

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. Leonard,

Complainant,

vs.

Andrew Aller,

Respondent.

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

The above-entitled Fair Campaign Practices Complaint is pending before the following panel of three Administrative Law Judges: James E. LaFave (Presiding Judge), Jeanne M. Cochran, and Barbara J. Case.

The matter was submitted to the panel based on the record created at the probable cause hearing and the underlying record, including the complaint, the Prima Facie Determination, and the Probable Cause Order. The parties were also given the opportunity to submit written argument by 4:30 p.m. on December 1, 2014.<sup>1</sup> The Respondent submitted a written closing argument. No submission was received from the Complainant. The Office of Administrative Hearings' (OAH) record closed on December 1, 2014.

Michael Leonard (Complainant) appeared on his own behalf without counsel. Jerry A. McDonald, Law Office of Jerry A. McDonald, PLC, appeared on behalf of Andrew Aller (Respondent).

**STATEMENT OF THE ISSUES**

1. Did the Complainant demonstrate that the Respondent violated Minn. Stat. § 211B.04(b) (2014) by failing to include a disclaimer on campaign material substantially in the form required by the statute?
2. If so, what penalty is appropriate?

**SUMMARY OF CONCLUSIONS**

The Complainant established by a preponderance of the evidence that the Respondent failed to include a disclaimer on his campaign material substantially in the

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<sup>1</sup> See NOTICE OF ASSIGNMENT OF PANEL AND SCHEDULING ORDER (November 19, 2014).

form required under Minn. Stat. § 211B.04(b). For this violation, the panel concludes a civil penalty of \$50 is appropriate.

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

### FINDINGS OF FACT

1. Complainant Michael Leonard and Respondent Andrew Aller both ran unsuccessfully for a seat on the Chanhassen City Council in the November 2014 general election.

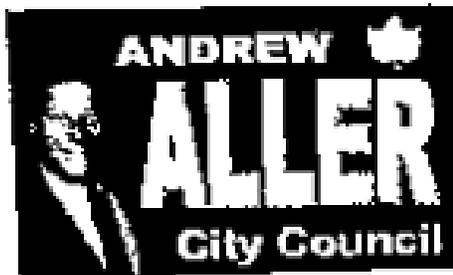
2. The Respondent was a sponsor of a fundraising event held on behalf of the Chanhassen High School Booster Club at the Hazeltine National Golf Club on October 11, 2014.<sup>2</sup>

3. Prior to the fundraising event, event organizers contacted the Respondent and each of the other sponsors and asked that they submit either their names or logos to be used to recognize them as sponsors.<sup>3</sup>

4. Rather than submitting his name, the Respondent submitted a digital image (jpeg) of his campaign sign that he had modified by including a photo of himself and an image a maple leaf, the symbol of the city of Chanhassen.<sup>4</sup> The Respondent obtained the image from the printing company he contracted with to produce his campaign signs.<sup>5</sup>

5. The Respondent understood that the image he submitted would be used in a printed form at the fundraising event.<sup>6</sup>

6. The image of Respondent's campaign sign did not include a disclaimer substantially in the form provided at Minn. Stat. § 211B.04(b). A scanned copy of the image the Respondent submitted for the fundraising event appears below:



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<sup>2</sup> Exhibits 3 (Affidavit of Nathan Swanson) and 4 (Affidavit of Austin Tollerson).

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

<sup>4</sup> Testimony of Andrew Aller.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

7. 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>7</sup> The heading at the top of the poster board read: "Thank You to Our Registration Sponsors."<sup>8</sup>

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



9. The image of the poster board appeared in the program distributed at the Booster Club fundraising event, on a page with the other sponsors for the evening.<sup>9</sup>

10. The Respondent and the other sponsors did not review the event program or the poster board prior to the event.<sup>10</sup>

11. Complainant Michael Leonard filed this campaign complaint against the Respondent on October 29, 2014.

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

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<sup>7</sup> Ex. 1.  
<sup>8</sup> *Id.*  
<sup>9</sup> Ex. 4.  
<sup>10</sup> Test. of A. Aller.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2014).

