

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Doran Horner,

Complainant,

vs.

Chancy Cole Jr.,

Respondent.

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

TO: Doran Horner, 34257 County Road 35, Warroad, MN 56763; and Chancy Cole Jr., 35910 570th Avenue, Warroad, MN 56763.

On April 16, 2007, Doran Horner filed a Complaint with the Office of Administrative Hearings alleging that Chancy Cole Jr. violated Minn. Stat. § 211B.07 (undue influence on voters) and Minn. Stat. § 609.43 (misconduct of public officer or employee). After reviewing the Complaint, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minnesota Statutes § 211B.07.

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 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 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: April 17, 2007

/s/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

The Complainant is the Board Chairman of Lake Township in Roseau County. He alleges that on or about March 4, 2007, the Respondent refused to plow roads in the Township until he was elected to the Township Board. The Township Board election took place on March 13, 2007. According to the Complaint, a resident of the Township (Mary Hackett) called the Complainant and informed him that the Respondent refused to plow her property until after the election and told her that “things would return to normal if he was elected” to the Township Board. The Complaint alleges that the Respondent was using or threatening to use coercion or undue influence against an individual to compel the individual to vote for him in violation of Minn. Stat. § 211B.07 and Minn. Stat. § 609.43.

As an initial matter, the campaign complaint process is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B. As such, the Administrative Law Judge has no jurisdiction to consider violations of chapter 609. Consequently, the Complainant’s allegation that the Respondent violated Minn. Stat. § 609.43 is dismissed.

Minnesota Statutes § 211B.07 prohibits undue influence on voters and provides as follows:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct

or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In reviewing the Complaint to determine whether it 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 Complaint appears to be alleging that the Respondent told the resident that he would not plow out her road unless she voted for him for Township Board. Presumably, the Respondent had an obligation to plow out her road. Construing the facts alleged in favor of the Complainant, the Administrative Law Judge finds that the Complaint states a sufficient claim to support finding a *prima facie* violation of Minnesota Statutes § 211B.07. If the evidence at a hearing were to establish by a preponderance of the evidence that the Respondent used or threatened coercion or undue influence to compel the resident to vote for him, those facts would establish a violation of Minnesota Statutes § 211B.07.

Pursuant to Minnesota Statutes § 211B.33, subd. 2(d), this matter shall be set on for an evidentiary hearing before a panel of three administrative law judges. An order scheduling this matter for a telephone prehearing conference and an evidentiary hearing will be issued shortly.

S.M.M.