

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Thomas Rees,

Complainant,

vs.

Michael Dudley and Dudley for  
State Senate,

Respondents.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER**

The above-entitled matter came on for an evidentiary hearing on October 3, 2012, before a panel of three Administrative Law Judges: Manuel J. Cervantes (Presiding Judge), James E. LaFave, and James Kohl. The hearing record closed on October 3, 2012, at the conclusion of the hearing.

Thomas Rees (Complainant) appeared on his own behalf without counsel.

Michael Dudley appeared on his own behalf and on behalf of his campaign committee, Dudley for State Senate (Respondents).

**STATEMENT OF THE ISSUES**

1. Did the Respondents violate Minn. Stat. § 211B.04(b) by failing to put a disclaimer on campaign material substantially in the form required?
2. If so, what penalty is appropriate?

The panel concludes that the Complainant has established by a preponderance of the evidence that Respondents failed to put a disclaimer on campaign material identifying who prepared and paid for the material in violation of Minn. Stat. § 211B.04. The Panel concludes further that a civil penalty of \$100 is appropriate.

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

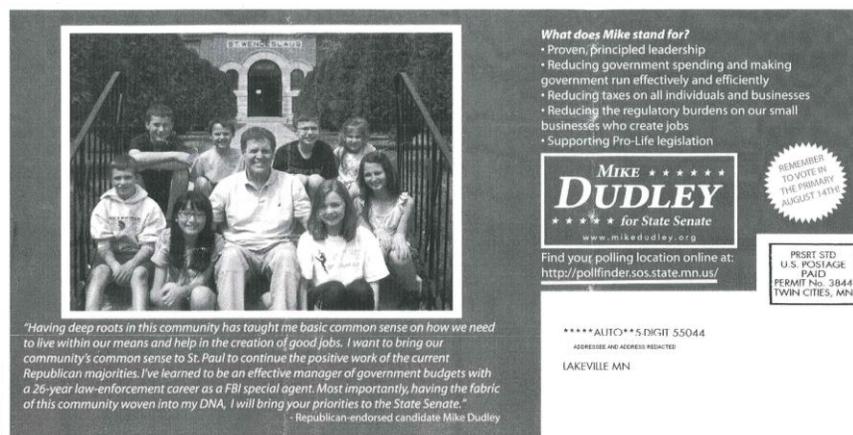
## FINDINGS OF FACT

1. The Complainant, Thomas Rees, is a resident of Senate District 20 and a former Republican member of the Minnesota House of Representatives.<sup>1</sup>

2. Respondent Michael Dudley is the Republican Party's endorsed candidate for Minnesota Senate District 20. Senate District 20 includes most of Le Sueur County and portions of Rice and Scott Counties. Respondent "Dudley for State Senate" is the name of Mr. Dudley's campaign committee.

3. Prior to the August 14, 2012, primary election, the Respondents prepared and disseminated a campaign postcard that promoted Mr. Dudley's candidacy for Senate District 20 and reminded recipients to vote in the primary.<sup>2</sup>

4. A copy of the campaign postcard appears below:



<sup>1</sup> Mr. Rees served in the Minnesota House representing (then) District 36B from 1979-1982, and 1985-1986.

<sup>2</sup> Complaint Ex. 1.

5. The postcard does not have a disclaimer indicating who or what organization prepared and paid for the campaign material. It does state a website address ([www.mikedudley.org](http://www.mikedudley.org)) for Mr. Dudley's campaign under the phrase "Mike Dudley for State Senate."<sup>3</sup>

6. Mr. Dudley's campaign website has several tabs which direct readers to specific information concerning his background, positions on issues, campaign volunteer opportunities, and ways to contact his campaign. Each page of the website contains a disclaimer stating: Prepared and paid for by Dudley for State Senate."<sup>4</sup>

7. On or about August 6, 2012, the Respondents mailed approximately 9,000 copies of the campaign postcard to residents in Senate District 20. The Respondents and volunteers working on behalf of Mr. Dudley's campaign also hand delivered about 200 copies of the postcard to residents in the district.<sup>5</sup>

8. The Complainant received the campaign postcard in the mail on or about August 8, 2012. He reviewed the postcard and was concerned that it lacked a statement indicating who prepared and paid for it.<sup>6</sup>

9. On August 9, 2012, the Complainant went to the [www.mikedudley.org](http://www.mikedudley.org) website identified on the postcard and sent an email to Respondent's campaign committee via the contact form provided at the site.<sup>7</sup> In his email, the Complainant informed the committee that he had received a mailing for Mr. Dudley and that it lacked the typical statement identifying who paid for it. The Complainant asked the campaign committee if it had sent him the mailing. The Complainant identified himself in the email only as "Tom."<sup>8</sup>

10. Mr. Dudley responded to the Complainant's inquiry in an email also dated August 9, 2012. Mr. Dudley stated, "I paid for it" and then incorrectly wrote that while federal law requires a disclaimer, state law does not.<sup>9</sup>

11. On August 10, 2012, the Complainant sent another email to Mr. Dudley. The Complainant pointed out the disclaimer requirement for campaign material found at Minnesota Statutes § 211B.04, and asked Mr. Dudley to explain why he believes that disclaimers are not required.<sup>10</sup>

12. When Mr. Dudley received the Complainant's August 10<sup>th</sup> email, he contacted Gary Goldsmith at the Minnesota Campaign Finance and Disclosure Board.

---

<sup>3</sup> Ex. 1.

<sup>4</sup> Ex. 2; Testimony of Michael Dudley and Thomas Rees.

<sup>5</sup> Testimony of Michael Dudley.

