

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Senn,

Complainant,

**PROBABLE CAUSE ORDER**

vs.

Denny Laufenburger,  
Laufenburger for Mayor Committee,

Respondents.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge (ALJ) LauraSue Schlatter on November 6, 2014.

On October 29, 2014, Mark Senn filed a campaign complaint under the Fair Campaign Practices Act. The complaint alleged that Mr. Laufenburger and his campaign committee violated Minn. Stat. §§ 211B.04, 211B.08, and 211B.13 in connection with his campaign for the office of mayor of the City of Chanhassen. On November 3, 2014, the undersigned Administrative Law Judge determined that the Complaint alleged *prima facie* violations of Minn. Stat. §§ 211B.04 and 211B.13, but failed to allege a violation of Minn. Stat. § 211B.08. The Section 211B.08 claim was dismissed.

The probable cause hearing was conducted by telephone conference call. The probable cause record closed upon the conclusion of the hearing on November 6, 2014.

Mark Senn (Complainant) appeared on his own behalf without counsel. Jerry McDonald, Attorney at Law, appeared on behalf of Denny Laufenburger and Laufenburger for Mayor Committee (Respondents).

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

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. There is probable cause to believe that Respondents Denny Laufenburger and Laufenburger for Mayor Committee violated Minn. Stat. § 211B.04(b) by disseminating campaign material that lacked a disclaimer.

2. There is no probable cause to believe that Respondents Denny Laufenburger and Laufenburger for Mayor Committee violated Minn. Stat. § 211B.13. This claim is dismissed.

3. This matter is referred to the Chief Administrative Law Judge for assignment to a panel of three Administrative Law Judges, pursuant to Minn. Stat. § 211B.35.

4. Should the parties decide that an evidentiary hearing is not necessary and that this matter may be submitted to the assigned Panel of Judges for a decision based on the file, the record created at the Probable Cause hearing, and final written argument, they should notify the undersigned Administrative Law Judge by **4:30 p.m.** on **Wednesday, November 12, 2014**. If both Parties do not agree to waive their right to an evidentiary hearing, this matter will be scheduled for an evidentiary hearing in the near future.

Dated: November 12, 2014

s/LauraSue Schlatter

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LAURASUE SCHLATTER  
Administrative Law Judge

### MEMORANDUM

Respondent, Denny Laufenburger, successfully campaigned for the office of mayor of Chanhassen in the November 4, 2014, general election.

The Complaint alleges that the Respondent violated Minn. Stat. § 211B.04(b) by disseminating campaign material in support of his candidacy, which lacked the required disclaimer.<sup>1</sup> Specifically, the Complaint asserts that an image of Respondent's campaign sign was displayed at the registration table of a fundraising event hosted by the Chanhassen High School Booster Club, a non-profit organization.<sup>2</sup> The Respondent's campaign committee was a sponsor of the event, which took place on October 11, 2014, at the Hazeltine National Golf Club in Chaska. The image of Respondent's campaign sign was displayed on a poster board along with the logos or signs of the other event sponsors.<sup>3</sup> The image of Respondent's campaign sign did not include a disclaimer. The image was also reproduced and included in a program printed for the event.

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<sup>1</sup> Exhibits (Ex.) 21 and 22.

<sup>2</sup> Ex. 21.

<sup>3</sup> *Id.*

The Complaint also alleges that the Respondent violated Section 211B.04(b) by failing to include a disclaimer on his campaign t-shirts.<sup>4</sup> The t-shirts display the image of the Respondent's logo or campaign sign on the front, and the Respondent's campaign website address on the back.<sup>5</sup>

Finally, the Complainant alleges that, during the course of his campaign for mayor, the Respondent provided pizza and campaign t-shirts to members of the Chanhassen High School football team at a party organized by a parent of a high school senior on the football team. The Complaint maintains that by providing food and t-shirts to members of the high school football team, the Respondent violated Minn. Stat. § 211B.13. This section prohibits giving something of monetary value in order to induce a voter to vote in a particular way.

## Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>6</sup> The administrative law judge must decide whether, given the facts disclosed by the record, it is fair and reasonable to hear the matter on the merits.<sup>7</sup> If the judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict, a motion to dismiss for lack of probable cause should be denied.<sup>8</sup> A judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony. As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that the Respondent has committed a violation.

