

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Robert Engelhart,

Complainant,

vs.

**ORDER OF DISMISSAL**

David Tronrud, Robert Tufty, and Gary  
Erichson,

Respondents.

**TO: Parties.**

On October 13, 2014, Robert Engelhart filed a Campaign Complaint with the Office of Administrative Hearings alleging that David Tronrud, Robert Tufty, and Gary Erichson violated Minnesota Statutes § 211B.06 by disseminating false campaign material with respect to a ballot question referendum.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint does not support a *prima facie* violation of Minn. Stat. § 211B.06.

**ORDER**

**IT IS ORDERED:**

That the Complaint filed by Robert Engelhart against David Tronrud, Robert Tufty, and Gary Erichson is **DISMISSED**.

Dated: October 15, 2014

s/LauraSue Schlatter

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LAURASUE SCHLATTER  
Administrative Law Judge

## NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## MEMORANDUM

This campaign complaint concerns a referendum on the ballot in the City of Grant in the November 4, 2014, general election. The referendum seeks voter approval to discharge the city of Grant charter commission. The referendum was placed on the ballot pursuant to a petition that garnered 194 signatures and more than the five percent of registered voters required by statute.<sup>1</sup>

According to the Complaint, the Grant City Council certified the petition on August 18, 2014, and approved the language of the ballot question, which reads as follows:

Do you approve of discharging the City of Grant Charter Commission in accordance with Minnesota Statutes § 410.05, Subd. 5(a)(2)?<sup>2</sup>

The Complaint alleges that each of the Respondents circulated the petition to place the question on the ballot. The Complaint asserts that, in their attempt to obtain the required signatures, the Respondents disseminated false and inaccurate information about City's Charter Commission. Specifically, the Complaint alleges that the Respondents misled residents of Grant by stating that: (1) under the charter, a district court judge will make all the decisions for the city; (2) the petition was not to disband the Charter Commission but to "get the charter on the ballot;" and (3) the petition was the only opportunity for residents of Grant to have a say regarding the charter because once the charter was in place, it cannot be changed. The Complaint maintains that these statements are false or inaccurate, and that by making these statements, the Respondents violated Minn. Stat. § 211B.06.<sup>3</sup> In addition, the Complaint alleges that Respondent Tufty repeated these statements to a *White Bear Press* reporter who included the statements in at least one news item published on-line on August 13, 2014.<sup>4</sup>

The Complaint maintains further that the Respondents did not provide any information to those signing the petition about the purpose or benefits of the charter commission.<sup>5</sup>

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<sup>1</sup> Complaint at 14-15. See Minn. Stat. 410.05, subd. 5(a)(2).

<sup>2</sup> *Id.*

<sup>3</sup> Complaint at 9.

<sup>4</sup> Complaint at 47-48. See [http://www.presspubs.com/white\\_bear/news/article\\_574e4cc6-2276-11e4-b636-001a4bcf887a.html](http://www.presspubs.com/white_bear/news/article_574e4cc6-2276-11e4-b636-001a4bcf887a.html).

<sup>5</sup> *Id.*

The Complaint also contends that 65 people who signed the referendum petition have since requested that their names be removed from the petition. The Complaint maintains that if these names are removed, the petition will not have number of signatures needed to place the referendum question on the ballot.<sup>6</sup>

### **False Campaign Material (Minn. Stat. § 211B.06)**

Minnesota Statutes Section 211B.06 provides in relevant part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat 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.

Over the years, the Minnesota Supreme Court has interpreted the statute to be directed against false statements of fact and not against unfavorable deductions or inferences based on fact; even if those conclusions might be misleading or incomplete.<sup>7</sup>

The Complainant's allegation that Respondents violated Minn. Stat. § 211B.06 fails for several reasons.

First, the definition of "campaign material" is limited to written material and excludes news items or editorial comments by the news media.<sup>8</sup> Oral statements (other than paid political advertising) such as those allegedly made by the Respondents and reported in the *White Bear Press* fall outside of the definition and cannot form the basis of a claim under Minn. Stat. § 211B.06.<sup>9</sup>

Second, contrary to Complainant's assertion, there is no requirement under Minn. Stat. § 211B.06 that the Respondents present both sides of the ballot question or explain the benefits of the charter commission.<sup>10</sup>

Third, and most significant, a panel of the U.S. Court of Appeals for the Eighth Circuit recently ruled that Minn. Stat. § 211B.06 violates the First Amendment of the

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<sup>6</sup> *Id.* at 8-10, and 12-16.

<sup>7</sup> *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

<sup>8</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>9</sup> See, *Stegner v. Smith*, 2008 WL 2967011 at \*4 (Minn. Ct. App.) (concluding that oral statements do not constitute "campaign material" within the meaning of § 211B.01); *Stegner v. Smith, et al*, OAH Docket No. 11-6381-19135-CV (2007); *Koalska v. Juneau*, OAH Docket No. 7-6312-16225-CV (2004).

<sup>10</sup> See *Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute.)

U.S. Constitution and is not enforceable.<sup>11</sup> Moreover, the panel concluded that there is no way to narrowly construe the statute to avoid the constitutional violation.<sup>12</sup> The panel found Section 211B.06 to be simultaneously overbroad and underinclusive, and concluded it was not narrowly tailored to achieve the state's asserted interest in preserving fair and honest elections and preventing a fraud on the electorate.<sup>13</sup>

Finally, with respect to the Complaint's arguments regarding the requests by individuals to have their names removed from the petition, the Administrative Law Judge notes that the Fair Campaign Hearing process is limited to alleged violations of Minn. Stat. ch. 211A and 211B. Accordingly, the Administrative Law Judge has no jurisdiction to consider challenges to the accuracy or validity of the petition.<sup>14</sup>

For all of these reasons, the Complaint filed by Robert Engelhart alleging violations of Minn. Stat. § 211B.06 is dismissed.

**L. S.**

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<sup>11</sup> *281 Care Committee v. Arneson*, 2014 W.L. 4290372 (8<sup>th</sup> Cir. 2014).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (The panel found the statute to be overbroad because nothing prohibits filing a complaint against wholly protected speech, and underinclusive because the statute exempts news items and is limited to paid political advertising or campaign material.)

<sup>14</sup> See Minn. Stat. § 200.039 (Petition Requirements for Ballot Questions).