

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Voters Alliance and Donald
Huizenga,

Complainants,

v.

Anoka Hennepin School District,

Respondent

**ORDER ON CROSS-MOTIONS
FOR SUMMARY DISPOSITION**

This matter came before Administrative Law Judge Eric L. Lipman on February 26, 2013, for an oral argument on cross-motions for summary disposition.

William Butler, Butler Law Office, appeared on behalf of the Complainants Minnesota Voters Alliance and Donald Huizenga. Jeanette M. Bazis and Todd M. Winter, Greene Espel, PLLP and, Paul Cady, General Counsel of the School District, appeared on behalf of the Anoka Hennepin School District (the School District).

The Complainants assert that the School District's publication of the brochure *Anoka-Hennepin School District Levy 2011* qualifies as "campaign material" under Minn. Stat. 211B.01, subd. 2, that certain claims in that brochure were demonstrably false and that the District failed to report brochure-related expenditures as required by state disclosure laws. In response, the School District argues that these claims are time-barred by the applicable statute of limitations and that the referenced brochure does not amount to campaign material under section 211B.01. Both the Complainants and the School District moved for summary disposition.

Based upon the contents of the hearing record and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

1. The School District's Motion for Summary Disposition is **GRANTED**.
2. The Cross Motion for Summary Disposition filed by Minnesota Voters Alliance and Donald Huizenga is **DENIED**.

3. The Complaint is **DISMISSED**.

Dated: April 1, 2013

s/Eric L. Lipman

ERIC L. LIPMAN
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

In Minnesota it is not lawful to disseminate campaign material with respect to a ballot question that “is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.”¹

Generally, a person making a false literature complaint to this Office must file that claim “within one year after the occurrence of the act or failure to act that is the subject of the complaint...”²

In this case, the threshold question is: When did the School District “disseminate” the brochure entitled *Anoka-Hennepin School District Levy 2011*, under Minn. Stat. § 211B.32, subd. 2?

We begin here because of all of the questions that follow hinge upon this determination. If the School District disseminated the brochure more than one year before the Complaint was filed, the claims that the brochure contained false statements and its presentation was so slanted that it obliged the filing campaign finance reports, are time-barred. This Office would be without jurisdiction to reach those claims. As the Minnesota Supreme Court concluded in *Abrahamson v. St. Louis County School District 2142*, Minn. Stat. § 211B.32, subd. 2, requires the complaint to have been filed within one year of the publication of the allegedly false statement, or the Administrative Law Judge lacks statutory authority to consider it.³

¹ Minn. Stat. § 211B.06, subd. 1.

² Minn. Stat. § 211B.32, subd. 2.

³ *Abrahamson v. St. Louis County School District 2142*, 819 N.W.2d 129, 138-39 (Minn. 2012).

The facts surrounding the School District's development of the brochure are not in genuine dispute. The District staff posted the brochure on its website on October 27, 2011.⁴ Staff likewise featured an announcement regarding the brochure and levy-related information on the homepage to its website.⁵ Overall, the School District's website logged more than 4 million "hits" or visits during the month of October 2011.⁶ Also on October 27, the District staff distributed 6,000 copies of a printed version of the brochure to school principals and lead administrative staff for circulation to District employees and others.⁷ Lastly, on October 31, the District mailed 82,135 copies of the brochure to residents of the School District.⁸

On November 2, 2012, the Minnesota Voters Alliance and Donald Huizenga filed a Complaint with the Office of Administrative Hearings alleging that Anoka Hennepin School District violated the Fair Campaign Practices Act.

To the assertion that their Complaint is untimely, Complainants respond that the limitations period should not begin to run until published materials are received by an otherwise persuadable voter. Without construing the statute in this way, the Complainants continue, bad actors could publish demonstrably false statements in obscure corners of the Internet, so as to sharply narrow the limitations period. In this case, they continue, the limitations period did not begin to run until at least November 2, 2011.

The Administrative Law Judge disagrees. First, the Complainants' reading of Minn. Stat. § 211B.32, subd. 2 is at odds with the text of the statute. The statute refers to dissemination of campaign material, not its receipt. If the Minnesota Legislature wished to begin the limitations period after receipt of campaign material by certain persons, it could have written the statute in this way. It did not. Dissemination – which is commonly defined as spreading abroad, as though sowing seed⁹ – does not imply receipt by any particular person or audience.

Second, this tribunal has long held that items posted to Internet webpages qualify as "dissemination" of campaign material for purposes of the Fair Campaign Practices Act.¹⁰ If the claims made in the levy brochure were actionable under the Act, they would have been actionable as of October 27, 2011 – the date that the School District featured the brochure on its website.

⁴ Affidavit of Mary Olson, at ¶ 22 and Exhibit G.

⁵ Affidavit of Courtney Markuson, at ¶ 4 and Exhibit B.

⁶ Affidavit of Courtney Markuson, at ¶ 3. There are no analytics for the visits to the page that contained brochure available to the School District or in the hearing record.

⁷ Affidavit of Mary Olson, at ¶ 22 and Ex. I.

⁸ Affidavit of Mary Olson, at ¶ 19 and Ex. F; Affidavit of Todd M. Winter, Exs. H and O.

⁹ Merriam-Webster Online Dictionary (Definition of "disseminate").

¹⁰ See, e.g., *Newman v. Ritchie*, OAH Docket No. 40-0320-30038 (2012); *Niska v. Clayton*, OAH Docket No. 68-0320-30147 (2012); *Hill v. Notch*, OAH Docket No. 8-6326-17585-CV (2006).

To the extent that the Complainants worry about a limitations period that runs from the date that claims are first posted to the Internet, even when the offending statements are posted in places that are not readily accessible, the Legislature has accounted for this concern. The limitations period is tolled in cases where there is “concealment ... that could not be discovered during that one-year period.” In those cases, “the complaint may be filed with the office within one year after the fraud, concealment, or misrepresentation was discovered.” While helpful in addressing the Complainant’s overall policy concern, this exception does not apply in this case. The School District’s linking of the brochure from its Internet homepage – a site that received more than 4 million visits that month – does not qualify as “concealment” under Minn. Stat. § 211B.32.

Third, even if no publication of the brochure was made on the Internet, distribution of 6,000 copies on October 27 through the local school system, and mailing another 82,000 copies on October 31, 2011, meet the statutory definition of “dissemination.” The claims filed more than a year after these dates are time-barred.

For all of these reasons, the Office of Administrative Hearings does not have jurisdiction to reach the matters outlined in the Complaint. Thus, dismissal is the appropriate result.

E. L. L.