

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Susan K.L. Rego,

Complainant,

vs.

ORDER OF DISMISSAL

Representative Tom Emmer and Thomas
Emmer for State Representative
Committee,

Respondents.

On March 16, 2009, Susan Rego filed a Complaint with the Office of Administrative Hearings alleging that Tom Emmer and Emmer for State Representative Committee violated Minn. Stat. §§ 211A.02 (campaign financial reports) and 211B.13 (accepting prohibited corporate contribution). The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on March 16, 2009. A copy of the complaint and attachments were sent by U.S. mail to the Respondents on March 16, 2009.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint does not set forth *prima facie* violations of either Minn. Stat. §§ 211A.02 or 211B.13. This determination is described in more detail in the attached Memorandum.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Susan Rego is DISMISSED WITHOUT PREJUDICE. The Complainant may revise and file a subsequent complaint regarding alleged violations of Minn. Stat. § 211B.13 without paying an additional filing fee.

Dated: March 18, 2009

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Respondent Tom Emmer was re-elected to the Minnesota House of Representatives District 19B in the November 2008 general election. The Complainant, Susan Rego, is the Minnesota DFL State Party Secretary.

The Complaint alleges that during the month leading up to the general election, a commercial billboard promoting Mr. Emmer's candidacy was on display alongside Interstate 94 near Albertville on property owned by Capital Land Investments, LLC. According to the Complaint, the billboard is owned by Franklin Outdoor Advertising. The monthly rental cost for the billboard in October of 2008 was \$1,700, and the production cost for the billboard was \$1,394.¹

The Complaint alleges that Representative Emmer failed to report expenditures or in-kind contributions relating to the costs of this billboard on his campaign finance reports in violation of Minn. Stat. § 211A.02.

Minnesota Statutes Chapter 211A governs campaign financial reporting for local candidates and their committees. "Candidate" is defined as an individual who seeks election to a "county, municipal, school district, or other political subdivision office."² Chapter 211A does not govern individuals seeking election as a state constitutional officer, legislator or judge. Instead, these individuals are required to file campaign financial reports with the Campaign Finance and Public Disclosure Board pursuant to Minnesota Statutes Chapter 10A. Because Representative Emmer was a candidate for the Minnesota House, he and his committee were not required to file reports under Minnesota Statutes Chapter 211A. Therefore, the Complainant has failed to allege a *prima facie* violation of Minn. Stat. § 211A.02 and that allegation is dismissed.

In addition, the Complaint contends that Representative Emmer and his campaign committee violated Minn. Stat. § 211B.13, subd. 2, by accepting a corporate contribution presumably from Capital Land Investments, LLC. Section 211B.13, subd. 2, prohibits persons from knowingly accepting or receiving anything of monetary value that is prohibited under Minn. Stat. § 211B.15. Minnesota Statutes § 211B.15 prohibits corporations from making contributions, directly or indirectly, to an individual to promote the individual's candidacy or election to political office. "Corporation" is defined to include for profit, nonprofit, and limited liability companies doing business in Minnesota.³ The Complainant seems to be alleging that by allowing a billboard promoting Representative Emmer's candidacy on its property, Capital Land Investments, LLC made a prohibited corporate contribution to Representative Emmer's campaign, and that by knowingly accepting this prohibited contribution, Representative Emmer and his campaign committee violated Minn. Stat. § 211B.13, subd. 2.

After reviewing the Complaint and attachments, the Administrative Law Judge concludes that the Complainant has failed to allege a *prima facie* violation

¹ Complaint attachment (Ex. 2).

² Minn. Stat. § 211A.01, subd. 3.

³ Minn. Stat. § 211B.15, subd. 1.

of Minn. Stat. § 211B.13. There is no evidence in the Complaint or attachments identifying who or what entity paid for or donated the billboard promoting Representative Emmer's candidacy. The fact that the billboard is located on property owned by Capital Land Investments, LLC is not sufficient to show that Capital Land Investments made a prohibited corporate contribution to Representative Emmer or his campaign committee. Unlike a local business permitting a candidate to place a lawn sign on its property,⁴ it is more likely that Capital Land Investments leases its property to Franklin Outdoor Advertising for the commercial billboard and that Franklin Outdoor Advertising in turn rents the billboard to paying customers. Any number of groups, corporations, or individuals could have paid for the billboard. Without some evidence that a corporation paid for or donated the cost of the billboard, which could be a prohibited contribution, the Complaint lacks a sufficient factual basis to support the claimed 211B.13 violation.

Accordingly, this allegation is dismissed without prejudice to re-filing. Should the Complainant discover that a corporation did pay for or donate the billboard in violation of Minn. Stat. § 211B.15, the Complainant may revise and file a subsequent complaint without payment of an additional filing fee.

B.J.H.

⁴ See, *Adams v. Anderson and Klatt True Value*, OAH File No. 12-0320-19974-CV (Order dated November 19, 2008).