

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Meisinger,

Complainant,

ORDER OF DISMISSAL

vs.

Napier for Council,

Respondent.

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a probable cause hearing on September 28, 2016, to consider a Complaint filed under the Fair Campaign Practices Act, Minnesota Statutes, chapter 211B (2016). The hearing was held by telephone and the record closed at the conclusion of the hearing on the same date.

David Meisinger (Complainant) appeared on his own behalf and without counsel. Dave Napier (Napier) was present on behalf of Napier for Council (Respondent), which appeared without counsel.

Based upon the Complaint and the hearing record and for the reasons set forth in the Memorandum below:

IT IS ORDERED:

1. Probable cause does not exist to believe that Respondent violated Minn. Stat. § 211B.04 as alleged in the complaint.
2. The Complaint is **DISMISSED**.

Dated: October 3, 2016


JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE OF RECONSIDERATION RIGHTS

Minnesota Statutes, section 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition for reconsideration, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2016).

MEMORANDUM

Factual and Procedural Background

On September 21, 2016, Complainant filed a Complaint alleging that Respondent's campaign lawn signs and website did not comply with Minn. Stat. § 211B.04 because these materials did not contain an address for Respondent. In an order dated September 23, 2016, the Administrative Law Judge determined that the Complaint alleged facts sufficient to establish a prima facie violation of section 211B.04. Therefore, a probable cause hearing was held to determine whether there is probable cause to believe that the violations alleged in the Complaint occurred.

At the probable cause hearing, Complainant further clarified his allegations. Complainant alleges Respondent's campaign lawn signs do not contain the required disclaimer because the signs lack a street address. Complainant's allegation as to Respondent's campaign website does not challenge the website as a whole. Rather, Complainant contends that an image of Respondent's lawn sign is featured on Respondent's website, and Complainant contends that the depiction of the lawn sign on the website is an independent violation due to the absence of a street address on the lawn sign.

Respondent's campaign lawn signs include the statement: "Paid for by Napier for Council," and display a website address: www.NapierForCouncil.com.¹ At the probable cause hearing, Napier testified that the website contains the street address for Respondent, which is also his home address, and that a person directed to the website by the lawn signs could use this address to contact Respondent.² Complainant provided no evidence to the contrary.

¹ Complaint Ex. A.

² Testimony (Test.) of Dave Napier.

Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.³ The Administrative Law Judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the Complaint at a hearing on the merits.⁴ If the Administrative Law Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case, a motion to dismiss a campaign violation complaint for lack of probable cause should be denied.⁵

Analysis

Under Minnesota Statutes, section 211B.04, it is 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)” for material prepared and paid for by a person or committee other than a principal campaign committee. If the material is produced and disseminated without cost, the words “paid for” may be omitted from the disclaimer.

Section 211B.04(a), states that the disclaimer on campaign material must be “substantially in the form provided.” In *Fine v. Bernstein*, this tribunal considered whether a campaign advertisement containing a website address, but lacking a street

³ See *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 664 (Minn. 2003) (“[I]n civil cases probable cause constitutes a *bona fide* belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it”) (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)) (internal punctuation omitted); see also *State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976) (explaining operation of probable cause standard in criminal context).

⁴ See *Hortman v. Republican Party of Minn.*, OAH Docket No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Oct. 2, 2006).

⁵ In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The court must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party’s favor. See, e.g., Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

address, substantially complied with section 211B.04.⁶ In *Fine*, the website to which the advertisement referred contained the required disclosure, including a street address.⁷ This tribunal held that such a disclaimer substantially complied with the statute's requirement and that the purpose of the statute was "to identify the source of the campaign material and provide a mechanism for contacting the preparer of the material."⁸

Based on the record in this matter, and consistent with previous decisions by this tribunal, the Administrative Law Judge determines that the disclaimer on Respondent's campaign lawn signs substantially complies with Minn. Stat. § 211B.04. Further, as the disclaimer on the lawn signs substantially complies with Minn. Stat. § 211B.04, Respondent's depiction of those lawn signs on his website does not violate the statute. As such, the Administrative Law Judge concludes that the Complaint is not supported by probable cause and it is dismissed.

J. P. D.

⁶ *Fine v. Bernstein*, OAH Docket 12-6326-16910, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 3, 14 (Nov. 7, 2005).

⁷ *Id.* at 3.

⁸ *Id.* at 14; *see also Hansen v. Stone*, OAH Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Oct. 28, 2005) (holding that campaign material containing candidate's email address substantially complied with disclaimer requirement).