OAH 5-0325-37250

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Julie Elmer,

Complainant,

vs.

Pete Schuckert,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND ORDER FOR PREHEARING CONFERENCE

On December 14, 2020, Julie Elmer (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Pete Schuckert (Respondent) violated Minn. Stat. § 211A.02 (2020), by failing to file the required Campaign Financial Report Certification of Filing form (certification of filing form). The Complaint was filed pursuant to Minn. Stat. § 211A.05 (2020).

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint establishes a prima facie violation of Minn. Stat. § 211A.05. For the reasons detailed in the Memorandum below, this allegation will proceed to a hearing before a panel of three administrative law judges. The Administrative Law Judge will hold a prehearing conference to set a date for such further proceedings and to discuss other preliminary matters.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a prehearing conference to be held before the undersigned Administrative Law Judge at **10:00 a.m.** on **Friday**, **January 8, 2021**. The prehearing conference will be held by telephone, and the parties must call in for the conference. At the appointed time, the parties are directed to:

(a) Telephone **1-888-742-5095** and, when prompted,

(b) Enter the conference code: **685 684 1864#**

At the prehearing conference, the Administrative Law Judge will address issues related to the hearing, including scheduling the hearing date, identifying the issues to be resolved, and discussing the number of potential witnesses and exhibits. The Administrative Law Judge will also address whether the matter may be disposed of on a written record without an evidentiary hearing.

Any party who needs an accommodation for a disability 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, Minnesota 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

A failure by any party to participate and appear by telephone at the prehearing conference may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2 (2020).

Dated: December 17, 2020

JIM MORTENSON
Administrative Law Judge

MEMORANDUM

Complainant is an employee with the Gibbon Fairfax Winthrop Schools (GFW Schools). Complainant is also the filing officer for the GWF Schools and filed this Complaint pursuant to Minn. Stat. § 211A.05.[1]

According to the Complaint, Respondent was a candidate for the Winthrop School Board in the general election held on November 3, 2020. Complainant states that Respondent failed to file a certification of filing form by November 10, 2020, as required by Minn. Stat. § 211A.05.[2]

Complainant asserts that she left a voice mail message for Respondent on his cell phone November 2, 2020, and sent him a letter by U.S. Mail on November 12, 2020, regarding his failure to file the required certification of filing form. [3] To date, Respondent has not submitted the certification of filing form to the GFW Schools as required.[4]

[1] Email from Julie Elmer to Mary Beth Gossman, OAH Staff Attorney (Dec. 15, 2020, 8:05 a.m. CDT) (on file with Minn. Office of Admin. Hearings).
[2] Complainant incorrectly cites Minn. Stat. § 211A.02 in her Complaint. The statute governing the filing of the certification of filing form is Minn. Stat. § 211A.05.
[3] *See* Complaint (Dec. 14, 2020).
[4] *Id*.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient facts to show that a violation of law has occurred.[5] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2020).[6]

For purposes of a prima facie determination, this 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.[7] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[8] 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 Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[9]

II. Failure to File Statement (Minn. Stat. § 211A.05)

Pursuant to Minnesota Statutes § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over $750 in a calendar year must file financial reports with the "filing officer"[10] for that office.

Minnesota Statutes § 211A.05, subd. 1, also requires that candidates or committee treasurers certify to the filing officer that all financial reports required by section 211A.02 have been submitted or certify that the candidate or committee did not receive contributions or make disbursements exceeding $750 in the calendar year. The certification must be submitted to the filing officer no later than seven days after the general or special election.[11]

If a candidate or committee fails to file a required financial report on the date it is due, the filing officer shall immediately notify the candidate or committee of the failure to file.[12] If the report is not filed within ten days after the notification is mailed, the filing officer is required to file a complaint under section 211B.32.[13]

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[5] Minn. Stat. § 211B.32, subd. 3 (2020).
[6] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[7] *Id*.
[8] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[9] *Barry,* 781 N.W.2d at 902.
[10] Minn. Stat. § 211A.01, subd. 7, defines "filing officer" to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.
[11] Minn. Stat. § 211A.05, subd. 1.
[12] *Id*. at subd. 2.
[13] *Id*.

III. Conclusion

Because Minn. Stat. § 211A.05 requires candidates or committee treasurers to certify to the appropriate filing officer that all financial reports required by section 211A.02 have been submitted, **or certify that the candidate or committee did not receive contributions or make disbursements exceeding $750,** the allegation that Respondent has not filed a certification of filing form after being notified of his obligation to do so supports finding a prima facie violation of Minn. Stat. § 211A.05.

This matter will proceed to a prehearing telephone conference as ordered. In the event Respondent files the certification of filing form prior to the date of the prehearing conference, Complainant must immediately notify the Office of Administrative Hearings.[14]

J. R. M.

[14] Pursuant to Minn. Stat. § 211B.36, subd. 2, a complainant may withdraw a complaint at any time prior to the evidentiary hearing.