

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

John Nephew,
Complainant,
vs.

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

Highland Sanitation Incorporated, David
Stewart, Susan Stewart, and Bob
Cardinal,

Respondents.

TO: Above Parties:

On October 7, 2011, John Nephew filed a Campaign Complaint with the Office of Administrative Hearings alleging that Highland Sanitation & Recycling Incorporated, David Stewart, and Susan Stewart violated Minnesota Statutes §§ 211B.15, subd. 2, and 211B.06, and that Bob Cardinal violated Minnesota Statutes §§ 211B.13, subd. 2, and 211B.15, subd. 13. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minnesota Statutes § 211B.06, 211B.13, and 211B.15.

THEREFORE, IT IS ORDERED AND NOTICE IS 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 Monday, October 17, 2011**. The hearing will be held by call-in telephone conference. You must call: **1-888-742-5095** at that time. When the system asks for your numeric pass code, enter “**371152359#**” on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at <http://mn.gov/oah> 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 that choice is 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 provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Neilson at barbara.neilson@state.mn.us or faxed to 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 Minnesota Statutes § 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 Minnesota Statutes § 211B.34, subdivision 3.

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 P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: October 12, 2011

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

Complainant John Nephew is a current member of the Maplewood City Council. Mr. Nephew and another current City Council member, Marv Koppen, are seeking reelection on November 8, 2011. Respondent Bob Cardinal and another candidate, Rebecca Cave, are challenging Mr. Nephew and Mr. Koppen in the City Council election. Respondent Highland Sanitation & Recycling Incorporated (Highland) is registered as a domestic business corporation with the Minnesota Secretary of State.¹ According to the Secretary of State registration, Respondent David Stewart is Highland's Chief Executive Officer.² Respondents David and Susan Stewart identify themselves as owners and operators of Highland.³

According to the Complaint, the City of Maplewood currently has an open or subscription trash hauling system under which each household is required to select one of the City-licensed haulers for weekly trash pickup. The City has been studying its trash hauling system and is in the process of considering changing to an organized system of some kind. One option under consideration is to have a City-wide contract with one or more haulers.

Mr. Nephew was appointed to the Trash Hauling Working Group that was created by the City, along with another City Council member, two Environmental and

¹ Complaint, Ex. D.

² *Id.*

³ Complaint, Ex. B.

Natural Resources Commissioners, and two City staff.⁴ One of the responsibilities of the Working Group was to develop a Request for Proposals (RFP) and solicit proposals from haulers regarding how they would serve Maplewood's needs and at what cost. Four trash haulers, including Highland, submitted proposals that were responsive to the RFP. As summarized in a September 20, 2011, Staff Report, the Working Group reviewed and scored the proposals and ultimately recommended that the City Council authorize staff to negotiate with Allied Waste Services (the lowest-cost proposer) for City-wide residential trash collection services.⁵

The Complaint alleges that, on October 6, 2011, a Maplewood resident contacted Mr. Nephew regarding materials he had received in an envelope with his bill from his trash hauler, Highland. These materials consisted of (1) a two-page letter addressed to Highland's valued customers from David and Susan Stewart (who identified themselves as the owners and operators of Highland since 1986); and (2) a campaign flyer for Mr. Cardinal. Among other things, the letter stated that the "current Mayor and Council members are 'trying' to take your rights away by choosing one hauler for you," raised questions about the Working Group's projected savings, and contended that the new system would cost residents more money.⁶ The letter encouraged readers to "vote in a new Mayor and new Council members that will do what they are supposed to do, REPRESENT YOU!" and indicated that readers will "find enclosed a brochure for a candidate who wants to represent you and allow you to keep your freedom of choice." The enclosed campaign flyer urged readers to vote for Bob Cardinal on November 8 and included a notation that it was prepared and paid for by Mr. Cardinal's campaign. The flyer noted that Mr. Cardinal disagreed with "the current Maplewood City Council's position of taking away our right to choose who we pay for trash pickup."⁷

The Complaint contends that, if the City were to adopt organized collection with a vendor other than Highland, Highland presumably would lose its existing single-family residential accounts in Maplewood. The Complaint further alleges that Mr. Cardinal has made opposition to organized trash hauling the central platform of his campaign and argues that Highland has a financial interest in promoting the candidacy of Mr. Cardinal.

