

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Kirsten Kennedy,

Complainant,

vs.

Charles Duncan,

Respondent.

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

**TO: Parties.**

On January 5, 2015, Kirsten Kennedy (Complainant) filed a campaign complaint with the Office of Administrative Hearings alleging that Charles Duncan (Respondent) violated Minn. Stat. § 211B.04 (2014) by failing to include a disclaimer on campaign material disseminated in opposition to Ms. Kennedy's candidacy for mayor of North Branch in the November 4, 2014, general election.

After reviewing the complaint and the attached exhibit, the undersigned Administrative Law Judge has determined that the complaint sets forth a prima facie violation of Minn. Stat. § 211B.04. This determination is detailed 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 Tuesday, February 3, 2015**. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **544-169-9282#**

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 an evidentiary 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: January 8, 2015

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

### MEMORANDUM

The Complainant, Kirsten Kennedy, ran successfully for the office of mayor of North Branch in the November 4, 2014, general election. She alleges in her complaint that the Respondent prepared and/or disseminated a campaign postcard that lacked a disclaimer in the form required by Minn. Stat. § 211B.04. The campaign postcard was entitled “And Now, for the Rest of the Story” and it listed various reasons why voters should not vote for Ms. Kennedy. A disclaimer on the postcard stated only: “Brought to you by Concerned Citizens.”<sup>1</sup>

A scanned copy of the front and back of the postcard appears below:



<sup>1</sup> Complainant Exhibit A.

### **WHO or WHAT is Kirsten Kennedy, candidate for Mayor**

A self-appointed "Community Organizer" who has taken it upon herself to disrupt City operations by spreading exaggerations and lies about what the Council is working on. Kirsten has managed to rally other like-minded people together over her own falsified perceptions of the issues rather than approaching these issues on factual information. The same person that has a **Lien Judgment** filed against her in Chisago Co. court for an unpaid debt to Capital One Bank (13-CV-11-943; 06-24-2011). **Does this make her an ethical candidate for Mayor?**

When the Council was looking at the budget and cost of operating the City, they looked at all departments. The goal was to identify ways to streamline operations, reduce costs and avoid adding additional financial burdens to the residents. Kennedy broadcast to all that that would listen; "...the Council was going to get rid of the Police Department." She organized the "We support NB Police" campaign, an effort fueled by lies and distortions of facts. The Council was only doing a study of cost saving options. **Can you trust a manipulator of facts, to be the Mayor?**

When the Council tried to get legislative support to change the Water & Light Commission from 3 to 5 members like all other commissions (EDA has 7) in the city, she fought it at the legislature, and managed to get the bill buried. **She touts "transparency" but doesn't support people having the same representation at NB W&L**

Promises: She is, in her campaigning, making promises. Promise Police and Fire, promises of more funding to the NB Senior Cent **she going to get the money, Capital One Bank? OR... more taxes!!!**

### **KENNEDY INTERVIEW QUOTES\***

Her ideals generally line up with that of other liberals, yet she is on specific social issues. "I believe that the large corporations sh taxes and that they should not enjoy human rights" Instead she about how there are still people in slavery in one form or anothe how children are being exploited overseas. She does not support definitely a peaceful, hippie type person," said her daughter, Jon Politically, Kirsten leans much more towards socialism...**So why call herself a progressive?**

Kennedy has stated that she wants to become a leader to wom complete my degree, write and become a leader to the women c It is through women the world will change, *men have had their* will happen through the collaboration of women from all over th peace, prosperity and freedom will flow and all..."

\*<http://www.honk.blogspot.com/2011/04/kirsten-kennedy-feature-story.html> will available - when's the transparency????

For a person who claims to support the police, why has she suet Braham for \$300,000? Her attorney also sent a notice of request North Branch, but the notice was pulled. **Why do we want a does not support the police when they are doing their job**

According to the complaint, the postcard was delivered to residents of North Branch on Friday, October 31, 2014, less than seven days before the November 4, 2014, election.

## **Standard of Review**

In order to set forth a prima facie case of violations of Minn. Stat. chs. 211A and 211B (2014), a complainant must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of either or both of those two chapters.<sup>2</sup> For purposes of a prima facie determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.<sup>3</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 violations of chapters 211A or 211B occurred.<sup>4</sup>

## **Minnesota Statutes, Section 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 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

<sup>2</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>3</sup> *Id.*

<sup>4</sup> *Id.*

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.

...

(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.

"Campaign material" is defined as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."<sup>5</sup>

The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."<sup>6</sup>

## Analysis

Any person who prepares or disseminates campaign material that does not prominently include a disclaimer substantially in the form provided in Minn. Stat. § 211B.04 is in violation of the statute.

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<sup>5</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>6</sup> *Hansen v. Stone*, Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, (Oct. 28, 2005) at 4.

The postcard at issue meets the definition of “campaign material” as it was disseminated for the purpose of influencing voting at an election. Because the postcard lacks a disclaimer substantially in the form required, the Complainant has alleged sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.04(b).

Accordingly, this alleged violation will proceed to a telephone prehearing conference as ordered and, if necessary, an evidentiary hearing.

**J. M. C.**