

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

John Nephew,

Complainant,

vs.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
ORDER**

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

Respondents.

The above-entitled matter came on for an evidentiary hearing on November 30, 2011, before a panel of three Administrative Law Judges: Barbara L. Neilson (Presiding Judge), Timothy J. O'Malley, and Kathleen D. Sheehy. The OAH record closed at the conclusion of the hearing on November 30, 2011.

The Complainant, John Nephew, participated without counsel.

James Gasperini, Attorney at Law, 3121 S. St. Croix Trail, Afton, MN 55001, appeared on behalf of Respondents Highland Sanitation Incorporated, David Stewart, and Susan Stewart.

Respondent Bob Cardinal participated without counsel.

**NOTICE**

This is the final decision in this case, as provided in Minn. Stat. § 211 B.36, subd. 5.<sup>1</sup> A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

**STATEMENT OF ISSUES**

1. Did Respondents Highland Sanitation Incorporated and its owners, David and Susan Stewart, make an illegal corporate contribution to Respondent Bob Cardinal, in violation of Minn. Stat. § 211B.15, subd. 2?

2. Did Respondent Bob Cardinal knowingly solicit, receive, or accept Highland's corporate contribution to his election campaign, in violation of Minn. Stat. § 211 B.13, subd. 2; or aid, abet, or advise a violation of Minn. Stat. § 211 B.15, in violation of Minn. Stat. § 211 B.15, subd. 13?

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<sup>1</sup> All references to Minnesota Statutes are to the 2010 edition.

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondent Highland Sanitation Incorporated violated Minn. Stat. § 211 B.15, subd. 2, by making a prohibited corporate contribution to Mr. Cardinal. The panel further concludes that the Complainant has shown by a preponderance of the evidence that Respondent Bob Cardinal violated Minn. Stat. § 211 B.15, subd. 13, and Minn. Stat. § 211 B.13, subd. 2, by knowingly soliciting a campaign contribution that was a prohibited corporate contribution from Highland Sanitation.

Based upon the entire record, the Panel makes the following:

### FINDINGS OF FACT

1. Complainant John Nephew is a current member of the Maplewood City Council. Mr. Nephew sought re-election in the general election held on November 8, 2011.

2. Respondent Bob Cardinal is a former two-term Mayor of the City of Maplewood.<sup>2</sup> He has campaigned for office on a total of five occasions, including primaries and general elections. Most recently, Mr. Cardinal ran for election for the City Council in November 2011.

3. Respondent Highland Sanitation & Recycling Incorporated (Highland) is a corporation within the meaning of Chapter 211 B.<sup>3</sup> Highland serves as the trash hauler for approximately 399 customers in Maplewood. Highland's offices are located in Newport and Farmington, Minnesota.<sup>4</sup>

4. Respondents David and Susan Stewart are the owners of Highland. They purchased the business in approximately 1986 from Ms. Stewart's mother.

5. During the time period relevant to this complaint, the City of Maplewood was studying its trash hauling system and considering changing from an open or subscription trash hauling system to a contractual or organized system. Mr. Nephew favored having an organized system. Mr. Cardinal disagreed with that proposal and supported the ability of individual citizens to choose their trash hauler.<sup>6</sup>

6. Mr. Nephew was a member of a Trash Hauling Working Group created by the City in April 2011. Among other things, the Working Group was responsible for developing a Request for Proposals (RFP) that could be used in soliciting proposals from haulers regarding residential trash collection in Maplewood.<sup>7</sup>

7. A Staff Report issued on Tuesday, September 20, 2011, indicated that four trash haulers, including Highland, had submitted proposals that were responsive to

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<sup>2</sup> Testimony (Test.) of Bob Cardinal.

<sup>3</sup> Stipulation of Parties.

<sup>4</sup> Test. of Susan and David Stewart.  
*sld.*

<sup>6</sup> Test. of Bob Cardinal; Exhibits (Exs.) 1 and 2.

