

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kathi Sims-Kosloski,

Complainant,

**ORDER FINDING NO PRIMA FACIE
VIOLATION AND DISMISSING
COMPLAINT**

v.

Eric Meyer and Chad Hamann,

Respondents.

On November 30, 2020, Kathi Sims-Kosloski (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Eric Meyer and Chad Hamann, both of whom were candidates for election as Supervisors for Haven Township, Minnesota, violated Minn. Stat. §§ 211B.02, 211B.04, 211B.06 (2020). Ms. Sims-Kosloski maintains that the campaign literature circulated jointly by Mr. Meyer and Mr. Hamann falsely implies the endorsement of Haven Township and includes an improper disclaimer.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33 (2020).

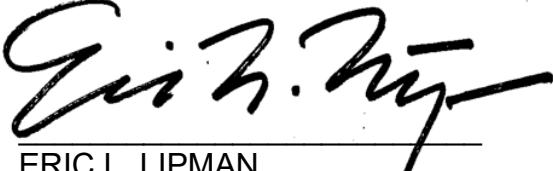
After reviewing the Complaint and the documents submitted by Complainant in support, and for the reasons set forth in the attached Memorandum, the undersigned Administrative Law Judge finds that the Complaint does not establish a prima facie violation of either Minn. Stat. §§ 211B.02, 211B.04 or 211B.06.

Based upon the record in this case, the Administrative Law Judge issues the following:

ORDER

The Complaint filed by Kathi Sims-Kosloski against Eric Meyer and Chad Hamann is **DISMISSED**.

Dated: December 3, 2020



ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2020), 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 (2020).

MEMORANDUM

I. Factual Background

The Complaint maintains that as part of their campaigns for election to township office, Messrs. Meyer and Hamman jointly sent to all postal customers in Haven Township a two-sided postcard.¹ One side of the postcard reflects details about Mr. Meyer and the reverse side includes both details about Mr. Hamman and features that are needed to send the postcard through the mail.²

The focus of Ms. Sims-Kosloski's complaint is that at the bottom of both sides of the postcard is the phrase "Haven Township people for change!" and next to this phrase is the 45th Avenue address of the Haven Town Hall. The township offices are not mentioned or pictured in the flyer, but Ms. Sims-Kosloski maintains that the use of the street address on the postcard is itself illegal. She maintains that it violates the Fair Campaign Practices Act because it is intentionally false, unlawfully implies the support of the Township government for Messrs. Meyer's and Hamman's candidacies, and is an improper disclaimer.³ Each of these claims is addressed below.

II. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, the complainant must allege enough facts to show that a violation of law has occurred.⁴ The complaining party must submit evidence or allege facts that, *if accepted as true*, would prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2020).⁵

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in the Complaint as if they are true, without independent substantiation, provided that those facts are not patently false or inherently incredible.⁶

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.⁷ A complaint is dismissed at the initial review stage only if it does not allege facts that, if accepted as true, would prove a violation of Minn. Stat. §§ 211A.01-

¹ Complaint at 1 ("Eric Meyer and Chad Hamann created and distributed post-card style candidate materials to the Haven Township voting population").

² *Id.* at 2-3.

³ *Id.* at 1.

⁴ Minn. Stat. § 211B.32, subd. 3.

⁵ *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

⁶ *Id.*

⁷ *Abrahamson v. St. Louis Cnty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).

.14, 211B.01-.37.⁸ If there is enough evidence to support a *prima facie* determination, the Administrative Law Judge must set the case on for additional proceedings.⁹

III. Minn. Stat. § 211B.02 – False Claim of Support

Minn. Stat. 211B.02 provides in relevant part:

A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.¹⁰

While the Administrative Law Judge agrees that the postcard qualifies as “written campaign material,”¹¹ it falls short of stating, or reasonably implying, that Haven Township has lent its “support or endorsement” to either Mr. Meyer’s or Mr. Hamman’s candidacy.

At least with respect to Haven Township, the authorship of the postcard is not in doubt. It is clear from the text and overall presentation of the postcard that the supporters of Messrs. Meyer’s and Hamann’s candidacies – the Haven Township people for change, or the candidate’s campaigns – are signaling their support. The flyer includes a home address, electronic mail address and cellular telephone number for Mr. Hamman and an electronic mail address and cellular telephone number for Mr. Meyer.¹² Moreover, the postcard invites recipients of the postcard to reach out to Mr. Meyer by “text, phone calls or email.”¹³

This case thus differs markedly from *City of Grant v. Smith*.¹⁴ In *City of Grant*, the proponents of a change to the charter of the City of Grant circulated a flyer in support of that change that featured the City’s name, logo, masthead and the same title and formatting style as the city’s official newsletter.¹⁵ The panel concluded that the “use and placement of the City logo and masthead, and reprinting of the City’s newsletter graphics,” implied that the flyer was an official publication of the City and that “support for Ballot Question 1 and rejection of Ballot Question 2 were positions endorsed by the City.”¹⁶

In this case, however, no such implication is present. The use of the street address of the Township offices alone – while perhaps unwarranted – is not enough to state or imply that either candidate had the endorsement of the Township’s government.

