

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Senn,

Complainant,

vs.

Denny Laufenburger,
Laufenburger for Mayor Committee,

Respondent.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING**

On October 29, 2014, Mark Senn filed a Campaign Complaint with the Office of Administrative Hearings alleging that Denny Laufenburger and the Laufenburger for Mayor Committee violated Minn. Stat. §§ 211B.04, .08, .13 during the course of Mr. Laufenburger's campaign for mayor of the city of Chanhassen. After reviewing the complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the complaint sets forth prima facie violations of Minn. Stat. §§ 211B.04, .13, but not of .08. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held before the undersigned Administrative Law Judge at **1:30 p.m. on November 6, 2014**. The hearing will be held by telephone conference call. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **805 596 0270#**

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at <http://mn.gov/oah> and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. By **4:30 p.m. on Wednesday, November 5, 2014**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case,

with copies to the opposing party. Documents may be e-mailed to Judge Schlatter at Laurasue.Schlatter@state.mn.us or faxed to 651-539-0300.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35.

If the Administrative Law Judge dismisses the complaint, the Complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 3, 2014

s/LauraSue Schlatter

LAURASUE SCHLATTER
Administrative Law Judge

MEMORANDUM

Background

The Respondent, Denny Laufenburger, is running for mayor of the city of Chanhassen in the November 4, 2014 election. The complaint alleges that Mr. Laufenburger violated Minn. Stat. §§ 211B.04, .08 when he displayed campaign signs and disseminated literature at an October 11, 2014 fundraising event held to benefit Chanhassen High School Athletics and Activities.¹ In addition, the complaint

¹ Mr. Laufenburger provided the Administrative Law Judge with a written response to the complaint via an e-mail. The information in the e-mail raised factual disputes. However, because a prima facie determination requires that the tribunal accept the allegations in the complaint as true for purposes of determining whether to hold a probable cause hearing, the Administrative Law Judge could not consider the information provided by Mr. Laufenburger at this stage of the proceedings. Mr. Laufenburger will have an opportunity to challenge the Complainant's factual allegations at the probable cause hearing. Mr. Laufenburger is directed to send a copy of his written response to the Complainant as soon as possible.

alleges Mr. Laufenburger violated Minn. Stat. § 211B.13 when he provided food and t-shirts at a party for members of the Chanhassen High School football team.²

Standard of Review

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 unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.³ For purposes of a prima facie determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁴ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁵

Discussion of Claims

Minnesota Statutes section 211B.04

The Complaint alleges that Mr. Laufenburger displayed campaign signs, which read “Denny Laufenburger for Mayor,” at the registration table at the Chanhassen High School fundraising event, and that the same image was printed in the program for the event.⁶ According to the Complaint, neither the campaign signs nor the program advertisements contained disclaimers as required by Minn. Stat. § 211B.04(a), (b). The Complaint also alleges that Mr. Laufenburger distributed campaign t-shirts at a separate gathering for the Chanhassen High School football team and that the t-shirts lacked the required disclaimer language.

The Fair Campaign Practices Act⁷ defines campaign material to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”⁸ Campaign material is required under Minn. Stat. § 211B.04(a), (b) to include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material. The purpose of the disclaimer requirement is to

² The Complainant also attached a copy of an announcement of a “meet and greet” opportunity where Mr. Laufenburger and two individuals running for city council were available to meet members of the public. See Picture #3. The copy of the announcement notes “No Disclaimers” but there is no allegation in the complaint that the announcement violated section 211B.04, that it was ever disseminated or how it was used. Therefore, the Administrative Law Judge has not considered whether the announcement shown at Picture #3 is campaign material that required a disclaimer pursuant to Minn. Stat. § 211B.04.

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

⁴ *Id.*

⁵ *Id.*

⁶ See Picture #1. The complaint also alleges that the candidate’s campaign materials were distributed at the event, and that verbal campaigning occurred. There were no copies of campaign materials that were allegedly distributed attached to the complaint. Nor does the complaint allege that such materials violated Minn. Stat. § 211B.04. Therefore, the Administrative Law Judge does not address these allegations.

⁷ Minn. Stat. ch. 211B.

⁸ Minn. Stat. § 211B.01, subd. 2.

“identify who or what committee prepared, disseminated and paid for the campaign material.”⁹

There is an exception to the disclaimer requirement for “objects stating only the candidate’s name and the office sought.”¹⁰ This exception has been interpreted to apply to objects that have an intrinsic value separate from their promotional message, such as pencils, as opposed to campaign lawn signs.¹¹

For purposes of the prima facie review, the Respondent’s campaign signs, advertisements, and t-shirts all appear to have been disseminated for the purpose of influencing voting and, therefore, meet the definition of “campaign material.” In addition, the signs, program advertisements, and t-shirts all state more than just the candidate’s name and the office sought. They include the word “for” and state: “Denny Laufenburger *for* Mayor.” Therefore, Respondent’s signs, advertisements, and t-shirts do not appear to fall within the exception for objects under section 211B.04(e). Because the signs, program advertisements, and t-shirts lacked disclaimers, the Complaint has sufficiently alleged *prima facie* violations of Minn. Stat. § 211B.04. These claims will proceed to a probable cause hearing.