<sup>7</sup> Ex. Eat 1-2.

the RFP. The Staff Report further stated that the Working Group had reviewed and scored the proposals and had recommended that the City Council authorize staff to negotiate with Allied Waste Services (the lowest-cost proposer) for City-wide residential trash collection services.<sup>8</sup>

8. On September 21, 2011, this proposal was placed on the agenda for the Maplewood City Council meeting to be held on September 26, 2011. At the September 26 meeting, the Council deferred action on the proposal.<sup>9</sup>

9. During the evening of September 26, 2011, Mr. Cardinal called David Stewart and arranged a time to meet with him the next morning. Mr. Cardinal had not contacted Highland or Mr. Stewart previously and had no prior personal or professional relationship with them.<sup>10</sup>

10. On Tuesday, September 27, 2011, Mr. Cardinal and Mr. Stewart had a brief meeting at Highland's offices in Newport during which they discussed the Maplewood trash hauling issue. Mr. Cardinal gave Mr. Stewart a stack of at least 100 campaign flyers because Highland "probably [had] ten drivers," Mr. Stewart "was in the thick of this thing in garbage hauling," Mr. Cardinal wanted to "help [Mr. Stewart] protect his business," and "to do a neighborhood you'd probably need 100." Mr. Cardinal explained during the hearing, "I don't know how many drivers he has-and he has customers-so I gave him some cards.,<sup>11</sup>

11. Although Mr. Cardinal did not know specifically how Highland would distribute the flyers to its customers, he provided the 100 flyers with the expectation that Highland would distribute them in some fashion and implicitly consented to that distribution.

12. The campaign flyers provided by Mr. Cardinal 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" and urged readers to vote for him on November 8. The flyers included a notation that they were prepared and paid for by Mr. Cardinal's campaign.<sup>12</sup>

13. After receiving the flyers, Mr. Stewart placed them on a counter in Highland's Newport office, where they remained until Friday, September 30, 2011.

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<sup>8</sup> Ex. E; Test. of John Nephew.

<sup>9</sup> Test. of J. Nephew. The agenda, which is available on-line, includes the following item under Unfinished Business: "Trash Collection System Analysis - Request for Authorization to Negotiate a Draft Trash Collection Contract with the Top Ranked Proposer." <http://docs.ci.maplewood.mn.us/ElectronicFile.aspx?docid=108513&dbid=0>. The minutes of the September 26, 2011, City Council meeting are also available on-line at <http://docs.ci.maplewood.mn.us/ElectronicFile.aspx?docid=108505&dbid=0>.

<sup>10</sup> Test. of B. Cardinal; Test. of D. Stewart.

<sup>11</sup> Test. of B. Cardinal; Test. of D. Stewart.

<sup>12</sup> Ex. C; see also Ex. 2.



Items on the counter were accessible to employees, vendors, and others who came into the office.<sup>13</sup>

14. On Friday, September 30, 2011, Mr. Stewart picked up the flyers and drove a company vehicle to Highland's Farmington location, where Ms. Stewart was in the process of preparing customer bills for the month. Mr. Stewart suggested that Ms. Stewart include Mr. Cardinal's flyers in the bills that had not yet been sent out to Highland customers in Maplewood.<sup>14</sup>

15. Ms. Stewart prepared a two-page letter addressed to Highland's "valued customers" from David and Susan Stewart. The letter was prepared during the work day at Highland's Newport Office. 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. 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 letter stated that readers could go to <http://www.electbobcardinal.com/for> information on Mr. Cardinal. TelePhone numbers and e-mail addresses for current City Council members were also listed.<sup>5</sup>

16. There is no evidence that Mr. Cardinal knew about the letter prepared by Ms. Stewart, or that he encouraged her to send it.<sup>16</sup>

17. Ms. Stewart included the letter and Mr. Cardinal's flyer in approximately 85 bills that were sent to Highland's Maplewood customers on September 29 or 30, 2011.<sup>17</sup> Highland's corporate mail permit was used to pay for the postage.<sup>18</sup> The inclusion of the letter and the flyer did not increase the amount of postage that was paid to send the bills.<sup>19</sup>

18. On October 6, 2011, a Maplewood resident contacted Mr. Nephew about the letter and Cardinal flyer that were included in the envelope with his bill from Highland.<sup>20</sup>

19. On October 7, 2011, Mr. Nephew filed a complaint alleging that Highland, David Stewart, and Susan Stewart had violated Minnesota Statutes §§ 211 B.06 (false political and campaign material) and 211 B.15, subd. 2 (illegal corporate contributions), and that Mr. Cardinal violated Minnesota Statutes §§ 211 B.13, subd. 2 (knowing

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<sup>13</sup> Test. of D. Stewart; Test. of S. Stewart.

