⁹⁰ 781 N.W.2d 898 (Minn. Ct. App. 2010).

⁹¹ *Id.* at 903.

the court did not consider the fact that the school district placed the questions on the ballot (as it was obligated to do) to be an act of promotion. Instead, the court held that because the complainants failed to allege specific facts about the content of the school district's communications there was no basis to conclude that by making the expenditures, the school district acted "to promote or defeat a ballot question."⁹²

Likewise, in *Abrahamson v. St. Louis County School District*,⁹³ the Minnesota Supreme Court did not consider whether the School District's act of placing the bond referendum question on the ballot amounted to promoting the ballot question. Instead, the Court remanded the matter back to the Office of Administrative Hearings for an evidentiary hearing to determine whether specific statements made by the School District in newsletters and at meetings were promotional.⁹⁴ The Court stated: "Whether, after the District answers the complaint and the case is fully litigated, the ALJ will ultimately find that these statements were promotional will depend on the evidence before it at the time."⁹⁵

The Complainant argues next that materials prepared and disseminated by the City regarding the proposed charter amendment ballot question, as well as presentations at City Council meetings and a television interview given by City staff, were promotional and should subject the City to the reporting requirements of chapter 211A. The Complainant maintains that the City's failure to present any opposing views on the charter amendment, particularly the Charter Commission's view, rendered its materials and presentations promotional. In addition, the Complainant contends that certain statements made in the City's flyer and on its webpage were so slanted or exaggerated as to only be read as promoting the ballot question. The Complainant notes, for example, that the City included two photographs of deteriorating roads in its flyer and it described the proposed amendment as something that would "expand public involvement when an improvement such as local road reconstruction is proposed."⁹⁶ Finally, the Complainant argues that the City's use of taxpayer dollars to disseminate one-sided advocacy in support of the referendum suppressed the opposition's free speech and amounted to "viewpoint discrimination."⁹⁷

The City maintains that it did not promote the proposed charter amendment. It contends that the material it published was factual and accurate and did not urge residents to vote in favor of the ballot question. In addition, the City asserts that it is not required to publish opposing viewpoints and its decision not to publish such viewpoints did not render the materials promotional. In fact, the City contends that if it had spent public dollars to publish adverse viewpoints it may have been considered to be acting to "defeat" a ballot question. The City maintains that it made a concerted effort to explain the proposed charter amendment in an objective manner in its published materials and presentations. It states that it inserted the two pictures of the deteriorating roads in the

⁹² *Id.*

⁹³ See *Abrahamson*, 819 N.W.2d at 129.

⁹⁴ *Id.* at 136.

⁹⁵ *Id.*

⁹⁶ Respondents' Ex. 1.

⁹⁷ Complainant's Reply Memorandum at 7-10.

flyer simply to alert voters to the fact that the proposed amendment was primarily about roads. Moreover, the City contends that the pictures accurately depicted the 13 percent or more of City roads that need to be reconstructed.

The City also insists that it accurately characterized the proposed amended charter process as “expanding” public involvement because the amended process would have provided for a second hearing with an additional opportunity for the public to present their opinion, instead of automatically sending the issue to a City-wide referendum. The City concedes that the flyer’s diagram of the proposed process erroneously stated that neighborhoods would continue to have 60 days to petition for or against a project. The City asserts, however, that this was merely a drafting error and not an attempt on its part to intentionally mislead voters. Moreover, the City points out that it accurately explained the differences between the current Charter process and the proposed amendment, including the elimination of the 60 day petition window, in its Frequently Asked Questions and flowchart linked to its website.

Analysis

The Minnesota Supreme Court has defined the term “promote” as meaning “to urge the adoption of” or “advocate.”⁹⁸

While the Panel is convinced that the City made a sincere effort to ensure that the information it presented concerning the proposed charter amendment was factual, it nonetheless concludes that, when viewed as a whole, both the flyer and the web-based material published by the City promoted adoption of the amendment.

The flyer, for example, shows two pictures of deteriorating roads and generally discusses the poor condition of local streets and the failed attempts to pass prior referendums. The flyer advises readers that, even if referendums continue to fail, “streets eventually will be rebuilt anyway.” The flyer warns readers that, in that case, the City would likely have to rely on a general tax levy to fund road repairs, which would potentially result in higher taxes for residents. The flyer also erroneously indicates that neighborhoods will continue to have a 60 day window in which to petition for or against a proposed improvement project under the amended process, when in fact the 60 day petitioning period was eliminated. The flyer states that passing the amendment will not raise property taxes. While it is true that the act of passing the amendment does not automatically raise taxes for anyone, passage of the amendment would make it easier to approve projects that would result in new assessments. In addition, in response to the question, “will this amendment take away my right to stop a road construction project that I don’t want?” the City states only “No.” The City chose not to explain that under the amended process the 60 day petition window was eliminated and that opposition to a proposed project had to be filed prior to the hearing or presented at the hearing.

⁹⁸ *Id.* at 136, quoting *American Heritage Dictionary* 1410 (5th ed. 2011).

Finally, both the flyer and webpage describe the proposed amended process for approving public improvement projects in exclusively positive terms. The flyer states that the proposed amendment will “expand public involvement” and “provide additional protections for residents.”⁹⁹ Similarly, the City’s webpage devoted to the proposed charter amendment states that the amendment will “provide additional opportunity for residents to discuss [the project]” and will “preserve the neighborhood’s right to petition against the improvements and stop the project.”¹⁰⁰ Both materials stress the ways the amended process will enhance public involvement without addressing the ways it may reduce the opportunity to petition against a proposed project.

