

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

William Braun,

Complainant,

**ORDER OF DISMISSAL**

vs.

City of Woodbury,

Respondent.

**TO: Parties**

On October 28, 2015, William Braun filed three Fair Campaign Practice Complaints with the Office of Administrative Hearings (OAH) alleging that the city of Woodbury (City) violated Minn. Stat. § 211B.09 (2014) by imposing or enforcing limitations on his political activities while he was employed by the City.

By Order dated October 29, 2015, the Chief Administrative Law Judge consolidated the complaints into one docket and assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33 (2014).

After reviewing the Complaints and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaints do not support a prima facie violation of Minn. Stat. § 211B.09.

Accordingly, the Administrative Law Judge issues the following:

**ORDER**

**IT IS HEREBY ORDERED** that the Complaints filed by William Braun against the city of Woodbury are **DISMISSED**.

Dated: November 2, 2015

s/Jeffery Oxley  
JEFFERY OXLEY  
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, William Braun, ran unsuccessfully for a seat on the Woodbury City Council in the November 2014 general election. At the time, Mr. Braun was employed as a Paid-on-Call Firefighter and Emergency Medical Technician with the City.<sup>1</sup> Mr. Braun's employment with the City was terminated in October 2015.

Mr. Braun has filed three complaints against the City alleging that it violated Minn. Stat. § 211B.09 by imposing additional limitations on his political activities while he was employed with the City. Mr. Braun contends that written warnings and discipline issued to him between October 2012 and October 2015, alleging insubordination and misuse of government property, were efforts by the City to inappropriately impose limitations on his "political activities."

### 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.<sup>2</sup> For purposes of a prima facie determination, the tribunal must accept the facts alleged as true. The allegations do not need independent substantiation.<sup>3</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 that violations of chapters 211A or 211B occurred.<sup>4</sup>

### Prohibited Public Employee Activities (Minn. Stat. § 211B.09)

Minn. Stat. § 211B.09 provides:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity. A political subdivision may not impose or enforce additional limitations on the political activities of its employees.

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<sup>1</sup> See *Braun v. City of Woodbury*, Docket No. 8-0325-31959, ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT (Oct. 31, 2014).

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

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

<sup>4</sup> *Id.*

## Analysis

As an initial matter, the Administrative Law Judge notes that Mr. Braun brought a similar complaint against the City in October 2014. In that complaint, Mr. Braun alleged that warnings and discipline issued to him by the City in August and September 2014 violated Minn. Stat. §§ 211B.07 (undue influence) and 211B.09 (prohibited public employee activity) in that they were attempts by the City to use its official authority to “compel” him to vote in a particular manner or to take part in a political activity. That complaint was dismissed.<sup>5</sup>

In the current Complaints, Mr. Braun is focusing solely on the last sentence of Minn. Stat. § 211B.09 and alleging that actions by the City amounted to prohibited limitations on his “political activities.”

### First Complaint (OAH 0325-32948)

Mr. Braun’s first complaint alleges that the City imposed additional limitations on his political activities when it “disciplined” him in September 2014, for allegedly wearing a t-shirt bearing markings associating it with the City’s Public Safety Department while campaigning for Woodbury City Council.<sup>6</sup> In support of this claim, Mr. Braun has attached a letter he received from City Administrator Clinton Gridley, dated September 18, 2014. In the letter, Mr. Gridley informs Mr. Braun that it had come to the City’s attention that Mr. Braun may have been wearing a Woodbury Public Safety t-shirt while conducting campaign activities.<sup>7</sup> While it is not clear whether the item in question was City property or Mr. Braun’s personal property, by wearing the t-shirt, the City believed that Mr. Braun was demonstrating his association with the City’s Public Safety Department. Mr. Gridley explains that it is crucial that the line between Mr. Braun’s role as a firefighter and a candidate be kept separate, and he directs Mr. Braun not to use, wear, or display any Woodbury Public Safety items while conducting his campaign activities.<sup>8</sup> Mr. Gridley also directs Mr. Braun’s attention to Woodbury City Code Sections 2-208 and 2-209, which prohibit City employees from using City time, facilities, equipment, supplies, prestige, influence, or other related items for private campaigns.<sup>9</sup>

Mr. Braun denies that he ever wore a Woodbury Public Safety t-shirt while campaigning, and he contends that the City may not regulate “prestige.”

This Complaint fails to allege a prima facie violation of Minn. Stat. § 211B.09. Cities may regulate the use of city property by its employees and such reasonable regulation cannot form the basis of a prohibited “additional limitation” on political activities under Minn. Stat. § 211B.09. In this case, a letter from the City directing Mr. Braun not to wear or display Woodbury Public Safety items while engaging in campaign activities, does not support finding that the City imposed prohibited limitations on Mr.

