

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Lynne Olson,

Complainant,

vs.

Friends of Progressive Fergus Falls,

Respondents.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
PREHEARING CONFERENCE**

**TO: Parties.**

On December 11, 2014, Lynne Olson, City Administrator of Fergus Falls (Complainant), filed a campaign complaint with the Office of Administrative Hearings (OAH). The complaint alleges that the Friends of Progressive Fergus Falls (Respondent) violated Minn. Stat. §§ 211B.04, .05 (2014), with respect to advertisements it placed in a local newspaper in support of four candidates for the Fergus Falls City Council, and Minn. Stat. § 211A.02 (2014) by failing to provide full and complete campaign finance disclosure reports.

After reviewing the complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the complaint sets forth prima facie violations of Minn. Stat. §§ 211A.02, subd. 2; 211B.04. The complaint fails to set forth a prima facie violation of Minn. Stat. § 211B.05, and that claim is dismissed. This determination is described in more detail in the attached Memorandum.

This matter is scheduled for a prehearing conference to be held by telephone before the undersigned Administrative Law Judge at **11:00 a.m. on Monday, January 26, 2015**. At the appointed time, the parties are directed to:

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

At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining whether the matter may be disposed of without an evidentiary hearing.

Any party who needs an accommodation for a disability in order to participate in the 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 (TTY)

Dated: December 15, 2014

s/James E. LaFave

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JAMES E. LAFAVE  
Administrative Law Judge

### MEMORANDUM

The Respondent, Friends of Progressive Fergus Falls, appears to be a committee that was acting to promote the election of four candidates to the Fergus Falls City Council in the November 2014 general election. The Complaint alleges that the Respondent placed a one-quarter page advertisement in the October 12, 2014, edition of a local news publication (*This Week's Shopping News*)<sup>1</sup> and full page advertisements in the October 19 and October 26, 2014, editions of the same publication.<sup>2</sup> The advertisements urge people to vote for four particular candidates for city council. A disclaimer at the bottom of the advertisements states only: "PAID ADVERTISEMENT BY FRIENDS FOR A PROGRESSIVE FERGUS FALLS."

According to the complaint, *This Week's Shopping News* is a publication of "The Midweek." The complaint alleges that The Midweek charges \$332.64 for a quarter page advertisement, and \$1,330.56 for a full page advertisement.

The complaint also alleges that on October 30, 2014, the Respondent rented the Center for the Arts for a "town hall meeting" held to meet the four candidates. According to the complaint, the Center for the Arts charged Respondent \$225 to rent the building for that event.<sup>3</sup>

On November 3, 2014, the Respondent submitted a campaign financial report listing \$1,642.41 in disbursements for the October 12<sup>th</sup> and October 19<sup>th</sup> Midweek advertisements.<sup>4</sup> The report indicated that the cost of the quarter page advertisement was \$311.85 and the cost for the full page advertisement was \$1330.56.<sup>5</sup> Under the section for "Contributions Received," the report identified \$1,642.41 in in-kind

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<sup>1</sup> Complaint Ex. A.

<sup>2</sup> Complaint Exs. B and C.

<sup>3</sup> Complaint Ex. D.

<sup>4</sup> Complaint Ex. E.

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

contributions and no cash contributions.<sup>6</sup> Laurie Mullen signed the report certifying its accuracy.<sup>7</sup>

By letter dated November 7, 2014, the Complainant notified Ms. Mullen that the campaign financial report she filed for Respondent failed to include the advertisement that ran in the October 26<sup>th</sup> edition of *This Week's Shopping News*. The Complainant notified Ms. Mullen that she should file another report and advised her that, as the report should have been filed within ten days of the general election, it was now late.<sup>8</sup>

In a campaign financial report dated November 10, 2014, for the reporting period of October 20, 2014 to October 31, 2014, the Respondent identified \$1,555.56 in additional disbursements: \$1,330.50 for the one page advertisement that was published in the October 26<sup>th</sup> edition of *This Week's Shopping News*, and \$225 for renting the Center for the Arts on October 30, 2014.<sup>9</sup> In the "Contributions Received" section of the report, the Respondent listed \$1,555.56 in in-kind contributions and no cash contributions.<sup>10</sup>

