

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Jeff V. Czczok,

Complainant,

vs.

ORDER OF DISMISSAL

Gary R. Scheeler,

Respondent.

On December 2, 2013, Jeff V. Czczok filed a Complaint with the Office of Administrative Hearings alleging Gary R. Scheeler violated Minn. Stat. § 211B.13 by giving a prospective voter a gift card to Cub Foods grocery store while campaigning in 2012 for the Brainerd City Council in Ward 3. According to the Complaint, the gift card to Cub Foods was given to the voter in advance of the November 6, 2012 election.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on December 2, 2013, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments was sent by United States mail to the Respondent on December 2, 2006.

After reviewing the Complaint, the Administrative Law Judge finds that the Complaint was not filed within one year of the event, as required by Minn. Stat. § 211B.32, subd. 2. Therefore, because the allegations in the Complaint are beyond the statute of limitations the Complaint must be dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out above,

IT IS ORDERED:

That the Complaint filed by Jeff V. Czczok against Gary R. Scheeler is **DISMISSED**.

Dated: December 5, 2013

s/James E. LaFave

JAMES E. LAFAVE
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

Jeff V. Czeczok and Gary R. Scheeler were candidates for the Brainerd City Council in 2012. Mr. Scheeler won the election, which was held on November 6, 2012.

The Complaint alleges that while campaigning, Mr. Scheeler knocked on a voter's door to ask for her vote. According to the Complaint, the voter told Mr. Scheeler that she would not vote for him because he had hung up on her when she had previously telephoned him to discuss an issue. The Complaint asserts that sometime after this encounter, Mr. Scheeler returned to the voter's home and gave her a Cub Foods gift card.

The Complainant attached to the Complaint an affidavit of Mary Koep, Brainerd's Alderwoman at Large. Ms. Koep states in her affidavit that she is a neighbor of the unidentified voter who claims Mr. Scheeler gave her a Cub Foods gift card. Ms. Koep states further that the unidentified voter disclosed to her the encounter she had with Mr. Scheeler sometime in February or March of 2013.¹

The Complainant argues that by giving the voter a gift card, Mr. Scheeler violated the prohibition against bribery in Minn. Stat. § 211B.13.

Minnesota Statutes section 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. . .

In Minnesota, complaints alleging unfair campaign practices must be filed within one year of the act which is the subject of the complaint.² Here, the act of giving the gift card to a voter occurred prior to the November 6, 2012 election. The Complaint in this case was filed on December 2, 2013, well over one year after that election.

¹ Sworn Affidavit of Mary Koep (dated Nov. 21, 2013).

² See, Minn. Stat. § 211B.32, subd. 2.

The only exception to the one-year filing requirement is if the act in question involves “fraud, concealment or misrepresentation that could not be discovered within the one-year period.”³ In those cases, the complaint may be filed with the OAH within one year after the fraud, concealment, or misrepresentation was discovered.

The Complaint does not argue that the statute of limitations should be tolled in this case due to fraud, concealment or misrepresentation. Nor does the Complaint allege any facts to support a claim that Respondent’s conduct involved fraud, concealment or misrepresentation. In order to toll the statute of limitations, the concealment must be fraudulent or intentional.⁴

While the Complaint alleges troubling conduct that, if proven, could establish a violation of the Fair Campaign Practices Act, the conduct occurred prior to November 6, 2012. Absent any evidence of fraud, concealment or misrepresentation on the part of the Respondent, the Complaint is untimely filed and must be dismissed.

For all of the above reasons, the Complaint is dismissed.

J. E. L.

³ *Id.*

⁴ See *Collins v. Johnson*, 374 N.W.2d 536 (Minn. Ct. App. 1985).