OAH 24-0325-40364

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Kevin Query,

Complainant,

vs.

Fletcher William Lewis,

Respondent.

ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT

On October 11, 2024, Kevin Query (Complainant) filed a Fair Campaign Practices Act Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Fletcher William Lewis (Respondent) violated Minn. Stat. §§ 211B.04 and 211B.06 (2024) in connection with a campaign for election to the Independent School District 181 School Board to be held on November 5, 2024.[1]

After reviewing the Complaint, the undersigned Judge has determined that the Complaint does not set forth a prima facie violation of Minn. Stat. § 211B.04, and the Judge cannot provide relief pursuant to Minn. Stat. § 211B.06. For the reasons detailed in the Memorandum below, the alleged violations of Minn. Stat. §§ 211B.04 and 211B.06 are dismissed.

Based upon the Complaint and the supporting filings, and for the reasons set out in the accompanying Memorandum, the Judge now hereby issues the following:

ORDER

The Complaint filed by Kevin Query against Fletcher William Lewis is **DISMISSED**.

Dated: October 16, 2024

KRISTIEN R. E. BUTLER
Assistant Chief Administrative Law Judge

[1] Complaint at 2.

MEMORANDUM

The Complaint in this case arises out of the upcoming election for the Independent School District 181 School Board to take place on November 5, 2024.[2] The Respondent's connection to this campaign is unclear.[3] The Complainant alleges that a brochure that "appears to have been prepared by or on behalf of the Respondent" violates Minn. Stat. §§ 211B.04 and 211B.06, and was "distributed by the Respondent at the Homecoming football game, a veterans recognition event, and is continuing to be disseminated within the community in which eligible voters reside."[4]

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.[5] 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 (2024).[6]

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.[7] 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.[8]

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.[9]

II. Campaign Material Must Include Disclaimer (Minn. Stat. § 211B.04)

The Complainant first alleges that the Respondent violated Minn. Stat. § 211B.04, which provides, in relevant part:

> (a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

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[2] *Id.*
[3] *Id*.
[4] *Id*.
[5] *See* Minn. Stat. § 211B.32, subd. 3.
[6] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[7] *Id*.
[8] *Abrahamson v. St. Louis Cty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).
[9] *Barry,* 781 N.W.2d at 902.

> (b) Except in cases covered by paragraph (c), the required form of disclaimer is: "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.

The Complaint relies upon a brochure related to the Brainerd School Board election, which urges readers to vote for Jody Kalenberg, Mike Stromberg, and Stephanie Etterman.[10] The brochure does not include a disclaimer as required by Minn. Stat. § 211B.04.[11] However, the Complaint does not include any evidence or allege any facts that, if accepted as true, would be sufficient to prove that it was the Respondent who violated Minn. Stat. § 211B.04. The Complaint merely alleges that the brochure "appears to have been prepared by or on behalf of the Respondent." This is insufficient to meet the prima facie standard.

Minn. Stat. § 211B.04 applies to "a person who participates in the preparation or dissemination of campaign material." However, the brochure does not contain any visible connection to the Respondent, despite the Complainant claiming that the brochure "appears" to have been prepared by or on behalf of the Respondent.[12] Rather than being a concrete allegation of the Respondent's conduct, the use of the word "appears" by the Complainant equally suggests that the Respondent may not actually be responsible for this brochure. The Complaint does not establish why the Complainant has reason to believe the Respondent was involved with the creation or dissemination of the document, nor does it make any connection between the Respondent and the candidates in the brochure.[13]

Minn. Stat. § 211B.32, subd. 3 (2024), expressly requires that a complaint alleging a violation of chapter 211A or 211B must "detail the factual basis for the claim that a violation of law has occurred." The Complaint lacks significant details in its factual basis, instead making vague allegations about the Respondent's participation in disseminating the brochure. Even accepting the Complainant's unsubstantiated allegations about the Respondent as true, these allegations would be insufficient to prove a violation of Minn. Stat. § 211B.04 by a preponderance of the evidence.[14] Accordingly, the claim brought pursuant to Minn. Stat. § 211B.04 is dismissed.

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[10] Exhibit (Ex.) A.
[11] Ex. A.
[12] Complaint at 2; Ex. A.
[13] Complaint at 2.
[14] "The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence." Minn. Stat. § 211B.32, subd. 4 (2024).

III. False Campaign Material (Minn. Stat. § 211B.06)

Next, the Complaint alleges that the brochure in question violates Minn. Stat. § 211B.06 by containing false information.[15] Minn. Stat. § 211B.06 has been invalidated as unconstitutional by the federal courts. In 2014, the United States Court of Appeals for the Eighth Circuit determined that, consistent with First Amendment guarantees of free speech, the statute is not narrowly constructed.[16] Accordingly, the court declared the prohibitions on false campaign speech set forth in Minn. Stat. § 211B.06 as being unenforceable and void.[17]

Given this statute cannot lawfully provide a basis for relief, the claims brought pursuant to Minn. Stat. § 211B.06 are dismissed.

IV. Conclusion

Based on the foregoing, the Judge finds that the Complainant has not set forth a prima facie violation of Minn. Stat. § 211B.04 on the part of the Respondent, and that Minn. Stat. § 211B.06 is unenforceable and void. Accordingly, the Complaint is **DISMISSED**.

K. R. E. B.

[15] Complaint at 2.
[16] *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.").
[17] *Id.*