<sup>14</sup> Test. of D. Stewart.

<sup>15</sup> EX.B.

<sup>16</sup> Test. of S. Stewart; Test. of B. Cardinal.

<sup>17</sup> Test. of S. Stewart.

<sup>18</sup> Stipulation of the Parties.

<sup>19</sup> Test. of S. Stewart.

<sup>20</sup> Test. of J. Nephew.

acceptance of a contribution prohibited by 211B.15, subd. 13 (aiding/abetting a violation of Section 211 B.15).

20. After they received notice that Mr. Nephew had filed a complaint, Highland and the Stewarts did not send out any additional flyers for Mr. Cardinal. They did, however, send a revised version of the letter to Maplewood customers with their October bills.<sup>21</sup>

21. On October 12, 2011, the Presiding Administrative Law Judge determined that the Complaint set forth a *prima facie* violation of Minnesota Statutes 211B.06 with respect to two of the six statements in the Stewarts' letter that were alleged to have been false, but dismissed Alleged False Statements 1, 4, 5, and 6. In addition, the Administrative Law Judge determined that the Complaint set 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.

22. A probable cause hearing on the allegations that survived *prima facie* review was held by telephone on October 17, 2011 ..

23. On October 21, 2011, the Presiding Administrative Law Judge concluded that there was not probable cause to believe that Highland, Mr. Stewart, or Ms. Stewart violated Minnesota Statutes §§ 211B.06, and dismissed the false statement allegations. However, it was determined that there was probable cause to believe that Highland, Mr. Stewart, and Ms. Stewart violated Minnesota Statutes §§ 211B.15, subd. 2, by making an illegal corporate contribution to Mr. Cardinal, as well as probable cause to believe that Mr. Cardinal violated Minnesota Statutes §§ 211B.15, subd. 13, and Minnesota Statutes § 211B.13, subd. 2, by knowingly accepting Highland's corporate contribution to his election campaign.

24. On November 2, 2011, a Notice of and Order for Evidentiary Hearing was issued by the Chief Administrative Law Judge assigning the remaining corporate contribution allegations to a panel of three Administrative Law Judges pursuant to Minnesota Statute § 211B.35. The hearing was held as scheduled on November 29, 2011.

25. Mr. Cardinal won election to the Maplewood City Council on November 8, 2011. Mr. Nephew lost his re-election bid. According to the Secretary of State's website, the vote totals for the two seats in the Maplewood City Council at-large election were as follows:

Bob Cardinal	3,352 (29.89%)
Marvin Koppen	2,935 (26.17%)
Rebecca Cave	2,707 (24.14%)

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<sup>21</sup> Test. of S. Stewart.

John Nephew

2,170 (19.35%)

Write-In

50 (0.45%)<sup>22</sup>

Based upon the foregoing Findings of Fact, the Panel makes the following:

### CONCLUSIONS

1. Minn. Stat. § 211 B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. §§ 211 B.13 and 211 B.15 is a preponderance of the evidence.<sup>23</sup>

3. Minn. Stat. § 211 B.13, subd. 2, prohibits a person from knowingly soliciting, receiving or accepting anything of monetary value that is a disbursement prohibited by section 211 B.15. "Disbursement" is defined to mean an act through which money, property, or other thing of value is directly or indirectly promised, paid, spent, contributed, or lent.<sup>24</sup> Minn. Stat. § 211 B.15, subd. 13, also specifies that an individual who "aids, abets, or advises a violation" of Minn. Stat. § 211 B.15 is guilty of a gross misdemeanor.<sup>25</sup>

