

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kevin Rebman,
Complainant,
vs.
District 279 United,
Respondent.

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

**TO: Kevin Rebman, PO Box 135, Osseo, MN 55369; District 279 United, 13923
80th Avenue North, Maple Grove, MN 55311.**

On October 17, 2008, Kevin Rebman filed a Complaint with the Office of Administrative Hearings alleging that Respondent "District 279 United" violated Minn. Stat. § 211B.02. The Complaint alleges that District 279 United violated the statute by distributing campaign material that implies that Independent School District 279 (the Osseo Area Schools) supports certain candidates for election to the School Board of Independent School District 279. The Complaint also alleges that Respondent violated Minn. Stat. § 10A.14 because it failed to register with the state as a political committee.

Following a review of both the Complaint, and the documents Mr. Rebman submitted in support of the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.02 – and that Mr. Rebman should be permitted to proceed to a probable cause hearing on this claim.

The alleged violation of Minn. Stat. § 10A.14 is dismissed without prejudice on the grounds that this Office does not have jurisdiction over such a claim.

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 the undersigned Administrative Law Judge at **2:00 p.m. on Thursday, October 23, 2008**. The hearing will be held by call-in telephone conference. You must call: **1-877-784-3231** at that time. Follow the directions and enter the code "**19989**" when asked for the meeting number. 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 **1:00 p.m. on Thursday, October 23, 2008**, 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 21, 2008

/s Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

Complainant Kevin Rebman is a candidate for District 279 School Board.

According to the Complaint, Respondent "District 279 United" is a political organization which supports certain other candidates for District 279 School Board – namely, Dean Henke, Teresa Lunt and Jennifer DeJournett. The Complaint alleges that Respondent has publicly endorsed, distributed literature, solicited donations and operated a website on behalf of these candidates. Additionally, the Complaint alleges that Independent School District 279 is known to the public as "District 279" and that

Respondent's use of the name "District 279 United" falsely implies that Independent School District 279 has endorsed Henke, Lunt and DeJournett.

Minn. Stat. 211B.02 provides in relevant part: "A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization."

The Administrative Law Judge finds that the Complainant has alleged a *prima facie* violation of Minn. Stat. § 211B.02 and this allegation will proceed to a probable cause hearing as scheduled by this Order.

The central inquiry of the probable cause hearing will be, whether, based upon the facts submitted into the record during the October 23 hearing, it is fair and reasonable to require the Respondent "District 279 United" to go to a full evidentiary hearing on the merits of Mr. Rebman's claims?¹ A further hearing on the merits of the Complaint before a three-judge panel is appropriate if there are sufficient facts in the record to believe that a violation of law that is alleged in the Complaint has occurred. There are sufficient facts if the Presiding Judge is satisfied that the evidence in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case.

In preparing for the probable cause hearing, the parties are invited to review the opinion in the case of *Robert Schmidt v. Rebecca Cave and the Maplewood Firefighters Association, Inc.*, OAH Docket No. 15-6361-19193-CV (2007).² In that case, a three-judge panel concluded, after a full evidentiary hearing, that the Respondent association falsely implied that a particular candidate for election to the City Council of Maplewood had the endorsement of the Maplewood Fire Department.

Mr. Rebman has also alleged that Respondent "District 279 United" violated Minn. Stat. § 10A.14 because it failed to register as a political committee. The Office of Administrative Hearings has jurisdiction to hear campaign complaints brought under Minn. Stat. Chapters 211A and 211B, but not those claiming a violation of the provisions of Chapter 10A.³ Accordingly, this allegation is dismissed without prejudice.

E. L. L.

¹ See, *Hortman v. Republican Party of Minnesota*, OAH Docket No. 15-0320-17530-CV, at 2-3 (Probable Cause Order, October 2, 2006) (<http://www.oah.state.mn.us/aljBase/032017530.Prob.Cause.htm>).

² *Robert Schmidt v. Rebecca Cave and the Maplewood Firefighters Association, Inc.*, OAH Docket No. 15-6361-19193-CV (2007) (accessible at <http://www.oah.state.mn.us/aljBase/636119193.rt.htm>).

³ The Campaign Finance and Public Disclosure Board investigates claimed violations of law arising under Minn. Stat. Chapter 10A. See, Minn. Stat. § 10A.02, subd. 11.