

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Barbara L. Thompson,		NOTICE OF DETERMINATION OF
	Complainant,	PRIMA FACIE VIOLATION
vs.		AND
Carol LeDoux,		NOTICE OF AND ORDER FOR
	Respondent.	PROBABLE CAUSE HEARING

TO: THE PARTIES.

On August 9, 2010, Barbara L. Thompson filed a Campaign Complaint with the Office of Administrative Hearings alleging that Carol LeDoux violated Minnesota Statutes § 211B.06 by preparing and disseminating false campaign material. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.06

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **2:00 p.m. on Monday, August 16, 2010**. The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter "**2283386407**" on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us 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 that choice is 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. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Johnson at William.Johnson@state.mn.us or faxed to 651-361-7936.

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 Minnesota Statutes § 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 Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order 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: August 11, 2010

/s/ William R. Johnson
WILLIAM R. JOHNSON
Administrative Law Judge

MEMORANDUM

The Respondent, Carol LeDoux, is a candidate for Anoka County Commissioner 5th District in the November 2010 general election. She is running for the seat vacated by her husband and former boxer, Scott LeDoux. In May 2010, Scott LeDoux resigned as commissioner for Anoka County District 5 due to health reasons. Anoka County left the seat open until the general election.

The Complaint alleges that Ms. LeDoux has disseminated campaign lawn signs to promote her candidacy that were prepared and paid for by her husband's campaign committee for use in past elections when he was a candidate. The campaign signs state:

Vote
LeDoux
Anoka County Commissioner 5th District

Images of boxing gloves appear in the upper corners of the sign and a disclaimer at the bottom of the sign states: "Paid for by the Scott LeDoux Election Committee."

The Complaint contends that the lawn signs are misleading and give the false impression to voters that it is Scott LeDoux, and not Carol LeDoux, who is running for Anoka County's 5th District. Specifically, the Complaint alleges that the failure to state

Ms. LeDoux's first name, the inclusion of images of boxing gloves, and the wording of the disclaimer render the lawn signs false campaign material within the meaning of Minn. Stat. § 211B.06. By disseminating the campaign signs, the Complainant maintains Carol LeDoux violated Minn. Stat. § 211B.06.

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false. Campaign material is "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."¹

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.² It does not prohibit inferences or implications, even if misleading. However, the statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.³

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.⁴ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁵ 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.⁶

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. The wording of the disclaimer, which identifies the Scott LeDoux Election Committee as the group or organization responsible for preparing and disseminating the signs, combined with the lack of the candidate's first name and images of boxing gloves, may be sufficient to render the lawn signs false campaign material within the meaning of the statute.

¹ Minn. Stat. § 211B.01, subd. 2.

² *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

³ *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

⁴ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁵ *Id.*

⁶ *Id.*

In addition, the Administrative Law Judge notes that the disclaimer may violate Minnesota Statutes § 211B.04, which requires campaign material to include the name and address of the person or committee causing the material to be prepared or disseminated. The disclaimer is required to provide the name and address of the candidate's committee that prepared and paid for the signs. If the signs were prepared and paid for by a person or committee other than the candidate's principal committee, the disclaimer must read substantially as follows: "Prepared and paid for by the _____ committee _____ (address) in support of _____ (insert candidate's name)."⁷ The disclaimer at issue in this matter appears to have incorrectly identified the committee responsible for disseminating the signs on behalf of Ms. LeDoux.

Should the Complainant desire to do so, the Administrative Law Judge will entertain a motion to amend the complaint to add an allegation that the Respondent violated Minn. Stat. § 211B.04 by failing to have the appropriate disclaimer on her lawn signs. Any such motion as well as the 211B.06 allegation will be considered at the probable cause hearing as ordered.

W.R.J.

⁷ Minn. Stat. § 211B.04 (2010).