OAH 22-0325-39635

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Luke Mielke,

Complainant,

v.

Michael Baskins,

Respondent.

ORDER ON RESPONDENTS' MOTION FOR SUMMARY DISPOSITION

This matter came before Presiding Administrative Law Judge Christa L. Moseng on a motion for summary disposition filed by Michael Baskins (Respondent) on December 6, 2023. The motion concerns a complaint filed under the Fair Campaign Practices Act (FCPA)[1] by Luke Mielke (Complainant) on November 15, 2023.

On December 15, 2023, Complainant filed argument opposing the motion.

Based upon the record in this matter, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge issues the following:

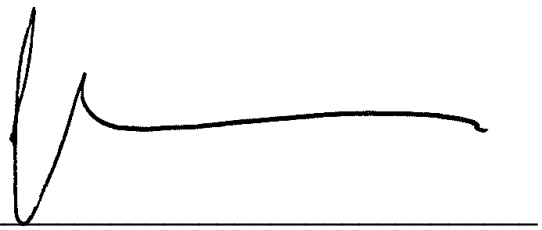
ORDER

1. Respondent's motion for summary disposition is **DENIED**.

2. The parties shall notify the Court no later than January 10, 2024, if they agree to waive the evidentiary hearing.

3. If the evidentiary hearing is not waived by both parties, a hearing in this matter will be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, on **February 7, 2024**, beginning at **9:30 a.m.**

Dated: December 22, 2023



CHRISTA L. MOSENG
Administrative Law Judge

[1] Minn. Stat. §§ 211A.01–.14, 211B.01–.37 (2022).

MEMORANDUM

I. Background

Respondent ran as a write-in candidate for the Minneapolis City Council Ward 2 seat in the general election held on November 7, 2023.[2] The Complaint alleges that during his campaign Respondent violated Minn. Stat. § 211B.04 by failing to have disclaimers on his campaign materials and campaign website.[3] In support of this claim, Complainant submitted images of Respondent's campaign flyer and screenshots of Respondent's campaign website.[4] The flyer and website promote Respondent's candidacy and appear to lack the required disclaimers.[5]

By Order dated November 20, 2023, the Administrative Law Judge found the Complaint alleged prima facie violations of Minn. Stat. § 211B.04.[6] The Judge set this matter on for a prehearing conference to be held by telephone of December 14, 2023.[7]

On December 6, 2023, Respondent filed a motion for summary disposition.[8]

II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.[9] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition.[10] A motion for summary disposition may be granted when no genuine issue of material fact exists.[11] A genuine issue is one that is not sham or frivolous, and a fact is material if resolving it will affect the result or outcome of the case.[12]

The moving party must initially show the absence of a genuine issue of material fact.[13] To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute which have a bearing on the outcome of the case.[14] The non-moving party must establish facts at issue by substantial evidence, and may not rest upon general averments or denials.[15] Evidence offered to support or defeat summary judgment must be such evidence as would be admissible at trial,[16] though the

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[2] Complaint (Nov. 15, 2023).
[3] *Id*.
[4] *Id.*, at attachments 1-2 (images of flyer), 3 (images of website).
[5] *Id*.
[6] Prima Facie Order.
[7] *Id*.
[8] Respondent's Motion for Summary Disposition (Dec. 6, 2023).
[9] *Pietsch v. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. 1400.5500(K) (2023).
[10] Minn. R. 1400.6600 (2023); Minn. R. Civ. P. 56.
[11] *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).
[12] *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641 (Minn. 1974).
[13] Minn. R. Civ. P. 56.03; *Anderson v. Dept. of Natural Resources*, 693 N.W.2d 181, 191 (Minn. 2005).
[14] Minn. R. Civ. P. 56.05; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).
[15] Minn. R. Civ. P. 56.05; *DLH*, 566 N.W.2d at 70.
[16] *Hopkins by LaFontaine v. Empire Fire & Marine Ins., Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991).

evidence presented need not be in a form that would be admissible.[17] "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial."[18]

When considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the non-moving party, and doubts and factual inferences must be resolved against the moving party.[19] The trial court's function is not to decide the facts at issue, but to determine whether a genuine dispute of fact exists.[20]

III. Analysis

Respondent argues that Complainant lacks standing to file a complaint under the FCPA because Complainant does not reside in Minneapolis. Respondent asserts that Complainant resides in St. Paul, Minnesota.[21] Respondent contends that to have standing to bring a campaign complaint, a complainant must demonstrate a cognizable injury caused by Respondent's alleged violation of Minn. Stat. § 211B.04. According to Respondent, only a resident of Minneapolis would have a potential injury sufficient for standing to file a complaint regarding alleged violations of election laws related to a Minneapolis election.

Respondent's argument is unavailing. The issue of standing typically arises in civil actions in district court. In such a case, a plaintiff must have "a sufficient stake in a justiciable controversy to seek relief from a court."[22] The FCPA does not limit who may file a complaint or seek relief. The Act states only that a complaint "must be in writing, submitted under oath, and detail the factual basis for the claim that a violation of law has occurred."[23] Moreover, the state courts have rejected standing challenges and construed the right to file a campaign complaint broadly, in line with the statute's public purpose of election integrity.[24] In *Niska v. Clayton*, the Minnesota Court of Appeals held that the legislature intended "at the very least that 'any eligible voter' may file a complaint under chapter 211B."[25]

Because there is no requirement that Complainant be a resident of Minneapolis to file a complaint under the FCPA regarding a Minneapolis election, Respondent's motion for summary disposition must be denied.

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[17] *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989).
[18] *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).
[19] *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).
[20] *Id.* at 664 (citing *DLH*, 566 N.W.2d 60 at 70).
[21] *But see* Complaint (Nov. 15, 2023) (providing a Minneapolis Post Office Box as Complainant's address).
[22] *Enright v. Lehmann*, 735 N.W.2d 326, 329 (Minn. 2007).
[23] Minn. Stat. § 211B.32, subd. 2.
[24] *See generally City of Grant v. Smith,* 2017 WL 957717 at *4 (Minn. Ct. App. 2017) (unpublished) (rejecting standing argument and noting the FCPA does not place limits on who may file a complaint); *Niska v. Clayton*, 2014 WL 9026880, at *3 (Minn. Ct. App. 2014) (unpublished) (finding the FCPA does not restrict who may file a complaint and noting that the legislature elsewhere provides that any eligible voter may contest an election).
[25] *Niska*, 2014 WL 9026880 at *3.

IV. Conclusion

The Administrative Law Judge finds that Complainant has the requisite standing to file a Complaint under the FCPA. Respondent's motion for summary disposition is, therefore, **DENIED**.

C. L. M.