OAH 60-0325-33821

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

William Braun,

Complainant,

vs.

City of Woodbury, Woodbury Police Officers
A. Doe, B. Doe, C. Doe and E. Doe

Respondents.

ORDER DENYING PETITION FOR RECONSIDERATION

On September 22, 2016, this matter came on for a probable cause hearing under Minn. Stat. § 211B.34 (2016), before Administrative Law Judge James E. LaFave. The Complaint, filed by William Braun (Complainant), alleged that the Respondents violated Minn. Stat. § 211B.045 (2016) of the Minnesota Fair Campaign Practices Act by preventing the posting and directing the removal of Mr. Braun's campaign signs within the City of Woodbury.

By Order dated September 28, 2016, Administrative Law Judge James E. LaFave dismissed the Complaint for lack of probable cause. On September 29, 2016, the Complainant submitted a letter that appears to constitute a petition for reconsideration of Judge LaFave's decision.

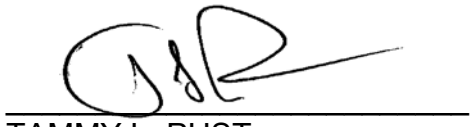
Complainant appeared in this proceeding on his own behalf and without counsel. Mark J. Vierling, Eckberg, Lammers, P.C., appeared on behalf of the City of Woodbury and the unnamed police officers (Respondents).

Based on the record herein and for the reasons stated in the following Memorandum, the Chief Administrative Law Judge makes the following:

ORDER

1. Complainant's Petition for Reconsideration is **DENIED**.

Dated: October 4, 2016



TAMMY L. PUST
Chief Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2016), 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 (2016).

MEMORANDUM

Complainant William Braun is a candidate for the Woodbury City Council. Mr. Braun is also in the real estate business. As part of his real estate business, he posts commercial real estate signs.[1]

Mr. Braun alleged in his Complaint that the City of Woodbury, through four of its police officers, prevented the posting and directed the removal of his campaign lawn signs within the City of Woodbury in violation of Minn. Stat. § 211B.045.[2] Specifically, the Complainant alleged that Woodbury police officers stopped installers from placing "any" of Braun's signs within the Woodbury City limits and threatened the installers with criminal charges if they continued to post "Braun" signs. The Complaint contends that by these actions, the City regulated the number of Mr. Braun's campaign signs to zero in violation of Minn. Stat. § 211B.045.

On September 28, 2016, Administrative Law Judge James E. LaFave issued an Order dismissing the Complaint in this matter for lack of probable cause to believe that the Respondent violated Minn. Stat. § 211B.045 as alleged. On September 29, 2016, the Complainant filed a letter claiming that Judge LaFave erred in his decision. This letter will be considered a request for reconsideration of the Dismissal Order.

Minnesota Statutes, section 211B.045, prohibits a municipality from regulating the size and number of noncommercial signs beginning 46 day before the state primary in a general election year until ten day following the state general election. Based on this standard, the Complainant had the burden at the hearing to show by clear and convincing evidence that the Respondents limited the number or size of his campaign signs during the applicable time frame.

Administrative Law Judge LaFave found that the Complainant failed to produce evidence that the City prevented the posting of any of his campaign signs or that the City removed any of his campaign signs. Instead, the evidence showed only that the City removed or prevented the posting of Complainant's commercial real estate signs. As a result, Judge LaFave found the record lacked sufficient evidence to believe that the City violated Minn. Stat. § 211B.045.

In his letter of September 29, 2016, Complainant raises three points as evidence of errors in Judge LaFave's ruling. First, the Complainant argues that the City failed to

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[1] *See Braun v. City of Woodbury*, OAH Docket No. 60-0325-33821, ORDER OF DISMISSAL at 2 (September 28, 2016).
[2] *See* CAMPAIGN COMPLAINT (Sept. 16, 2016).

properly serve him with its copies of exhibits prior to the probable cause hearing and so denied him the opportunity to adequately prepare for the probable cause hearing. Second, the Complainant asserts that the City violated Minn. Stat. § 211B.045 by obtaining a Temporary Restraining Order (TRO) from the Washington County District Court that prohibited the Complainant from displaying certain signs. And third, the Complainant maintains that the four police officers who stopped the installers from posting his signs all had squad car audio and video recording equipment, yet none of them turned on the equipment to record the incident despite the fact they were providing warnings about criminal conduct.