2. Minn. Stat. § 211B.01, subd. 2 (2014), 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 image of the Respondent's campaign sign displayed on the poster board and printed in the Booster Club event program promoted the Respondent's candidacy for Chanhassen City Council and is campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. The Respondent disseminated the image of his campaign sign for the purpose of influencing voting in the November 2014 election.

5. The Respondent participated in the preparation and dissemination of his campaign material by providing the digital image of his campaign sign to the Booster Club event organizers for their use in recognizing sponsors at the event.

6. Minn. Stat. § 211B.04 (2014) provides in relevant part:

(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.

\* \* \*

(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.

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7. The Complainant bears the burden of proving the allegations in the complaint. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.<sup>11</sup>

8. The Respondent's campaign logo, which was displayed on the poster board at the Booster Club event and included in the even program, did not include a disclaimer substantially in the form required by Minn. Stat. § 211B.04(b).

9. The Complainant has established by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(b) by failing to include a disclaimer on his campaign logo.

10. Based on the above violation, it is appropriate to impose a civil penalty in the amount of \$50.

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>11</sup> Minn. Stat. § 211B.32, subd. 4.

## ORDER

### IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.04, Respondent Andrew Aller shall pay a civil penalty of \$50 by February 15, 2015.<sup>12</sup>

Dated: December 4, 2014

s/James E. LaFave

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JAMES E. LAFAVE  
Presiding Administrative Law Judge

s/Jeanne M. Cochran

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JEANNE M. COCHRAN  
Administrative Law Judge

s/Barbara J. Case

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BARBARA J. CASE  
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2014), 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-.69 (2014).

## MEMORANDUM

The Fair Campaign Practices Act<sup>13</sup> 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.”<sup>14</sup> Campaign material is required, under Minn. Stat. § 211B.04(a), (b), to include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material. The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”<sup>15</sup>

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<sup>12</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.

<sup>13</sup> Minn. Stat. ch. 211B (2014).

<sup>14</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>15</sup> *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.

The panel finds that the image of the Respondent's campaign sign, which was displayed on a poster board and in the written program at the Booster Club event, was disseminated for the purpose of influencing voting and does meet the definition of campaign material under Section 211B.01, subd. 2. The image promoted the Respondent's candidacy for Chanhassen City Council in the upcoming election and the Respondent testified at the probable cause hearing that he assumed the image he provided to the event organizers would be published in a printed form at the event.

The Respondent argues that he had no control over how the image of his campaign sign was used at the fundraising event and he was not provided an opportunity to review the poster board or program prior to the event. Consequently, the Respondent contends that the Complainant has failed to show that he participated in the preparation or dissemination of campaign material in violation of Section 211B.04. The Respondent also asserts in his closing argument that when he was asked to submit his name or logo to the event organizers, he was unaware of the reason or purpose of this request. The Respondent maintains that the display of his campaign logo by the event organizers should be deemed an independent act not requiring a disclaimer under the exception provided in item (f) of Section 211B.04.

The panel finds Respondent's arguments unpersuasive. The record reflects that the Respondent was asked by the event organizers to submit his name or logo in order to be recognized as a sponsor. The Respondent could have submitted just his name, but instead chose to submit a digital image of his campaign sign promoting his candidacy for Chanhassen City Council. The Respondent also testified at the probable cause hearing that, while he did not know exactly how the image of his campaign sign would be used, he assumed it would be published in some type of print form at the event. The image submitted by the Respondent for use by the Booster Club did not include a disclaimer substantially in the form required by Minn. Stat. § 211B.04(b).

Based on the record, the panel finds that the Complainant has established by a preponderance of the evidence that the Respondent participated in the preparation and dissemination of campaign material promoting his candidacy for Chanhassen City Council that failed to include a disclaimer in violation of Minn. Stat. § 211B.04(b).

In addition, the panel finds that the exception to the disclaimer requirement provided in item Section 211B.04(f) for individuals or associations who act independently of a candidate does not apply in this case. By providing the digital image of his campaign sign to the Booster Club for its use at the event, the Respondent acted in coordination or concert with the Booster Club. The Booster Club did not act independently of a candidate within the meaning of Section 211B.04(f).

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 his campaign material substantially in the form required by the statute.

The Panel finds, however, that the violation was isolated with minimal impact on the upcoming election. The Panel concludes that a civil penalty in the amount of \$50 is appropriate in this case.

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