## The Disclaimer Requirement

Minn. Stat. § 211B.04 requires "campaign material" to "prominently" include the name and address of the person or committee causing the material to be prepared or disseminated. The disclaimer provision requires the committee that prepared and paid for the signs to provide its name and address, substantially in the following form: "Prepared and paid for by the \_\_\_\_\_ committee \_\_\_\_\_ (address)."<sup>9</sup> Objects

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<sup>4</sup> Ex. 22.

<sup>5</sup> *Id.*; Testimony (Test.) of Denny Laufenburger.

<sup>6</sup> Minn. Stat. § 211B.34, subd. 2

<sup>7</sup> *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

<sup>8</sup> *Id.* at 903. In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The judge must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. See, e.g., Minn. R. Civ. P. 50.01; *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980). The standard for a directed verdict in civil cases is not significantly different from the standard for summary judgment. *Howie v. Thomas*, 514 N.W.2d 822 (Minn. Ct. App. 1994).

<sup>9</sup> Minn. Stat. § 211B.04.

stating only a candidate's name and the office sought are not required to include a disclaimer.<sup>10</sup>

Campaign material is defined to include any "material disseminated for the purpose of influencing voting at a primary or other election."<sup>11</sup>

The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."<sup>12</sup>

### **Respondents' Campaign Logo and T-shirts**

Respondent, Denny Laufenburger, was a sponsor of a fundraising event held on behalf of the Chanhassen High School Booster Club on October 11, 2014.

The event organizers contacted the Respondent and each of the other sponsors and requested they submit either names or logos to be used to recognize the sponsors at the registration table and in the event program.<sup>13</sup> The Respondent submitted a digital image (jpeg) of his campaign sign.<sup>14</sup>

A scanned copy of the image the Respondent submitted for the fundraising event appears below:



The event organizers displayed the above image along with the names and logos of other sponsors on a large poster board by the registration table.<sup>15</sup> The heading at the top of the poster board read: "Thank You to Our Registration Sponsors."<sup>16</sup>

A scanned copy of a photograph of the poster board appears below:

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<sup>10</sup> Minn. Stat. § 211B.04(e).

<sup>11</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>12</sup> *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.

<sup>13</sup> Exs. 2 and 3.

<sup>14</sup> Test. of D. Laufenburger.

<sup>15</sup> Ex. 21.

<sup>16</sup> *Id.*

## Thank You To Our Registration Sponsors



The same image appeared in the programs distributed at the Booster Club fundraising event, on a page with the other sponsors for the evening.

The Respondent's t-shirts displayed the same logo submitted by the Respondent for the Booster Club event on the front of the t-shirt, and the Respondent's campaign website address was displayed on the back of the t-shirt.<sup>17</sup>

### Arguments of the Parties

The Complainant argues that, by submitting the above image of his campaign sign for display at the Chanhassen Booster Club event, the Respondent prepared and disseminated campaign material that lacked a disclaimer in violation of Minn. Stat. § 211B.04(b). The Complainant alleges further that the Respondents violated Minn. Stat. § 211B.04(b) by failing to have a disclaimer on Respondent's campaign t-shirts.

The Respondent asserts that the logo he submitted to the fundraising event was not campaign material and did not require a disclaimer because he did not disseminate it "for the purpose of influencing voting."<sup>18</sup> The Respondent contends that he provided

<sup>17</sup> Ex. 22 and Test. of D. Laufenburger.

<sup>18</sup> Minn. Stat. § 211B.01, subd. 2.

his logo at the request of the event organizers who simply wanted to acknowledge and thank their sponsors. The Respondent maintains that because his campaign logo was being displayed for charitable purposes rather than political purposes, a disclaimer was not required. In support of his argument, the Respondent notes that his campaign lawn signs, which depict the same image as the logo above, do include a disclaimer.

The Respondent also argues that the logo he provided to the fundraising event and his campaign t-shirts meet the exception to the disclaimer requirement provided at Minn. Stat. § 211B.04(e) for “objects” stating only the candidate’s name and office sought.

