7-0325-22113-CV

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Elizabeth Sletten,

Complainant,

vs.

DISMISSAL ORDER

Marvin Koppen,

Respondent.

TO: Parties

The above-entitled matter came on for a probable cause hearing before Administrative Law Richard C. Luis on June 16, 2011, to consider a campaign complaint filed by Elizabeth Sletten on June 13, 2011. The probable cause hearing was conducted by telephone conference call. The record closed on June 16, 2011.

Elizabeth Sletten (Complainant) appeared on her own behalf without counsel. Jack Clinton, Attorney at Law, appeared on behalf of Marvin Koppen (Respondent).

Based on the record and all of the proceedings in this matter, and for the reasons stated in the attached Memorandum, the Administrative Law Judge finds that there is not probable cause to believe that the Respondent violated Minn. Stat. § 211B.02.

ORDER

IT IS HEREBY ORDERED that the Complainant has failed to demonstrate probable cause to believe that the Respondent violated Minn. Stat. § 211B.02 in connection with his 2011 campaign for re-election to the Maplewood City Council. Accordingly, the Complaint is DISMISSED.

Dated: June 17, 2011

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Complainant Elizabeth Sletten is a candidate in the August 9, 2011, primary election for Maplewood City Council. The Respondent, Marvin Koppen, is a current member of the Maplewood City Council. He ran unsuccessfully for Mayor of Maplewood in 2009, and was elected to the City Council in a special election in 2010. Mr. Koppen received the Maplewood DFL endorsement for City Council in 2010. He is currently seeking reelection to the Maplewood City Council.[1]

On June 13, 2011, Ms. Sletten filed a Campaign Complaint alleging that Mr. Koppen violated several provisions of the Fair Campaign Practices Act including, Minn. Stat. §§ 211B.02 (false claim of endorsement), 211B.06 (false campaign material), and 211B.07 (undue influence), in connection with campaign material promoting his candidacy. By Order dated June 15, 2011, the Administrative Law Judge dismissed all of the Complainant's allegations for failure to establish *prima facie* violations except for the claim that Mr. Koppen violated Minn. Stat. § 211B.02 by falsely stating or implying that he had the Maplewood DFL endorsement. The Administrative Law Judge allowed that claim to proceed to a probable cause hearing.

The Complainant alleges that Mr. Koppen's current campaign website lists endorsements, including the "Maplewood DFL."[2] The Complainant points out that the Maplewood DFL endorsing convention was held on June 16, 2011, after this web posting. The Complainant also notes that under the DFL Bylaws endorsements for any endorsee terminate upon the swearing in for office.[3] Therefore, based on the DFL By-Laws, Mr. Koppen's DFL endorsement for his 2010 campaign terminated whenever he took office. The Complainant contends that by posting on his website that he was

[1] Mr. Koppen previously served on the Maplewood City Council for 12 years until he lost his bid for re-election in 2005.
[2] Ex. 2 (Attachment 7).
[3] Ex. 3.

endorsed by the Maplewood DFL, Mr. Koppen has falsely stated or implied he has a major political party or party unit's endorsement for the 2011 election in violation of Minn. Stat. § 211B.02.

At the probable cause hearing, Ms. Sletten also argued that the Respondent's listing as an "endorsed candidate" on the current Senate District 55 (SD 55) DFL website, constitutes another violation of Minn. Stat. § 211B.02. Mr. Koppen is listed as a SD 55 DFL endorsed candidate and current office holder, along with several other federal, state and local elected officials. Ms. Sletten makes no claim that Mr. Koppen posted the list on the SD 55 DFL website or had any authority or control regarding the website's content.

Mr. Koppen testified that he created the website at issue in 2009 when he ran unsuccessfully for Mayor of Maplewood. He revised the website in 2010 when he ran for Maplewood City Council, and he has not revised it since. The information and list of endorsements on the website refer to his 2010 campaign. Mr. Koppen pointed out that the disclaimer on the bottom of some of the web pages states in part: "Copyright 2010 Koppen Campaign Committee."[4] In addition, at several places on the site voters are encouraged to vote for him "in the Maplewood Special Election on August 10, 2010."[5]

Mr. Koppen argues that it is clear that his web postings, including his list of endorsements, refer to his prior 2010 campaign. Because he was endorsed by the DFL in 2010, Mr. Koppen maintains there is nothing false about the posted material. With respect to the SD 55 DFL web pages, Mr. Koppen asserts that he had nothing to do with creating that posting, but that, in any event, listing him as an endorsed candidate currently in office is not a false statement.

Minnesota Statutes § 211B.02 False Claim of Support.

Minnesota Statutes 211B.02 provides, as follows:

> A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

In order to violate this provision, a person or candidate must *knowingly* make a false claim stating or implying that the candidate has a major political party or party unit's endorsement. The postings on Mr. Koppen's website clearly refer to his prior 2010 special election campaign when he did have the Maplewood DFL endorsement. The Complainant has put forward no evidence to suggest that Mr. Koppen intended to

[4] Ex. 1 (Attachment 6).
[5] Ex. 2 (Attachment 7).

portray these past endorsements as endorsements for his 2011 campaign. The Administrative Law Judge concludes that the Complainant has failed to establish probable cause to believe that Mr. Koppen knowingly made a claim of false endorsement on his website in violation Minn. Stat. § 211B.02. Mr. Koppen is advised, however, to take prompt action to update his website to avoid any further confusion regarding the information posted.

As for the SD 55 DFL website, it specifically states that the list of names represents "endorsed candidates who are currently in office." It then provides a long list of current federal and state office holders, who presumably were endorsed by SD 55 DFL. The Complainant does not allege that this listing is untrue, and she concedes that she has no evidence that Mr. Koppen had any involvement in the creation or posting of the list on the SD 55 DFL website. Because the listing of Mr. Koppen as an endorsed current office holder is not false and because Mr. Koppen was not responsible for the posting of the list, the Complainant has failed to establish probable cause to believe Mr. Koppen violated Minn. Stat. § 211B.02 with respect to this list. Moreover, the Administrative Law Judge notes that the prohibition contained in § 211B.02 is directed only against persons or candidates – not against political parties or units.

After reviewing the Complaint, its attachments, and the additional evidence and argument offered by the parties at the probable cause hearing, the Administrative Law Judge concludes that the Complainant has failed to establish probable cause to believe that Respondent violated Minn. Stat. § 211B.02 as alleged in the Complaint. The Complaint is therefore dismissed in its entirety.

R.C.L.