

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Sharon Petersen,

Complainant,

vs.

Linda Phillips,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER**

The above-entitled matter came before a panel of Administrative Law Judges on April 7, 2014. The panel members, James E. LaFave (Presiding Judge), Stacy P. Bouman, and Jeanne M. Cochran reviewed the record created at the probable cause hearing and the submissions of the Parties to determine the appropriate penalty for Respondent's admitted violation of Minn. Stat. § 211B.04. The record closed on April 7, 2013.

The Complainant Sharon Petersen represented herself without counsel.

Robert Suk, Robert G. Suk Law Offices, P.A., represented the Respondent Linda Phillips.

**STATEMENT OF THE ISSUES**

1. Did the Respondent violate Minn. Stat. § 211B.04(b) by failing to put a disclaimer on campaign material substantially in the form required?
2. If so, what penalty is appropriate?

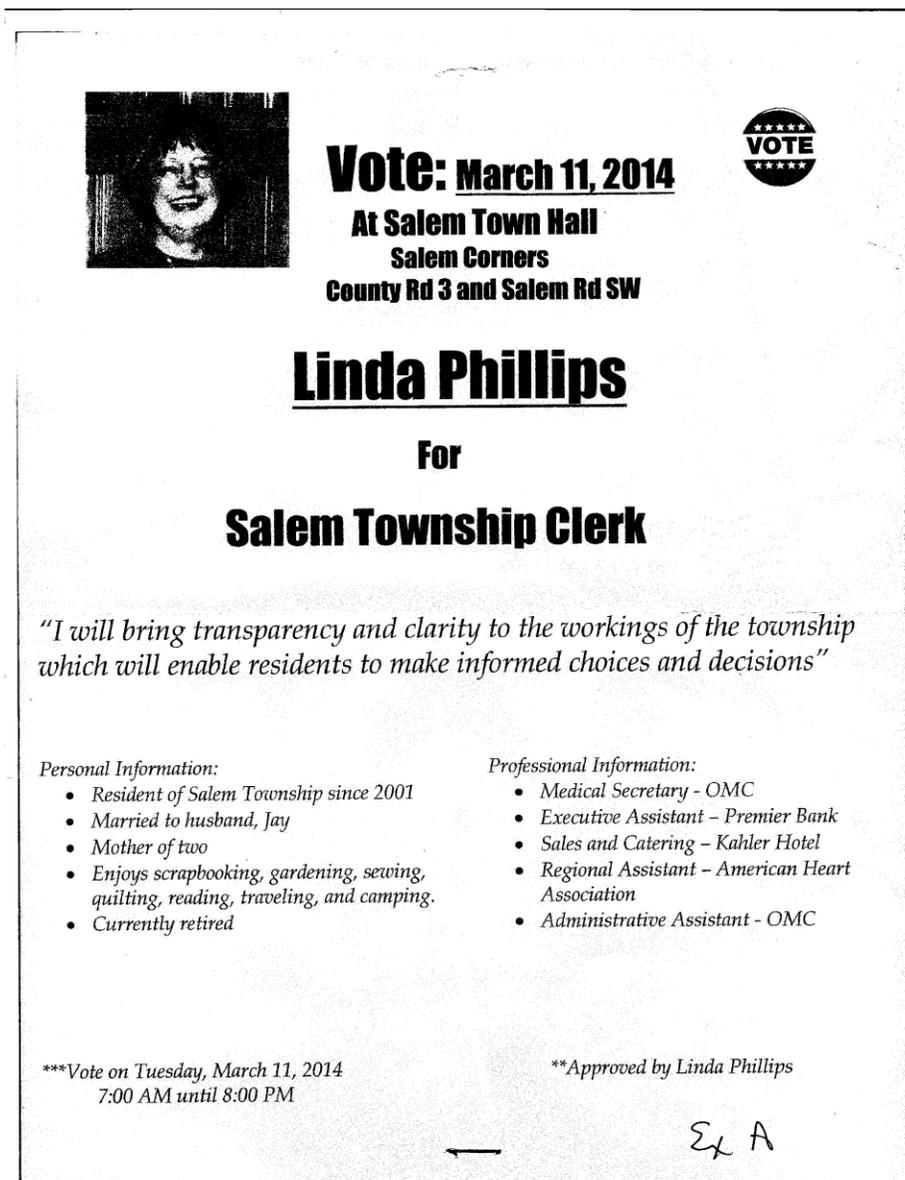
**SUMMARY OF CONCLUSIONS**

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondent Linda Phillips failed to put a disclaimer on campaign materials identifying who prepared and paid for the materials in violation of Minn. Stat. § 211B.04. The Panel concludes further that a civil penalty of \$250 is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

