

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Elizabeth Sletten,

Complainant,

vs.

DISMISSAL ORDER

John Nephew,

Respondent.

TO: Parties

On June 15, 2011, Elizabeth Sletten filed a Campaign Complaint with the Office of Administrative Hearings alleging that John Nephew violated Minnesota Statutes §§ 211B.02, 211B.06, 211B.07, and 211B.17 in connection with his campaign for re-election to the Maplewood City Council.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on June 15, 2011, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on June 15, 2011.

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 Minn. Stat. §§ 211B.02, 211B.06, 211B.07, or 211B.17.

ORDER

IT IS ORDERED:

That the Complaint filed by Elizabeth Sletten against John Nephew is **DISMISSED**.

Dated: June 17, 2011

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
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

Complainant Elizabeth Sletten is a candidate in the August 9, 2011 primary election for Maplewood City Council. The Respondent, John Nephew, is a current member of the Maplewood City Council. He first ran for City Council in 2007, and is currently seeking reelection.

The Complaint alleges that Mr. Nephew has stated in campaign material posted on his campaign website that he is “proud of [his] DFL endorsement, and pleased to make good use of the tools that endorsement gives my campaign.”¹ The Complaint alleges further that on the Senate District 55 DFL website, Mr. Nephew is listed as a SD 55 DFL endorsed candidate.² Mr. Nephew is also listed as the contact person on the SD 55 DFL website and Ms. Sletten claims that he has authority to update the website. Ms. Sletten argues that since the SD 55 DFL endorsing convention was held on June 16, 2011, after these postings, Mr. Nephew has falsely stated or implied that he has the party’s endorsement in violation of Minn. Stat. § 211B.02. Ms. Sletten has attached a copy of the DFL Party By-Laws, which provide that endorsements for any endorsee shall terminate upon the swearing in for said office. Therefore, based on the DFL By-Laws, Mr. Nephew’s past DFL endorsement for his 2007 campaign terminated in January 2008.

Ms. Sletten also argues that Mr. Nephew’s claims of DFL endorsement violate the prohibition against false campaign material under Minn. Stat. § 211B.06, and amounts to undue influence in violation of Minn. Stat. § 211B.07. Finally, Ms. Sletten seems to be arguing that, based on these violations, Mr. Nephew should forfeit his office under Minn. Stat. § 211B.17.

Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.³ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁴ A complaint must be dismissed if

¹ Attachment 5.

² Attachment 8.

³ *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁴ *Id.*

it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁵

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.

On Mr. Nephew's website, he posts blog entries that are organized by date. The campaign web page attached to the Complaint in which Mr. Nephew states that he is "proud of his DFL endorsement" was posted on September 5, 2007, when Mr. Nephew was first running for election. At the end of the post it states: "campaign 2007" and "Posted by John Nephew on 9/05/07. These postings are insufficient to support finding that Mr. Nephew is falsely stating or implying he currently has the DFL endorsement.

With respect to the SD 55 DFL website, it specifically states: "As a party unit, the Central Committee votes and endorses candidates at all levels of elected office. The following are the 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 the DFL. The Complainant does not allege that this is an untrue statement. Whether the DFL has internal rules concerning the use of the term "endorsed" is outside of the scope of this proceeding. It is a fair reading, and not clearly false, that the candidates listed on the SD 55 DFL website previously received the DFL endorsement for the offices they currently hold and the Complainant has made no allegation to the contrary. Moreover, the fact that Mr. Nephew is listed as the contact person and may manage the website for SD 55 DFL is insufficient to establish that he created and posted the endorsement list. Finally, the prohibition contained in § 211B.02 is directed against persons or candidates – not the party unit itself.

The Administrative Law Judge finds that the Complainant has failed to establish *prima facie* violations of Minn. Stat. § 211B.02 with respect to these endorsement postings and these allegations are dismissed.

Minnesota Statutes § 211B.06 False Campaign Material

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally

⁵ *Id.*

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. Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”⁶

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.⁷ It does not prohibit inferences or implications, even if misleading. Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.⁸

The Administrative Law Judge concludes that the postings of Mr. Nephew’s 2007 DFL endorsements are not false statements of fact and cannot form the basis of a Minn. Stat. § 211B.06 complaint. This allegation is dismissed.

Minnesota Statutes § 211B.07

Minnesota Statutes § 211B.07 prohibits undue influence on voters and provides as follows:

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.

To allege a *prima facie* violation of Minn. Stat. § 211B.07, the Complainant must put forward facts that would support finding the Respondent used or threatened force, coercion, violence, etc. to “compel” a person to vote for him. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”⁹

The Complainant has failed to allege any facts to support finding that the Respondent used or threatened force or undue influence to *compel* voters to vote for him. The Complainant alleges only that the listing of Mr. Nephew as a DFL-endorsed candidate on the SD 55 DFL website “could unduly influence voters interested in the 2011 election for Maplewood City Council.” The prior postings of Mr. Nephew’s 2007

⁶ Minn. Stat. § 211B.01, subd. 2.

⁷ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

⁸ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

⁹ Merriam Webster Online Dictionary.

DFL endorsement do not amount to the type of coercion required to form the basis of a § 211B.07 claim. Because the Complainant has failed to establish a *prima facie* violation of Minn. Stat. § 211B.07 this allegation is dismissed.

Minnesota Statutes § 211B.17

Minn. Stat. § 211B.17 provides that if a candidate is found guilty of violating chapter 211B, the court, after entering the adjudication of guilty, shall enter a supplemental judgment declaring that the candidate has forfeited the nomination or office. This provision applies only when a court has found the candidate “guilty” of violating this chapter. Although the provisions of chapter 211B provide for criminal penalties, this current proceeding is an administrative process. A criminal conviction for violating a provision under chapter 211B may only be pursued by the appropriate county attorney after completion of the administrative process,¹⁰ and an adjudication of guilty may only be made by a district court. The Administrative Law Judge lacks the jurisdiction to find a party “guilty” of a criminal offense. Accordingly, this allegation is dismissed.

B.J.H.

¹⁰ Minn. Stat. § 211B.35, subd. 2.