

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Gary Hukriede,

Complainant,

vs.

Minnesota Democratic Farmer Labor
(DFL) Party,

Respondent.

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

TO: Parties on the Attached Service List

On October 26, 2012, Gary Hukriede (“Complainant”) filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Minnesota Democratic Farmer Labor (DFL) Party (“Respondent”) violated Minnesota Statutes § 211B.06 of the Fair Campaign Practices Act by disseminating political advertising or campaign material regarding Stacy Stout, a Republican-endorsed candidate for House District 43A, that was false and that Respondent knew was false or was communicated to others with reckless disregard of whether it is false.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth *prima facie* violations of Minn. Stat. § 211B.06. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that a probable cause hearing regarding the alleged violations of Minn. Stat. § 211B.06 shall be held by telephone before the undersigned Administrative Law Judge at **3:30 p.m. on Friday, November 2, 2012**. 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 **992-715-4908#** 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 O'Reilly at Ann.OReilly@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 30, 2012

s/Ann O'Reilly

ANN O'REILLY
Administrative Law Judge

MEMORANDUM

On October 26, 2012, the Complainant, Gary Hukriede, filed a Complaint with the Office of Administrative Hearings alleging that Respondent, the Minnesota Democratic Farmer Labor Party, violated Minnesota Statutes § 211B.06 of the Fair Campaign Practices Act by preparing and disseminating political advertising or campaign material regarding Stacy Stout (“Stout”), the Republican-endorsed candidate for House District 43A.¹ Complainant asserts that the campaign materials contain statements that are false and that Respondent knew were false or were communicated to others with reckless disregard of whether they were false.

Specifically, the Complaint alleges that Respondent prepared and disseminated two pieces of campaign material that contain false statements. The first refers to a “Lobbyist Relocation Program” and the second refers to “Stacy Stout’s Brand of Tea.”² The two pieces of campaign materials contain the following allegations:

Stout’s a threat to Medicare – In Washington, DC Stout worked against the Medicare prescription drug benefit, [...] ³

and

Wrong on Medicare. In Washington, DC, Stout worked against the Medicare prescription drug benefit, [...] ⁴

The Complaint asserts that while Stout worked in Washington, DC as an attorney at the Department of Justice, as a staff member for Oklahoma Senator Don Nickles, and as a federal lobbyist, she did not work on issues involving the Medicare prescription drug benefit.⁵

The Complaint contends that the statements on the campaign materials are “patently false, were done intentionally,” and Respondent “either knew the statements to be false or acted with reckless disregard” for the truth in order to injure or defeat Stout in the general election.⁶

Legal Standard

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 Minnesota Statutes Chapters 211A or 211B.⁷ For

¹ Minnesota House District 43A is comprised of portions of Ramsey and Washington Counties, and includes parts of Maplewood, White Bear Lake, and Mahtomedi.

² See Exs. A and B, attached to Complaint.

³ Ex. A-3, attached to Complaint

⁴ Ex. B-1, attached to Complaint.

⁵ Complaint, p. 3.

⁶ *Id.*

⁷ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true, and the allegations do not need independent substantiation.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 Minnesota Statutes Chapters 211A or 211B.⁹

Minnesota Statutes § 211B.06 (false campaign material)

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material or paid political advertising with respect to the personal or political character or acts of a candidate that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to public office. In order to be found to have violated this section, a party must intentionally participate in the preparation, dissemination or broadcast of campaign material or advertising that is false, and that the party knows is false or communicates with reckless disregard of whether it is false.

As interpreted by the Minnesota Supreme Court, Minn. Stat. § 211B.06 is directed against false statements of specific facts.¹⁰ The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.¹¹ Based on this standard, the Complainants have the burden at the hearing to show by clear and convincing evidence that the Respondent prepared or disseminated the advertisement knowing that it was false or did so with reckless disregard for its truth or falsity.¹²

The Administrative Law Judge finds that the Complaint has alleged sufficient facts to support a *prima facie* violation of Minn. Stat. § 211B.06. The identified statements are capable of being proven true or false, concern the personal or political character or acts of candidate Stout, and are designed to injure or defeat Stout for election to public office.

This matter will proceed to a probable cause hearing on the alleged violations of Minn. Stat. § 211b.06, as indicated in this Order.

A.C.O.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); *See, 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).

¹¹ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

¹² *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.) *review denied* (Minn. 2006).