OAH Docket No. 8-6301-19262-CV

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Scott D. Wenzel,

Complainant,

vs.

Warren Harder, Painter & Allied Trades District Council 82, and Jeffery Jewett, Business Agent of the St. Paul Painters & Allied Craftsmen, Local 61

Respondents.

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

TO: Warren Harder, 1224 87th Avenue North, Brooklyn Park, MN 55444; Painter & Allied Trades District Council 82, 3295 Country Drive, Little Canada, MN 55117; Jeffery Jewett, 411 Main Street, Suite # 204, St. Paul, MN 55102.

On October 10, 2007, Scott D. Wenzel filed a Complaint with the Office of Administrative Hearings alleging that Warren Harder, Painter and Allied Trades District Council 82, and Jeffery Jewett, acting on behalf of St. Paul Painters and Allied Craftsman Local No. 61, violated three provisions of Minnesota Statutes Chapters 211A and 211B. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minnesota Statutes §§ 211A.12 and 211B.15, subd. 2.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before Administrative Law Judge Eric L. Lipman at **3:00 p.m.** on **Tuesday, October 16, 2007**.

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 or appear on their own behalf without counsel. 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 faxed to Judge Lipman at 651-361-7936.

The probable cause hearing will be conducted by telephone conference. The Administrative Law Judge will initiate the conference by dialing the telephone numbers listed in the Complaint Form. If a party wishes to be reached at a number other than the one listed in the Form, the alternate number shall be provided to the Administrative Law Judge by **12:00 p.m.** on **Tuesday, October 16, 2007**.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss all or part of the complaint based upon 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 a 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.

A party who is disabled and needs an accommodation in order to participate in the hearing process may request an accommodation. Examples of reasonable accommodations include wheelchair accessibility to the hearing location, an interpreter, Braille materials 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 PO Box 64620, St. Paul, MN 55164, or call 651-361-7900.

Dated: October 11, 2007

/s/ Eric L. Lipman_____
ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

The Complainant, Scott D. Wenzel, is an incumbent member of the School Board from District 5 of the Anoka-Hennepin School District.

Respondent, Warren Harder, is a candidate for the School Board of the District from District 5. According to the Complaint, Harder maintains a website,

www.warrenharder.org, which lists Harder's cellular telephone number and email address.

The Complaint alleges that Respondents Painter and Allied Trade District Council 82 ("District Council 82") and St. Paul Painters and Allied Craftsman Local Number 61 ("Local 61") provided Harder with cellular phone services and the software and hardware to operate the email account. The Complainant maintains that by contributing these items of value to Harder's school board campaign, Respondents violated Minnesota Statute § 211B.15, subd. 2. The Complaint further alleges candidate Harder unlawfully accepted the provision of the email and cellular telephone services, in violation of Minnesota Statute §§ 211A.12 and 211B.15, subd. 13. The allegations are addressed in turn below.

At this stage of the process, when reviewing a Complaint to determine whether it sets forth a prima facie violation of the Fair Campaign Practices Act, this Office 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]

Corporate Contribution by District Council 82

The Complaint alleges that District Council 82 is a corporation and provides both the software and hardware for Harder's campaign email account.

Section 211B.15, subd. 2 prohibits corporations from making contributions to an individual to promote the individual's candidacy or election to political office. Whether in fact District Council 82 is a corporation and thus subject to the limitations set forth in § 211B.15 is a matter that will be determined at the probable cause hearing.

The Administrative Law Judge finds that the Complaint alleges a *prima facie* violation of Minnesota Statute § 211B.15, subd. 2 against District Council 82.

Corporate Contribution by Local 61

The Complaint alleges that the telephone number listed on Harder's website is registered to Jeffery Jewett, who is employed as the Business Agent for the St. Paul Painters & Allied Craftsman Local Number 61 ("Local 61"). Further, the Complaint alleges that the billing address for this telephone number is 411 Main Street, Suite 204, St. Paul, MN 55102 – Local 61's business

[1] *See, e.g., Halverson v. Nelson*, OAH Docket No. 4-6301-16282-CV, slip op. at 2 (2004) (http://www.oah.state.mn.us/aljBase/630116282.primafacie.htm); *compare also, Elzie v. Commissioner of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (Dismissal of a complaint is proper only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested).

address. Lastly, the Complaint asserts that Local 61 is a corporation that contributed these items to Harder's campaign.

The Complainant names Jeffery Jewett as a Respondent in this matter, but to the extent that the Complainant alleges claims against Jewett in his individual capacity under § 211B.15, those claims must fail. Section 211B.15, subd. 2 prohibits contributions from corporate entities but not from natural persons.

The Complaint does, however, state a *prima facie* violation of § 211B.15 against Local 61 to the extent that Jewett is named in his official capacity as the Business Agent for Local 61. Again, as it is with District Council 82, whether or not Local 61 is a corporation that is subject to the limitations set forth in § 211B.15 is a matter that is deferred to the probable cause hearing.

Accordingly, the Administrative Law Judge finds that the Complaint alleges a *prima facie* violation of Minnesota Statute § 211B.15, subd. 2 against Local 61.

Aiding and Abetting Claim

Citing Minnesota Statute § 211B.15, subd. 13, the Complaint alleges that Respondent Harder violated the Fair Campaign Practices Act by allowing District Council 82 and Local 61 to provide Harder a campaign email account and cellular telephone services. Section 211B.15, subd. 13, prohibits the "aiding, abetting or advising" of a violation of the prohibition on corporate contributions. While the Complainant's submissions do not make Mr. Harder's role in securing the email account and cellular phone services clear, the Complaint sets forth sufficient allegations to state a *prima facie* violation of § 211B.15.

Prohibited Contribution Claim

Finally, the Complaint alleges that Harder violated Minnesota Statute § 211A.12 by permitting District Council 82 and Local 61 to provide his campaign with cellular telephone and email account services. Section 211A.12 prohibits candidates from accepting aggregate contributions in excess of $300 in an election year. The Complaint alleges the value of the hardware and software which supports the email account and the service contract for the cellular telephone exceed the $300 limit on in-kind contributions. As such, the Administrative Law Judge finds that the Complaint has stated a *prima facie* violation of § 211A.12.

This matter will proceed to a probable cause hearing.

E.L.L.