OAH 22-0325-40386

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Todd Smith,

Complainant,

vs.

City of Fairmont,

Respondent.

ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT

On October 21, 2024, Todd Smith (Complainant) filed a Fair Campaign Practices Act Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that City of Fairmont (Respondent) violated Minn. Stat. §§ 211B.07 and 211B.075 (2024) in connection with a campaign for election to the Fairmont City Council, Ward 4 to be held on November 5, 2024.[1]

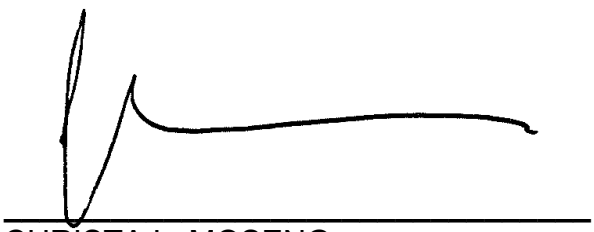
After reviewing the Complaint, the undersigned Administrative Law Judge has determined that the Complaint does not set forth a prima facie violation of Minn. Stat. § 211B.07, and the Judge cannot provide relief for a violation alleged under Minn. Stat. § 211B.075. For the reasons detailed in the Memorandum below, the alleged violations of Minn. Stat. §§ 211B.07 and 211B.075 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 Todd Smith against City of Fairmont is **DISMISSED**.

Dated: October 23, 2024



CHRISTA L. MOSENG
Administrative Law Judge

[1] Complaint at 1-2.

MEMORANDUM

The Complaint in this case arises out of the upcoming election for the Fairmont City Council, Ward 4, to take place on November 5, 2024.[2] Complainant is running for a position on the Fairmont City Council.[3] The Complaint alleges that Respondent has violated Minn. Stat. §§ 211B.07 and 211B.075.[4]

Complainant alleges that on October 10, 2024, the City of Fairmont, through the city administrator, sent Complainant a cease-and-desist letter that Complainant feels was intended to smear his character.[5] Complainant similarly alleges that on October 11, 2024, Jay Maynard, a city council member, posted several inaccurate and false claims about Complainant on his Facebook page that are damaging the Complainant's campaign.[6] The Complaint also mentions that during city council meetings that took place on September 23, 2024 and October 14, 2024, vague comments were made by the city administrator and a city council member about safety measures needing to be taken at city hall.[7]

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.[8] 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 or 211B.01-.37 (2024).[9]

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.[10] 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.[11]

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 or 211B.01-.37.[12]

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[2] *Id.*
[3] *Id*.
[4] *Id.* at 1.
[5] *Id*. at 2-3, 13-15. The Judge notes that attached to the Complaint is a "Notice of Restricted Access," which references a cease-and-desist letter.
[6] *Id.* at 2-3, 10-11.
[7] *Id.* at 2-3, 12.
[8] Minn. Stat. § 211B.32, subd. 3.
[9] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[10] *Id*.
[11] *Abrahamson v. St. Louis Cty. Sch. Dist*., 819 N.W.2d 129, 136 (Minn. 2012).
[12] *Barry,* 781 N.W.2d at 902.

II. Undue Influence on Voters (Minn. Stat. § 211B.07)

Minn. Stat. § 211B.07 provides:

> A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

Minn. Stat. § 211B.32, subd. 3, 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." Additionally, in *Menne v. Phillips*, the Minnesota Court of Appeals held that in order to find a violation of section 211B.07, there must be a clear nexus between the coercive behavior and casting a ballot in a particular way.[13] While Complainant alleges several facts regarding the Respondent's actions and their effect on his campaign, the Complainant does not detail any factual basis for how these actions violate Minn. Stat. § 211B.07.[14]

Specifically, Complainant does not allege that the Respondent used or made threats to use any of the actions prohibited by the statute to compel an individual to vote for or against a candidate or ballot question.[15] Even accepting Complainant's allegations about Respondent as true, these allegations would be insufficient to prove a violation of Minn. Stat. § 211B.07 by a preponderance of the evidence.[16] Accordingly, the claim under Minn. Stat. § 211B.07 is dismissed.

III. Intimidation and Interference with the Voting Process (Minn. Stat. § 211B.075)

Minn. Stat. § 211B.075 prohibits intimidation, deceptive practices, and interference with registration or voting. Minn. Stat. § 211B.075, subd. 5, provides a criminal penalty and civil remedies for violations of the section. Importantly, however, Minn. Stat. § 211B.075, subd. 5(d), provides that "[t]he complaint process provided in sections 211B.13 to 211B.36 does not apply to violations of this section." The Office of Administrative Hearings' jurisdiction to hear complaints alleging violations of chapter 211A and 211B is limited and excludes alleged violations of section 211B.075.[17]

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[13] *Menne v. Phillips*, No. A07-0564, 2008 WL 2102721 at *2–3 (Minn. Ct. App. May 20, 2008).
[14] *See* Complaint.
[15] *Id.*
[16] "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.
[17] Minn. Stat. § 211B.32, subd. 1(a), (c).

Because the Office of Administrative Hearings is unable to adjudicate claims under Minn. Stat. § 211B.075, the claim brought under Minn. Stat. § 211B.075 is dismissed.

IV. Conclusion

Based on the foregoing, the Administrative Law Judge finds that Complainant has not set forth a prima facie violation of Minn. Stat. § 211B.07 on the part of Respondent and that the Office of Administrative Hearings is unable to adjudicate claims under Minn. Stat. § 211B.075. Accordingly, the Complaint is **DISMISSED**.

C. L. M.