

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Ken Martin, Chair of the Minnesota
Democratic-Farmer-Labor Party,

Complainant,

ORDER OF DISMISSAL

vs.

Stephen Sundquist,

Respondent.

TO: Parties on Attached Service List.

On October 25, 2012, Ken Martin filed a Complaint with the Office of Administrative Hearings alleging that Respondent Stephen Sundquist violated Minn. Stat. § 211B.06, subd. 1. The allegations relate to a Letter to the Editor that was published in the *Brainerd Dispatch* regarding the Minnesota House District 10B race.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 25, 2012, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on October 25, 2012.

After reviewing the Complaint and the attached documents, and for the reasons set out in the Memorandum below, the Administrative Law Judge finds that the Complaint fails to set forth a *prima facie* violation of Minn. Stat. § 211B.06.

ORDER

IT IS HEREBY ORDERED that:

The Complaint filed by Ken Martin against Stephen Sundquist is **DISMISSED**.

Dated: October 30, 2012.

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complaint in this matter alleges that statements made by Respondent Stephen Sundquist in a Letter to the Editor of the *Brainerd Dispatch* on or about October 23, 2012, violated Section 211B.06 of the Minnesota Fair Campaign Practices Act. In the Letter to the Editor,¹ Mr. Sundquist asserted that he: (a) was a member of the DFL party; (b) voted in the primary for Joe Radinovich, the DFL-endorsed candidate for the Minnesota House of Representatives from District 10B; and (c) was going to vote in the upcoming general election for a write-in candidate, David Strand, instead of Mr. Radinovich, and urged “all true Democrats” to do the same.

The Complainant alleges that the statements in the letter claiming that Mr. Sundquist is a member of the DFL party and voted for Mr. Radinovich during the 2012 primary election are false. According to the Complaint, Mr. Sundquist is, in fact, an employee of the House Republican Campaign Committee (HRCC) who is campaigning as part of his HRCC duties on behalf of Dale Lueck, the Republican candidate for House District 10B, and Mr. Sundquist does not even reside in District 10B.² The Complainant contends that Mr. Sundquist’s Letter to the Editor violates Minn. Stat. § 211B.06 because it “addresses Joe Radinovich’s political character and is designed to injure Radinovich’s candidacy by encouraging DFL voters to cast write in ballots rather than voting for Radinovich.”³

Minn. Stat. § 211B.06 provides in relevant part, that:

A person is guilty of a misdemeanor who intentionally participates in the drafting of a letter to the editor with respect to the personal or political character or acts of a candidate . . . that is designed or tends to elect, injure, promote, or defeat any candidate for nomination or election to a public office . . . that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.⁴

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.⁵ For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged in the Complaint

¹ See Complaint, Exhibit A.

² See Complaint, Exhibits B-D.

³ Statement Regarding Nature of Violation of Minn. Stat. § 211B.06 (attached to Complaint), at 2.

⁴ Minn. Stat. § 211B.06, subd. 1 (emphasis added).

⁵ *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. App. 2010).

as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.⁶ 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.⁷

While the conduct that the Complainant attributes to Mr. Sundquist, if true, is highly objectionable, it is not actionable under the Fair Campaign Practices Act. The Fair Campaign Practices Act does not reach every misstatement of fact made in a Letter to the Editor, but only those that relate to a *candidate's* personal or political character or acts. In this instance, the only assertions contained in the Letter to the Editor that the Complainant alleges are false pertain to Mr. Sundquist himself. None of the statements that were alleged to be factually false relate to the personal character of Mr. Radinovich, the political character of Mr. Radinovich, or the acts of Mr. Radinovich.

The Administrative Law Judge concludes that the Complaint does not allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. § 211B.06, subd. 1. As a result, the Complaint must be dismissed.

B. L. N.

⁶ *Id.*

⁷ *Id.*