## FINDINGS OF FACT

1. The Complainant Sharon Petersen was the incumbent candidate for Salem Township Clerk in the March 11, 2014, township election.
2. The Respondent Linda Phillips ran against Ms. Petersen for the position of Township Clerk.
3. Prior to the election, Respondent prepared and disseminated to residents of Salem Township a campaign flyer promoting her candidacy. A copy of the campaign material at issue appears below:



**Vote: March 11, 2014**  
**At Salem Town Hall**  
**Salem Corners**  
**County Rd 3 and Salem Rd SW**

**Linda Phillips**  
**For**  
**Salem Township Clerk**

*"I will bring transparency and clarity to the workings of the township which will enable residents to make informed choices and decisions"*

**Personal Information:**

- Resident of Salem Township since 2001
- Married to husband, Jay
- Mother of two
- Enjoys scrapbooking, gardening, sewing, quilting, reading, traveling, and camping.
- Currently retired

**Professional Information:**

- Medical Secretary - OMC
- Executive Assistant - Premier Bank
- Sales and Catering - Kahler Hotel
- Regional Assistant - American Heart Association
- Administrative Assistant - OMC

\*\*\*Vote on Tuesday, March 11, 2014  
7:00 AM until 8:00 PM

\*\*Approved by Linda Phillips

Ex A

4. The advertisement lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04. Instead, it stated only: "Approved by Linda Phillips."

5. The Respondent also had advertisements promoting her candidacy published in the local *Byron Review* newspaper on February 25 and March 4, 2014. Respondent provided the text for the advertisement to an employee at the newspaper. The text did not include a disclaimer and the Respondent did not inform the newspaper who had prepared and paid for the advertisement.

6. The advertisement that was published on February 25, 2014, promoted both Respondent's campaign and her husband's campaign for Salem Township Supervisor. The advertisement read:

Elect  
Jay Phillips, Salem Twp Supervisor  
"The right experience, the right choice"  
Linda Phillips, Salem Twp Clerk  
"Because principal matters . . ."  
**Vote: March 11, 2014**<sup>1</sup>

7. Respondent's February 25, 2014, campaign advertisement lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04.

8. The advertisement that the Respondent placed in the March 4, 2014, edition of the *Byron Review* was identical to the one published in the February 25<sup>th</sup> edition, except that at the bottom of the advertisement, in smaller font, the phrase "Paid Advertisement" was included.

9. The Complainant filed this Campaign Complaint on February 27, 2014, and a probable cause hearing was held on March 6, 2014.

10. By Order dated March 11, 2014, the Presiding Administrative Law Judge found there was probable cause to believe the Respondent violated Minn. Stat. § 211B.04 with respect to her campaign flyer and newspaper advertisements.<sup>2</sup> The Administrative Law Judge gave the parties until March 19, 2014, to notify him as to whether they wished waive their right to an evidentiary hearing and submit the matter to the Panel for a determination based on the record created at the probable cause hearing and on their submissions.

11. On March 11, 2014, the Complainant won the election for Salem Township Clerk. The Complainant received 299 votes, and the Respondent received 205.<sup>3</sup>

12. On March 17, 2014, the Respondent, through her counsel, submitted a letter in which she waived her right to an evidentiary hearing and admitted violating

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<sup>1</sup> Exs. 3 and 4. (Emphasis in the original).

<sup>2</sup> The Administrative Law Judge dismissed allegation regarding law signs. See, PROBABLE CAUSE ORDER, OAH 60-0325-31334 (March 11, 2014).

<sup>3</sup> See, *Rochester Post Bulletin* (March 12, 2014); [http://www.postbulletin.com/news/local/township-election-results/article\\_a1da6d3a-726c-500a-bee0-579f3dd13cda.html](http://www.postbulletin.com/news/local/township-election-results/article_a1da6d3a-726c-500a-bee0-579f3dd13cda.html)

Section 211B.04 as alleged with respect to the campaign flyers and newspaper advertisements. The Complainant waived her right to an evidentiary hearing on March 19, 2014.

13. The Parties also agreed to allow the panel to determine the matter based on the record created at the probable cause hearing and the submissions of the parties.

14. In correspondence dated March 17, 2014 Respondent admitted to the violations.

Based upon the foregoing Findings of Fact, the undersigned panel of Administrative Law Judges makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines "campaign material" 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."

3. The campaign flyer that the Respondent mailed to Township residents and the newspaper advertisements were campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2. They were disseminated for the purpose of influencing the township election.

4. The campaign flyer and newspaper advertisements were required to have disclaimers substantially in the form set forth in Minn. Stat. § 211B.04.

5. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part, as follows:

(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, or "Prepared and paid for by the ..... committee, ..... (address), in support of ..... (insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the ..... committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to ..... (insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.<sup>4</sup>

6. Newspapers are obligated under Minn. Stat. § 211B.05, subd. 1, to include the phrase "PAID ADVERTISEMENT" at the beginning or end of any advertisement accepted for publication.

7. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.<sup>5</sup>

8. The campaign flyer and newspaper advertisements did not substantially comply with the disclaimer requirement contained in Minn. Stat. § 211B.04(b).

9. Respondent's campaign flyer does not meet the exception for "personal letters" at Minn. Stat. § 211B.04(e).

10. The Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer on her campaign flyer and advertisements substantially in the form required.

11. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

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

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<sup>4</sup> Minn. Stat. § 211B.04; Minn. Laws 2010 ch. 397, § 15. The amendment is applicable to campaign material "prepared and disseminated" on or after June 1, 2010.

<sup>5</sup> Minn. Stat. § 211B.32, subd. 4.

**ORDER**

**IT IS ORDERED:**

That having been found to have violated Minn. Stat. § 211B.04, Respondent Linda Phillips shall pay a civil penalty of \$250 by July 15, 2014.<sup>6</sup>

Dated: April 10, 2014

s/James E. LaFave  
JAMES E. LAFAVE  
Presiding Administrative Law Judge

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

s/Stacy P. Bouman  
STACY P. BOUMAN  
Administrative Law Judge

**NOTICE**

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under 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.

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<sup>6</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

## MEMORANDUM

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.”<sup>7</sup> The campaign flyer and newspaper advertisements at issue in this case meet the definition of “campaign material” because they were disseminated for the purpose of influencing voting at the township election. As a result, the flyer and advertisements were required to include a disclaimer substantially in the form provided in Minn. Stat. § 211B.04(a) and (b).<sup>8</sup> The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”<sup>9</sup>

It is not evident when looking at Respondent’s campaign material who or what committee prepared or paid for the pieces. Without a disclaimer, the recipient of the flyer and readers of the newspaper are left to guess whether Ms. Phillips or some other person or group prepared and disseminated the material.

The Respondent concedes that she violated the disclaimer requirement. She emphasizes, however, that she had never run for public office before and, despite reading the campaign manual, believed she was doing everything properly with respect to her campaign flyer and advertisements. She admitted, however, she was confused as to the requirements of Minn. Stat. § 211B.04. Respondent also states that she believed the newspaper would include the required disclaimer language on the advertisements. Yet, the Respondent does not explain how the newspaper would have known who prepared and paid for the advertisements without her supplying that information. Respondent points out that she did not benefit from the violation as she lost the election. She asks that the Panel issue her a reprimand.

The Complainant noted that Ms. Phillips testified she did not want her address on her campaign material. Ms. Phillips stated that she wanted to keep her address private because she was concerned that a bad actor might take some action against her. The Complainant, on the other hand, asserted that Ms. Phillips wanted to keep her address private to avoid revealing that she lives on a street that needs repaving. A key issue in the campaign was whether to resurface certain township roads and who should pay for the expense. Further, Complainant questions Ms. Phillips veracity when Ms. Phillips testified she made the flyer in question. Complainant submitted copies of similar flyers used in prior campaigns that have the same format and layout used by Ms. Phillips in her flyer.<sup>10</sup>

The Panel concludes that the Complainant has established by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(b) by not including a disclaimer on her campaign materials substantially in the form required by the statute.

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<sup>7</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>8</sup> Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 and 2.

<sup>9</sup> *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005).

<sup>10</sup> See, Letter from Sharon Peterson to the Honorable James LaFave, the Honorable Jeanne M. Cochran and the Honorable Stacy P. Bouman, Exhibits (April 3, 2014).

While the Respondent claims that she was confused after reading the campaign material as to whether she was required to put the disclaimer on the flyer and newspaper advertisement, the Respondent's confusion does not excuse her failure to comply with the statute. The Respondent had an obligation to obtain clarification and ensure compliance with the requirements of the statute for the flyer and the advertisement. As a first time candidate, the Respondent should have sought out the advice she needed to ensure compliance with respect to both the flyer and advertisement. The Respondent also should have inquired as to whether the newspaper would include the required disclaimer on the advertisement. The Respondent's failure to do so meant that the voters in Salem Township did not know who prepared these campaign materials, in direct contravention of the purposes of Minn. Stat. § 211B.04(b). The Panel recognizes, however, that the violation had little adverse effect on the township election, but the statutory requirements are, nonetheless, applicable and necessary in maintaining fair campaigns.

For these reasons, the Panel concludes that a \$250 civil penalty is appropriate in this case.

**J.E.L., S.P.B., J.M.C.**