Respondent submitted a final campaign financial report on November 18, 2014.<sup>11</sup> This report covered the reporting period of October 12, 2014, through November 18, 2014. The report listed all of the disbursements identified in the two prior reports for the three advertisements and rental of the Center for the Arts, for a total campaign disbursement amount of \$3,197.97.<sup>12</sup> The Respondent listed its total contributions received as \$3,197.97. The Respondent identified all of its contributions as in-kind, indicating in a hand-written notation "no donations." The Respondent also listed a "total cash on-hand" amount of \$3,197.97.<sup>13</sup>

On November 26, 2014, the city received another campaign financial report from Respondent identified as a final report – independent expenditures.<sup>14</sup> This report identifies the same disbursements and contributions listed in Respondent's other final campaign finance report.<sup>15</sup>

The Complainant alleges that she attempted to contact Laurie Mullen on more than one occasion to clarify the reports, but was unsuccessful.

The Complainant notes that none of the four candidates promoted in the identified advertisements reported the cost of the advertisements as disbursements on their campaign financial reports.

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

<sup>7</sup> *Id.*

<sup>8</sup> Complaint Ex. F.

<sup>9</sup> Complaint Ex. G.

<sup>10</sup> *Id.*

<sup>11</sup> Complaint Ex. H.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Complaint Ex. I.

<sup>15</sup> (Ex. H)

The Complaint alleges that the Respondent has failed to accurately report its contributions in violation of Minn. Stat. § 211A.02, subd. 2. In addition, given the Respondent's representation that in-kind contributions covered the cost of the advertisements, the Complainant states it raises a question whether Midweek Publication made the in-kind donation of \$2,972.97 worth of advertising. If that was the case, the Complainant suggests this could violate Minn. Stat. § 211B.05, which requires publishing companies to charge candidates the same rates for advertising.<sup>16</sup>

### **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 (2014).<sup>17</sup> For purposes of a prima facie determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>18</sup> 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.<sup>19</sup>

### **Minnesota Statutes section 211B.04 (Disclaimer Requirement)**

The Complaint alleges that the Respondent's advertisements were campaign material that should have included a disclaimer substantially in the form required by Minn. Stat. § 211B.04. The advertisements identified the four "progressive candidates" with their pictures, telephone numbers, and email addresses and urged voters to vote for them to build a progressive future in Fergus Falls. The disclaimer at the bottom of each advertisement stated: "Paid Advertisement (sic) by Friends for a Progressive Fergus Falls." No address was provided for Friends for a Progressive Fergus Falls.

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>20</sup>

Minnesota Statutes section 211B.04, 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.

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<sup>16</sup> See Minn. Stat. § 211B.05, subd. 2.

<sup>17</sup> *Barry, et al. v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Minn. Stat. § 211B.01, subd. 2.

(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.

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(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>21</sup>

Minnesota Statutes section 211B.05, subdivision 1, provides that a newspaper may not intentionally accept a political advertisement unless the words "PAID ADVERTISEMENT" and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement.

The advertisements meet the definition of campaign material. They urged voters to vote for the four particular city council candidates in the general election. While the advertisement included contact information for each candidate, it did not include an address for the group that paid for the advertisement. The disclaimer at the bottom of each advertisement stated only: "PAID ADVERTISEMENT BY FRIENDS FOR A PROGRESSIVE FERGUS FALLS."

The Administrative Law Judge finds that the Complaint has alleged sufficient facts to support a prima facie violation of Minn. Stat. § 211B.04 with respect to Respondent's advertisements.

### **Minnesota Statutes section 211A.02 (Financial Report)**

Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year must file financial reports with the appropriate "filing officer."<sup>22</sup> In addition to an initial financial report, a candidate or committee must also file a report 30 days after a general or special election.<sup>23</sup>

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<sup>21</sup> Minn. Stat. § 211B.04; 2010 Minn. Laws ch. 397, § 15. The amendment is applicable to campaign material "prepared and disseminated" on or after June 1, 2010.

