

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

John Smith,

Complainant,

ORDER OF DISMISSAL

v.

City of Grant,

Respondent.

On January 4, 2016, John Smith (Complainant) filed a campaign complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that the City of Grant (City) violated Minn. Stat. § 211B.32 (2014) in connection with the October 13, 2015, Special Election on a proposed city charter. The Complaint also asserts that City Council Members violated Minn. Stat. § 331.04 (2014) and that the City Clerk and City Attorney violated Minn. Stat. § 410.10, subd. 2 (2014), by failing to follow statutory requirements for designating an official newspaper.

For the reasons detailed in the attached Memorandum, the Administrative Law Judge concludes that the Complaint fails to state a *prima facie* violation of Minn. Stat. § 211B.32 or any other provision of the Fair Campaign Practices Act.

Based upon the Complaint and the supporting filings, and for the reasons set out in the attached Memorandum,

IT IS HEREBY ORDERED THAT:

The Complaint filed by John Smith against the City of Grant is **DISMISSED**.

Dated: January 7, 2016

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2014) this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2014).

MEMORANDUM

The Complaint makes three key claims; namely that: (1) the City violated Minn. Stat. § 211B.32 in connection with the October 13, 2015, Special Election; (2) the City Council violated its Rules of Procedure and Minn. Stat. § 331.04 when designating the *St. Paul Pioneer Press* as its official newspaper; and (3) the City Clerk and City Attorney violated Minn. Stat. § 410.10 (2014) by publishing notice of the October 13, 2015, Special Election in an unauthorized publication.

In order for the Complainant, Mr. Smith, to state a *prima facie* case - a case that would entitle him to a later hearing on his claims - he must allege facts that, if accepted as true, would prove a violation of the Fair Campaign Practices Act.¹ Against this standard, the allegations in the Complaint are reviewed and discussed below.

Factual Background

On October 13, 2015, the City held a Special Election on whether to establish a Home Rule Charter (Question 1) and discharge the City's Charter Commission (Question 2). A majority of voters rejected the proposed home rule charter and chose to discharge the charter commission.²

According to the Complaint, the City Council passed a motion by a majority vote to accept a consent agenda that included the designation of the *St. Paul Pioneer Press* as the official newspaper of the City. Prior to this action, the *White Bear Press*, a free publication, had been the City's official newspaper. The Complaint contends that the actions of the Council violated the City Rules of Procedure for City Council Meetings³ and the requirements of Minn. Stat. § 331.04. According to the Complaint, "Minn. Stat. § 331.04, subd. 6.4," requires a unanimous vote by the City Council to designate the City's official newspaper.⁴

The Complaint also asserts that, because the designation of the *St. Paul Pioneer Press* as the official newspaper was invalid, the later election notices that were published in the *St. Paul Pioneer Press*, were likewise invalid and in violation of Minn.

¹ Minn. Stat. § 211B.33, subd. 2 (2014); *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

² See Washington County election results at <https://www.co.washington.mn.us/index.aspx?NID=675>.

³ Complaint, Exhibit 6.

⁴ See Attachment to Complaint at 1.

Stat. § 410.10. Mr. Smith argues that the proper remedy for these violations is setting aside the Special Election results.

Finally, the Complaint states that the Mayor of Grant, and others, made false statements regarding the timing of the Charter Commission's proposal. Mr. Smith maintains that certain assertions by the Mayor and others as to the costs of a Special Election on the proposal were false, and circulated notwithstanding an appreciation of their falsity, so as to urge voters to reject the Commission's proposal.

Legal Analysis

The campaign complaint process is limited to violations of the Fair Campaign Practices Act – found in Minnesota Statutes Chapters 211A and 211B (2014). Chapter 211A governs the campaign financial reporting for candidates seeking election to county, municipal, or other political subdivision office. Chapter 211B governs fair campaign practices. Complaints alleging violations of Chapters 211A or 211B must identify the individual or entity being complained about, the statutory provision alleged to have been violated, and must detail the factual basis for the claim that a violation of law has occurred.⁵ If the administrative law judge determines that the complaint does not set forth a *prima facie* violation of a provision of chapter 211A or 211B, the administrative law judge must dismiss the complaint.⁶

The Complaint's allegations that the City of Grant, by and through its officials, violated Minn. Stat. §§ 331.04 and 410.10 are beyond the scope of the campaign complaint process and must be dismissed. In these matters, the Administrative Law Judge has jurisdiction to decide only alleged violations of Chapters 211A and 211B.

Even if the Administrative Law Judge's jurisdiction was more expansive, it is still unlikely that Mr. Smith would have a proper claim.⁷ Not only does Chapter 331 not require the designation of an official newspaper to occur by a unanimous vote, these provisions were repealed by the Legislature in 1984.⁸

Likewise problematic, the Complaint does not detail how the City violated Minn. Stat. § 211B.32. This provision governs the process by which a Fair Campaign Practices complaint is filed with the Office of Administrative Hearings. It requires, among other things, that complaints be in writing, submitted under oath, and filed within one year of the act that is the subject of the complaint. Minn. Stat. § 211B.32 does not proscribe any particular conduct of those engaging in political campaigns. Because the cited statute merely set forth the procedure for a proper filing, Mr. Smith has not stated a proper claim for relief.

⁵ Minn. Stat. § 211B.32, subd. 3.

⁶ Minn. Stat. § 211B.33, subd. 2(a).

⁷ The Complainant cites Minn. Stat. § 331.04, which requires a newspaper to publish the names of its owners, publishers and editors. Minn. Stat. § 331.02, subd. 7 (1984) governs designation of a newspaper as an official publication.

⁸ Repealed, 1984 Minn. Laws ch. 543 § 69.

Finally, to the extent Mr. Smith complains that the City's Mayor violated the prohibition against circulating false campaign material, found in Minn. Stat. § 211B.06, those claims are no longer enforceable. The U.S. Court of Appeals of the Eighth Circuit recently concluded (in the case of *281 Care Committee v. Arneson*), that this prohibition was unconstitutional and unenforceable.⁹

For all of these reasons, the Complaint fails to allege a *prima facie* violation of Fair Campaign Practices Act and is dismissed.

E. L. L.

⁹ *281 Care Committee v. Arneson*, 766 F.3d 774 (8th Cir. 2014), *cert. denied*, --- S. Ct. ----, 2015 WL 1280248 (2015).