4. Minn. Stat. § 211 B.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.<sup>26</sup>

[22http://electionresults.sos.state.mn.us/201111\\_08/ElecRsIts.asp?CtvCd=40&M=MCD&QI\\_D=&QI\\_ED=41 &CtNm=382%3A40382&ZoneName=40382%20-%20Maplewood&DID=40382](http://electionresults.sos.state.mn.us/201111_08/ElecRsIts.asp?CtvCd=40&M=MCD&QI_D=&QI_ED=41 &CtNm=382%3A40382&ZoneName=40382%20-%20Maplewood&DID=40382)

<sup>23</sup> Minn. Stat. § 211 B.32, subd. 4.

<sup>24</sup> Minn. Stat. § 211 B.01, subd. 5.

<sup>25</sup> Minn. Stat. § 211 B.15, subd. 13.

<sup>26</sup> Minn. Stat. § 211 B.15, subd. 2. As discussed below, independent expenditures as defined in Minn. Stat. § 10A01, subd. 18, are permitted. See Minn. Stat. § 211 B.15, subd. 3.



5. A corporation is permitted to make an expenditure to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office if the expenditure is an "independent expenditure.,,27 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.,,28

6. Respondent Highland Sanitation is a corporation within the meaning of Chapter 211 B.<sup>29</sup>

7. The two-page letter from David and Susan Stewart included with Highland Sanitation bills on or about September 30, 2011, was intended to promote Mr. Cardinal's candidacy for election to the Maplewood City Council. However, the letter was not prepared or distributed with the express or implied consent, authorization, or cooperation of, or in concert with or at the request or suggestion of, Mr. Cardinal and, standing alone, constituted a permitted independent expenditure by Highland Sanitation.

8. The flyers that were included in the Highland Sanitation bills were prepared and paid for by Bob Cardinal for City Council and were obviously intended to promote Mr. Cardinal's candidacy for election to the Maplewood City Council. Highland Sanitation distributed Mr. Cardinal's campaign flyers with its bills with the implied consent, authorization, and cooperation of Mr. Cardinal, and in concert with or at the request or suggestion of Mr. Cardinal. The inclusion of the flyers in the envelopes containing Highland bills did not constitute an independent expenditure by Highland Sanitation. In taking this action, Highland violated Minn. Stat. § 211 B.15, subd. 2, by making a prohibited corporate contribution to Mr. Cardinal. Specifically, Highland made a contribution of free services by including the flyers with bills sent to Maplewood customers, and made a contribution of a thing of monetary value by using Highland's corporate resources, including paying for postage with its corporate mail permit and allowing its customer list to be used for this purpose.

9. Mr. Cardinal violated Minn. Stat. §§ 211 B.13, subd. 2, and 211 B.15, subd. 13, by providing at least 100 flyers to Highland with the expectation that Highland would distribute them in some fashion to its customers, and thereby knowingly solicited a campaign contribution from Highland Sanitation that was a prohibited corporate contribution and aided and abetted that violation.

10. Pursuant to Minn. Stat. § 211 B.35, subd. 2, the Panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.

11. The attached Memorandum explains the reasons for these Conclusions and is incorporated herein.

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<sup>27</sup> Minn. Stat. § 211 B.15, subd. 3.

<sup>28</sup> Minn. Stat. § 10A.01, subd. 18.

<sup>29</sup> Stipulation of the Parties.

