

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Kevin Rebman,

Complainant,

v.

ORDER OF DISMISSAL

District 279 United,

Respondent.

Kevin Rebman filed a Complaint with the Office of Administrative Hearings alleging that Respondent "District 279 United" violated Minn. Stat. § 211B.02.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 17, 2008, pursuant to Minn. Stat. § 211B.33. Following a review of Mr. Rebman's Complaint and accompanying materials, on October 21, 2008, the Administrative Law Judge determined that the Complaint set forth a *prima facie* violation of Minn. Stat. § 211B.02, and set the matter on for a probable cause hearing on October 23, 2008. Both parties appeared at the probable cause hearing by way of telephone conference call and made written submissions into the record before and after the probable cause hearing.

Based upon the Complaint, accompanying filings and later submissions, and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Kevin Rebman against District 279 United is DISMISSED.

Dated: October 28, 2008

/s/ Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

## **NOTICE OF RECONSIDERATION AND APPEAL RIGHTS**

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## **MEMORANDUM**

Complainant Kevin Rebman is a candidate for election to the School Board of Independent School District 279.

According to the Complaint, Respondent "District 279 United" is a non-profit corporation which supports certain other candidates for District 279 School Board – namely, Dean Henke, Teresa Lunt and Jennifer DeJournett. The Complaint alleges that Respondent has publicly endorsed, distributed literature, solicited donations and operated a website on behalf of these candidates. Additionally, the Complaint alleges that Independent School District 279 is known to the public as "District 279" and that Respondent's use of the name "District 279 United" falsely implies that Independent School District 279 has endorsed the election of Henke, Lunt and DeJournett.

Minn. Stat. § 211B.02 provides in relevant part: "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."

In its initial response to the Complaint, and during its later argument at the probable cause hearing, District 279 United interposes two defenses. It asserts that it is not a "person" as that term is used in Minn. Stat. § 211B.02. Additionally, it urges dismissal of the Complaint because there is no evidence adduced that District 279 United, or those associated with it, knowingly implied that Independent School District 279 had endorsed candidates Henke, Lunt and DeJournett.

District 279 United's first defense to the claim is not well taken. While it is true that Minn. Stat. Chapter 211B does not include any specific definition for the term

“person,” in Minn. Stat. Chapter 645, the Legislature has provided instruction on the meaning of this term. Minn. Stat. § 645.44 reads:

The following words, terms, and phrases used in Minnesota Statutes or any legislative act shall have the meanings given them in this section, unless another intention clearly appears.

....

Subd. 7. Person. "Person" may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations.

Under the Legislature’s chosen method of interpretation, the term “person” extends to corporate entities “unless another intention clearly appears” from the particular statute. Because a legislative intention to exclude corporate disseminators of campaign material from the reach of Minn. Stat. § 211B.02 is not clearly apparent from that statute, dismissal of the Complaint is not warranted on this ground.<sup>1</sup>

District 279 United likewise argues that beyond the bare allegation that “District 279 United is providing a false claim of support by [implying] that this organization represents the actual School District and their endorsement is such that it appears to be coming from the School District itself,”<sup>2</sup> Mr. Rebman has not put forward any evidence that this implication was either deliberate or knowingly made by those associated with District 279 United. The Administrative Law Judge agrees.

While Mr. Rebman did adduce evidence that at least some voters were confused about the nature of District 279 United, and whether or not it is a government entity,<sup>3</sup> he did not sustain his burden that the false implication that Independent School District 279 endorsed candidates Henke, Lunt and DeJournett for election was knowingly made.<sup>4</sup>

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<sup>1</sup> See, *McClure v. Davis Engineering, L.L.C.*, 716 N.W.2d 354, 357 (Minn. App. 2006) (a corporation could be a “commission salesperson,” as those terms were used in Minn. Stat. § 181.145, because the court did not find “another clear intention in section 181.145”); *Dayton Hudson Corp. v. Johnson*, 528 N.W.2d 260, 262 (Minn. App. 1995) (the retailer “Dayton’s” was “a person who is a victim of harassment” that was “entitled to seek a restraining order under the anti-harassment statute,” because use of the general definition of “person” found in Minn. Stat. § 645.44, subd. 7 did not “lead to an absurd result”); *But cf., Thomas v. Braswell*, OAH Docket No. 15-6310-19969-CV (2008) (including a city as a “person” under the anti-bribery provisions of Minn. Stat. § 211B.13 “would not promote the statute’s purpose” of prohibiting “the bribing of voters”) (<http://www.oah.state.mn.us/aljBase/631019969.primafacie.ord.htm>).

<sup>2</sup> Compare, Complaint at 1.

<sup>3</sup> See, Exhibits 1, 2, 3, 4, 5 and 6.

<sup>4</sup> See, *In the Matter of Ryan*, 303 N.W.2d 462, 467 (Minn. 1981) (“the correct interpretation of the statute requires us to hold that the word ‘knowingly’ refers to the falsity of the statement and that, to find a violation of the statute, it must be determined that the violator knew that the statement published was false”) (citing *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953)).

In significant respects, therefore, this case is distinguishable from *Robert Schmidt v. Rebecca Cave and the Maplewood Firefighters Association, Inc.*<sup>5</sup> In that case, the author of the campaign materials had appropriated the phrasing “Maplewood Fire;” which had earlier and commonly been used by the Maplewood Fire Department to describe its own operations.<sup>6</sup> There is no evidence in this record that Independent School District 279 had earlier used the phrasing “District 279 United” to signify its own operations. Also important, notwithstanding the confusion by some voters, the words “District 279 United” do connote something other than a government entity.

For these reasons, a referral to the Chief Administrative Law Judge for assignment of a three-judge panel, and further proceedings in this matter, are not warranted.

**E. L. L.**

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<sup>5</sup> See, *Robert Schmidt v. Rebecca Cave and the Maplewood Firefighters Association, Inc.*, OAH Docket No. 15-6361-19193-CV (2007) (<http://www.oah.state.mn.us/aljBase/636119193.rt.htm>).

<sup>6</sup> See, *id.* (“the phrase ‘Maplewood Fire [Endorsed]’ falsely implies to the average Maplewood voter that the candidate had the endorsement of the Maplewood Fire Department ... which in this case did not exist”) (<http://www.oah.state.mn.us/aljBase/636119193.rt.htm>).