Based upon these allegations, Mr. Nephew alleges that Highland, David Stewart, and Susan Stewart have violated Minnesota Statutes §§ 211B.15, subd. 2 (illegal corporate contributions) and 211B.06 (false political and campaign material). Mr. Nephew further alleges that Mr. Cardinal has violated Minnesota Statutes §§ 211B.13, subd. 2 (knowing acceptance of a contribution prohibited by 211B.15) and 211B.15, subd. 13 (aiding/abetting a violation of Section 211B.15).

⁴ Complaint, Ex. E (Sept. 20, 2011, Memorandum to James Antonen, City Manager, from Shann Finwall, AICP, Environmental Planner) at p. 1.

⁵ *Id.* at p. 5.

⁶ Complaint, Ex. B.

⁷ Complaint, Ex. C.

Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁸ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁹ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.¹⁰

Minnesota Statutes § 211B.06 - False Campaign Material

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false. Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”¹¹

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts and not against unfavorable deductions or inferences based on fact, even if they “may be considered extreme and illogical.”¹² The statute does not prohibit inferences or implications, even if misleading. Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.¹³ In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.¹⁴

To prove a violation at the hearing, the Complainant must show that the statement is substantively false and that the person or persons who prepared, disseminated or broadcasted the statement did so knowing it was false or communicated it with reckless disregard of whether it was false. The term “reckless

⁸ *Barry v. St. Anthony-New Brighton Independent School District*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Minn. Stat. § 211B.01, subd. 2.

¹² *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981). See also *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

¹³ *Abrahamson v. St. Louis County School District*, A10-2162, Slip op. at 18-19 (Minn. App. Aug. 1, 2011) (pet. for cert. pending); *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

¹⁴ *Jadwin*, 390 N.W.2d at 441, citing *Old Dominion Branch No. 496, National Association of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.¹⁵ Based on this standard, the Complainant has the burden to prove by clear and convincing evidence that the Respondent prepared or disseminated the statement knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent “in fact entertained serious doubts” as to the truth of the statement or acted “with a high degree of awareness” of its probable falsity.¹⁶

As a threshold matter, the Complainant has made a *prima facie* demonstration that the Stewarts’ letter falls within the definition of “campaign material” set forth in Section 211B.06. Based upon the explicit language of the letter, it is evident that the Stewarts distributed the letter to Highland customers for the purpose of influencing voting in the City’s November 8 City Council election. The remaining question has to do with whether the letter contains false statements regarding the personal or political character or acts of a candidate. In his Complaint, Mr. Nephew alleges that the letter from the Stewarts contains six false claims. Each of these alleged false statements are discussed below.

Alleged False Statement No. 1

Mr. Nephew alleges that the following statement contained in the letter from the Stewarts is false:

John Nephew and the ill informed "Trash hauling work group" would have you believe that switching to this system will collectively save residents \$500,000 a year. There has been no indication where the savings will take place. Are you saving it in the trash rates, the laughable "savings" on road repairs they're claiming or in some magical estimate of the reduced greenhouse gas emissions will [sic] have on our environment?

Mr. Nephew argues that this statement is false because the September 20, 2011, Staff Report made it clear that the savings estimate was derived from a comparison of the average rates that are reported by haulers under the current City ordinance and the average proposed rates reflected in the proposals received in response to the RFP. He also maintains that the Staff Report clearly was talking about rates paid by residents, and projected that individual resident bills would be lower in the aggregate by \$500,000 to \$800,000 per year, not including additional hauler-discretion fees (such as fuel surcharges) and taxes (which are a percentage on top of a bill’s total). Finally, he contends that, because Highland submitted one of the proposals, the Stewarts are aware that Highland proposed rates that would be lower than what Highland and other haulers currently charge.

¹⁵ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

¹⁶ *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), *rev. denied*, (Minn. 2006).

After careful consideration of these arguments, the Administrative Law Judge concludes that Mr. Nephew has not made a *prima facie* showing of the falsity of this statement. To the contrary, the assertions in the Stewarts' letter about the Working Group's projection that there would be \$500,000 in collective savings to residents and the failure to indicate where those savings will occur appear to be accurate statements. The September 20, 2011, Staff Report summarizing the findings and recommendations of the Trash Hauling Working Group did, in fact, state that "residents collectively could save over \$500,000 per year" based upon a comparison of "the average proposed prices of the top three proposals to the current, average published rates as reported by the licensed haulers to the City for 2011."¹⁷ And the Staff Report did not provide any detailed information concerning where the savings would occur, perhaps based upon the Working Group's additional recommendation that "further details of proposals and proposed prices not be released publicly until such time as the contract is successfully negotiated and executed."¹⁸ Thus, the statement in the Stewarts' letter appears to be true in substance.

