OAH 80-0325-35727

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Janine Hanson,

Complainant,

vs.

Elise Ryan,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND ORDER FOR PREHEARING CONFERENCE

On November 6, 2018, Janine Hanson (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Elise Ryan (Respondent) violated Minn. Stat. § 211B.04 (2018) by disseminating campaign material that lacked the required disclaimer.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.04. For the reasons detailed in the Memorandum below, these allegations will proceed to a prehearing conference.

THEREFORE, IT IS HEREBY ORDERED that this matter is scheduled for a prehearing conference to be held by telephone before the undersigned Administrative Law Judge at **10:30 a.m.** on **Tuesday, November 27, 2018.** At the appointed time, the parties are directed to:

(a) Telephone **1-888-742-5095**, and

(b) Enter conference code: **805-596-0270#**

At the prehearing conference, preliminary matters will be addressed, such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining whether the matter may be disposed of on a written record without an evidentiary hearing.

Any party who needs an accommodation for a disability 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, Saint Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 8, 2018

LAURASUE SCHLATTER
Administrative Law Judge

MEMORANDUM

Respondent ran successfully for the office of mayor of Chanhassen in the November 6, 2018, general election. The Complaint alleges that Respondent prepared and disseminated campaign lawn signs, literature, You Tube videos, and t-shirts that lacked a disclaimer in the form required by Minn. Stat. § 211B.04. The Complaint also alleges that Respondent established a campaign website and Facebook page that lacked the required disclaimer.

Complainant attached images of Respondent's campaign material to support some of the allegations in her complaint. Respondent's campaign mailer and lawn signs include a website address (www.eliseryan.org) and a disclaimer that state: "Paid for by the Citizens for Ryan campaign."[1] What appears to be Respondent's Facebook page includes a copyright ("Copyright © 2018 Citizens for Ryan – All Rights Reserved") and the disclaimer "Paid for by Citizens for Ryan."[2] The signs, campaign mailer, and Facebook page do not appear to include the committee's mailing address. Complainant did not provide an image or screen shot of Respondent's campaign webpage. She also provided no information regarding Respondent's You Tube videos and t-shirts.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must allege sufficient facts to show that a violation of law has occurred.[3] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes, chapter 211A or 211B (2018).[4]

[1] Complaint Exhibits (Ex.) A and B.
[2] Complaint Ex. C.
[3] Minn. Stat. § 211B.32, subd. 3 (2018).
[4] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[5] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[6] A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.[7]

II. Disclaimer Requirement

Minn. Stat. § 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[8] The statute requires the disclaimer provide the name and address of the committee that prepared and paid for the material, and must read substantially as follows: "Prepared and paid for by the _____ committee _____ (address)."[9] The statute was recently amended to allow the committee's address to be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.[10] The statute was also amended to exclude from the disclaimer requirement "wearing apparel," such as t-shirts.[11]

"Campaign material" is defined, in relevant part, as any material disseminated for the purpose of influencing voting.[12] The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[13]

Respondent's campaign signs and literature do not include a mailing address for Respondent's campaign committee. The Complaint alleges that Respondent's website does not include a mailing address for the committee. Accepting the facts alleged in the complaint to be true, Complainant has alleged a prima facie violation of section 211B.04 with respect to Respondent's lawn signs, literature, Facebook page, and website. However, if Respondent's website includes the committee's mailing address, Respondent's campaign material may be compliant with the statute's requirements.

Complainant failed to set forth any facts to support a prima facie violation of section 211B.04 with respect to Respondent's You Tube videos, and this claim is dismissed. In addition, Complainant's claim with respect to Respondent's campaign t-shirts is also

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[5] *Id*.
[6] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[7] *Barry,* 781 N.W.2d at 902.
[8] Minn. Stat. § 211B.04, subd. 1(b).
[9] *Id*.
[10] Minn. Stat. § 211B.04, subd. 1(b). *See* 2018 Minn. Laws ch. 119, § 33.
[11] *See* Minn. Stat. § 211B.04, subd. 3(c)(2).
[12] Minn. Stat. § 211B.01, subd. 2 (2018).
[13] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).

dismissed. Minn. Stat. § 211B.04, subd. 3(c)(2) specifically excludes “wearing apparel” from the disclaimer requirement.

III. Conclusion

Accepting the facts alleged as true, the Administrative Law Judge finds that Complainant has alleged sufficient facts to support finding a prima facie violation of Minn. Stat. § 211B.04 on the part of Respondent with respect to her campaign lawn signs, literature, Facebook page, and website. Accordingly, this claim will proceed to a prehearing conference as indicated in this Order.

L. S.