

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Campbell,
Complainant,
vs.

The Grant County Republican Party of
Minnesota,
Respondent.

ORDER OF DISMISSAL

TO: Bruce Campbell and the Grant County Republican Party of Minnesota.

On July 31, 2008, Bruce Campbell filed a Complaint with the Office of Administrative Hearings alleging that the Grant County Republican Party of Minnesota violated Minnesota Statutes § 211B with regard to the upcoming election in House District 11A. He filed an Amended Complaint on August 1, 2008, specifically alleging a violation of Minnesota Statutes § 211B.13. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint fails to set forth a prima facie violation of Minnesota Statutes § 211B.13.

THEREFORE, IT IS ORDERED that the Complaint filed by Bruce Campbell against the Grant County Republican Party of Minnesota is **DISMISSED**.

Dated: August 4, 2008

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
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

Complainant Bruce Campbell is a citizen who resides in or near Alexandria, Minnesota. He has brought a complaint against the Grant County Republican Party of Minnesota (Respondent or Grant County Republicans). Complainant alleges that he attended the Grant County Fair on July 25, 2008, and July 26, 2008, and was given a bottle of water from the Grant County Republicans' fair booth on one or both of those

days that had a label saying it was from the Republican Party. Complainant attached a schedule from a campaign finance report filed by Respondent with the Grant County Ethics Board to his Complaint. The schedule shows that a payment was made in the amount of \$399, on June 25, 2007, to a bottling company in Iowa. The entry indicates that the payment was for “water for fair booth.” Complainant alleges that Respondent violated Minnesota Statutes § 211B.13 by giving the bottled water to people in attendance at the county fair.

A web search shows that Complainant is listed by the Minnesota Campaign Finance Board as Treasurer of the Douglas County DFL and as a candidate for State Representative in House District 11A. That District includes parts of Douglas, Grant, and Stevens Counties.¹ The search also shows that he has a campaign website.²

Minnesota Statutes § 211B.13 provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.³

The key issue is whether there has been a giving of “money, food ... or other thing of monetary value” to a person “in order to induce a voter to refrain from voting or to vote in a particular way” at an election. An assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.⁴ Whether the distribution of items to voters is a violation of this section is a question of fact.⁵ In prior decisions, Administrative Law Judges have held that tossing penny candy at a parade and giving notepads imprinted with the candidate’s name and

¹ www.cfboard.state.mn.us and

www.commissions.leg.state.mn.us/gis/pdf/elec2006/house/maps/house_members07.pdf.

² www.campbellforhouse.com.

³ The last sentence was amended in 2005 as follows:

Refreshments of food or nonalcoholic beverages ~~of nominal~~ having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Minn. Laws 2005, ch. 156, art. 6, sec. 63.

⁴ *United States v. Garcia*, 719 F.2d 99, 102 (5th Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

⁵ See, *Op. Atty. Gen.* 627F-1, March 7, 1950 (interpreting predecessor statute) (whether the distribution of objects such as matchbooks, pencils, emery boards, etc., is a violation of this section is a question of fact).

office did not violate Minn. Stat. § 211B.13, but that one candidate providing chicken dinners to residents at a senior housing complex after a candidates' forum did violate Minn. Stat. § 211B.13.⁶

The Complaint here does not state a violation of Minnesota Statutes § 211B.13 for at least two reasons. First, the bottle of water being distributed to each person does not constitute “a thing of monetary value” or “other valuable consideration.” Notice is taken that a bottle of drinking water is worth less than \$5, which is the amount the Legislature recently established for determining whether a refreshment is a thing of monetary value.⁷ To the extent the issue may be relevant, meeting with the public at a county fair booth should be considered a “public meeting” for the purposes of this statute.

Second, there is no evidence of any “inducement” of anyone to vote a particular way by offering a bottle of water to members of the public at a county fair booth. Complainant states that the bottle that he received had a label saying it was from the Republican Party. We can also assume that the booth itself was promoting Republican positions and Republican candidates running for office in areas that included Grant County with posters, flyers, and conversation with those staffing the booth. But there is no allegation, and no reason to believe, that any condition was attached to the offer of a bottle of water, that anybody was “paid” to vote for or against any candidate, or that anybody was otherwise “induced” to vote a particular way in any election. In fact, the opposite was true. Anyone could choose to visit the booth and choose to accept or reject the bottle of water without any condition. The value of the water accepted by any person was too nominal to create any legal or moral obligation on the part of the recipient to vote in any particular manner and there is no allegation or evidence to prove that any water was accepted under those terms. Obviously Complainant did not accept his bottle of water under such terms, either directly or indirectly. And just as obviously, he has not been induced to vote Republican in the District 11A race or any other race by accepting the refreshment. It is impossible to imagine that there is any competent evidence to prove that anyone has been. The “inducement” prohibited by the statute requires something more than what was alleged to have occurred at the Grant County Republicans' fair booth in this case.

The Administrative Law Judge therefore determines that the Complaint has not alleged a prima facie violation of Minnesota Statutes § 211B.13. The Complaint must be dismissed.

S. M. M.

⁶ See *Kalil v. Knutson*, OAH Docket No. 3-6302-16119-CV (Order Denying Reconsideration, September 2, 2004); *Schauer v. Gillaspie*, OAH Docket No. 3-6371-17570-CV, (Order of Dismissal dated October 11, 2006); OAH *Wyckoff and Laine v. Peterson and Williams*, OAH Docket No. 7-6301-16405-CV (Order dated April 25, 2005).

⁷ The report showing that Respondent had paid \$399 for water last year is not relevant. Presumably, Respondent paid something for several cases of bottled water this year, too. It is the value of each bottle that is significant.