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Campaign Finance & Public Disclosure Board

CAMPAIGN FINANCE & PUBLIC DISCLOSURE BOARD



190 Centennial Office Building, 658 Cedar St. St. Paul, MN 55155 www.cfboard.state.mn.us

Complaint for Violation of the Campaign Finance and Public Disclosure Act

All information on this form is confidential until a decision is issued by the Board.
A photocopy of the entire complaint, however, will be sent to the respondent.

Information about complaint filer

Name of complaint filer <i>Nancy Barsness</i>	
Address <i>38506 Co Rd 24</i>	Email address <i>nancyb@sunestone.net</i>
City, state, and zip <i>Cyrus, MN 56323</i>	Telephone (Daytime) <i>507-320-630-4950</i> <i>320-795-2708</i>

Identify person/entity you are complaining about

Name of person/entity being complained about <i>State Representative Jeff Backer</i>
Address <i>593 State Office Bldg - 100 Rock Martin Blvd</i>
City, state, zip <i>St Paul, MN 55155</i>
Title of respondent (if applicable) <i>State Representative</i>
Board/Department/Agency/District # (if legislator) <i>District 12A</i>

Nancy Barsness
Signature of person filing complaint

8/3/16
Date

Send completed form to:

Campaign Finance & Public Disclosure Board
190 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

If you have questions:

Call 651-539-1190, 800-657-3889, or for TTY/TDD communication contact us through the Minnesota Relay Service at 800-627-3529. Board staff may also be reached by email at cf.board@state.mn.us.

Give the statutory cite to the section of Chapter 10A, Chapter 211B, or Minnesota Rules you believe has been violated:

Chapter 211B.⁰⁴ and 10A.20

You will find the complete text of Chapter 10A, Chapter 211B, and Minnesota Rules chapters 4501 - 4525 on the Board's website at www.cfboard.state.mn.us.

Nature of complaint

Explain in detail why you believe the respondent has violated the campaign finance and public disclosure laws. Attach an extra sheet of paper if necessary. Attach any documents, materials, minutes, resolutions, or other evidence to support your allegations.

*
On July 20th, I received a "Legislative Report" (Report & copy of envelope enclosed) from Rep Jeff Backer (District 12A) that touts his accomplishments and priorities as a legislative candidate. There is no disclaimer of who paid to prepare and disseminate it. In the Report Backer says, "I am proud of the good work we accomplished...I am passionate about working to ensure that schools...I was proud to support an education bill...I worked hard the last two years... I worked on a number of bills this year..." Those are the same words he used in a campaign speech at a recent "Meet the Candidate" forum. The Report also is partisan. He lists his accomplishment as: "Weakened Governor Dayton's one-size-fits-all agriculture buffer zone regulations;" "Strengthened 2nd Amendment rights;" and "Blocked Democrats gun owner registration efforts." He gives sole credit to his party by noting "Thanks to the House Republicans benefits earned by retired veterans are now tax free;" This is campaign literature that was disseminated for the purpose of influencing voting in the upcoming election, and should have included a disclaimer its preparation and dissemination should have been paid for by the candidate. The Office of Administrative Hearings concluded that the Report was sent by US Mail with postage paid by the Minnesota House of Representatives (see envelope and memorandum attached). This income/expenditure does not appear to be reported in Backer's latest "Report of Receipts and Expenditures for Principal Campaign Committee."

Minnesota Statutes section 10A.022, subdivision 3 describes the procedures required for investigating complaints. A full description of the complaint process is available on the Board's website

Briefly, the Board will notify you when it has received your complaint. The Board must send a copy of the complaint to the respondent. Complaints and investigations are confidential. Board members and staff cannot talk about an investigation except as required to carry out the investigation or to take action in the matter. After the Board issues a decision, the record of the investigation is public.

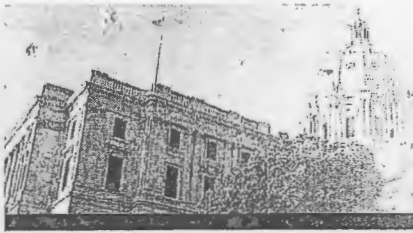
The law requires a complaint to go through two stages before the Board can begin an investigation: a prima facie determination and a probable cause decision. If the complaint does not pass one of the stages, it must be dismissed.