<sup>6</sup> Testimony of Thomas Rees.

<sup>7</sup> Ex. 2.

<sup>8</sup> Ex. 3.

<sup>9</sup> Ex. 3.

<sup>10</sup> Ex. 7.

Mr. Goldsmith informed Mr. Dudley that state law does require disclaimers on campaign material. Mr. Goldsmith also informed Mr. Dudley that complaints concerning the lack of a disclaimer are handled by the Office of Administrative Hearings.<sup>11</sup>

13. As of August 10, 2012, Mr. Dudley had approximately 6,000 campaign postcards that had not yet been disseminated. After reviewing Minnesota Statutes § 211B.04, Mr. Dudley stamped the remaining postcards with the following disclaimer: "Prepared and paid for by Dudley for State Senate." The Respondents delivered about 4,000 of these stamped postcards to households in the district prior to the August 14<sup>th</sup> primary election.<sup>12</sup>

14. Mr. Dudley won the Republican primary for Senate District 20. He received approximately 87% of the votes. His opponent, Gene Kornder, did little campaigning and received about 13% of the votes.<sup>13</sup>

15. The state primary election is a partisan election. Voters may vote for candidates of only one political party.<sup>14</sup>

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

### **CONCLUSIONS**

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, 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 Respondents' campaign postcard at issue in this matter is campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minn. Stat. § 211B.04, as amended in 2010, 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.

---

<sup>11</sup> Dudley Test.

<sup>12</sup> Dudley Test.; Ex. A.

<sup>13</sup> Dudley Test.; Primary election results reported on the Minnesota Secretary of State's website. (Mr. Dudley received 2,590 votes and Mr. Kornder received 400 votes.)

<sup>14</sup> See, Minn. Stat. § 204D.08.

(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.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the ..... 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.<sup>15</sup>

5. The burden of proving the allegation in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.<sup>16</sup>

6. The campaign postcard did not substantially comply with the disclaimer requirement contained in Minn. Stat. 211B.04(b).

7. The Complainant has established by a preponderance of the evidence that Respondents violated Minn. Stat. § 211B.04 by failing to include a disclaimer on their campaign postcard substantially in the form required.

8. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

---

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

<sup>16</sup> Minn. Stat. § 211B.32, subd. 4.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

**ORDER**

**IT IS ORDERED:**

That having been found to have violated Minn. Stat. § 211B.04, Respondents Michael Dudley and Dudley for State Senate shall pay a civil penalty of \$100 by December 15, 2012.<sup>17</sup>

Dated: October 8th, 2012

/s/ Manuel J. Cervantes

---

MANUEL J. CERVANTES  
Presiding Administrative Law Judge

/s/ James E. LaFave

---

JAMES E. LAFAVE  
Administrative Law Judge

/s/ James Kohl

---

JAMES KOHL  
Administrative Law Judge

**NOTICE**

Pursuant to Minn. Stat. § 211B.36, subd. 5, 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 to 14.69.

---

<sup>17</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.

## MEMORANDUM

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>18</sup> The campaign postcard at issue in this case meets that definition as it was disseminated for the purpose of influencing voting at a primary election. As a result, it was required to include a disclaimer substantially in the form provided in Minn. Stat. § 211B.04(a) and (b).<sup>19</sup> The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”<sup>20</sup>

In *Gadsden v. Kiffmeyer*,<sup>21</sup> this Office found that a document disseminated on behalf of Representative Kiffmeyer was campaign material and did substantially comply with the disclaimer requirement despite lacking a specific statement indicating who “prepared and paid” for the material. The document was produced in a tabloid format with four pages of text and was designed to resemble a newspaper. It contained “articles” promoting Representative Kiffmeyer’s legislative work and numerous photographs of Representative Kiffmeyer. At the top of the document, above the fold, was “A Letter from Representative Kiffmeyer.” The letter began with the greeting, “Dear Neighbor,” and closed with “In service, Mary.” Across the bottom of the front page was a graphic in large font size advising readers to “Connect with Your Neighbor, Representative Kiffmeyer” at [www.kiffmeyer.org](http://www.kiffmeyer.org).” Inside pages also listed the telephone number and email address of Representative Kiffmeyer’s legislative office and website. Based on the totality of this document, the panel of Administrative Law Judges in that case concluded that the document substantially complied with the disclaimer requirement. The panel found that the only conclusion a reader could reasonably draw was that Representative Kiffmeyer or her campaign committee disseminated the material.

Unlike the *Kiffmeyer* document, which began with a personal letter from Representative Kiffmeyer and prominently included her contact information, the postcard in this matter contains only Mr. Dudley’s logo and website address. It is not clearly evident when looking at the material who or what committee or organization prepared or paid for the piece. Without a disclaimer, the recipient is left to guess whether Mr. Dudley or some other group prepared and disseminated the mailing.

The Panel concludes that the Complainant has established by a preponderance of the evidence that the Respondents violated Minn. Stat. 211B.04(b) by not including a disclaimer on the campaign postcard substantially in the form required by the statute. The Panel concludes further, however, that the violation was at most negligent on Respondents’ part and had little, if any, adverse effect on the primary election. Moreover, once he was made aware that the postcard lacked the required disclaimer, Mr. Dudley made appropriate efforts to promptly correct the mistake by stamping a

---

<sup>18</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>19</sup> Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2.

<sup>20</sup> *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005).

<sup>21</sup> OAH Docket No. 3-0320-21690-CV (Nov. 1, 2010).

disclaimer on the remaining postcards and delivering the corrected postcard to a majority of the homes that received the first mailing. The Panel concludes that a \$100 civil penalty is appropriate in this case.

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