

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Common Cause Minnesota,

Complainant,

v.

Wayne Valentine, Marcia Ward, Missy Beyers, Concerned Taxpayers of Winona County, Responsible Voters of Winona County, and Concerned Citizens of Winona County,

Respondents.

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

On October 13, 2015, Common Cause Minnesota (CCM or Complainant) filed a campaign complaint with the Office of Administrative Hearings alleging that the candidate committees for Mr. Valentine, Ms. Ward, and Ms. Beyers failed to report certain contributions from Respondents Concerned Taxpayers of Winona County, Responsible Voters of Winona County, and Concerned Citizens of Winona County. Additionally, CCM asserts that the contributions made in favor of the Ward and Valentine committees exceeded the allowable contribution limits.

CCM maintains that this conduct violates Minn. Stat. §§ 211A.02, subd. 2(6) and 211A.12 (2014).<sup>1</sup>

After reviewing the complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the complaint sets forth *prima facie* violations of both Minn. Stat. §§ 211A.02, subd. 2(6) and 211A.12. 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 **1:30 p.m. on Monday, November 9, 2015**. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **566-872-4759#**

---

<sup>1</sup> See *generally* Minn. Stat. § 211B.32, subd. 2 (2014) (complaints must be filed within one year of the occurrence of the act or failure to act that is the subject of the complaint).

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 this hearing process may request one. 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: October 21, 2015

s/Eric L. Lipman

---

ERIC L. LIPMAN  
Administrative Law Judge

## MEMORANDUM

The Complaint asserts campaign practice violations by three candidates for election to the Winona County Board of Commissioners, and three political committees that ran advertisements during the November 4, 2014, general election.

The Complaint alleges that the three candidates – Wayne Valentine, Marcia Ward, and Missy Beyers – worked with the Respondent political committees on the development of a multi-candidate advertisement that was published in the *Winona Post* prior to the 2014 general election. The advertisement had three distinct parts, with each section urging the election of a different candidate for a different single-member district of the Winona County Board.

In the referenced advertisement, the disclaimer on the portion of the advertisement urging the election of Missy Beyers states that it was prepared and paid for by her campaign committee. The portions of the advertisement that urge the election of Mr. Valentine and Ms. Ward state that the message was an independent expenditure by the Concerned Citizens of Winona County and the Responsible Voters of Winona County, respectively.

Because of the similarity of the messages and designs of the subparts, CCM maintains that the advertisements were not independent expenditures, but rather unreported contributions in favor of those candidate committees that benefitted from the disbursements.

## Statutory Framework

Chapter 211A (2014) governs the campaign financial reporting requirements for candidates seeking election to county, municipal, school district, or other political subdivision office.<sup>2</sup> Complaints alleging violations of the campaign financial reporting laws must identify the individual or entity that is being complained about, the statutory provision alleged to have been violated, and the factual basis for believing that a violation of the law occurred.<sup>3</sup>

The Complaint alleges that by coordinating the campaign advertisements in support of the three candidates, the Respondents violated Minn. Stat. §§ 211A.02, subd. 2(6) and 211A.12. Section 211A.02 requires local candidates and political committees that receive or disburse more than \$750 for a political purpose<sup>4</sup> in any calendar year, to make a campaign finance report at certain specified intervals. In this context, a “contribution” is:

anything of monetary value that is given or loaned to a candidate or committee for a political purpose. “Contribution” does not include a service provided without compensation by an individual.<sup>5</sup>

Because the disbursements made by the political committees do not appear in the candidates’ year-end financial reports, either as contributions to, or disbursements by, the candidate committees, CCM maintains that Minnesota’s campaign disclosure laws were violated.

To establish a *prima facie* violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.<sup>6</sup> The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B (2014).<sup>7</sup>

For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.<sup>8</sup> A Complaint must be

---

<sup>2</sup> Minn. Stat. § 211A.01, subd. 3.

<sup>3</sup> Minn. Stat. § 211B.32, subd. 3 (2014).

<sup>4</sup> Minn. Stat. § 211A.01, subd. 8 (“An act is done for ‘political purposes’ if it is of a nature, done with the intent, or done in a way to influence or tend to influence, directly or indirectly, voting at a primary or an election or if it is done because a person is about to vote, has voted, or has refrained from voting at a primary or an election”).

<sup>5</sup> See Minn. Stat. § 211A.01, subd. 5 (2014).

<sup>6</sup> Minn. Stat. § 211B.32, subd. 3.

<sup>7</sup> *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

<sup>8</sup> *Id.*

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>9</sup>

## Legal Analysis

If the facts that are alleged in the Complaint are accepted as true, in-kind disbursements were made which benefitted two candidate committees and those payments were not later reported.

The more difficult question, however, is whether in the context of a race for local office, an “in-kind” contribution (a disbursement that was made by one of the political committees to cover costs of one of the candidate committees) is something “of monetary value that is *given* or *loaned* to a candidate or committee for a political purpose.” For example, if the Concerned Citizens of Winona County made a disbursement to the *Winona Post* for the costs of newspaper advertising which urged the election of Mr. Valentine to the County Board, is that disbursement “given or loaned to a candidate or committee” under Minn. Stat. § 211A.01, subd. 5?

The definition of “contribution” in Minn. Stat. § 211A.01, subd. 5 is shorter and less detailed than the corresponding definition of “contribution” that covers candidates for state office.<sup>10</sup> Further, the definition that is applicable to state candidates specifically includes a “donation in kind that is given to a ... principal campaign committee.”<sup>11</sup>

The relevant case law, however, apparently resolves the differences in the two statutes. The phrase “given ... to a candidate or committee,” that is found in Chapter 211A, is read expansively. As interpreted by this Office, it includes in-kind payments that benefit those candidates or committees.<sup>12</sup>

The Administrative Law Judge therefore concludes that CCM has a stated a *prima facie* violation of the Fair Campaign Practices Act.

**E. L. L.**

---

<sup>9</sup> *Id.*

<sup>10</sup> Compare Minn. Stat. § 10A.01, subd. 11 (2014) with Minn. Stat. § 211A.01, subd. 5.

<sup>11</sup> *Id.*

<sup>12</sup> See generally *Osmek v. McKinley*, OAH Docket No. 8-6326-20255-CV, 2009 WL 1219497, at \*2 (the Respondent candidate, Mr. McKinley “failed to properly report the \$266 in-kind contribution for the *Laker* [newspaper] advertisement”) (unpublished); accord, *Abrahamson v. The St. Louis County School District, ISD 2142, et. al*, OAH Docket No. 60-0325-32071, 2014 WL 7337927 (unpublished).