The Stewarts' letter did not indicate that the savings projected by the Working Group were "over" \$500,000 and could reach as high as \$800,000 if the City was able to successfully negotiate with the top-ranked proposer. However, this failure simply shows a lack of completeness or an inaccuracy of detail which does not render the statement false. The Minnesota Supreme Court has emphasized that statements which tell only one side of the story or are merely "unfair" or "unjust," without being demonstrably false, are not prohibited by the statute.¹⁹ Finally, the Stewarts' characterization of Mr. Nephew and the Working Group as "ill informed" and their speculation about the factors that might have contributed to the projected cost savings merely reflect the Stewarts' opinions and their disagreement with the recommendations that the Working Group made to the City Council. It is likely that those reading the letter would understand that the statements are not a representation of fact, but rather an expression of opinion or an unfavorable inference.

The Administrative Law Judge concludes that the Complainant has failed to submit evidence or allege facts with respect to Alleged False Statement No. 1 that, if unchallenged or accepted as true, would be sufficient to prove a *prima facie* violation of Minnesota Statutes § 211B.06.

Alleged False Statement No. 2

The Stewarts' letter stated, "This system will cost residents more money, in the short-term, long-term and immediate future."

Mr. Nephew argued that this statement is false and that the Stewarts would have known it was false based on their own proposal as well as the public summary information showing the difference between the proposals and the current rates. He also stressed that the RFP required a formula to use objective inflationary measures to

¹⁷ Complaint, Ex. E at p. 4.

¹⁸ *Id.* at 5.

¹⁹ *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979).

set price changes over the term of the contract, limiting a portion to the consumer price index, another to the diesel index, and a third to actual tipping fees for trash disposal. He contended that this formula ensures that the short-term savings do not vanish in the intermediate and long term stage of the contract. Mr. Nephew contended that, if diesel prices decline, it would be possible that residents could pay less in future years than in the initial year assuming that the contract was ultimately adopted.

The Administrative Law Judge concludes that the Complainant has alleged sufficient facts with respect to Alleged False Statement No. 2 to demonstrate a *prima facie* violation of Minnesota Statutes § 211B.06.

Alleged False Statement No. 3

According to the letter from the Stewarts:

The city intends to limit the use of vacation credits, to where you need to be gone for at least 21 days to qualify for a credit (that you'll be charged a convenience fee for using no less!).

Mr. Nephew contends that this statement is false. He asserted that the actual language of the RFP said that residents must be given credit on their next trash bill for extended vacations of three weeks or more and that the contractor may charge a reasonable, one-time administrative handling fee to residents for each vacation credit. Based on this language, Mr. Nephew asserted that the RFP does not prohibit a hauler from allowing shorter interruptions, or require a hauler to propose an administrative fee for service suspension. He also indicated that the reference in the RFP to “three weeks” equated to “three weekly trash pickups” and pointed out that, if a vacation started and ended on pickup days, as few as 14 days of absence could qualify. In addition, Mr. Nephew argued that the Stewarts demonstrated reckless disregard by asserting as fact claims about what will be included in contracts that are not yet negotiated or what was contained in the confidential proposals of three other haulers, particularly in light of their specific knowledge of the proposal process and the content of their own proposal.

The Administrative Law Judge concludes that the Complainant has alleged sufficient facts with respect to Alleged False Statement No. 3 to demonstrate a *prima facie* violation of Minnesota Statutes § 211B.06.

Alleged False Statement No. 4

The letter from the Stewarts contains the following passage:

Are you handicapped or elderly and use a carry out service? The city will designate whether you qualify for that service after this system is implemented (Maplewood RFP Section 3.8), another choice they are proposing to take away from you!