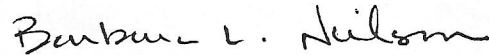
Based upon the record herein, the Panel of Administrative Law Judges makes the following:

**ORDER**

IT IS ORDERED:

1. That Respondent Bob Cardinal pay a civil penalty of \$500 by March 1, 2012, for violating Minn. Stat. §§ 211B.13, subd. 2, and 211B.15, subd. 13.<sup>30</sup>
2. That Respondent Highland Sanitation and Recycling Incorporated pay a civil penalty of \$100 by March 1, 2012, for violating Minn. Stat. § 211B.15, subd. 2.<sup>31</sup>

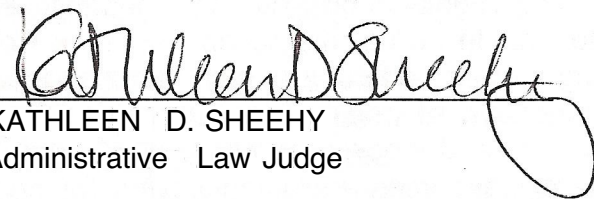
Dated: December 4, 2011



BARBARA L. NEILSON  
Presiding Administrative Law Judge



TIMOTHY J. O'MALLEY  
Administrative Law Judge



KATHLEEN D. SHEEHY  
Administrative Law Judge

**MEMORANDUM**

Complainant John NepheYJ alleges that Highland made an improper in-kind corporate contribution to Mr. Cardinal's election campaign in violation of Minnesota Statutes § 211B.15, subd. 2, and that Mr. Cardinal cooperated with and knowingly sought and accepted Highland's corporate contribution to his election campaign, in violation of Minn. Stat. § 211B.13, subd. 2, and Minn. Stat. § 211B.15, subd. 13. In order to show that a violation of Minn. Stat. § 211B.15, subd. 2, occurred, the Complainant must demonstrate by a preponderance of the evidence that Highland made a "contribution" of "any money, property, free service of its officers, employees ... or thing of monetary value" to an individual "to promote or defeat the candidacy of an

<sup>30</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55101.

<sup>31</sup> The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55101.



individual" for election to a political office. The Complainant must also show that the contribution was "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" and was not an "independent expenditure." To establish a violation of Minn. Stat. § 211B.15, subd. 13, the Complainant must show by a preponderance of the evidence that Mr. Cardinal knowingly solicited, received, or accepted any "money, property, or other thing of monetary value" that is a disbursement prohibited by Section 211B.15. Finally, to demonstrate a violation of Minn. Stat. § 211B.15, subd. 13, the Complainant must show by a preponderance that Mr. Cardinal aided, abetted, or advised a violation of Minn. Stat. § 211B.15.

Many of the underlying facts in this matter are undisputed. Bob Cardinal has admitted that he initiated a meeting with David Stewart at Highland Sanitation's Newport offices in late September and provided David Stewart with a stack of at least 100 flyers prepared and paid for by Mr. Cardinal's campaign committee. Susan Stewart has acknowledged that she prepared a letter which criticized Maplewood's current Mayor and Council members for trying to take away customers' rights to choose a trash hauler and described Mr. Cardinal as a "candidate who wants to represent you and allow you to keep your freedom of choice." Finally, Highland Sanitation and the Stewarts have agreed that Highland included Mr. Cardinal's campaign flyer and the letter in company-paid envelopes with customer bills and used the corporate bulk rate postage permit to send the materials to approximately 85 Maplewood customers. The parties do, however, disagree about whether this conduct violated the provisions of the Fair Campaign Practices Act set forth in Chapter 211 B of the Minnesota Statutes.

After careful consideration of the record, and for the reasons set forth below, the Panel concludes that the Complainant has demonstrated by a preponderance of the evidence that Highland violated Minn. Stat. § 211B.15, subd. 2, when it mailed Mr. Cardinal's campaign flyer with its customer bills, and Mr. Cardinal violated Minn. Stat. §§ 211B.15, subd. 13, and 211B.13, subd. 2, by knowingly soliciting and receiving the corporate contribution and aiding and abetting a violation of Section 211B.15.