The Board has 10 business days after receiving your complaint to determine whether the complaint is sufficient to allege a prima facie violation of the campaign finance laws. If the Board determines that the complaint does allege a prima facie violation, the Board has 45 days to decide whether probable cause exists to believe a violation that warrants a formal investigation has occurred. Both you and the respondent have the right to be heard on the issue of probable cause before the Board makes this decision. The Board will notify you if the complaint moves to the probable cause stage.

If the Board determines that probable cause does not exist, the Board will dismiss the complaint. If the Board determines that probable cause exists, the Board will start an investigation. The Board will send you monthly updates regarding the status of the investigation. At the end of the investigation, the Board will offer you and the respondent the opportunity to be heard before the Board makes a final decision.

In most cases, the Board will issue findings, conclusions, and an order as its decision. For a spending or contribution limits violation, the Board can enter into a conciliation agreement with the respondent instead of issuing findings, conclusions, and an order. The Board's final decision will be sent to you and posted on the Board's website.

* A better copy of the "Legislative Report" is with the OAH material that was sent to you via email



LEGISLATIVE REPORT

Dear Neighbor,

It has been an honor to serve as your voice at the Capitol the last two years. I am proud of the good work we accomplished, investing in our nursing homes, passing life-saving mental health legislation and improving our schools—all the while keeping government growth at one of its lowest rates in 50 years.

Please take a moment to look over this year's session summary and be sure to contact me if you have any questions or comments, it would be great to speak with you!

Kids First

Improving Minnesota's Schools

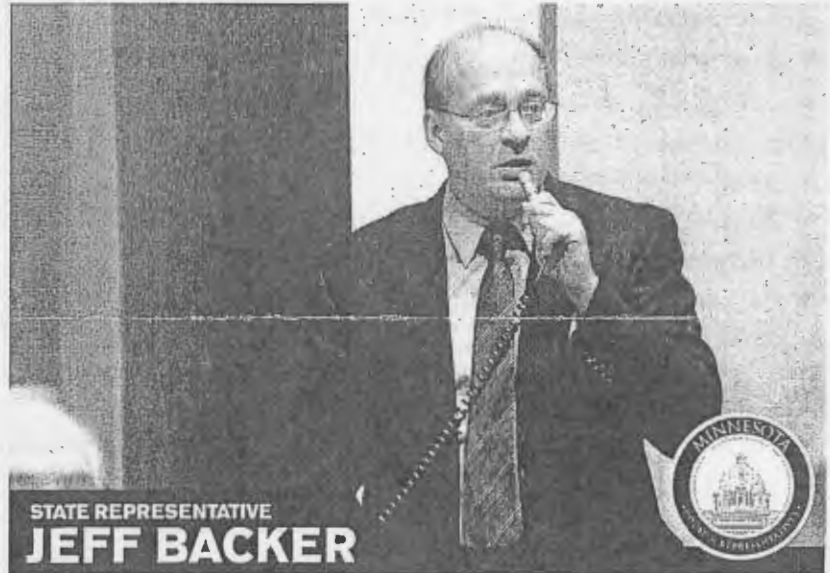
As a former school board member, I am passionate about working to ensure that the schools in western and northwestern Minnesota continue to be among the best in the nation. That's why I was proud to support an education bill last year that partners significant new funding with proven reforms to ensure every child in Minnesota has the opportunity to receive a world-class education.

In addition, this year we passed a new law to end a fundamental funding disparity between metro and non-metro schools.

Phone: 651-296-4929

rep.jeff.backer@house.mn

Sign up for email updates at www.house.mn/12A



STATE REPRESENTATIVE
JEFF BACKER

593 State Office Building • 100 Rev. Dr. Martin Luther King Jr. Blvd • Saint Paul, MN 55155



Respecting Taxpayers

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- Tax relief for farmers
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Thanks to House Republicans, benefits earned by retired veterans are now tax free in Minnesota. This historic tax cut will have a significant impact on the 18,000 military retirees that currently live in Minnesota.