Minn. Stat. § 211B.34, subd. 3(b), provides that the Chief Administrative Law Judge must review a petition for reconsideration within three business days and determine whether the assigned administrative law judge made a "clear error of law."

The Chief Administrative Law Judge finds no evidence that Administrative Law Judge LaFave committed clear error by dismissing the Complaint. The fact that the City mailed copies of its exhibits to the Complainant at a wrong address is troubling, but this fact did not affect the Complainant's ability to put forth evidence that the City violated Minn. Stat. § 211B.045. The City's exhibits consisted of a photocopy of the Complainant's commercial real estate sign, a press release from the Minnesota Department of Transportation (MnDOT) reminding the public of the statutory prohibition against posting signs at highway rights of way, and prior decisions of this Office concerning other campaign complaints filed by the Complainant. Neither the MnDOT press release nor the earlier decisions were mentioned in nor formed a basis for Judge LaFave's Order of Dismissal. Therefore, the fact that the Complainant did not receive them prior to the hearing constitutes harmless error. The Complainant himself introduced into evidence a photograph of his commercial real estate sign, so the fact that he did not receive the City's copy did not prejudice his ability to prepare for the hearing. As such, the Complainant has failed to demonstrate that he was denied an opportunity to adequately present his case at the hearing based on the City's use of an incorrect address when mailing copies of their exhibits to him prior to the hearing.

The Complainant's argument related to the TRO also fails. The Order restrained and enjoined Complainant and EdQuest, Inc. of Minnesota d/b/a FirePrevention.org from:

a. Promoting, marketing, advertising or otherwise displaying the term "Woodbury Fire Fighter" or Woodbury Firefighter/EMT" in any marketing material, either directly of otherwise by pictorial display showing those terms on any helmet, articles of clothing, or other equipment or paraphernalia displayed with any pictorial marketing piece, advertisement, car, bill, pamphlet, internet site, or otherwise.

b. From displaying, reproducing, mimicking, or otherwise using in any advertisements, marketing, trainings, pamphlets, websites or other material, the pictorial productions of the Woodbury Fire Department.[3]

[3] *City of Woodbury v. William Braun, and EdQuest, Inc. of Minnesota, d/b/a FirePrevention.org*, , ORDER FOR TEMPORARY RESTRAINING ORDER 82-CV-16-3218, slip op. at 2 (July 26, 2016).

The TRO clearly addresses advertising Complainant sought to use in his commercial business. While the TRO may or may not have been applicable to the wording on his campaign signs, the Order did not limit the number or size of Complainant's campaign signs in violation of the statute.

Finally, the Complainant urges a finding of error based on the fact that the City's police officers did not record their contact with his sign installers and that four officers were used to deliver a warning about the signs. Again, this allegation does not address whether the City engaged in conduct that limited the number or size of Complainant's campaign signs in violation of the statute.

Based on the record, Administrative Law Judge LaFave concluded that the Complainant failed to put forth any evidence that the Respondents' prohibited the placing of Complainant's campaign signs or removed any of Complainant's campaign signs. Because the Complainant failed to demonstrate that the City limited the number or size of his campaign signs in violation of Minn. Stat. § 211B.045, Judge LaFave properly dismissed the Complaint.

The Complainant has not met his burden to establish a clear error of law. Administrative Law Judge LaFave's conclusion that the Respondents did not remove or prevent the placing of Complainant's campaign signs, as well as his conclusion that the Complainant failed to put forward any evidence that Respondents violated Minn. Stat. § 211B.045, were not clearly in error. Accordingly, the petition for reconsideration is denied.

T. L. P.