Minnesota Statutes section 211B.08

The Complainant also alleges that Mr. Laufenburger violated Minn. Stat. § 211B.08 because he openly campaigned for office at an event held by the Chanhassen High School Booster Club, a tax exempt charitable nonprofit 501(c)(3) organization. Mr. Laufenburger allegedly displayed his campaign signs, distributed literature, and verbally campaigned during the event; and had his campaign image printed in the event program.

Minnesota Statutes section 211B.08 prohibits a religious, charitable, or educational organization from requesting a candidate to contribute to the organization, or to pay for space in a publication. The Complaint does not allege a violation of Minn. Stat. § 211B.08 because the Complainant does not allege that the Chanhassen High School Booster Club asked Mr. Laufenburger to contribute to it, or to purchase space in the fundraising program. The statute does not prohibit a candidate from voluntarily making such a contribution or purchase at the candidate’s own initiative.

Even if the complaint did allege such a violation, this allegation would fail because the Eighth Circuit Court of Appeals found Minn. Stat. § 211B.08 unconstitutional in *Minnesota Citizens Concerned for Life, Inc. v. Kelley*.¹² In *Kelley*, Minnesota Citizens Concerned for Life (MCCL), a non-profit corporation, challenged Minn. Stat. § 211B.08, alleging it violated MCCL’s First Amendment rights to freely

⁹ *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.

¹⁰ Minn. Stat. § 211B.04(e).

¹¹ See *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005); *Kalil v. Knutson*, OAH Docket No. 3-6302-16119 (September 10, 2004).

¹² 427 F. 3d 1106 (8th Cir. 2005).

solicit charitable donations.¹³ Holding that section 211B.08 was designed to serve the state's compelling interest in preventing corruption, or the appearance of corruption in elections, the court found that the statute was unconstitutional because it was not sufficiently narrowly tailored to take into account the charity's interest in being able to solicit contributions.¹⁴ Because Minn. Stat. § 211B.08 is unconstitutional, and the Complainant failed to state a claim under the statute even if one were allowed, the alleged violations of Minn. Stat. § 211B.08 are dismissed.

Minnesota Statutes, section 211B.13

The Complainant alleges that Mr. Laufenburger paid for food at a party attended by Chanhassen High School football players. According to the Complaint, in addition to paying for the food, Mr. Laufenburger and his committee gave "Denny Laufenburger for Mayor" t-shirts to the football players. The Complainant alleges that Mr. Laufenburger then posed for a picture with the football players and posted the photograph on his Facebook page.¹⁵

Minnesota Statutes section 211B.13 provides:

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.

....

Minnesota Statutes section 211B.13 includes an exception to its general prohibitions. The exception applies to "[r]efreshments of food or nonalcoholic beverages having a value up to \$5" Minnesota Statutes section 211B.13 is an anti-bribery statute. It prohibits giving something of monetary value in order to induce a voter to vote in a particular way at an election. The Complainant contends that, by purchasing food for the football players, and giving them t-shirts, he provided them with things of monetary value in violation of Minn. Stat. § 211B.13.

An assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.¹⁶ Prior decisions have closely examined the circumstances in which the items were given. For example, Administrative Law Judges have held that tossing penny candy at a parade, giving notepads imprinted with the candidate's name and office, or distributing promotional tote

¹³ *Id.* at 1116. *Kelley* also noted that the language of Minn. Stat. § 211B.08 "prohibits only the organization's request for money and allows a candidate voluntarily to donate money to any charity." *Id.*

¹⁴ *Id.* at 1116-1117.

¹⁵ See Picture #2.

¹⁶ *United States v. Garcia*, 719 F.2d 99, 201 (5th Cir. 1983) (under federal statute prohibiting payment for votes, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it).

bags urging potential voters to vote for the candidate did not violate Minn. Stat. § 211B.13. In contrast, however, a candidate's donation of chicken dinners to residents at a senior housing complex following a candidates' forum was found to violate the statute.¹⁷

The allegations in this case include both the giving of food and campaign t-shirts, each of which could independently be valued at five dollars. Furthermore, the photograph of the candidate with the players, all wearing the campaign t-shirts, creates the impression that the party was a campaign opportunity for the candidate. Therefore, the Administrative Law Judge finds that the Complaint alleges a prima facie violation of Minn. Stat. § 211B.13 and the alleged violation of that section will proceed to a probable cause hearing.

Conclusion

The Administrative Law Judge concludes that the Complainant has alleged sufficient facts to support prima facie violations of Minn. Stat. §§ 211B.04, .13. The campaign sign and printed programs distributed at the high school fundraiser, along with the t-shirts distributed at the football party, all appear to be campaign material that lacked the disclaimers required by Minn. Stat. § 211B.04. In addition, the distribution of food and t-shirts as alleged in the complaint appears to violate the restrictions at Minn. Stat. § 211B.13. The alleged violations of each of these sections will proceed to a probable cause hearing.

L. S.

¹⁷ See *Kalil v. Knutson*, OAH Docket No. 3-6302-16119-CV (ORDER DENYING RECONSIDERATION, September 2, 2004); *Schauer v. Gillpasie*, OAH Docket No. 3-6371-17570-CV (ORDER OF DISMISSAL, October 11, 2006); *Brand v. Mollin*, OAH Docket No. 11-0325-21869-CB, (ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT, February 25, 2011); *Wyckoff and Laine v. Peterson and Willians*, OAH Docket No., 7-6301-16405-CV (ORDER, April 25, 2005).