2016 LEGISLATIVE REPORT

Attachment A

Protecting Our Aging Adults

Last year, the legislature passed reforms and made needed increases in nursing home funding. This additional funding ensures our rural nursing homes will be able to continue providing outstanding care for our seniors and disabled families, neighbors and friends. Here's how the bill increases nursing care center funding in our area:

- Essentia Health Grace Home, Graceville: 31.52% increase
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- Blocked Democrats' gun owner registration efforts
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- Required legislative review of President Obama's Clean Power Plan



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I worked on a number of bills this year to improve our communities including:

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- A bill that increases reimbursement rates for rural ambulance services
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- Flood mitigation projects in Herman, Ortonville, and Browns Valley
- Funding for critical access hospitals
- Legislation that would streamline the ditch repair process while making it more cost effective



Minnesota House of Representatives

State Representative

Jeff Backer

State Office Building

100 Rev Dr Martin Luther King Jr Blvd

St. Paul, Minnesota 55155-1298

*Received
7/20/16*

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Permit No 171



T* P1 *****AUTO**5-DIGIT 56311
NANCY BARSNESS
OR CURRENT OCCUPANT
38506 COUNTY ROAD 24
CYRUS MN 56323-4572



July 29, 2016

Nancy Barsness
38506 County Rd 24
Cyrus, MN 56323

State Representative Jeff Backer
593 State Office Building
100 Rev Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

State Representative Jeff Backer
318 East Broadway
Browns Valley, MN 56219

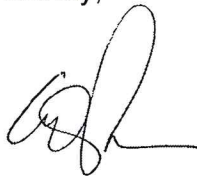
Re: *In the Matter of Nancy Barsness (Jeff Backer)*
OAH 65-0320-33688

Dear Ms. Barsness and Mr. Backer:

Enclosed and served upon you please find the **NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND NOTICE OF AND ORDER FOR PROBABLE CAUSE HEARING** in the above-entitled matter.

If you have any questions, please contact my legal assistant Denyse Johnson at (651) 361-7888, denyse.johnson@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



ANN C. O'REILLY
Administrative Law Judge

ACO:dj
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Nancy Barsness,

Complainant,

vs.

State Representative Jeff Backer,

Respondent.

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

On July 27, 2016, Nancy Barsness (Complainant) filed a campaign complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleged that the Respondent, State Representative Jeff Backer, violated Minn. Stat. § 211B.04 (2016) by disseminating campaign material that lacked a disclaimer.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on July 27, 2016. A copy of the Complaint and attachments were sent by U.S. mail to the Respondent on July 28, 2016.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.04. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY 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 **11:30 a.m. on Wednesday, August 3, 2016**. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **952-715-4908#**

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2016). 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 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. By **4:30 p.m. on Tuesday, August 2, 2016**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party.

Any document filed with the Office of Administrative Hearings, or that a party wishes to make part of the record in this matter, may be filed with the Office of Administrative Hearings in any one of the following ways: (1) **by e-Filing** through the Office of Administrative Hearings' e-Filing system at <http://mn.gov/oah/forms-and-filing/efiling/>; (2) **by mail**; (3) **by fax** at 651-539-0310; or (4) **by personal delivery**.¹ Attorneys representing government agencies are encouraged to e-File.

Any party filing proposed hearing exhibits using the e-Filing system or by fax shall also provide a paper copy of the proposed hearing exhibits to the Administrative Law Judge on the same date the exhibits are faxed or e-Filed. Filings are effective on the date the Office of Administrative Hearings receives the filing.²

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 Minn. Stat. § 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 Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. 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: July 29, 2016


ANN C. O'REILLY
Administrative Law Judge

¹ See 2015 Minn. Laws ch. 63, sec. 7; Minn. R. 1400.5550, subp. 5 (2015).

² See Minn. R. 1400.5550, subp. 5, .5500 J, Q (2015).

MEMORANDUM

Representative Jeff Backer is running for reelection to the Minnesota House of Representatives seat in District 12A.³

The Complaint alleges that on or about July 20, 2016, Representative Backer disseminated campaign material that lacked a disclaimer in the form required by Minn. Stat. § 211B.04. The material is a two-sided document entitled “Legislative Report” that includes several paragraphs identifying Representative Backer’s accomplishments and priorities during the recent legislative session. Included among the list of his accomplishments are: “Weakened Governor Dayton’s one-size-fits-all agricultural buffer zone regulations;” “Strengthened 2nd Amendment rights;” and “Blocked Democrats’ gun owner registration efforts.”⁴

The front side of the document also includes a personal statement from Representative Backer that begins with the greeting, “Dear Neighbor” and concludes with an image of his signature. The document does not identify who prepared or paid for the material. It does, however, include Representative Backer’s telephone number and email address at the House of Representatives as his contact information.⁵ The material was sent by U.S. Mail with postage paid by the Minnesota House of Representatives.⁶

A copy of the Legislative Report is attached to this Order as Attachment A.

