

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michael John Luce,
Complainant,

vs.

DISMISSAL ORDER

Jay Whiting,
Respondent.

TO: Parties

On November 30, 2011, Michael Luce filed a Campaign Complaint with the Office of Administrative Hearings alleging that Jay Whiting violated Minnesota Statutes § 211B.06 in connection with his campaign for election to the Shakopee City Council.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 30, 2011, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by U.S. mail to the Respondent on December 1, 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 a *prima facie* violation of Minn. Stat. § 211B.06.

ORDER

IT IS ORDERED:

That the Complaint filed by Michael John Luce against Jay Whiting is
DISMISSED.

Dated: December 2, 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 14.69.

MEMORANDUM

Complainant Michael John Luce ran unsuccessfully for a seat on the Shakopee City Council in the November 2011 election. The Respondent, Jay Whiting, and Patrick Heitzman were the two candidates elected to the Shakopee City Council. A total of nine candidates filed for the two open seats.¹

The Complaint alleges that on October 13, 2011, the *Shakopee Valley News* published a letter to the editor endorsing Mr. Whiting's candidacy. The *Shakopee Valley News* is a local newspaper that is published weekly on Thursdays. According to the Complaint, the letter to the editor was falsely attributed to a "Jim Hunter." The Complaint has attached a notarized letter from a James Hunter who denies writing the letter to the editor. Mr. Hunter lives with his brother Wayne Hunter. According to his letter, when someone contacted the newspaper about the letter to the editor, "[t]hey said it was a typo [and that] the actual author was a Wayne Hunter." James Hunter asserts that neither he nor his brother Wayne had anything to do with the letter to the editor endorsing Mr. Whiting. James Hunter also writes that on October 21, 2011, Mr. Whiting showed up at his house asking to see him. When Wayne Hunter informed Mr. Whiting that James Hunter was not at home, Mr. Whiting allegedly asked Wayne to have James call him because he needed him to "sign something."

The Complainant has not submitted the letter to the editor at issue and does not assert that anything in the letter is false other than the author attribution. Based on the notarized letter from James Hunter, the Complainant maintains that Mr. Whiting violated Minn. Stat. § 211B.06, which prohibits the dissemination of false campaign material. In support of his Complaint, the Complainant provided the following statement:

I believe that the document shows that Mr. Whiting was aware of the identity of the author of the letter to the editor and that it was neither James Hunter or Wayne Hunter. I believe that Mr. Whiting lost the ability to us [sic] a plausible deniability defense when he arrived at the Hunter brothers home. I also believe that the newspaper was his source of information. The paper strongly endorsed Mr. Whiting. Under what right is the local newspaper allowed to direct or control in some manner the direction of a local election?²

¹ Mr. Whiting received 1860 votes, Patrick Heitzman received 1431 votes, and Michael Luce received 531 votes.

² Complaint at p. 2.

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 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.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 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, except for news items or editorial comments by the news media.”⁶ A letter to the editor of a newspaper endorsing a particular candidate would be considered campaign material.

To allege a *prima facie* violation of Minn. Stat. § 211B.06, the Complainant must put forward facts that would support finding the Respondent knowingly, or with reckless disregard, disseminated false statements of specific facts concerning the personal or political character or acts of a candidate. Here, the Complainant seems to be alleging that Mr. Whiting drafted the letter to the editor and falsely attributed it to Mr. James Hunter. Even if the Complainant could prove this allegation, it would not support finding a *prima facie* violation of Minn. Stat. § 211B.06 because the alleged false attribution does not concern the “personal or political character or acts of a candidate.” Moreover, the Complainant’s only evidence to support his claim that Mr. Whiting was responsible for the false attribution is his assertion that Mr. Whiting stopped by the Hunters’ home about a week after the letter to the editor was published asking that James call him to “sign something.” It is not unusual for a candidate to stop by a voter’s home close to an election, and a request to “sign something” is too vague to be considered evidence of wrongdoing. Finally, the Complainant failed to allege or offer evidence that the James Hunter who denied involvement with the letter to the editor is the only possible James or Jim Hunter in Shakopee who could have written the letter.⁷

³ 211B.02 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.*

⁵ *Id.*

⁶ Minn. Stat. § 211B.01, subd. 2.

⁷ The on-line telephone directory lists three James, Jim or Jimmy Hunters residing in Shakopee.

For all of these reasons, the Administrative Law Judge concludes that the Complainant has failed to allege sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06 on the part of Mr. Whiting.

Minnesota Statutes § 211B.02 False Claim of Support

The Administrative Law Judge notes that this Complaint may be more appropriately characterized as a false claim of endorsement, which is prohibited under Minn. Stat. § 211B.02. Pursuant to that statute, a candidate may not state in written campaign material that he has the endorsement of an individual without first getting written permission from the individual to do so.

Again, however, because the Complainant has alleged only his belief that Mr. Whiting was behind the publication of the letter to the editor endorsing his candidacy that was falsely attributed to a Jim Hunter and because he has submitted no facts or evidence to support this suspicion, other than his claim that Mr. Whiting stopped by the Hunter home a week after the letter was published, this allegation fails.

Because the Complainant has failed to allege a *prima facie* violation of either Minn. Stat. §§ 211B.06 or 211B.02 the Complaint is dismissed.

B.J.H.