

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Marcus C. Shelander,
Complainant,

ORDER OF DISMISSAL

vs.

Committee to Re-Elect Rick Smisson,
Rick Smisson, and CCL,
Respondents.

On October 23, 2006, Marcus Shelander filed a Complaint with the Office of Administrative Hearings alleging that Respondents violated Minn. Stat. § 211B.06 by distributing campaign literature falsely asserting that Doug Payne was a member of the Harris City Council during the 2004-06 timeframe. The Complaint also asserts that another document announcing a candidate forum, but identifying only the incumbent mayor and city council members by name and telephone number, violates 211B.04 because it contains no disclaimer and is a conflict of interest.

The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on October 23, 2006, under Minn. Stat. § 211B.33. A copy of the Complaint was sent by U.S. Mail to the Respondent the same day.

After reviewing the Complaint and supporting materials, the Administrative Law Judge finds that the Complaint does not set forth a claim against the Respondents, that if proven, would constitute a violation of Minn. Stat. §§ 211B.06 or 211B.04.

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

IT IS HEREBY ORDERED:

That the Complaint filed by Marcus Shelander against the Committee to Re-Elect Rick Smisson, Rick Smisson, and CCL, is **DISMISSED**.

Dated: October 24, 2006

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

The Complaint alleges that Respondents¹ are distributing a two-page piece of campaign literature that begins with the following description:

Accomplishments of the 2004-2006 Harris City Council

Mayor — Rick Smisson

Council – Kathy Olson

Council – Doug Payne

Council – Doug Chaffee

Council – Wayne Buisman

The literature continues by describing a variety of council accomplishments in the 2004-2006 timeframe with regard to ordinances, engineering design standards, city code, office organization, sewer and water bills, wastewater and water treatment plants, fire department, water and sewer rates, cash on hand, tax cuts, and zoning. At the bottom of each page is the disclaimer “Paid for by the Committee to Re-Elect Rick Smisson for Mayor – Harris, MN.”

The Complaint alleges that this literature falsely lists Douglas Payne as a member of the council for 2004-2006, because Mayor Smisson appointed Payne to the City Council just a few months ago after former council member Dan Walton moved out of town after holding office for almost eight years.

Minn. Stat. § 211B.06 prohibits a person from intentionally preparing or disseminating false campaign material with respect to the personal or political character or acts of a candidate that is designed to elect or promote a candidate for public office that the person knows is false or communicates to others with reckless disregard of whether it is false. The Complaint acknowledges that Doug Payne is a current member of the Harris City Council. Describing the asserted accomplishments of the current City Council in the 2004-06 timeframe is not a false statement of fact that Payne was on the council for the entire two-year period. The allegation that this piece of campaign literature violates Minn. Stat. § 211B.06 is dismissed.

The Complaint also refers to a separate document, the source of which is unclear.² The document appears to be one page of a multi-page document, or perhaps the back of a postcard, which provides as follows:

¹ The Respondents are identified as the Committee to Re-Elect Rick Smisson, Rick Smisson, and CCL. It is unclear what “CCL” refers to, but it apparently has the same address as the other respondents.

² According to the Complaint, the document was obtained “from Hunter’s Automotive where a campaign was done with an undercover person, in the waiting area.”

If you would like to discuss any of these topics or any other city issues, please contact one of your city representatives.

Rick Smisson	651-337-1160	Cell 612-715-1272
Doug Payne	651-674-8111	
Kathi Olson	651-674-7228	
Doug Chaffee	651-674-2432	
Wayne Buisman	651-674-5413	

NOTICE:

There will be a candidate forum for all city offices.
Thursday, Oct 26, Harris Covenant Church at 7:00 PM.

Please attend this if you would like to know more or want to ask questions of all of the candidates.

The Complaint alleges that this document violates Minn. Stat. § 211B.04 because it does not include a disclaimer that it is being circulated to support the Respondents. Even assuming that this document was prepared on behalf of the Respondents, the Minnesota Court of Appeals recently ruled that the disclaimer requirement contained in Minn. Stat. § 211B.04 is unconstitutional on its face.³ This allegation is also dismissed.

Finally, the Complaint alleges that in addition to violating the disclaimer requirement of § 211B.04, the document above “is a direct conflict of interest of using city assets to promote their further interest.” Even if this document was improperly printed or mailed using public funds, there is no provision in Minnesota Statutes Chapter 211B that would preclude a public official from using public resources to promote his or her candidacy for election. City ordinances may contain provisions precluding such actions, but this office would have no jurisdiction to hear an alleged violation of a city ordinance.

Because the Complaint fails to allege a prima facie violation of either Minn. Stat. § 211B.06 or 211B.04, it is dismissed.

K.D.S.

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.

³ *Riley v. Jankowski*, No. A05-1125 (Minn. App. April 26, 2006), *rev. denied*, (Minn. July 20, 2006).