OAH 22-0325-38768

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Winnie Martin,

Complainant,

ORDER OF DISMISSAL

vs.

Kate Agnew,

Respondent.

On October 24, 2022,[1] Winnie Martin (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Kate Agnew (Respondent) violated Minn. Stat. § 211B.02 (2022) in connection with Respondent's current campaign for a seat on the Edina City Council.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33 (2022). After reviewing the Complaint, and for the reasons explained in the attached Memorandum, the undersigned Administrative Law Judge finds that the Complaint does not establish a prima facie violation of Minn. Stat. § 211B.02, as alleged.

Therefore, the Administrative Law Judge issues the following:

ORDER

The Complaint filed by Winnie Martin against Kate Agnew is **DISMISSED**.

Dated: October 27, 2022

CHRISTA L. MOSENG
Administrative Law Judge

[1] The Complaint was submitted on October 6, 2022, but the Office of Administrative Hearings did not receive the filing fee until October 24, 2022. The Complaint was deemed filed on that day.

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 (2022), 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 (2022).

MEMORANDUM

Respondent is a candidate for the Edina City Council in the general election to be held on November 8, 2022.[2] Complainant alleges that Respondent violated Minn. Stat. § 211B.02 by using, in a paid campaign advertisement, a photograph of Respondent standing in front of Edina City Hall along alongside one current Edina City Council member and one former Edina City Council member.[3] The advertisement attached to the complaint appears below.

Figure 1: An excerpt of the relevant portion of Complaint at 4.

[2] Complaint (Oct. 25, 2022).
[3] Complaint at 2.

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient 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 be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).[5]

For purposes of a prima facie determination, this 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.[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 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 Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[8]

II. False Claim of Endorsement (Minn. Stat. § 211B.02)

Complainant alleges that Respondent's use of the photograph, described and depicted above, violated section 211B.02 by falsely, indirectly implying the support or endorsement of the City of Edina or the City Council of the City of Edina.[9] The Complaint alleges that residents recognize the few panes of glass behind Respondent as belonging to City Hall.[10]

Minn. Stat. § 211B.02 provides that a 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. To establish a prima facie violation, the Complaint must assert facts that, if true, would establish that Respondent knowingly implied that she had the endorsement of the City of Edina or the City Council of the City of Edina.

Assuming the facts alleged are true, Complainant has not alleged facts sufficient to support a finding that Respondent stated or implied support or endorsement of either the City or the City Council.

Respondent appeared in a photograph in front of several windows at City Hall with one current member of the City Council and one former member. The photograph cannot

[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 Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[8] *Barry,* 781 N.W.2d at 902.
[9] Complaint at 2.
[10] Complaint at 5.

reasonably be said to imply, directly or indirectly, endorsement by the City.[11] Even accepting that City Hall is recognizable in the photo, the facts here are clearly distinct from cases where implied claims have been found.[12] Edina City Hall is a public building. Complainant does not allege that there is a requirement to obtain permission or approval from the City to have a picture of one's self taken in front of it, to publish that picture, or to use the picture in an advertisement. The photograph in the Complaint does not imply the City's support or endorsement.

Likewise, the contents of the photograph do not directly or indirectly imply endorsement of the Edina City Council. Elected officials routinely endorse candidates and appear in photographs with them without implying the support or endorsement of the official's colleagues.[13] Appearing in a photograph in front of City Hall with one current and one former member of the Edina City Council cannot reasonably support a conclusion that Respondent knowingly implied the support of an entire multi-member body such as the Edina City Council. The facts as alleged are insufficient to support a conclusion that Respondent violated Minn. Stat. § 211B.02 by implying that she has the support or endorsement of the Edina City Council.

Because the facts alleged and reasonable inferences drawn therefrom are insufficient to prove a violation, this claim must be dismissed.

III. Conclusion

Complainant has failed to establish a prima facie violation of Minn. Stat. § 211B.02 by Respondent. The Complaint is, therefore, **DISMISSED** in its entirety.

C. L. M.

[11] The City of Edina may well have ethical rules prohibiting, for example, city employees from using city property for campaign purposes. Any such City policy, if it exists, does not bear on whether Respondent violated Minn. Stat. § 211B.02.

[12] *See, e.g., Bunday v. Campaign Committees for Minnetonka City Council Candidates Wyn Ray, et al* OAH Docket No. 65-0325-37860 (January 13, 2022) (distinguishing the facts in that case from photographs of candidates in front of city buildings where the city's association is "incidental" and "give[s] context to where the candidate is appearing or how the candidate is connected to the city").

[13] Indeed, the absence of those colleagues can imply the opposite.