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<sup>5</sup> See *Braun v. City of Woodbury*, Docket No. 8-0325-31959, ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT (Oct. 31, 2014).

<sup>6</sup> Complaint Ex. A.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*; Complaint Ex. D (copy of Woodbury City Code Sections 2-208 and 2-209).

Braun's political activities. In addition, while Mr. Braun may have interpreted the September 18, 2014, letter from Mr. Gridley to be "discipline," the letter simply advises Mr. Braun to abide by the provisions of the City Code regarding use of City property.

Moreover, the complaint is untimely as it was filed beyond the one-year statute of limitations provided under the Fair Campaign Practices Act. Pursuant to Minn. Stat. § 211B.32, subd. 2, complaints alleging violations of chapters 211A or 211B, must be filed with the OAH within one year of the act or failure to act that is the subject of the complaint. The act that is the subject of this Complaint is the September 18, 2014, directive from Mr. Gridley not to wear or display City items while campaigning. The Complaint is therefore untimely.

For these reasons, this complaint is dismissed.

### **Second Complaint (OAH 0325-32951)**

In his second complaint, Mr. Braun alleges that the City imposed additional restrictions on his "political activity" when, in October 2012, it "ordered" Mr. Braun not to engage in volunteer or paid fire prevention education work other than what he was already doing on behalf of the City. Mr. Braun had requested in an e-mail to his supervisor, John Wallgren, that he be allowed to accept an offer from a local church to conduct fire prevention education to children.<sup>10</sup> Mr. Braun explained that he is an "education instructor and on the South Washington County School District's Early Childhood and Family Education (ECFE) Advisory Board."<sup>11</sup> In a response e-mail dated October 1, 2012, Mr. Wallgren advised Mr. Braun as follows:

I do not think it would be a good idea for you [Braun] to do any type of fire prevention in the City of Woodbury other than what we are already doing for K-12 aged children. . . . We want to be sure to get one message out to our community and that message goes through the Public Safety Department.<sup>12</sup>

Mr. Braun contends that the City thereafter imposed discipline on him and ultimately terminated his employment in 2015 in part due to his outside "political activity" on behalf of the South Washington County School District ECFE Advisory Council.

The complaint fails to state a violation of Minn. Stat. § 211B.09 because it does not allege that a city official imposed limitations on Mr. Braun's "political activities." Pursuant to Minn. Stat. § 211B.01, an act is done for "political purposes" when "it is intended or done to influence, directly or indirectly, voting at a primary or other election." Mr. Braun has failed to demonstrate that the City's decision to limit his fire prevention education work with pre-K children was in any way a limitation imposed on his political activities.

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<sup>10</sup> Complaint Exhibit (Ex.) A. (John Wallgren is the Fire Services Commander for the city of Woodbury.)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Moreover, the act complained of occurred back in 2012. Again, pursuant to Minn. Stat. § 211B.32, subd. 2, complaints alleging violations of chapters 211A or 211B, must be filed with the OAH within one year of the act or failure to act that is the subject of the complaint. This complaint is therefore untimely as it was filed well beyond the one year statute of limitations.

For these reasons, this complaint is dismissed.

### **Third Complaint (OAH 19-0325-32952)**

In his third complaint, Mr. Braun alleges that the City disciplined and ultimately terminated him for using a City computer and printer to access and print voter registration information in violation of the City's Technology Policy. The City began an investigation of Mr. Braun's alleged violation of the policy on August 14, 2014. In a report dated April 16, 2015, the City ultimately found that Mr. Braun had violated the City's Technology Policy.<sup>13</sup>

Mr. Braun denies he accessed the voter registration information on a City computer. He asserts that by disciplining him for allegedly accessing public records on a City computer when he, in fact, accessed the information on his own time and with his own resources, the City imposed additional limitations on his political activities in violation of Minn. Stat. § 211B.09.

As with the other two complaints, this complaint fails to put forward any facts to support finding that the restrictions the City imposed on the use of its computers and printers pursuant to its Technology Policy amounted to prohibited limitations on Mr. Braun's "political activities" in violation of Minn. Stat. § 211B.09. Instead, it appears that this Complaint is an attempt by Mr. Braun to challenge the basis for the City's disciplinary actions and ultimate termination of his employment. If Mr. Braun believes he was unfairly discharged from his position with the City, there are other remedies he may pursue. A proceeding under the Fair Campaign Practices Act, however, is not the proper forum for considering such claims in the absence of facts sufficient to support finding a prima facie violation of chapters 211A or 211B.

Because the facts alleged in this complaint are insufficient to establish a prima facie violation of Minn. Stat. § 211B.09, it is dismissed.

All three Complaints filed by Mr. Braun against the city of Woodbury are dismissed in their entirety.

**J. O.**

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<sup>13</sup> Complaint Ex. A.