In his Complaint, Mr. Nephew maintained that this statement is misleading. He pointed out that Section 3.8 of the RFP stated, "Special walk-in Collection service shall be provided to selected, City-designated residents who require house-side or garage-side Collection service." At another location in the RFP, it was noted that the City's recycling contractor provides "special walk-in ('house-side' or 'garage side') collection of recyclables from residents with physical limitations" and that this special walk-in service was being provided to thirteen City residences in 2011. The RFP also indicated that special walk-in collection service accounts for elderly residents or other residents with physical limitations "shall be pre-approved by the City and designated by address to the Contractor." Mr. Nephew contends that Stewarts' letter falsely suggests that the City's intent is to make it difficult for people to obtain this service or that it will be taken away from people who currently need it. He argues that the intent of the RFP is to ensure that residents who need this service will receive it, and emphasizes that the same residents who need house-side service for recycling will also receive it for trash, without any additional step or verification.

As noted above, Section 211B.06 merely prohibits false statements of specific facts and not unfavorable inferences based on fact.²⁰ The RFP provisions mentioned by Mr. Nephew do indicate that the City will "pre-approve" and designate the residents who require special walk-in service. While the Stewarts' further assertion that this practice amounts to "another choice [the City] is proposing to take away from" individual residents may be an extreme inference based on these facts, it does not violate Section 211B.06.

The Administrative Law Judge concludes that the Complainant has not alleged sufficient facts with respect to Alleged False Statement No. 4 to demonstrate a *prima facie* violation of Minnesota Statutes § 211B.06.

Alleged False Statement No. 5

The Stewarts' letter stated:

Before the vote to make this study permanent, you have the opportunity to vote in a new Mayor and new Council members that will do what they are supposed to do, REPRESENT YOU!

. . . To have your voice heard, make sure to vote on November 8 to elect mayor and council members who will represent you!

Mr. Nephew argued that these statements were false because (1) the mayor will not be on the ballot until 2013 and only two Council members are up for election on November 8; and (2) any newly-elected members will not be able to vote on the trash proposal to be taken up at the November 28, 2011, Council meeting because they won't be sworn into office until January 2012. Mr. Nephew speculated that the intent of the

²⁰ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981). See also *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

false statement may be to deceive voters into believing that a new majority bloc of three votes could be elected to the five-member City Council in November, in order to motivate voters to turn out and elect Highland's favored candidate.

The Administrative Law Judge finds that the challenged statements have not been shown to violate Section 211B.06. The statement made in the Stewarts' letter accurately notes that members of the public will have an opportunity to vote in new Council members on November 8, and that that election will occur before the date the City Council is expected to vote on the trash proposal. While the Stewarts' letter contains inaccurate information about when the next mayoral election will occur, the statute does not require that a statement be literally true in every detail. And the fact that the statement may be misleading regarding the ability of new Council members to take effective action regarding the trash proposal does not rise to the level of a violation of Minnesota Statutes § 211B.06. Moreover, because this statement does not relate to the personal or political character or acts of a candidate, it is unlikely that it falls within the purview of the statute.

The Administrative Law Judge finds that the Complainant has not alleged sufficient facts with respect to Alleged False Statement No. 5 to demonstrate a *prima facie* violation of Section 211B.06.

Alleged False Statement No. 6

According to the letter from the Stewarts:

This is only the tip of the iceberg in a growing problem of government involvement in the private industry, beyond regulation where it doesn't belong. What's next? Who's to stop them from determining that the pizza delivery trucks aren't causing road wear and tear and telling Domino's it can only deliver on Tuesday's [sic]? Or that there are too many florists and limiting Maplewood to one contracted florist?

Mr. Nephew alleges that it is false to suggest that the regulation and management of sanitation or the imposition of organized trash collection is new or "the tip of the iceberg in a growing problem." He also contends that there is no statutory authorization or legal basis for a city to impose the type of pizza or floral delivery regulations to which the Stewarts' letter alludes. He argues that the fact that Highland submitted a proposal to serve Maplewood under an organized contract coupled with the fact that Highland currently holds the city-wide contract for trash and recycling pickup for the city of Afton "gives them first-hand experience to know that their fearmongering is baseless and false."

The Administrative Law Judge concludes that this passage of the Stewarts' letter is hyperbole that merely serves to underscore the opinions expressed in the letter. Those reading this portion of the letter would understand that it does not contain representations of fact. Moreover, this statement does not fall within the reach of

Section 211B.06 because it does not relate to the personal or political character or acts of a candidate.

