

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kurt Freitag,

Complainant,

v.

Marc Johnson,

Respondent.

**ORDER FINDING NO
PRIMA FACIE VIOLATION
AND DISMISSING COMPLAINT**

TO: Parties.

On October 20, 2014, Kurt Freitag, a candidate for the office of Freeborn County Sheriff, filed a Campaign Complaint with the Office of Administrative Hearings.

The Complaint alleges that Marc Johnson disseminated campaign material, regarding "the personal or political character or acts of a candidate." The Complaint further maintains that this material "is designed or tends to ... injure ... a candidate for ... election to a public office" and that this material is false.¹

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 for the reasons set out in the Memorandum below, the Administrative Law Judge finds that the Complaint fails to set forth a *prima facie* violation of the Fair Campaign Practices Act.

ORDER

IT IS ORDERED THAT:

The Complaint is **DISMISSED**.

Dated: October 22, 2014

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

¹ Minn. Stat. § 211B.06, subd. 1(a).

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

The Complainant, Mr. Freitag, alleges that Mr. Johnson has established an internet website (www.frietagforsheriff.com) with the purpose of disseminating false materials regarding the personal and political character of Mr. Freitag. Mr. Freitag further maintains that the unsavory, unethical and unprofessional conduct attributed to him on the website is false.

To allege a *prima facie* violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.²

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes chapters 211A or 211B.³ For purposes of a *prima facie* determination, the tribunal must accept the facts that are alleged as true.⁴

A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would prove a violation of Minnesota Statutes chapters 211A or 211B.⁵

Minn. Stat. § 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.

² Minn. Stat. § 211B.32, subd. 3.

³ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

⁴ *Id.*

⁵ *Id.*

Over the years, the Minnesota Supreme Court interpreted this statute as proscribing false statements of fact, but not unfavorable deductions or inferences based on fact.⁶

However, on September 2, 2014, a panel of the U.S. Court of Appeals for the Eighth Circuit ruled that this narrow reading was not sufficient. In the case of *281 Care Committee v. Arneson*, the appellate panel concluded that Minn. Stat. § 211B.06 violates the First Amendment of the U.S. Constitution and that there is no way to properly interpret the statute so as to avoid the constitutional violation.⁷

For this reason, the statute barring false claims in campaign literature is not enforceable.⁸

Because Mr. Freitag submits only the false literature claim, and the underlying statute is not enforceable, his Complaint is dismissed in its entirety.

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⁶ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917).

⁷ *281 Care Committee v. Arneson*, 2014 WESTLAW 4290372 (8th Cir. 2014).

⁸ *Id.*