As a threshold matter, the Panel concludes that the flyer and letter sent with Highland's bills were, in fact, intended to promote Mr. Cardinal's candidacy for election to the Maplewood City Council. In their testimony at the hearing, Susan and David Stewart denied such an intention and contended they were merely attempting to educate their customers about the Maplewood trash hauling issue and urging them to "make their voices heard." Although Mr. Stewart initially testified that he suggested the flyers be included with the bills because "maybe a little more voter turnout or something would help things go in what I believed to be the right direction," he later maintained that his reference to the "right direction" merely meant that he wanted to ensure that people were informed about the issue. The Panel does not find the Stewarts' testimony in this regard to be credible since it is directly contradicted by the plain language used in the letter and flyer. On its face, the letter criticized the actions of the current Mayor and Council members on the trash hauling issue, characterized Mr. Nephew and the Work Group as "ill informed," and urged Highland's Maplewood customers to "vote on keeping your 'freedom of choice' and having less government involvement in your personal

decision making." The letter informed customers that they would find enclosed "a brochure for a candidate who wants to represent you and allow you to keep your freedom of choice," and Mr. Cardinal's flyer was the only candidate's literature that was included in the mailing. The flyer itself was prepared by Mr. Cardinal's campaign and explicitly urged readers to vote for him. These materials reflected a clear intent to promote Mr. Cardinal's candidacy for election to the Maplewood City Council.

The Panel further finds that Highland did, in fact, make a "contribution" within the meaning of Section 211B.15. Although the inclusion of the letter and flyer did not increase the amount of postage Highland had to pay to send its bills, the statutory prohibition is not restricted to monetary contributions; it also encompasses a contribution of "free service" of a corporation's officers or employees or a "thing of monetary value" to an individual to promote his candidacy for political office. The Panel finds that there is a proper basis to find that Highland contributed free services when it inserted the letter and Mr. Cardinal's campaign flyer into the bills by hand before sending them to Maplewood customers. In addition, it is evident that Highland contributed "a thing of monetary value" within the meaning of the statute when it paid for the postage with Highland's corporate mail permit and allowed its customer list to be used for this purpose.

The remaining issues are whether the expenditure made by Highland was an independent expenditure, i.e., one that was 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," and the related questions of whether Mr. Cardinal knowingly solicited and received free services or a thing of monetary value from Highland and/or whether Mr. Cardinal aided or abetted Highland's violation of the statute.

In this case, there is no evidence that Mr. Cardinal or anyone associated with his campaign knew about the letter prepared by Ms. Stewart or encouraged her to send it. Accordingly, the Panel concludes that the inclusion of that letter in the customer bills constituted an independent expenditure by the corporation that did not violate Minn. Stat. § 211B.15.

However, there is ample evidence that the distribution of Mr. Cardinal's flyer in Highland's customer bills was not an independent expenditure by the corporation but rather occurred with the implied consent, authorization, and cooperation of Mr. Cardinal. The record reflects that, at some point during the evening of September 26, Mr. Cardinal, who had never had any prior personal or professional contact with Highland or Mr. Stewart, called Mr. Stewart and arranged to meet with him at Highland's Newport office the next day. The timing of this call suggests that it was prompted by recently-released public information that Highland had submitted a proposal in response to the Maplewood RFP and City staff was seeking Council authorization to proceed with negotiations with the lowest-cost proposer, Allied Waste. When Mr. Cardinal and Mr. Stewart met on September 27, Mr. Cardinal admitted that he gave Mr. Stewart a stack of "at least" 100 campaign flyers that had been prepared and paid for by his campaign.



Mr. Cardinal denied that there was any discussion during his meeting with Mr. Stewart of what Highland would do with the flyers and repeatedly testified that there was no intent or consent on his part to have Highland distribute the flyers. However, these claims lacked credibility in light of conflicting testimony provided by Mr. Cardinal during the hearing. For example, Mr. Cardinal testified at the outset of the hearing that Mr. Stewart had told him during their discussion on September 27 that, "if a resident or his drivers wanted to give them [the flyers] to a customer or something, they could." Upon further questioning, Mr. Cardinal testified, "I don't know if there was a discussion [of delivery by the truck drivers]" and then emphatically stated, "There was no discussion of the drivers distributing campaign cards." Similar inconsistencies cropped up during the probable cause hearing, when Mr. Cardinal denied knowing that Highland was going to mail the flyers out to customers but stated, "For all I could see, he [Mr. Stewart] could take them and distribute them to customers in Maplewood by truck."

