

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. Leonard,

Complainant,

vs.

Andrew Aller,

Respondent.

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

On October 29, 2014, Michale J. Leonard filed a Campaign Complaint with the Office of Administrative Hearings alleging that Andrew Aller violated Minn. Stat. §§ 211B.04 and 211B.08 during the course of his campaign for a seat on the Chanhassen City Council. After reviewing the complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.04. The complaint, however, fails to set forth a prima facie violation of Minn. Stat. § 211B.08. These determinations are described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held before the undersigned Administrative Law Judge at **10:00 a.m. on Thursday, November 6, 2014**. The hearing will be held by telephone conference call. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **249 440 7275#**

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 <http://mn.gov/oah> 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 Wednesday, November 5, 2014**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case,

with copies to the opposing party. Documents may be e-mailed to Judge LaFave at James.LaFave@state.mn.us or faxed to 651-539-0300.

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 3, 2014

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Background

The Respondent Andrew Aller is a candidate for the Chanhassen City Council in the November 4, 2014, general election.

The complaint alleges that Mr. Aller violated Minn. Stat. § 211B.04 by preparing and disseminating a campaign sign that lacked a disclaimer in the form required by Minn. Stat. § 211B.04. The Complaint asserts that Mr. Aller's campaign sign was displayed at the registration table at a fundraising event held by the Chanhassen High School Booster Club. According to the Complaint, the Chanhassen High School Booster Club is a tax exempt charitable non-profit 501(c)(3) organization. The Complaint maintains that, in addition to displaying his campaign signs at the registration table, Mr. Aller had an image of his campaign sign included in the program printed for the event.

The Complaint also alleges that Mr. Aller violated Minn. Stat. § 211B.08 by using his name and campaign literature to promote the fact that he was a table sponsor of the Chanhassen High School Booster Club, a 501(c)(3) charitable organization.

Standard of Review

To set forth a prima facie case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.¹ For purposes of a prima facie determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.² 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.³

Discussion of Claims

Campaign Material Literature Must Include Disclaimer

(Minn. Stat. § 211B.04)

Minnesota Statutes section 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the “person or committee causing the material to be prepared or disseminated. . . .” The statute requires that the disclaimer on campaign material be substantially similar to the following: “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.⁴

“Campaign material” is defined, in relevant part, as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”⁵ The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”⁶

The Complainant alleges Mr. Aller placed a campaign sign promoting his candidacy at a non-profit event that did not include a disclaimer substantially in the form required by Section 211B.04. The Complainant attached to the Complaint a copy of a photograph of a campaign sign. The sign reads as follows:

¹ *Barry v. St. Anthony-New Brighton Independent School District*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

² *Id.*

³ *Id.*

⁴ Minn. Stat. § 211B.04.

⁵ Minn. Stat. § 211B.01, subd. 2.

⁶ *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.

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Aller
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The sign includes a photograph of Mr. Aller. The sign does not include a disclaimer or indicate who or what committee prepared or paid for the sign.

The Administrative Law Judge concludes that the Complainant has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211B.04. The sign appears to meet the definition of “campaign material,” and lacks the disclaimer required by Minn. Stat. § 211B.04. Without a disclaimer substantially in the form required identifying the name and address of the person or committee causing the material to be prepared or disseminated, it cannot be determined who prepared the material. The alleged violation of Minn. Stat. § 211B.04 will proceed to a probable cause hearing.

The Administrative Law Judge notes that there is an exception to the disclaimer requirement for objects “stating only the candidate’s name and the office sought.”⁷ In prior decisions, however, this Office has held that campaign signs are not “objects” within the meaning of Minn. Stat. § 211B.04.⁸ Unlike objects, such as pencils, that have an intrinsic value separate from their promotional message, a campaign sign’s only purpose is to promote the candidate.

a. Solicitation of Contributions Prohibited (Minn. Stat. § 211B.08)

Minn. Stat. § 211B.08 makes it unlawful for a religious, charitable or educational organization to ask a candidate or committee for a contribution or to pay for space in a publication.⁹ The Complaint alleges Mr. Aller violated the statute by sponsoring a table at an event held for the Chanhassen High School Booster Club; a Minnesota 501(c)(3) charitable organization.

Mr. Leonard’s claim fails on two grounds. First, and most important, the United States Court of Appeals for the Eighth Circuit ruled Minn. Stat. § 211B.08 is unconstitutional. In *Minnesota Citizens Concerned for Life, Inc. v. Kelly*¹⁰ the court determined that while the State of Minnesota had a compelling interest in preventing corruption, Minn. Stat. § 211B.08 “bars requests that have nothing to do with preventing corruption or the appearance of corruption.”¹¹ The court ruled that the statute was unconstitutional because it was not sufficiently narrowly tailored to protect the non-profit charity’s interest.¹²

⁷ Minn. Stat. § 211B.04(e).

⁸ See *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005); *Kalil v. Knutson*, OAH File No. 3-6302-16119-CV (September 10, 2004 Order).

⁹ Minn. Stat. § 211B.08.

¹⁰ *Minnesota Citizens Concerned for Life v. Kelly*, 427 F.3d 1106(2005).

¹¹ *Id.* at 1116.

¹² *Id.*

Even if the statute were constitutional the claim still must be dismissed. Minn. Stat. § 211B.08 makes it unlawful for a charitable organization to ask a candidate or committee for a contribution. The prohibition in the statute is against the charity. A charity is prohibited from soliciting charitable donations. The statute does not bar a candidate from making contributions or sponsoring a table at a charitable event. As the Court in *Kelly* noted, Minn. Stat. § 211B.08 “prohibits only the organization’s request for money and allows a candidate to voluntarily to donate money to any charity.”¹³ For these reasons Mr. Leonard’s section 211B.08 claim fails.

J. E. L.

¹³ *Id.*