

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Douglas W. Erickson,
Complainant,
vs.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

Education Minnesota Local 1406,
Respondent.

The above-entitled matter came on for an evidentiary hearing on May 10, 2010, before a panel of three Administrative Law Judges: Beverly Jones Heydinger (Presiding Judge), Kathleen D. Sheehy, and James F. Cannon. The hearing record closed at the conclusion of the Complainant's case.

James Magnuson, Attorney at Law, Mohrman & Kaardal, P.A., appeared on behalf of Douglas W. Erickson (Complainant).

Meg Luger-Nikolai, Attorney at Law, Education Minnesota, appeared on behalf of Education Minnesota Local 1406 (Respondent).

STATEMENT OF ISSUE

Did Respondent violate Minn. Stat. § 211B.06 by preparing and disseminating false campaign material relating to Independent School District 2142's bond referendum election that occurred on December 8, 2009?

The panel dismissed the Complaint at the conclusion of the Complainant's case because the evidence was insufficient to prove that the Respondent made a false statement of fact, in violation of Minn. Stat. § 211B.06.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. On December 8, 2009, the St. Louis County School District (ISD 2142 or District) held a special election on a bond referendum. The referendum passed with 52 percent of the vote.¹

2. Complainant is a resident of ISD 2142 who opposed the bond referendum and voted against it.²

¹ Ex. 8.

² Testimony of Douglas Erickson.

3. Respondent is the local chapter of Education Minnesota, the state teachers' union.

4. The bond referendum was controversial, and the special election generated much public discussion and debate.³

5. On September 9, 2009, the ISD 2142 School Board met to consider various consequences and options if district voters did not pass the referendum. The Board concluded that dissolution of the school district would be the inevitable result if the referendum were to fail.⁴ It was the District's position that if the District were dissolved, the District's students would have to attend school in neighboring districts, most of which are taxed at higher rates. The District did not claim that individual property taxes would go down if the referendum passed.⁵

6. In its September/October 2009 newsletter, the District explained its position as follows:

If passed, the implementation [of the referendum] would be funded by a property tax increase of \$14 per month for every \$100,000 of home value, less homestead and other tax credits, for the next 20 years.

However, if residents vote no, their taxes will most likely still increase – in some cases by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.

Yet everyone will be impacted, even if you don't have students in the public schools. You'll then be paying the taxes of the nearest district. Right now, our taxes in the St. Louis County School District – at \$68 annually for a \$100,000 home – are significantly lower than they are in neighboring districts.⁶

7. In its December 2009 newsletter, the District again explained the tax impact of the bond referendum in a section entitled "Here's how your taxes will be impacted. Approval keeps your taxes lower than the regional average." The newsletter included a bar graph depicting the 2010 school property taxes paid in 18 nearby school districts. The chart indicated that residents of ISD 2142 paid the lowest amount of taxes of the 19 districts surveyed. The chart explicitly explained in bulleted statements: "Long Range

³ Test. of D. Erickson.

⁴ Ex. 8, p. 4-5.

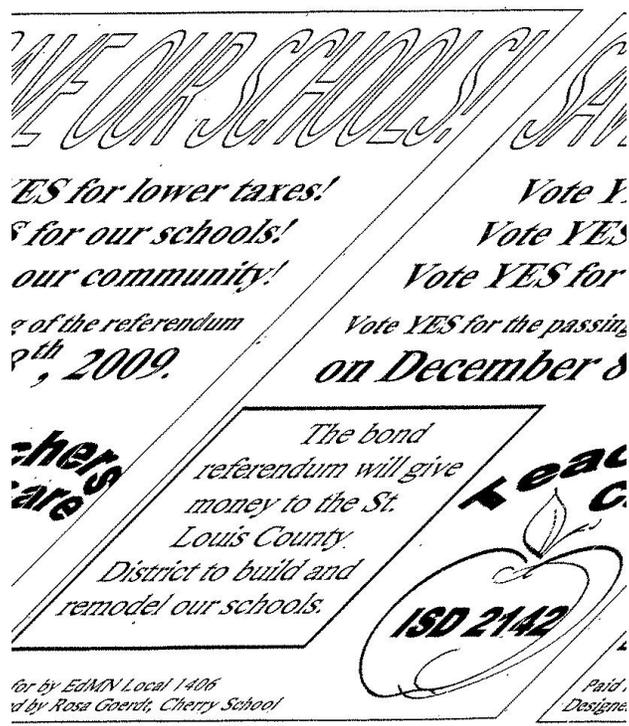
⁵ *Id.*

⁶ Ex. 7, p. 5.

Plan Tax Impact: Added tax impact of Bond Referendum = \$164/year per \$100,000 Home.”⁷

8. The District published a sample ballot in the Cook News Herald on November 26, 2009. The sample ballot set out the text of the referendum. Underneath the ballot question, the ballot stated in bold, “By voting ‘yes’ on this ballot question, you are voting for a property tax increase.”⁸

9. In the days before the election, Respondent published the following advertisement in four local newspapers urging people to vote for the referendum:⁹



10. The Complainant did not see the advertisement before the election. He saw it after the election when he was investigating what he believed to be voting irregularities that took place on election day. He asserts that the statement “Vote YES for lower taxes!” is false because it implies that passage of the referendum would decrease property taxes for District residents. The Complainant’s own property taxes increased by approximately \$500 in 2010 as a result of the passage of the referendum.¹⁰

Based upon the foregoing Findings of Fact, the panel makes the following:

⁷ Ex. 6, p. 2.

⁸ Ex. 1.

⁹ See Exs. 1-4, 9.