Whether one views the proposed amended charter process as expanding public involvement or restricting it is a matter of opinion on which reasonable people may differ. The amended process did add a second public hearing, but it significantly decreased the time and opportunity for residents to file objections. Therefore, to state on the flyer and webpage that the amendment would “expand public involvement” and “provide additional protections” is to put an overly positive spin on the proposed process. Had the City, for example, mentioned that the Charter Commission opposed the referendum, used less subjective language to describe the proposed changes, or stated more explicitly that the 60 day petition window was eliminated, the Panel may have reached a different conclusion.¹⁰¹

Failure to include opposing viewpoints does not automatically render informational materials biased or unfair. Therefore, the Panel agrees with the City that it is not obligated to present opposing opinions in the information it disseminates and that its decision not to include such opinions did not, by itself, render its material promotional.¹⁰² Rather, the Panel concludes that the average reader would view the flyer and the webpage, taken as a whole, as advocating for passage of the proposed charter amendment. It is this quality that persuades the Panel that these materials were promotional.

As for the Complainant’s argument that the City violated the opposition’s free speech rights by using taxpayer dollars to exercise viewpoint discrimination, the Panel notes that the Minnesota Supreme Court has yet to determine whether public funds may be expended to advocate for only one side of a ballot question.¹⁰³ In any event, a challenge to the constitutionality of the City’s conduct is beyond the scope of this hearing and is within the exclusive province of the judicial branch to resolve.¹⁰⁴ For this reason, the Complainant’s constitutional claims are duly noted for the record and preserved for possible appeal.

⁹⁹ Respondents’ Ex. 1.

¹⁰⁰ Complainant’s Ex. 7.

¹⁰¹ The Panel also rejects Complainant’s argument that the inclusion of stars and stripes on the webpage was promotional or that the glossy paper used for the flyer rendered the flyer promotional.

¹⁰² Inclusion of different viewpoints would be one factor to consider in determining whether material or a presentation is informational or promotional.

¹⁰³ See, *Abrahamson*, 819 N.W.2d at 135.

¹⁰⁴ See, *Neeland v. Clearwater Memorial Hospital*, 257 N.W.2d 366, 369 (Minn.1977); *In re Rochester Ambulance Service*, 500 N.W.2d 495, 499-500 (Minn. Ct. App. 1993).

While the Complainant did establish that the flyer and webpage were promotional, he failed to establish that the City's presentations at the Council meetings or the televised interview were promotional. Other than Mayor Reinert's endorsement of the referendum at a City Council meeting and during the television interview, the Complainant did not point to any specific statements made by Mr. Grochala or Mayor Reinert that he claimed were promotional. The mayor has the right, and arguably the duty, to state his opinion on municipal policy. In addition, the Panel notes that the City Council meetings were open to the public and Mr. Grochala's presentations were clearly noted on the agenda. Any opponent who wished to voice an opinion in opposition to the proposed referendum could have done so during the "open mic" portion of the meetings. Contrary to the Complainant's assertion, the City was under no obligation to extend an invitation to the Charter Commission or any other group to present opposing viewpoints.

Because the Panel finds that the City did promote the passage of the ballot question, it is a "committee" within the meaning of Minn. Stat. § 211A.01, subd. 4. Accordingly, it was required to report disbursements of more than \$750. The Complainant established that the City spent \$2,052 to prepare and disseminate the flyer. The Complainant failed, however, to introduce any evidence as to how much, if anything, the City spent on the creation or maintenance of the webpage devoted to the proposed amendment.

The City argues that even if the Panel finds the flyer and webpage to be promotional, the expenses associated with preparing and disseminating the material were authorized by law and were not therefore reportable "disbursements." The definition of "disbursement" excludes "election-related expenditures required or authorized by law."¹⁰⁵ The City maintains that municipalities are authorized to expend reasonable amounts to inform the public about the impact of ballot question.¹⁰⁶

The Panel finds the City's argument unpersuasive and concludes that the costs related to preparing and disseminating the flyer were not required or authorized by law. Authorized election related expenses are identified at Minn. Stat. § 204B.32 and include such expenses as compensation for election judges and sergeants-at-arms, the cost of printing ballots, providing ballot boxes, and equipping polling places. The City's expenditures related to the flyer were disbursements and were required to be reported.¹⁰⁷

Conclusion

Having found that the City violated the reporting requirements of Minn. Stat. § 211A.02, the Panel may make one of several dispositions: The Panel may issue a

¹⁰⁵ Minn. Stat. 211A.01, subd. 6.

¹⁰⁶ See, Op. Atty. Gen. 159a-3 (May 24, 1966) (quoting *Citizens to Protect Pub. Funds v. Board of Education*, 98 A.2d 673, 677 (N.J. 1953)).

¹⁰⁷ See, *Abrahamson v. St. Louis County Sch. Dist.*, 802 N.W.2d 393, 400-403 (Minn. Ct. App. 2011), review granted (Oct. 18, 2011), *aff'd in part, rev'd in part*, 819 N.W.2d 129 (Minn. 2012).

reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution.¹⁰⁸

The Panel imposes only a reprimand. The Panel concludes that the City's failure to report its disbursements had little impact upon the voters in Lino Lakes and the case law to date has provided little instruction to municipalities and school districts on section 211A reporting requirements. Both of these factors urge the imposition of a modest sanction. Moreover, the City's actions were based on bona fide fiscal and public service concerns. The City is, however, directed to file the required campaign financial reports with the City filing officer and the Office of Administrative Hearings by June 30, 2014.

S.M.M., T.J.O., L.S.S

¹⁰⁸ Minn. Stat. § 211B.35, subd. 2.