

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Joanie Clausen,

Complainant,
vs.

ORDER FINDING
NO PRIMA FACIE VIOLATION AND
DISMISSING COMPLAINT

Star Tribune, Paula Pentel,
DeDe Scanlon, Blair Tremere,

Respondents.

On November 20, 2009, Joanie Clausen filed a Complaint with the Office of Administrative Hearings alleging that the Star Tribune, Paula Pentel, DeDe Scanlon, and Blair Tremere violated Minnesota Statutes §§ 211B.05 (paid advertisements), 211B.11 (election day prohibitions), 211B.13 (accepting prohibited corporate contribution) and 211B.15 (prohibited corporate contributions) in connection with the November 3, 2009, election for Golden Valley City Council.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 20, 2009, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondents on November 20, 2009.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth *prima facie* violations of Minnesota Statutes §§ 211B.05, 211B.11, 211B.13 and 211B.15.

ORDER

IT IS ORDERED:

That the Complaint filed by Joanie Clausen against the Star Tribune, Paula Pentel, DeDe Scanlon and Blair Tremere is **DISMISSED**.

Dated: November 23, 2009

/s/ Kathleen D. Sheehy
KATHLEEN D. SHEEHY

Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this Order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.6.

MEMORANDUM

The Complainant, Joanie Clausen, ran unsuccessfully for a seat on the Golden Valley City Council in the November 3, 2009, election. The Respondents Paula Pentel, DeDe Scanlon, and Blair Tremere were also candidates for Golden Valley City Council. Paula Pentel and DeDe Scanlon, both incumbents, received the most votes and were re-elected to new terms on the Golden Valley City Council.

According to the Complaint, campaign flyers promoting Respondents Pentel, Scanlon and Tremere were included with the Saturday October 31st edition of the *Star Tribune* newspaper that was delivered to homes in Golden Valley. The campaign flyers were printed on 8 ½ x 11 paper, and there was one for each of the three candidates. The Complaint alleges that the advertising rate charged by the *Star Tribune* for each campaign flyer was \$630.

On election day, Tuesday, November 3, 2009, the *Star Tribune* re-published ¼ page versions of the campaign advertisements in the paper for each of the three candidates to correct an error with the previously published flyers. It is not clear from the Complaint what the error was as the advertisements appear to be identical to the flyers. Nevertheless, a disclaimer at the bottom of each advertisement states: "This ad has been published by the Star Tribune due to an error with a previously published advertisement."

The Complainant alleges that by reprinting the advertisements at no cost to the three candidates, the *Star Tribune* violated Minn. Stat. § 211B.05, which requires newspapers to charge all candidates the same rates for advertising, and Minn. Stat. § 211B.15, which prohibits corporations from contributing anything of monetary value to a candidate. The Complainant alleges that the typical rate charged for a ¼ page advertisement in the *Star Tribune* is \$3,992.63. The Complainant also alleges that by accepting the re-publication of the advertisements, Respondents Pentel, Scanlon and Tremere violated Minn. Stat. § 211B.13, which prohibits candidates from knowingly accepting corporate contributions. Finally, the Complainant suggests that *Star Tribune* newspapers with the advertisements may have been "placed in or around" polling places on election day in violation of Minn. Stat. § 211B.11. This statute prohibits persons from displaying campaign material within a polling place or within 100 feet of the building in which a polling place is situated on election day.

The Administrative Law Judge finds that the Complainant has failed to allege specific facts to support any of her allegations. The mere fact that the *Star Tribune* apparently re-published Respondents' campaign advertisements to correct an error made in distributing the original flyers is not evidence that the *Star Tribune* charged candidates different rates for advertising, in violation of Minn. Stat. § 211B.05. The Complainant has made no showing that she was charged a different rate than the Respondents or that the republication of the advertisements was not a legitimate response to an error by the newspaper in distributing the flyers. This allegation is dismissed.

Likewise, the Complainant fails to allege facts sufficient to conclude that the *Star Tribune* provided the Respondents with a prohibited corporate contribution, in violation of Minn. Stat. § 211B.15. Nor can the "receipt" of the re-published advertisements be viewed as accepting a prohibited corporate contribution, in violation of Minn. Stat. § 211B.13, subd. 2, in absence of any facts suggesting the re-publication was a prohibited contribution.

Finally, the Complainant's speculation that copies of the *Star Tribune* may have been placed in and around polling places is completely lacking any factual basis. Absent some allegation that a person displayed the newspaper advertisements in or around a polling place, this claimed violation of Minn. Stat. § 211B.11 must be dismissed.

The Complaint is dismissed in its entirety.

K.D.S.