

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Michael D. Johnson,  
Complainant,  
vs.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION**

**AND**

Grant Residents Who Want to Save  
Grant, Art and Joyce Welander, et al,  
Respondents.

**NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

To: Michael D. Johnson, 7109 Jamaca Ave. N., Stillwater, MN 55082 and Grant Residents Who Want to Save Grant, Art and Joyce Welander, 10381 83<sup>rd</sup> Street N., Grant, MN 55082 and others using that address.

On November 2, 2004, Michael D. Johnson filed a Complaint with the Office of Administrative Hearings alleging multiple violations of Minn. Stat. secs. 216B.04 and 211B.06 in pieces of campaign material distributed by Grant Residents Who Want to Save Grant, a group which opposed the reelection of Rick Vanzwol, Michael Johnson and Nancy McNulty, and supported the election of Timothy Gangnon, Nancy Levitz and Kim Linner. All were candidates for various posts in the City of Grant general election held on November 2, 2004. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that portions of the Complaint set forth a prima facie violation of sections 211B.04 and 211B.06, subd. 1. These are detailed in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for 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 one week 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 3, 2004

S/ Allan W. Klein \_\_\_\_\_  
ALLAN W. KLEIN  
Administrative Law Judge

### MEMORANDUM

The relevant sections of the Fair Campaign Practices Act provide as follows:

[211B.06, subd. 1] 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.

[211B.04] (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section [211B.05](#), subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, ..... (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the ..... committee, ....."

(address), in support of .....(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

....

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to ..... (insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

....

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$500 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

The Complaint in this case contains several different allegations based on a number of different flyers. Each flyer has a prima facie disclaimer violation. With regard to the false statement allegations, using the numbering system in the Complaint, the Administrative Law Judge finds there to be a prima facie violation of § 211B.06 in the case of all of the allegations concerning the "yellow flyer" except for number 4 (uncontrolled spending). He also finds a prima facie case has been made for all of the allegations concerning the "orange flyer" except number 2 (citywide referendum). He also finds a prima facie case has been made for all of the allegations concerning the "white flyer" except for number 1 (road maintenance plan). He also finds a prima facie case has been made for all of the allegations concerning the "pink flyer".

The allegations, identified above, where no prima facie violation has been found, are dismissed.

The remaining allegations, where a prima facie violation has been found, will be the subject of the evidentiary hearing.

A.W.K.