

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Cheryl Schimming,

Complainant,

vs.

Mark Riverblood,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

TO: Cheryl Schimming, [Street Address Redacted], Princeton, MN 55371; and Mark Riverblood, [Street Address Redacted], Princeton, MN 55371.

On March 16, 2009, Cheryl Schimming filed a Complaint with the Office of Administrative Hearings alleging that Mark Riverblood violated Minn. Stat. § 211B.11 (election day prohibitions). After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.11.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a prehearing conference and an evidentiary hearing, to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Pursuant to Minn. Stat. § 211B.35, the evidentiary hearing must be held within 90 days of the date the complaint was filed.

You will be notified of the dates and times of both the prehearing conference and evidentiary hearing, and the three judges assigned to hear this matter, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary 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 Judges. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judges and the opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A

party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order 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 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: March 17, 2009

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

On March 10, 2009, the Respondent, Mark Riverblood, was elected to the open seat on the Princeton Township Board of Supervisors. The Complainant, Cheryl Schimming, alleges that Mr. Riverblood violated Minn. Stat. § 211B.11 by soliciting votes outside of the polling place (the Princeton Township Hall). Specifically, the Complainant alleges that Mr. Riverblood drove a truck bearing a campaign sign promoting his candidacy past the polling place at least two times on election day.

Minn. Stat. § 211B.11 governs election day prohibitions. Subdivision 1 of this section provides as follows:

Subdivision 1. Soliciting near polling places. A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, on primary or election day to vote for or refrain from voting for a candidate or ballot question. A person may not provide political badges, political buttons, or other political insignia to be worn at or about the polling place on the day of a primary or election. A political badge, political button, or other political insignia may not be worn at or about the polling place on primary or election day. This section applies to areas established by the county auditor or municipal clerk for absentee voting as provided in chapter 203B. . . .

For purposes of a *prima facie* determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.¹ In deciding 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. The Administrative Law Judge concludes that the Complainant in this matter has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.11. If at the hearing the Complainant is able to establish by a preponderance of the evidence that the Respondent solicited votes at or within 100 feet of the polling place, those facts would establish a violation of Minn. Stat. § 211B.11. Therefore, this allegation will proceed to an evidentiary hearing before a panel of three Administrative Law Judges.

An order scheduling this matter for a telephone prehearing conference and evidentiary hearing will be issued shortly.

R.C.L.

¹ Minn. Stat. § 211B.32, subd. 3.