

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Jonathan P. Glassel,

Complainant,

vs.

Darrel Allen Trulson,

Respondent.

**ORDER DENYING MOTION
FOR RECONSIDERATION**

On September 25, 2012, this matter came on for a probable cause hearing under Minn. Stat. § 211B.34, before Administrative Law Judge Eric L. Lipman to consider a Complaint filed by Jonathan Glassel. The Complaint alleged that the Respondent violated Minn. Stat. § 211B.06 by disseminating false campaign material.

By Order dated September 28, 2012, Administrative Law Judge Eric L. Lipman dismissed the Complaint for lack of probable cause. On October 1, 2012, the Complainant submitted a petition for reconsideration of Judge Lipman's decision.

Jonathan Glassel (Complainant) appeared in these proceedings on his own behalf without counsel. Mr. Trulson, appeared on his own behalf.

Based on the record herein, and for the reasons stated in the following Memorandum the Chief Administrative Law Judge makes the following:

ORDER

Complainant's Motion for Reconsideration is DENIED.

Dated: October 4, 2012



RAYMOND R. KRAUSE
Chief 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

Respondent Darrel Trulson is a candidate for a County Commissioner seat in Chisago County currently held by the incumbent, Commissioner Walker. In his campaign material, Mr. Trulson claimed that he had been elected a "Trustee" in the City of Arlington Heights, Illinois. Upon further investigation by Commissioner Walker, it was determined that Mr. Trulson was never a Trustee of the city board. He was, however, elected as a Trustee of the Arlington Heights, Illinois Memorial Library Board. The Complainant argued that the inference left by Mr. Trulson's campaign material was that he was a City Board Trustee and that is false. The Complainant also asserted that Respondent disseminated these statements knowing they were false.

On September 28, 2012, Administrative Law Judge Eric L. Lipman issued an Order dismissing the Complaint in this matter for lack of probable cause to believe that the Respondent violated Minn. Stat. § 211B.06 as alleged. On October 1, 2012, the Complainant requested reconsideration of the Dismissal Order.

Minn. Stat. § 211B.34, subd. 3(b), provides that the Chief Administrative Law Judge must review the petition for reconsideration within three business days and determine whether the assigned administrative law judge made a "clear error of law."

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation or dissemination of campaign material that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false. The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.¹

Based on this standard, the Complainant would have the burden at the hearing to show by clear and convincing evidence that the Respondent prepared or disseminated the material knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove the Respondent "in fact entertained serious doubts" as to the truth of the material or acted "with a high degree of awareness" of its probable falsity.²

Administrative Law Judge Lipman found that the statement at issue was substantially accurate and as such could not form the basis of a § 211B.06 complaint.

¹ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

² *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), *rev. denied* (Minn. 2006).

Judge Lipman noted that the statement that Trulson was a Trustee in Arlington Heights, Illinois was, quite possibly confusing and "far less precise than 'Library Trustee.'"

In his Petition for Reconsideration, the Complainant argues that the Dismissal Order is clearly erroneous as a matter of law. He suggests that Judge Lipman erred because a "reasonable reader" would have taken Mr. Trulson's statement to mean a city board trustee. He points to an OAH decision in *Hauer v. Katch* for support of his argument.³ In the *Hauer* case, the ALJ found that the candidate's name, closely followed by the office for which he was running, was not a false statement that he was the incumbent. Here also, the true statement that the candidate was elected a trustee in Arlington Heights does not become false simply because one could read it to mean that he was elected as a trustee of the City of Arlington Heights City Board. As pointed out in Judge Lipman's memorandum, Section 211B.06 prohibits false statements not ones which are susceptible to interpretation or simply not as clear as one might hope from a candidate for public office.⁴

The Chief Administrative Law Judge disagrees with Complainant's contention that Administrative Law Judge Lipman committed clear error by dismissing the Complaint. Judge Lipman correctly noted that 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.⁵ In this case, the statement that he had been a trustee in Arlington Heights, Illinois is substantially true. The Complainant cannot meet the burden of proof required by the statute, by suggesting that other people may read more into that statement than they should.

Based on the record, Administrative Law Judge Lipman concluded that, in addition to the statement being substantially accurate, the Complainant failed to put forward any evidence that the Respondent disseminated the statements in the campaign material either knowing it was false or did so with a "high degree of awareness" of its falsity. Respondent did not offer the statement "knowing it was false" because it was essentially true. Because the Complainant failed to demonstrate evidence of an essential element of a § 211B.06 violation, Judge Lipman properly dismissed the Complaint.

A finding of "clear error of law" is a significant burden that the Complainant has not overcome. Administrative Law Judge Lipman's conclusion that the Respondent's statements were substantially accurate and not factually false within the meaning of Minn. Stat. § 211B.06, as well as his conclusion that the Complainant failed to put forward any evidence that Respondent disseminated the statements either knowing they were false or with reckless disregard as to whether they were false were not clearly in error. Accordingly, the motion for reconsideration is denied.

R. R. K.

³ *Hauer v. Katch*, OAH 8-0325-20710-CV (August 3, 2009).

⁴ See, *Kennedy v. Voss*, 304 N.W.2d. 299, 300 (Minn. 1981).

⁵ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441.