

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

John Trierweiler,

Complainant,

vs.

John Wagner,

Respondent.

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

**TO: John Trierweiler, 450 Ridge Street South, P.O. Box 102, Trosky, MN 56177;  
and John Wagner, 3<sup>rd</sup> Street East, Trosky, MN 56177.**

On November 14 2006, John Trierweiler filed a Complaint with the Office of Administrative Hearings alleging that John Wagner 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 prima facie violations of Minn. Stat. § 211B.11.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, 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](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://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 Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) 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 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: November 16, 2006

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

### MEMORANDUM

On November 7, 2006, the Respondent, John Wagner, was elected to the office of Mayor of the City of Trosky as a write-in candidate. The Complainant, John Trierweiler, was also a candidate for mayor and lost to Mr. Wagner by two votes. The Complaint alleges that Mr. Wagner violated Minn. Stat. § 211B.11 by soliciting votes at or within 100 feet of the polling place. According to the Complaint, Mr. Wagner remained at the polling place throughout election day greeting voters and chatting with them. The Complaint further alleges that Mr. Wagner was overheard talking on his cell phone in front of city hall encouraging people to vote for him. Finally, the Complaint alleges that Mr. Wagner participated in counting the ballots despite being a candidate.

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. . . .

If the evidence at a hearing were to establish by a preponderance of the evidence that the Respondent solicited votes at or near the polling place, those facts

would establish a violation of Minn. Stat. § 211B.11. The Administrative Law Judge therefore determines that the Complaint has alleged a prima facie violation of Minn. Stat. § 211B.11 and that allegation will proceed to an evidentiary hearing before a panel of three Administrative Law Judges. However, the allegation that the Respondent improperly acted as an election judge or counted ballots while a write-in candidate for mayor, is outside the jurisdiction of the Administrative Law Judge. The campaign complaint process is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B. It appears that this alleged conduct on the part of the Respondent may violate statutes or rules within the jurisdiction of the Minnesota Secretary of State.<sup>[1]</sup> Because the conduct does not amount to a violation of Minn. Stat. § 211B.11 or any other provision of Chapters 211A or 211B, the Administrative Law Judge has no jurisdiction to consider this violation.

R.C.L.

---

<sup>[1]</sup> See Minn. Stat. §§ 204B. 19 and 204C.19.