

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Peter Adolphson,

Complainant,

vs.

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

Dan Campion,

Respondent.

**TO: Parties.**

On October 29, 2014, Peter Adolphson filed a Campaign Complaint with the Office of Administrative Hearings alleging that Dan Campion violated Minnesota Statutes § 211B.08 by “openly campaigning” at an event organized by the Chanhassen High School Booster Club.

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.08.

**ORDER**

**IT IS ORDERED:**

That the Complaint filed by Peter Adolphson against Dan Campion is **DISMISSED**.

Dated: November 3, 2014

s/Barbara J. Case

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BARBARA J. CASE  
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**

### **Background**

The Respondent is a candidate for Chanhassen City Council in the November 4, 2014, general election.

The Complaint alleges that the Respondent violated Minn. Stat. § 211B.08 by “openly campaigning for office” at a fundraising event held by the Chanhassen High School Booster Club. The Complaint asserts that the Chanhassen High School Booster Club is a tax exempt charitable non-profit 501c3 organization. The Complaint maintains that the Respondent displayed his campaign signs at the registration table; handed out campaign materials at the event; and had an image of his campaign sign included in the program printed for the event.

### **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.<sup>1</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>2</sup> 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.<sup>3</sup>

### **Analysis**

Minn. Stat. § 211B.08 prohibits a religious, charitable, or educational organization from soliciting contributions from candidates. The statute provides that religious, charitable, or educational organizations may not request a candidate or committee contribute to the organization, subscribe for the support of a club or organization, buy tickets to entertainment, or pay for space in a publication. The prohibition does not apply to ordinary business advertisements, ordinary contributions at church services, or regular payments to a religious, charitable, or educational organization, of which the candidate was a member or contributor for more than six months before candidacy.

Section 211B.08’s prohibition against soliciting contributions is directed against religious, charitable, or educational organizations; not against candidates. Accordingly,

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<sup>1</sup> *Barry v. St. Anthony-New Brighton Independent School District*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

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

<sup>3</sup> *Id.*

the Complaint fails to allege a *prima facie* violation of Minn. Stat. § 211B.08 and must be dismissed.

Moreover, even if the Complainant had sufficiently pled a violation of Section 211B.08, the claim would fail due to the Eighth Circuit Court of Appeals decision in *Minnesota Citizens Concerned for Life, Inc. v. Kelley*.<sup>4</sup> In that case, the Court found Section 211B.08 to be unconstitutional and not enforceable. The Court held that the provision prohibiting religious, charitable, and educational organizations from requesting donations from candidates or committees was not narrowly tailored to serve the state's interest in prohibiting such groups from soliciting money from candidates in exchange for votes. The Court determined that Section 211B.08 violated those organizations' First Amendment right to solicit contributions.<sup>5</sup>

Because Minn. Stat. § 211B.08 has been determined to be unconstitutional, and because the Complainant failed to allege a *prima facie* violation of the statute even if one were allowed, the Complaint against Respondent Dan Campion is DISMISSED.

**B.J.C.**

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<sup>4</sup> 427 F. 3d 1106 (8<sup>th</sup> Cir. 2005).

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