Standard of Review

To establish a *prima facie* violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.⁷ The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Chapter 211A or 211B (2016).⁸

For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.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 Against this standard, the allegations in the Complaint are reviewed and discussed below.

³ Complaint at 2.

⁴ Complaint Attachment A.

⁵ *Id.*

⁶ Envelope enclosed with Complaint.

⁷ Minn. Stat. § 211B.32, subd. 3.

⁸ *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

⁹ *Id.*

¹⁰ *Id.*

Minnesota Statutes, Section 211B.04

Minnesota Statutes, section 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the person or committee causing the material to be prepared or disseminated. The statute provides, in relevant part:

(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. If the material is produced and disseminated without cost, the words "paid for" may be omitted from the disclaimer.

...

(d) This section does not apply to fundraising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate.

"Campaign material" is defined as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."¹¹

The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."¹²

Analysis

The Complainant argues that Respondent's "Legislative Report" was disseminated to influence people to vote for him in the upcoming general election and, therefore, meets the definition of campaign material. The Complainant points out that the document highlights Respondent's legislative priorities and accomplishments using language similar to Respondent's campaign speeches. The Complainant contends that, as campaign material, the document was required to include a disclaimer indicating who or what committee prepared and paid for the material.

¹¹ Minn. Stat. § 211B.01, subd. 2.

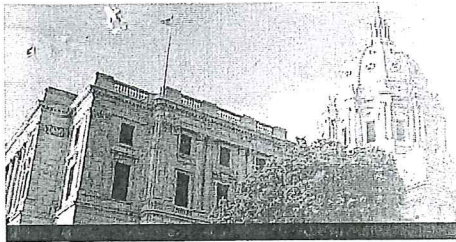
¹² *Hansen v. Stone*, Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, (Oct. 28, 2005) at 4.

In prior decisions, this Office has found documents similar to Representative Backer's Legislative Report to be campaign material.¹³

The Complainant has alleged sufficient facts to support finding a prima facie violation of the Fair Campaign Practices Act's disclaimer requirement. This matter shall proceed to a probable cause hearing on Complainant's claim as indicated in the Order.

A.C.O.

¹³ See *Minnesota Democratic Farmer Labor Party v. Minnesota Senate Republican Caucus, et al*, OAH Docket 11-0320-22622, ORDER ON MOTION FOR SUMMARY DISPOSITION (June 11, 2012) and FINDINGS OF FACT, CONCLUSIONS AND ORDER (August 31, 2012); and *Gadsden v. Kiffmeyer*, OAH Docket 3-0320-21609, FINDINGS OF FACT, CONCLUSIONS AND ORDER (November 1, 2010).

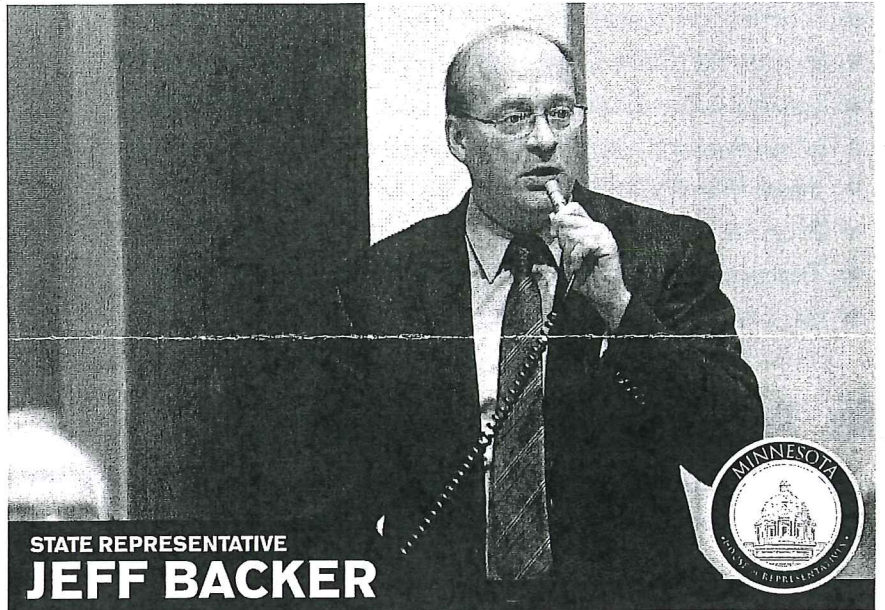


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