¹⁰ Test. of D. Erickson; Ex. 10.

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Campaign material is defined to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”¹¹ The newspaper advertisements prepared and disseminated by Respondent are campaign material within the meaning of that statute.¹²

3. Minn. Stat. § 211B.06, subd. 1, provides:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

4. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.¹³

5. The Complainant has failed to demonstrate by clear and convincing evidence that the Respondent made a false statement of fact in violation of Minn. Stat. § 211B.06.¹⁴

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel makes the following:

¹¹ Minn. Stat. § 211B.01, subd. 2.

¹² See Exs. 1-4.

¹³ Minn. Stat. § 211B.32, subd. 4.

¹⁴ See *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006), citing *Chafoulias v. Peterson*, 668 N.W.2d 642, 654-65 (Minn. 2003) (interpreting the “reckless disregard” standard to require a defendant to have made a statement while subjectively believing that the statement is probably false.)

ORDER

IT IS ORDERED:

That Respondent did not violate Minnesota Statutes § 211B.06 as alleged in the Complaint, and therefore the Complaint is DISMISSED.

Dated: May 18, 2010

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Presiding Administrative Law Judge

s/Beverly Jones Heydinger for
KATHLEEN D. SHEEHY
Administrative Law Judge

s/James F. Cannon
JAMES F. CANNON
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Complainant alleges that Education Minnesota Local 1406 falsely stated in campaign material that property taxes would be lowered if the school bond referendum passed, in violation of Minn. Stat. § 211B.06. Minn. Stat. § 211B.06 prohibits the preparation and dissemination of false campaign material. According to § 211B.06, a person must not intentionally participate in the preparation or dissemination of campaign

material that the person knows is false or communicates with reckless disregard of whether it is false. A complainant must prove by clear and convincing evidence that the statement is false. A complainant must also demonstrate that the respondent made the statement while subjectively believing that the statement was probably false, or published the statement with reckless disregard of its truth or falsity.¹⁵

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact. It is not intended to prevent criticism of candidates or to prevent unfavorable deductions or inferences derived from a candidate's conduct. The statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading. Section 211B.06 does not regulate unfavorable deductions, inferences, unfair characterizations, or misleading remarks. The statute prohibits only false statements of specific fact.¹⁶

The Minnesota Supreme Court's discussion of this standard in *Kennedy v. Voss* is instructive.¹⁷ In that case, an incumbent County Commissioner complained that his opponent disseminated literature which unfairly characterized his support for programs serving the elderly. The challenger, citing the incumbent Commissioner's vote against the entire County Budget, which included funding for programs serving the elderly as well as many other appropriations, asserted that the incumbent "is not a supporter of programs for the elderly."¹⁸ The incumbent maintained that there were other votes, not cited in the challenger's literature, which made the incumbent's support of the referenced programs clear. The Minnesota Supreme Court held that inferences based on fact did not come within the purview of the statute even if the inferences are "extreme and illogical."¹⁹ The Court pointed out that the public is protected from such extreme inferences by the campaign process itself.²⁰

The statement at issue here is "Save our schools! Vote yes for lower taxes!....Vote yes for the passing of the referendum on December 8, 2009." The Complainant argues that the statement is false because his property taxes increased after the referendum passed; they were not lowered as a result of the referendum. Complainant points out that the sample ballot published in the Cook News Herald on November 26, 2009, stated clearly that "by voting "yes" on [the referendum question], you are voting for a property tax increase." Therefore, he argues, it was false for Respondent to state that property taxes would be lowered if the referendum were to pass.

¹⁵ See *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006).

¹⁶ See *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute).

¹⁷ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981).

¹⁸ *Id.* at 300.

¹⁹ *Id.*

²⁰ *Id.*

The panel concludes that the statement is not false within the meaning of § 211B.06. It was the District's position that if the referendum did not pass, the District would need to dissolve, and the District's students would be required to attend neighboring school districts, most of which are taxed at significantly higher rates than District 2142. The District explained its position in depth in its September/October 2009 and December newsletters. The District also provided comprehensive graphs of the tax rates of the 18 neighboring school districts in the newsletters. The District's position that residents' taxes would actually increase if the referendum failed was well established throughout the debate and discussion of the referendum. The Complainant has no evidence to suggest that the District's statements about the consequences of failure to pass the referendum were false.

Although the Respondent's statement "Vote yes for lower taxes" is incomplete and somewhat misleading, in that it does not make clear that voting yes meant that taxes would be lower than other school districts in the region, it is not false within the meaning of § 211B.06. Moreover, it is apparent from the record that the debate was framed within the community as how best to limit the size of a virtually inevitable increase in taxes, whether paid to ISD 2142 or to another neighboring district. Because the evidence presented at the hearing was insufficient to prove by clear and convincing evidence that the statement is a false statement of fact, the panel granted the Respondent's motion to dismiss the complaint at the close of the Complainant's case.

Respondent also moved for an award of attorneys' fees. Pursuant to Minn. Stat. § 211B.36, subd. 3, the panel may order a Complainant to pay the Respondent's reasonable attorney's fees and costs if the panel determines the complaint was frivolous. A frivolous claim is one that is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law.²¹ Here the complaint was found to state a prima facie violation of Minn. Stat. § 211B.06. The fact that the Complainant was not able to meet his burden of proving the case by clear and convincing evidence does not render his complaint frivolous. Therefore, Respondent's request for attorney's fees is denied.

B.J.H., K.D.S., J.F.C.

²¹ *Maddox v. Department of Human Services*, 400 N.W.2d 136, 139 (Minn. App. 1987).