

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Lynn Koalska,

Complainant,

vs.

ORDER OF DISMISSAL

Allen Juneau,

Respondent.

On October 19, 2004, Lynn Koalska filed a Complaint with the Office of Administrative Hearings alleging violations of Minn. Stat. § 211B.06 by Allen Juneau. Ms. Koalska is a candidate for re-election to the Wyoming, Minnesota City Council. Mr. Juneau is another candidate for one of the two open Council seats to be filled in the general election.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 19, 2004, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on October 19, 2004, and by facsimile transmission on October 20, 2004.

After reviewing the Complaint and watching a videotape of the Candidates' Forum submitted by the Complainant, the Administrative Law Judge finds that the statements made by Mr. Juneau do not constitute a prima facie violation of Minn. Stat. § 211B.06, subd. 1.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Lynn Koalska against Mr. Allen Juneau is DISMISSED.

Dated: October 20, 2004

/s/ Richard C. Luis

RICHARD C. LUIS

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

The Complaint alleges that during an October 12, 2004 Candidates' Forum, Mr. Juneau made false statements regarding Ms. Koalska. Specifically, Mr. Juneau claimed that Ms. Koalska had 27 police calls to her house for assault or domestic abuse in the past four and one-half years. Ms. Koalska contends that Mr. Juneau's false statements violated the prohibition against false campaign material in Minn. Stat. § 211B.06, subd. 1. This provision provides as follows:

Subdivision 1. Gross misdemeanor. 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.

This provision prohibits the dissemination of false campaign material. Minn. Stat. § 211B.01, subd. 2, defines "campaign material" as follows:

Subd. 2. Campaign material. "Campaign material" means 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.

The question presented is whether Mr. Juneau's oral statements made during a candidates' forum meet the definition of "campaign material" set out in Minn. Stat. § 211B.01, subd. 2. Prior to 1975, Minnesota Statutes chapter 211, the predecessor to the current Campaign Practices Act, provided in relevant part as follows:

...[A]ny person, firm, corporation or committee who shall knowingly make or publish or cause to be published, any *false statement in relation to any candidate* or proposition to be voted upon, which statement is intended to or tends to affect any voting at any primary or election, shall be guilty of a misdemeanor ...^[1]

In 1975, Minnesota Statutes Sections 211.01 to 211.41 were repealed and the laws regulating campaign practices and penalties were adopted under chapter 210A. Under this chapter, the prohibition against false campaign information was written as follows:

Every person who writes, prints, posts, or distributes, or causes to be written, printed, posted, or distributed, except by broadcasting, any circular, poster, or other written material, or printed matter containing false information with respect to the personal or political character or acts of any candidate, which is designed or tends to elect, injure or defeat any candidate for nomination or election to a public office, shall be guilty of a gross misdemeanor. ^[2]

Given the current definition of “campaign material” found at Minn. Stat. § 211B.01, subd. 2, and the legislative history, which includes the deletion of the phrase “false statement,” the Administrative Law Judge concludes that “campaign material” is limited to written matter and excludes oral statements. The Judge notes that the Merriam-Webster dictionary defines the word “material” to mean “relating to, derived from, or consisting of matter.” Moreover, Minn. Stat. § 211B.04, requires campaign material to include a disclaimer identifying the name and address of the person or committee causing the material to be prepared. Such a disclaimer can only be included on written or tangible material.

The Administrative Law Judge concludes that the oral statements made by Mr. Juneau are not “campaign material” within the meaning of Minn. Stat. § 211B.01, subd. 2, and § 211B.06, subd. 1. While Mr. Juneau’s statements may form the basis of a defamation action, they do not form the basis for a violation of Minn. Stat. § 211B.06, as alleged in the Complaint.

The Complaint fails to identify a prima facie violation of Minnesota Chapter 211B and therefore is dismissed.

R.C.L.

^[1] Minn. Stat. § 211.08 (1974) (emphasis added).

^[2] Minn. Laws 1975, Ch. 284, § 4 (codified as Minn. Stat. § 210A.04).