Accordingly, the Administrative Law Judge finds that the Complainant has not alleged sufficient facts with respect to Alleged False Statement No. 6 to demonstrate a *prima facie* violation of Minnesota Statutes § 211B.06.

In summary, only Alleged False Statements Nos. 2 and 3 by Highland, David Stewart, and Susan Stewart will proceed to the probable cause hearing. Alleged False Statements 1, 4, 5, and 6 are dismissed.

**Minnesota Statutes § 211B.15 – Corporate Political Contributions; and
Minnesota Statutes § 211B.13, subd. 2 – Knowing Acceptance of Corporate
Political Contribution**

In his Complaint, Mr. Nephew alleges that Highland, David Stewart, and Susan Stewart have violated Minnesota Statutes § 211B.15, subd. 2 (illegal corporate contributions). He further contends that Mr. Cardinal has violated Minnesota Statutes § 211B.15, subd. 13 (aiding/abetting a violation of 211B.15) and Minnesota Statutes § 211B.13, subd. 2 (knowing acceptance of a contribution prohibited by 211B.15).

Section 211B.15, subd. 2, prohibits corporations from making contributions to an individual to promote or defeat the candidacy of an individual for election to a political office in Minnesota. Specifically, the statute provides:

A corporation may not make a contribution or offer or agree to make a contribution directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.²¹

An expenditure is considered to be independent if it is "made without the express or implied consent, authorization, or cooperation of, and not in concert with or at the request or suggestion of, any candidate or any candidate's principal campaign committee or agent."²² "Corporation" is defined to mean: "(1) a corporation organized for profit that does business in this state; (2) a nonprofit corporation that carries out activities in this state; or (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state."²³ Based upon the

²¹ Minn. Stat. § 211B.15, subd. 2.

²² Minn. Stat. § 10A.01, subd. 18.

²³ Minn. Stat. § 211B.15, subd. 1.

information from the Minnesota Secretary of State's website attached to the Complaint, it appears that Highland is a corporation as defined in the statute.

In his Complaint, Mr. Nephew alleges that Highland and the Stewarts made an improper corporate contribution to Mr. Cardinal by enclosing Mr. Cardinal's campaign flyers and the Stewarts' letter supporting Mr. Cardinal's candidacy in company-paid envelopes with customer bills and using the corporate bulk rate postage permit to send the materials to its customers. Mr. Nephew contends that the expense incurred by Highland to include and mail these letters and campaign flyers with the bills sent to its customers constitutes an in-kind contribution from Highland to Mr. Cardinal's election campaign. Mr. Nephew argues that the fact that the mailing included campaign flyers prepared and paid for by Mr. Cardinal's campaign committee implies, at a minimum, that there was sufficient cooperation between the corporation and the candidate/committee that the corporation was able to acquire a supply of the flyers. For this reason, he contends that this was not an independent expenditure by Highland.

Mr. Nephew further asserts that Mr. Cardinal knowingly accepted Highland's corporate contribution to his election campaign. He argues that Mr. Cardinal thereby violated two additional statutes: Minnesota Statutes § 211B.13, subd. 2, which specifies that "[a] person may not knowingly solicit, receive, or accept any money, property, or other thing of monetary value . . . that is a disbursement prohibited by this section or section 211B.15;" and Minnesota Statutes § 211B.15, subd. 13, which specifies that "[a]n individual who aids, abets, or advises a violation of this section is guilty of a gross misdemeanor." The Complaint alleges that Mr. Cardinal is an experienced candidate and office-holder who previously served as Mayor of Maplewood for six years, ran again for Mayor in 2009, and has been a candidate for congressional and other offices, and was likely aware of the prohibition against corporate contributions. Mr. Nephew speculated that the financial value of Highland's contribution (the printing and mailing expense and the value of the customer list) may have exceeded \$300.

After reviewing the Complaint and its attachments, the Administrative Law Judge concludes that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.15, subd. 2, by Highland, David Stewart and Susan Stewart, as well as a *prima facie* violation of Minnesota Statutes §§ 211B.13, subd. 2, and 211B.15, subd. 13, by Bob Cardinal. These allegations will proceed to a probable cause hearing as scheduled by this Order, along with the allegations against Highland, Mr. Stewart, and Ms. Stewart under Minnesota Statutes § 211B.06 involving Alleged False Statements Nos. 2 and 3.

B. L. N.