## **Analysis**

The image of the Respondent’s logo meets the definition of campaign material. The logo’s message, “Denny Laufenburger for Mayor,” promotes the Respondent’s candidacy and its purpose is to influence voting. Contrary to Respondents’ argument, the fact that the logo was displayed at a charitable event rather than a campaign event is not dispositive. It is the message and purpose of the sign that is dispositive, not the setting or locale where the sign is displayed. The Respondent concedes that yard signs are campaign material, and yet those are typically displayed on the front lawns of homes, which generally are not the site of campaign events. Moreover, the Respondent could have chosen to display his own name at the event or the moniker he uses when announcing high school sporting events (“Voice of the Storm”) rather than his campaign sign.

The Respondent’s campaign t-shirt also meets the definition of campaign material.

As campaign material, the Respondent’s logo and t-shirts were required to include a disclaimer substantially in the form provided at Minn. Stat. § 211B.04(b) unless an exception applies.

The exception for objects “stating only the candidate’s name and the office sought”<sup>19</sup> does not apply to the Respondent’s logo or t-shirts. Both include more than just the Respondent’s name and the office sought. The logo includes the word “for” and the t-shirt includes the Respondent’s campaign website address. While the Office has found in prior decisions that a candidate’s campaign website address may satisfy the disclaimer requirement where the website prominently includes a disclaimer substantially in the form required by Section 211B.04, there is no evidence in the record that the Respondent’s campaign website included a disclaimer.

Therefore, the Complainant has established probable cause to believe the Respondents violated Minn. Stat. § 211B.04(b) with respect to Respondent’s logo and t-shirts.

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<sup>19</sup> Minn. Stat. § 211B.04(e).

## Bribery Allegation

Minnesota Statutes section 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election. The Complainant contends that, by purchasing food for the football players, and giving them t-shirts, the Respondent provided them with things of monetary value in violation of Minn. Stat. § 211B.13.

An assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.<sup>20</sup> Prior decisions have held that tossing penny candy at a parade, giving notepads imprinted with the candidate's name and office, or distributing promotional tote bags urging potential voters to vote for the candidate did not violate Minn. Stat. § 211B.13. In contrast, however, a candidate's donation of chicken dinners to residents at a senior housing complex following a candidates' forum was found to violate the statute.<sup>21</sup>

The Complainant failed to establish probable cause to believe the Respondents violated Minn. Stat. § 211B.13. The record established that the Respondents did not pay for the pizza that was provided at a party for members of the high school football team.<sup>22</sup> Instead, the pizza was paid for and provided by the parents who hosted the party.<sup>23</sup> In addition, the Complainant failed to establish what worth, if any, the Respondents' campaign t-shirts had to the members of the high school football team. The Respondent testified at the probable cause hearing that the t-shirts cost approximately \$4.90 each and were paid for by his campaign committee. Moreover, there was no evidence to support finding that the Respondent provided the t-shirt to the high school football players in order to induce them or others, such as their parents, to vote for him.<sup>24</sup> The 211B.13 allegation is dismissed.

## Conclusion

The Administrative Law Judge concludes that based on the record presented, the Complainant has demonstrated probable cause to believe that Respondent violated Minn. Stat. § 211B.04(b) with respect to his campaign logo and t-shirts.

This matter will be set on for an evidentiary hearing to allow a panel of three Administrative Law Judges to determine whether the Respondent violated Minn. Stat. § 211B.04, and if so, what penalty is appropriate.

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<sup>20</sup> *United States v. Garcia*, 719 F.2d 99, 201 (5<sup>th</sup> Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

<sup>21</sup> See *Kalil v. Knutson*, OAH Docket No. 3-6302-16119-CV (ORDER DENYING RECONSIDERATION, September 2, 2004); *Schauer v. Gillpasie*, OAH Docket No. 3-6371-17570-CV (ORDER OF DISMISSAL, October 11, 2006); *Brand v. Mollin*, OAH Docket No. 11-0325-21869-CB, (ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT, February 25, 2011); *Wyckoff and Laine v. Peterson and Willians*, OAH Docket No., 7-6301-16405-CV (ORDER, April 25, 2005).

<sup>22</sup> Ex. 5 and Test. of D. Laufenburger.

<sup>23</sup> Ex. 5.

<sup>24</sup> Ex. 6.

Should the parties decide to waive the evidentiary hearing and submit the matter based on the record, they must notify the Administrative Law Judge by the date and time stated in the Order. In that case, both parties would be given the opportunity to submit final written arguments for consideration by the assigned panel members. The panel would then make a final determination based on these written submissions, the record created at the probable cause hearing, and the file.

**L.S.**