

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mike Aksamit,

Complainant,

vs.

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

Robert (Bob) Heid,

Respondent.

TO: Parties.

On November 7, 2014, Mike Aksamit filed a campaign complaint with the Office of Administrative Hearings. The complaint alleged that Robert Heid violated Minn. Stat. § 211B.06 (2014) by disseminating false campaign material with respect to his campaign for the office of Mayor of Browerville, Minnesota.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33 (2014).

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 Mike Aksamit against Robert Heid is **DISMISSED**.

Dated: November 13, 2014

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2014), 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-.69 (2014).

MEMORANDUM

The Complainant Mike Aksamit, and the Respondent Robert Heid were both candidates for the office of mayor of Browerville in the November 4, 2014, general election. The Complainant was the incumbent candidate and the Respondent was a member of the Browerville City Council. The Respondent won the election by receiving 138 votes to the Complainant's 137 votes.¹

The complaint alleges that the Respondent violated Minn. Stat. § 211B.06 by preparing and disseminating a pamphlet that included four false statements regarding actions allegedly taken by the Complainant in his capacity as mayor. Specifically, the pamphlet states that: (1) the Complainant let certain people use the city's community center rent-free without the city council's knowledge or approval; (2) the Complainant "gets free rent on Water Tower space for [school] bus radios;" (3) the Complainant "refused to give cost" the city paid for bands that played at Browerville Days; and (4) the Complainant refused to let "other beer companies come into Browerville Days."

According to the complaint, the first statement refers to the fact that an organization known as Todd County Economic Development has been permitted to use the city's community center without providing a deposit or paying rent. The Complainant asserts that the decision to allow this organization to use the city's community center rent-free was made by the Browerville City Administrator Lynn Fabro, and not him. Moreover, the Complainant maintains that Ms. Fabro made this decision without consulting him. The Complainant argues, therefore, that Respondent's claim that he made this decision (as mayor) is false.

The second sentence identified in the pamphlet apparently refers to a transportation business owned by the Complainant called Aksamit Transportation Incorporated (ATI). The pamphlet stated that the Complainant (as ATI) pays no rent to lease space on the Browerville water tower for radios used by ATI school buses. The Complainant contends that this claim is also false because ATI pays \$100 a year to lease space on the city's water tower and this agreement was approved by the Browerville city council.

¹ See election results posted at the Office of the Minnesota Secretary of State's website at: <http://www.sos.state.mn.us/index.aspx?page=1804>.

With respect to the third sentence in the pamphlet, the Complainant contends that he never refused to give out the cost the city paid for bands to play at Browerville Days. The Complainant asserts that the cost the city incurred for the bands was “public knowledge” and he notes, specifically, that council member Iten indicated that he was aware of the cost of the bands.

Finally, with respect to the fourth sentence, the Complainant states that the city received only two proposals from beer distributors to provide beer at Browerville Days festival. One proposal was significantly less costly for the city than the other, and the city council voted to accept the less costly proposal. The Complainant maintains that he did not “refuse to let other beer companies” come to Browerville Days, as Respondent’s pamphlet alleges.

The complaint contends that by preparing and disseminating the pamphlet with the four identified false statements, the Respondent violated 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.²

Recently, however, a panel of the U.S. Court of Appeals for the Eighth Circuit ruled that Minn. Stat. § 211B.06 violates the First Amendment of the U.S. Constitution and is not enforceable.³ Moreover, the panel concluded that there is no way to narrowly construe the statute to avoid the constitutional violation.⁴ Although the Eighth Circuit case concerned a ballot measure and not a candidate’s campaign material,⁵ the Court concluded generally that Section 211B.06 is not narrowly tailored to achieve the state’s asserted interest in preserving fair and honest elections and preventing a fraud on the electorate. The Court found the statute to be simultaneously overbroad and

² *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).

³ *281 Care Committee v. Arneson*, 2014 WL 4290372 (8th Cir. 2014).

⁴ *Id.*

⁵ *Id.*

underinclusive, and held that counterspeech is the better (if imperfect) means for achieving the state's asserted goal in truthful campaigns.⁶

Because a panel of the U.S. Court of Appeals for the Eighth Circuit has determined that the statute barring false claims in campaign literature is unconstitutional and unenforceable, the complaint against Mr. Heid must be dismissed.

B. L. N.

⁶ *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.)