

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Elise M. Hiljus, Complainant

v.

Jonathan Glassel and Jon's Small Engine
Repair

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING**

TO: Elise M. Hiljus, 14643 – 255th Street, Lindstrom, MN 55045; Jonathan P. Glassel, 27540 Forest Boulevard North, Wyoming, MN 55092.

On October 25, 2012, Elise M. Hiljus filed a Complaint with the Office of Administrative Hearings alleging that Respondents Jonathan Glassel and Jon's Small Engine Repair violated the Fair Campaign Practices Act. The Complaint alleges that issues of Mr. Glassel's publication, the *Chisago County Epitaph*, reveal violations of Minn. Stat. §§ 211B.05, 211B.06, 211B.13 and 211B.15. Specifically, the Complaint alleges that statements made in the *Epitaph* violate the Act's prohibitions on bribery, compensation for media endorsements, corporate contributions and false claims in literature.

Following a review of the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.06 – and that Ms. Hiljus should be permitted to proceed to a probable cause hearing on this claim.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held before the undersigned Administrative Law Judge at **1:30 p.m. on Wednesday, October 31, 2012.** The hearing will be held at the Saint Paul offices of the Minnesota Office of Administrative Hearings.

The probable cause hearing will be conducted pursuant to Minn. Stat. § 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 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. By **3:00 p.m. on Tuesday, October 30, 2012,** the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with

copies to the opposing party. Documents may be faxed to Judge Eric L. Lipman at (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 Minn. Stat. § 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 Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability 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: October 26, 2012

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

To allege a *prima facie* violation at this stage of the proceeding, the Complainant must allege sufficient facts to show that a violation of law has occurred.¹ “*Prima facie*” means “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”² “*Prima facie* evidence” is “[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.”³ In determining whether a campaign complaint sets forth a *prima facie* violation of the statute, the Administrative Law Judge is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible.

¹ Minn. Stat. § 211B.32, subd. 3.

² *Black’s Law Dictionary* 1228 (8th ed. 2004).

³ *Id.* at 598.

I. Prohibition on Bribery and Advancing Money

Minn. Stat. § 211B.13, subd. 1 states that:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony.

The Complaint asserts that Mr. Glassel violated this section by offering “free beer” to anyone who sent the word “LORA” by way of a text message to the campaign of Lora Walker, a candidate for Chisago County Commissioner. The Administrative Law Judge disagrees that the cited passage of the *Epitaph* can be read to imply such an offer. Instead, the advertisement plainly reads that those who “like lower taxes, efficient government and free beer” should send the requested text message.

Because liking free beer is different from receiving free beer, the Administrative Law Judge concludes that the Complainant has failed to state a *prima facie* violation of Minn. Stat. § 211B.13. This allegation is dismissed.

II. Prohibition on Compensation for Media Endorsements

Minn. Stat. § 211B.05, subd. 3 states that:

An owner, publisher, editor, reporter, agent, broadcaster, or employee of a newspaper, periodical, magazine, radio or television broadcast station, or cable system may not directly or indirectly solicit, receive, or accept a payment, promise, or compensation, nor may a person pay or promise to pay or in any manner compensate an owner, publisher, editor, reporter, agent, broadcaster, or employee directly or indirectly for influencing or attempting to influence voting at an election or primary through printed material in the newspaper or periodical, or radio, television, or cable broadcast, except as a "PAID ADVERTISEMENT" as provided in this section.

The Complaint asserts that the advertisements urging the election of Lora Walker as a Chisago County Commissioner and Jeske Noordergraaf as a Minnesota State Senator are not accompanied by the text “PAID ADVERTISEMENT,” and therefore violate Minn. Stat. § 211B.05, subd. 3. The Administrative Law Judge disagrees. There is no allegation in the Complaint, or accompanying material, that Mr. Glassel solicited or received items of value for placement of the advertisements in the *Epitaph*.

The Administrative Law Judge concludes that the Complainant has failed to state a *prima facie* violation of Minn. Stat. § 211B.05. This allegation is dismissed.

III. Prohibition on Corporate Contributions

Minn. Stat. § 211B.15, subd. 2 states that:

A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

The Complaint asserts that the advertisements urging the election of Lora Walker as a Chisago County Commissioner and Jeske Noordergraaf as a Minnesota State Senator, appear in issues of the *Epitaph* alongside advertisements for Jon's Small Engine Repair, and therefore violate Minn. Stat. § 211B.15, subd. 2. The Administrative Law Judge disagrees. There is no allegation in the Complaint that corporate funds were used to publish or disseminate the *Epitaph* with the election-related advertisements; only that corporate advertisements appear in the same issue as election-related advertisements.

The Administrative Law Judge concludes that the Complainant has failed to state a *prima facie* violation of Minn. Stat. § 211B.15. This allegation is dismissed.

IV. Prohibition on False Claims in Campaign Literature

Minn. Stat. § 211B.06, subd. 1 states that:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

The Complaint alleges that Mr. Glassel prepared and disseminated campaign literature that asserted that Darrell Trulson "has never been elected to public office," at a time when Mr. Glassel knew that Mr. Trulson had been earlier-elected as a Library Trustee for the Library Board of the Village of Arlington Heights, Illinois. If credited as

true this allegation would sustain a finding that Mr. Glassel circulated a claim that he knew was false in violation of Minn. Stat. § 211B.06.

The Administrative Law Judge finds that the Complainant has alleged a *prima facie* violation of Minn. Stat. § 211B.06 and this allegation will proceed to a probable cause hearing as scheduled by this Order.

The Administrative Law Judge likewise concludes that because the Complainant does not allege any misconduct by “Jon’s Small Engine Repair” as to the circulation of false literature, and there are no remaining claims against the company, the company should be dismissed as a party respondent.

E. L. L.