Mr. Cardinal also testified during the hearing that he gave Mr. Stewart 100 campaign flyers because Highland "probably [had] ten drivers," Mr. Stewart "was in the thick of this thing in garbage hauling," Mr. Cardinal wanted to "help [Mr. Stewart] protect his business," and "to do a neighborhood you'd probably need 100." Mr. Cardinal explained during the hearing, "I don't know how many drivers he has-and he has customers-so I gave him some cards." Moreover, Mr. Cardinal responded to further questioning at the hearing by stating that he typically gave only one or two pieces of literature to members of the public whom he encountered, and was unable to provide an example of a situation where he provided 100 pieces of literature to anyone without expecting that the material would be distributed.

While it appears that Mr. Cardinal did not know or approve the precise method that Highland would use to distribute the campaign flyers to its customers, the Panel concludes, based upon the record as a whole, that Mr. Cardinal provided the 100 flyers with the expectation that Highland would distribute them in some fashion (most likely by using its truck drivers). The Panel finds that Mr. Cardinal gave implied consent to the distribution by Highland and that he cooperated with and suggested the distribution by Highland by initiating the meeting and providing the flyers. Because the distribution occurred with the cooperation and consent of Mr. Cardinal, the Panel concludes that Highland's distribution of the flyers was not an independent expenditure.

The evidence discussed above also supports a finding that Mr. Cardinal knowingly solicited and received a "thing of monetary value" that constituted a disbursement prohibited by Section 211 B.15, and Mr. Cardinal aided and abetted a violation of Minn. Stat. § 211 B.15. It is evident that Mr. Cardinal initiated the contact with Mr. Stewart because of his connection with Highland, provided a large number of flyers to the corporation with the expectation that Highland would distribute them in some fashion, and thereby assisted in Highland's violation of Section 211 B.15, subd. 2. Mr. Cardinal received a benefit from the contribution by having Highland use its customer list and absorb the costs of preparing the mailing and mailing the flyers. Based upon his past experience as a candidate and as a public official, his receipt of the Campaign Manual when he filed for candidacy in the 2011 Maplewood municipal ~



election,<sup>32</sup> and his responsibility to abide by applicable law, it is fair to view this as a knowing violation.

Having found that Highland violated Minn. Stat. § 211B.15, subd. 2, and Mr. Cardinal violated Minn. Stat. §§ 211B.13, subd. 2, and 211B.15, subd. 13, the Panel may make one of several dispositions.<sup>33</sup> The Panel may issue a reprimand, impose a civil penalty of up to \$5,000, and/or refer the complaint to the appropriate county attorney for criminal prosecution. In this case, the Panel has decided to impose civil penalties of \$100 against Respondent Highland Sanitation and \$500 against Respondent Bob Cardinal.

The Panel concludes that \$100 is an appropriate civil penalty for Highland because its violation was inadvertent, unintentional, and limited in scope and duration. It is evident that the Stewarts were not aware of the prohibition against corporate contributions. No actual monetary expenditures were made on behalf of Mr. Cardinal, and the flyers were no longer included in customer billings once Highland was notified that a complaint had been filed. The violation occurred in late September and it is not clear what, if any, impact the violation had on those who voted on November 8. Although it is possible that the legislature intended the prohibition against corporate contributions to be directed against larger companies as opposed to "mom and pop" businesses, no such exception is set forth in the statute. For that reason, the Panel believes that a nominal penalty must be imposed.

The Panel finds Mr. Cardinal's violation was negligent and ill-advised. He is a past two-term Mayor of Maplewood and has run for office on numerous occasions. As noted above, he received a copy of the Campaign Manual when he filed for candidacy in the 2011 Maplewood municipal election and is responsible for understanding applicable law. As noted above, it is not clear what, if any, impact the violation had on those who voted on November 8. Under all of the circumstances, the Panel concludes that \$500 is an appropriate penalty for Mr. Cardinal's violation.

**B. L. N., T. J. O., & K. D. S.**

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<sup>32</sup> Ex. F.

<sup>33</sup> Minn. Stat. § 211B.35, subd. 2.