

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Timothy Faver,

Complainant,

vs.

David Hanson and Vote
Hanson Committee,

Respondents.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

On November 7, 2014, Timothy Faver filed a campaign complaint with the Office of Administrative Hearings alleging that David Hanson and the Vote Hanson Committee violated Minn. Stat. § 211B.04 (2014) by failing to include disclaimers on campaign material disseminated in support of his campaign for the office of Beltrami County Attorney in the November 4, 2014, general election. 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. This determination is detailed in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for a telephone prehearing conference and an evidentiary hearing to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

Pursuant to Minn. Stat. § 211B.35 (2014), the evidentiary hearing must be held within 90 days of the date the complaint was filed.

You will be notified of the dates and times of both the telephone prehearing conference and evidentiary hearing, and the three judges assigned to hear this matter within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minn. Stat. § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary 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 Judges. Parties should bring with them all evidence bearing on the case with copies for the three Administrative Law Judges.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63-.69 (2014).

Any party who needs an accommodation for a disability in order 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 (TTY).

Dated: November 13, 2014

s/James E. LaFave
JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Respondent David Hanson ran unsuccessfully for the office of Beltrami County Attorney in the November 4, 2014, general election.

The Complainant alleges that the Respondent prepared and disseminated campaign material in the form of a campaign website and campaign Facebook page that lacked disclaimers as required by Minn. Stat. § 211B.04. The Complainant has attached copies of “screen shots” of the Respondent’s Facebook page and website page to support his allegations.

The Complainant also alleges that he received a voicemail message from a marketing research company urging him to vote for the Respondent for Beltrami County Attorney. The Complaint maintains that the voicemail message is campaign material and should have included a disclaimer. The Complainant maintains that the failure of the voicemail to have a disclaimer violated Minn. Stat. 211B.04. In support of this allegation, the Complainant attached a memorandum from the Minnesota Attorney General’s Office regarding the Minnesota’s Automatic Dialing–Announcement Device (ADAD) law, which is contained at Minn. Stat. §§ 325E.26-.31 (2014).

Standard of Review

In order to set forth a prima facie case of violations of Minn. Stat. chs. 211A and 211B (2014), a complainant must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of either or

both of those two chapters.¹ For purposes of a prima facie determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.² A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove violations of chapter 211A or 211B occurred.³

Minnesota Statutes Section 211B.04

Minnesota Statutes section 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the person or committee causing the material to be prepared or disseminated. The statute provides, in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: “Prepared and paid for by the committee, (address)” for material prepared and paid for by a principal campaign committee, or “Prepared and paid for by the committee, (address), in support of (insert name of candidate or ballot question)” for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: “Paid for by the committee.”

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is “in opposition to (insert name of candidate or ballot question.....)”; or that “this publication is not circulated on behalf of any candidate or ballot question.”

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political

¹ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

² *Id.*

³ *Id.*

committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

"Campaign material" is defined, in relevant part, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."⁴

The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."⁵

Analysis

Any person who prepares or disseminates campaign material that does not prominently include a disclaimer substantially in the form provided in section 211B.04 is in violation of the statute.

For purposes of the prima facie review, Respondent's Facebook page, www.facebook.com/votehansonbeltramicountyattorney, and Respondent's webpage, www.votehanson.com, appear to be maintained and disseminated for purposes of influencing voting and, therefore, meet the definition of "campaign material." Because Respondent's Facebook page and campaign webpage lacked disclaimers, the Complainant has alleged sufficient facts to establish a prima facie violation of Minn. Stat. § 211B.04(b).

The Administrative Law Judge notes that the Respondent's website does have a statement that indicates the website has been copyrighted by "David Hanson for Beltrami County Attorney." However, a copyright notice refers to ownership of material and does not necessarily disclose who or what entity prepared and paid for the material. Accordingly, these alleged violations of Minn. Stat. § 211B.04 will proceed to a telephone prehearing conference and evidentiary hearing.

The Administrative Law Judge, however, finds that the Complainant has failed to allege sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.04(c), with respect to the allegation that a voicemail message urging him to vote for Mr. Hanson lacked a disclaimer. While oral statements generally fall outside the definition of "campaign material" and may not support a violation of Minn. Stat. § 211B.04(b),⁶ there is an exception for paid political advertising. Such material,

⁴ Minn. Stat. § 211B.01, subd. 2.

⁵ *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005) at 4.

⁶ 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 section 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).

typically broadcast to the public by radio, television, cable, or internet webcasting, is required to state: “paid for by the _____ committee.”⁷

The complaint failed to allege facts sufficient to find that a voicemail message generated by a market research group amounts to “broadcast media” for purposes of section 211B.04(c). In addition, the Administrative Law Judge does not have authority to consider alleged violations of Minn. Stat. §§ 325E.26-.31 governing Minnesota’s Automatic Dialing–Announcement Device law. The Administrative Law Judge’s authority, with respect to campaign law violations, is limited to violations of Minn. Stat. chs. 211A and 211B. The Complainant’s allegation concerning the voicemail message is, therefore, dismissed.

An order scheduling the prehearing conference will issue shortly.

J. E. L.

⁷ Minn. Stat. § 211B.04(c). See *also*, Minn. Stat. § 211B.05, subd. 1, requiring radio, television and cable stations to include the word “PAID ADVERTISEMENT” at the beginning or end of the advertisement.