

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Robert L. Fitzsimmons,  
Complainant,

vs.

ORDER FOR DISMISSAL

Lucy Nesheim,  
Respondent.

On October 26, 2004, Robert Fitzsimmons filed a complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.06 by Lucy Nesheim. The complaint alleges that the Respondent distributed campaign material stating "Re-elect . . . Lucy Nesheim for Alderman at Large" and "Re-elect . . . Lucy Nesheim for Alderman Ward 1," and that doing so violated Minn. Stat. § 211B.06.

The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on October 26, 2004, under Minn. Stat. § 211B.33. The Respondent was notified of the filing of the Complaint by telephone and email and a copy of the Complaint was mailed to her by United States mail on the same day.

After reviewing the Complaint and supporting materials, the Administrative Law Judge finds that the Complaint does not set forth a claim against Lucy Nesheim that, if proven, would constitute a violation of Chapter 211A or 211B, and specifically Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS HEREBY ORDERED:**

That the Complaint filed by Robert Fitzsimmons against Lucy Nesheim is **DISMISSED**.

Dated this 27<sup>th</sup> day of October 2004.

S/Bruce H. Johnson  
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BRUCE H. JOHNSON  
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

The Complaint alleges that Lucy Nesheim, a candidate for Alderman for the Brainerd City Council, distributed three different versions of campaign material for that position. The first, Exhibit A, read in relevant part: “Re-elect . . . Lucy Nesheim for Alderman at Large.” Exhibit B read: “Re-elect . . . Lucy Nesheim for Alderman Ward 1.”<sup>[1]</sup> Exhibit C read: “elect . . . Lucy Nesheim for Alderman Ward 1.”<sup>[2]</sup> The Complaint alleges that this was a violation of Minn. Stat. § 211B.06 because the Respondent “is currently Alderman at Large and changed to running for Ward 1 Alderman – very confusing for citizens.”

Minn. Stat. § 211B.06 provides, in relevant part:

Subdivision 1. **Gross misdemeanor.** 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 the Respondent distributed campaign material that encouraged voters to re-elect her to the Alderman at Large<sup>[3]</sup> position and later to re-elect<sup>[4]</sup> or elect her to the Alderman Ward 1 spot.<sup>[5]</sup> There is no allegation that the campaign materials contain any false information, only that their distribution was confusing for the voters. There is no statutory prohibition against the distribution of campaign material that is confusing.

The Complaint must be dismissed because it fails to allege a prima facie violation of Minn. Stat. § 211B.06 by Ms. Nesheim.

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<sup>[1]</sup> “Ward 1” was typed on a sticker that had been placed over the words “at Large” where “at Large” appeared in Exhibit A.

<sup>[2]</sup> In this final example, there were two type-written stickers attached to the campaign material: the first was over the “Re-” that preceded the word “elect” in Exhibit B, and Exhibit C contained a sticker reading “Ward 1” in the same place as Exhibit B.

<sup>[3]</sup> Exhibit A.

<sup>[4]</sup> Exhibit B.

[\[5\]](#) Exhibit C.