<sup>22</sup> Minn. Stat. § 211A.01, subd. 7, defines "filing officer" to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

<sup>23</sup> Minn. Stat. § 211A.02, subd. 1(b)(3).

A “disbursement” is defined as “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”.<sup>24</sup> “Disbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.<sup>25</sup>

A “contribution” is defined to mean “anything of monetary value that is given or loaned to a candidate or committee for a political purpose.”<sup>26</sup> “Contribution” does not include a service provided without compensation by an individual.<sup>27</sup>

An “in-kind” contribution refers to anything of value that is given, other than money.<sup>28</sup>

Minnesota Statutes section 211A.02, subd. 2, requires campaign financial reports to include the following:

- (1) the name of the candidate or ballot question;
- (2) the printed name, address, telephone number, signature, and e-mail address, if available, of the person responsible for filing the report;
- (3) the total cash on hand designated to be used for political purposes;
- (4) the total amount of contributions and disbursements for the period from the last previous report to five days before the current report is due;
- (5) the amount, date, and purpose for each disbursement; and
- (6) the name, address, and employer, or occupation if self-employed, of any individual or committee that during the year has made one or more contributions that in the aggregate exceed \$100, and the amount and date of each contribution. The filing officer must restrict public access to the address of any individual who has made a contribution that exceeds \$100 and who has filed with the filing officer a written statement signed by the individual that withholding the individual's address from the financial report is required for the safety of the individual or the individual's family.

The information provided in Respondent's three campaign financial reports appears to be inaccurate or incomplete. The Respondent has represented that it received in-kind (non-cash) contributions of a value in the exact amount of its disbursements. The Respondent also reports that it has total cash on hand in the amount of its total disbursements (\$3,197.97). The Respondent has not identified the information required to be reported in item (6) of section 211A.02, subd. 2 – namely the name and address of individuals or committees who contributed amounts exceeding \$100. The Administrative Law Judge finds that the complaint has alleged sufficient

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<sup>24</sup> Minn. Stat. § 211A.01, subd. 6.

<sup>25</sup> *Id.*

<sup>26</sup> Minn. Stat. § 211A.01, subd. 5.

<sup>27</sup> *Id.*

<sup>28</sup> See Minn. Stat. § 10A.01, subd. 13.

facts to support finding prima facie violations of Minn. Stat. § 211A.02, subd. 2, on the part of the Respondent.

**Minnesota Statutes section 211B.05 (Paid Advertisement)**

Minnesota Statutes, section 211B.05 provides as follows:

Subdivision 1. Acceptance of paid advertisements. A newspaper, periodical, or magazine may not intentionally accept for insertion in the newspaper, magazine, or periodical a political advertisement unless the words "PAID ADVERTISEMENT," and the disclaimer required under section 211B.04 are included at the beginning or end of the advertisement. The disclaimer must be in a legible text size and font. A radio station, television station, or cable system may not accept for broadcast a political advertisement unless the words "PAID ADVERTISEMENT" are included at the beginning or end of the advertisement.

Subd. 2. Advertising rates. Rates charged for advertising to support or oppose a candidate or ballot question must be the same as the charges made for any other political candidate and may be no greater than charges made for any other comparable purpose or use according to the seller's rate schedule.

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Subd. 4. Unpaid material identification. Unpaid material published in a newspaper, magazine, or other publication that is: (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

Section 211B.05 places certain duties on newspapers, magazines, or other publications as defined in subdivisions 1 and 3 of the statute. The Respondent is not regulated by this statute. Therefore, because the complaint is directed at the committee or persons who submitted the advertisement and not Midweek or *This Week's Shopping News*, it fails to allege a prima facie violation of Minn. Stat. § 211B.05. This claim is dismissed.

This matter shall proceed to a prehearing conference as ordered on the alleged violations of Minn. Stat. §§ 211B.02, .04 and, unless otherwise disposed of, shall be set on for an evidentiary hearing before a panel of three administrative law judges pursuant to Minn. Stat. § 211B.33, subd. 2(d).

**J. E. L.**