⁸ *Barry*, 781 N.W.2d at 902.

⁹ See Minn. Stat. § 211B.33, subd. 2.

¹⁰ Minn. Stat. § 211B.02.

¹¹ See Minn. Stat. § 211B.01, subd. 2.

¹² Complaint at 2-3.

¹³ *Id.* at 3.

¹⁴ *City of Grant v. Smith*, OAH 8-0325-33077 (Minn. Off. Admin. Hrgs. June 3, 2016) (Findings of Fact, Conclusions of Law and Order) *aff’d City of Grant by & through Points v. Smith*, A16-1070, 2017 WL 957717 (Minn. Ct. App.) (unpublished) *review denied* (Minn. 2017).

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 9.

IV. Minn. Stat. § 211B.04 – Required Use of a Disclaimer

Minn. Stat. § 211B.04 makes it unlawful to prepare or disseminate certain types of campaign material without prominently including the name and address of the “person or committee causing the material to be prepared or disseminated”¹⁷ Under Minn. Stat. § 211B.04, subd. 1(b), the disclaimer must be “substantially in the form” as the model provided by the statute:

“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. The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address. If the material is produced and disseminated without cost, the words “paid for” may be omitted from the disclaimer.¹⁸

Yet, there are important exceptions to this statute. So as to leave room for the types of anonymous pamphleteering that are protected by the First Amendment, the disclaimer requirements do not apply to an “individual or association that is not required to register or report under chapter 10A or 211A.”¹⁹

In this case, Ms. Sims-Kosloski has not alleged that at least \$750 was spent or received by either candidate during their campaigns for office, or by the Haven Township people for change, making the disclaimer requirement operative upon any of them.²⁰ Without such a claim, the Complaint does not allege sufficient facts to support a *prima facie* determination²¹ that Minn. Stat. § 211B.04 was violated.²²

V. Minn. Stat. § 211B.06

Minn. Stat. § 211B.06 provides in relevant part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a

¹⁷ Minn. Stat. § 211B.04.

¹⁸ Minn. Stat. § 211B.04, subd. 1(b).

¹⁹ Compare Minn. Stat. § 211B.04, subd. (3)(b), with *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-42 (1995); *Riley v. Jankowski*, 713 N.W.2d 379, 404-05 (Minn. App) review denied (Minn. 2006); see also *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 219 F.Supp.2d 1052, 1068-69 (D. Minn. 2003).

²⁰ See Minn. Stat. §§ 211A.01, subds. 3, 4, 211A.02, subd. 1.

²¹ See *Nelson v. Erickson*, OAH Docket No. 8-0325-22613-CV, 2012 WL 6568250, at *1 (Minn. Off. Admin. Hrgs. 2012) (Without an averment as to the minimum level of expenditures, “the Complaint does not allege sufficient facts to support a *prima facie* determination that Minn. Stat. § 211B.04 was violated”).

²² Even if Ms. Sims-Kosloski had submitted a proper claim, the result would likely be the same. Given that Mr. Hamman included his name, street address and electronic mail address on one face of the postcard, it is likely that a later panel of judges would conclude that he had written a disclaimer “substantially in the form” that is required. Those responsible for the postcard were identified and within easy reach.

candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In 2014, the United States Court of Appeals for the Eighth Circuit determined that there was no way, consistent with First Amendment guarantees of free speech, to narrowly construe this statute. Accordingly, it declared the prohibitions on false campaign speech unenforceable and void.²³ It cannot be the basis for relief.

Thus, even if it is true that the street address for the “Haven Township people for change” is not 4230 - 45th Avenue Southeast, in St. Cloud, Minnesota, that claim would not be actionable under Fair Campaign Practices Act. Minn. Stat. § 211B.06 has been set-aside by the federal courts.

Conclusion

Because Ms. Sims-Kosloski has not alleged facts that, if accepted as true, would show a violation of the Fair Campaign Practices Act, the Complaint must be dismissed.

E. L. L.

²³ See *281 Care Committee v. Arneson*, 766 F.3d 774, 789 (8th Cir. 2014), cert. denied 135 S. Ct. 1550 (2015) (“Stated most simply, § 211B.06 does not survive strict scrutiny because it tends to perpetuate the very fraud it is allegedly designed to prohibit. For this reason, among others, the restriction is neither narrowly tailored nor necessary”).