OAH 5-0325-37463

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Tilsen,

Complainant,

vs.

Minneapolis Area DFL Senior Caucus,

Respondent.

ORDER OF DISMISSAL

On April 5, 2021, David Tilsen (Complainant) filed a campaign complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that the Minneapolis Area DFL Senior Caucus (Respondent) violated Minn. Stat. § 211B.02 (2020) (false claim of support) in connection with the November 2021 Minneapolis elections.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33, subd. 1 (2020). After reviewing the Complaint and attached exhibit, the undersigned Administrative Law Judge has determined that the Complaint fails to set forth a prima facie violation of Minn. Stat. § 211B.02.

Therefore, based on the Complaint and for the reasons set forth in the attached Memorandum, the Administrative Law Judge issues the following:

ORDER

The Complaint filed by David Tilsen against Minneapolis Area DFL Senior Caucus is **DISMISSED.**

Dated: April 8, 2021

JIM MORTENSON
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

The chair and treasurer of Respondent Minneapolis Area DFL Senior Caucus sent an email to the organization's members to encourage them to share a list of vetted candidates within the community. David Tilsen alleges in his Complaint that Respondent violated Minn. Stat. § 211B.02 because the email intentionally and falsely implied that the list of candidates vetted and endorsed by Respondent were really endorsed by the Minneapolis DFL as a whole. For the reasons explained below, the Complaint does not demonstrate a prima facie violation of Minn. Stat. § 211B.02.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Minnesota Fair Campaign Practices and Finance Acts (Minnesota Statutes chapter 211A or 211B (2020)) the complainant must allege sufficient facts to show that a violation of law has occurred.[1] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation.[2]

For the 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.[3] 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.[4]

II. Minn. Stat. § 211B.02

Minnesota Statutes, section 211B.02 provides, in relevant part:

> A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization.

[1] Minn. Stat. § 211B.32, subd. 3 (2020).
[2] *Barry and Spano v. St. Anthony-New Brighton Independent School District 282,* 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[3] *Id.*
[4] *Id.*

III. Analysis

Complainant's factual allegations are, for purposes of this determination, accepted as true. Complainant alleges Respondent sent a mass email to seniors in Minneapolis. Complainant includes what he purports to be a copy of the email in his Complaint. He also includes a copy of the sample ballot that he states was attached to the mass email. Complainant alleges the word "senior" is omitted from Respondent's name four of the five times it is mentioned in the email message. He asserts this omission was intentionally made to confuse the senior recipients of the email and to cause them to believe that the identified candidates were endorsed by the Minneapolis DFL, not the Respondent. Complainant contends that, by these actions, Respondent falsely implied endorsement by a party unit and violated Minn. Stat. § 211B.02.

The email message appears to have been sent to members of the Minneapolis Area DFL Senior Caucus. On its face, the message is a bit confusing - but, so is the political process and party organization. The Complaint demonstrates that the DFL is a multilayered and, therefore, complex organization. A caucus is a portion of the political party. (To add to the confusion, the term "caucus" also refers to a local political party process conducted at the neighborhood level.[5]) Respondent is the *Minneapolis Area* DFL Senior Caucus. Based on the email, Respondent is a member or part of the *Minnesota* DFL Senior Caucus.

The email message states that "the Minneapolis Area DFL Caucus has reviewed the candidates with the membership of our Caucus."[6] It is not clear to the objective reader whether "the Minneapolis Area DFL Caucus" is the same as the "Minneapolis Area DFL *Senior* Caucus" because "senior" is left out of the name. Further, if "the Minneapolis Area DFL Caucus" is the "Minneapolis Area DFL Senior Caucus," why would it review the screened candidates with itself? Or, is it the Caucus leadership who reviews the screened candidates and then shares the list with the membership as a whole? While this example demonstrates the confusing nature of the party organization and the struggle to clearly articulate that nature, it does not support finding an intentional false implication of endorsement on the part of Respondent.

The email's final paragraph again refers to the attached "***Minneapolis Area DFL Caucus Sample Ballot***" (bolded and italicized in original). The email closes with the name and title of the chair of the Respondent: "Ken Vreeland, Minneapolis Area DFL Seniors (sic) Caucus Chair." This would be a rather weak attempt to mislead the reader.

Finally, the attached sample ballot includes a heading indicating that it was generated by the Minnesota DFL Senior Caucus Minneapolis Area Chapter. Again, this shows the confusing nature of the party organization, not an intentional false claim of endorsement. Critically, the sample ballot also contains a disclaimer at the bottom of the page that states: "Prepared and paid for by the Minneapolis Area DFL Senior Caucus."[7]

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[5] *See* Minn. Stat. § 202A.14 (2020).
[6] Complaint (April 5, 2021).
[7] *Id.*

Given the heading and disclaimer, a reasonable person would not be led to believe the sample ballot's list of candidates is from any other organization.

IV. Conclusion

The Complaint and its attachment, the sample ballot, taken on their face, do not demonstrate the Respondent knowingly made a false claim stating or implying that the candidates listed in the sample ballot were endorsed, prior to the convention, by the Minneapolis DFL as a whole. Despite the confusing nature of the party organization and the email message, it is reasonably clear the list of candidates is endorsed by the Respondent in an effort to get them endorsed by the party as a whole at the party convention. Complainant has failed to allege sufficient facts to support finding a prima facie violation of section 211B.02. As a result, this claim is dismissed.

J. R. M.