OAH 65-0325-40406

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Stacy Grey,

Complainant,

vs.

Lakers4Change,

Respondent.

ORDER FINDING NO PRIMA FACIE VIOLATION AND DISMISSING COMPLAINT

On October 30, 2024, Stacy Grey (Complainant) filed a Fair Campaign Practices Act Complaint (Complaint) with the Office of Administrative Hearings. The Complaint alleges that Lakers4Change (Respondent) violated Minn. Stat. §§ 10A.12, 10A.14, 211B, and 211B.04 (2024) in connection with a campaign for election to the Prior Lake-Savage School Board and an Independent School District No. 719 referendum question in an election to be held on November 5, 2024.[1]

After reviewing the Complaint, the undersigned Administrative Law Judge determines that the Complaint does not set forth a prima facie violation of Minn. Stat. §§ 211B or 211B.04, and the Office of Administrative Hearings does not have jurisdiction to decide violations of Minn. Stat. § 10A. For the reasons detailed in the Memorandum below, the Complaint is dismissed.

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

ORDER

The Complaint filed by Stacy Grey against Lakers4Change is **DISMISSED**.

Dated: October 31, 2024

ANN C. O'REILLY
Administrative Law Judge

[1] Complaint at 1.

MEMORANDUM

The Complaint arises out of the upcoming election for Prior Lake-Savage School Board and ballot question on an Independent School District No. 716 referendum, which will take place on November 5, 2024.[2] The Complaint alleges that Respondent Lakers4Change is a political committee that was formally terminated but continues to engage in campaign activity, including making expenditures totaling approximately $3,000.[3] Complainant alleges that Respondent violated: (1) Minn. Stat. § 10A.12 by making unlawful campaign expenditures; (2) Minn. Stat. § 10A.14 by failing to re-register as a political committee; (3) Minn. Stat. ch. 211B due to an unidentified "potential misrepresentation"; and (4) Minn. Stat. § 211B.04 by failing to include a required disclosure on unidentified campaign material.[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. Unlawful Campaign Expenditures (Minn. Stat. §§ 10A.12 and 10A.14)

The Complaint alleges that Respondent made unlawful campaign expenditures in violation of Minn. Stat. § 10A.12 and failed to register as a political committee in violation of Minn. Stat. § 10A.14. The Office of Administrative Hearings has jurisdiction to hear campaign complaints brought under Minn. Stat. ch. 211A and 211B, but not violations arising under Minn. Stat. ch. 10A.[10] Accordingly, Complainant's claims of violations of Minn. Stat. § 10A.12 and .14 are dismissed.

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[2] *Id*.
[3] *Id.* at 2-10.
[4] *Id.* at 1-2.
[5] 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.
[10] The Campaign Finance and Public Disclosure Board regulates claimed violations of law arising under Minn. Stat. ch. 10A. *See* Minn. Stat. § 10A.02, subd. 8.

III. Potential Misrepresentation (Minn. Stat. § 211B)

The Complaint alleges that Respondent violated Minn. Stat. § "211B" due to a "potential misrepresentation."[11] The Complaint does not identify which section of Minn. Stat. ch. 211B was allegedly violated or what the "potential misrepresentation" is.

Minn. Stat. § 211B.32 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 does not detail any factual basis for this violation or point to what section of Minn. Stat. ch. 211B has been violated specifically.[12]

This allegation most closely fits Minn. Stat. § 211B.06, which 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.[13] Accordingly, the court declared the prohibitions on false campaign speech set forth in Minn. Stat. § 211B.06 as being unenforceable and void.[14]

Regardless of the section of Minn. Stat. ch. 211B that the Complainant may have been hoping to invoke, the Complaint does not affirmatively allege that the Respondent made any misrepresentation. Instead, Complainant speculates that there was a "potential misrepresentation" with no stated factual basis to support the allegation.[15] Even accepting Complainant's allegations as true, there is insufficient evidence to establish a prima facie violation of any section of Minn. Stat. § 211B.[16] Accordingly, Complainant's general claim under Minn. Stat. ch. 211B is dismissed.

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

Finally, the Complaint alleges that Respondent violated Minn. Stat. § 211B.04 by failing to "disclose on campaign literature."[17]

Minn. Stat. § 211B.04 requires any person who participates in the preparation or dissemination of "campaign material" to 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 by the statute.[18] "Campaign material" is defined as "any literature, publication, or material that is disseminated for the purpose of influencing voting

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[11] Complaint at 1-2.
[12] *See* Complaint.
[13] *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.").
[14] *Id.*
[15] Complaint at 2.
[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] Complaint at 2.
[18] Minn. Stat. § 211B.04.

at a primary or other election, except for news items or editorial comments by the news media."[19] Minn. Stat. § 211B.04, subd. 4 notes that the requirements of this statute are satisfied if the disclaimer required in subdivisions 1 or 2 appears on the home page of a website.

The Complaint does not identify the campaign material that allegedly lacks the required disclosure.[20] Attached to the Complaint appears to be pages from the Lakers4Change.com website (although that is not particularly evident from the filing).[21] Even assuming that these website page printouts are the literature that Complainant is referring to in her Complaint, the documents are insufficient to support a prima facie violation of Minn. Stat. § 211B.04. The Complaint does not allege that the documents show the home page of the website or that the home page lacks the required disclaimer.[22] As a result, the claim under Minn. Stat. § 211B.04 is dismissed.

V. Conclusion

Based on the foregoing, the Administrative Law Judge finds that Complainant has not set forth prima facie violations of Minn. Stat. §§ 211B or 211B.04. In addition, the Office of Administrative Hearings lacks jurisdiction to hear claims under Minn. Stat. ch. 10A. Accordingly, the Complaint is **DISMISSED** in its entirety.

It is not the Administrative Law Judge's duty to attempt to decipher a complaint and determine what violations a complainant may be attempting to articulate. Because the Complainant did not allege facts to support a claim, did not investigate to determine the proper venue for certain claims, and did not identify a particular law allegedly violated with respect to the "potential misrepresentation" claim, the Complaint is frivolous. Complainant is put on notice that future frivolous complaints could subject Complainant to the imposition of costs and/or attorneys' fees.[23]

A. C. O.

[19] Minn. Stat. § 211B.01, subd. 2.
[20] *See* Complaint.
[21] Complaint at 6, 11-15.
[22] Minn. Stat. § 211B.32, subd. 4.
[23] *See* Minn. Stat. § 211B.36, subd. 3.