

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Stev Stegner,

Complainant,

vs.

ORDER OF DISMISSAL

Terance Smith, Andy Meyer, Dawn  
Nelson, Anne Gabriel, Janice Ochs, John  
Doe, and Mary Roe.

Respondent.

On August 1, 2007, Stev Stegner filed a Complaint with the Office of Administrative Hearings alleging that the Respondents violated Minnesota Statutes §§ 211B.06 (false campaign material) and 211B.07 (undue influence on voters). The Complaint also alleged that, as a result of these violations, Respondent Terance Smith engaged in conduct that “would have required forfeiture of municipal office” under Minnesota Statutes § 211B.17.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on August 2, 2007, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on August 2, 2007.

After reviewing the Complaint and the attachment, the Administrative Law Judge has determined that the Complaint does not state prima facie violations of Minnesota Statutes §§ 211B.06, 211B.07, or 211B.17. Therefore, the Complaint is dismissed.

Based upon the Complaint and its attachments and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Stev Stegner against Terance Smith, Andy Meyer, Dawn Nelson, Anne Gabriel, Janice Ochs, John Doe, and Mary Roe is DISMISSED.

Dated: August 3, 2007

/s/ Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

## NOTICE

Under Minnesota Statutes § 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 Minnesota Statutes §§ 14.63 to 14.69.

## MEMORANDUM

The Complainant, Stev Stegner, is the current mayor of the City of Forest Lake. In the General Election on November 7, 2006, Mr. Stegner defeated the incumbent candidate, Respondent Terance Smith. The Complaint alleges that during the course of the campaign, Respondent Smith and the other Respondents engaged in conduct that violated Minnesota Statutes §§ 211B.06 and 211B.07. In general, the Complaint maintains that the Respondents subjected Mr. Stegner to false and “distressing attacks” about his personal and political character. The Complaint further alleges that had Respondent Smith been successful in his campaign to be re-elected mayor, he would have been required to forfeit his municipal office on the basis of these violations under Minnesota Statutes § 211B.17.

### **Allegations against Respondent Andy Meyer**

The Complaint maintains that Respondent Andy Meyer produced campaign material in the form of alleged “government surveillance photos” showing Mr. Stegner at the Holy Land Café, a Middle Eastern deli and bakery in Minneapolis.<sup>[1]</sup> According to the Complaint, Respondent Meyer showed the photographs to Ben Winnick, a Forest Lake business owner, and told Mr. Winnick that the photos depicted Mr. Stegner “meeting at the same place and with the same people and purpose as convicted Muslim terrorist and supposed 9/11 20<sup>th</sup> hijacker Zacarias Moussaoui.”<sup>[2]</sup> The Complaint also alleges that Respondent Meyer showed the photos to Jewish residents of Forest Lake and told those residents that Stegner “hated Jews and was himself a Muslim terrorist.”<sup>[3]</sup> The Complaint further alleges that Ms. Meyer warned Mr. Winnick that “anyone reading the Torah should be concerned about Stegner running for office since he was studying the Koran,” and alleged that Mr. Stegner wanted to save a deteriorating water tower in order to keep all of the towers on one side of the highway and make Forest Lake more vulnerable to a terrorist attack.<sup>[4]</sup>

The Complaint also alleges that Respondent Meyer “approached a woman with threats that if Stegner were elected, Al Qaida would sabotage the Forest Lake water supply in a terrorist attack.” According to the Complaint, Respondent Meyer told this woman further that Mr. Stegner was a “bad Muslim” for “preying on underage Muslim girls with offers of money for sexual favors and having impregnated at least one young girl.”

### **Allegations against Respondent Janice Ochs**

The Complaint alleges that Respondent Janice Ochs was overheard at a local gas station urging others “to do everything possible to make sure Stegner was not

elected mayor.” According to the Complaint, Respondent Ochs was overheard warning people that Mr. Stegner was a “closet Muslim” and that “all Christians should make sure he was not elected.”<sup>[5]</sup>

### **Allegations against Respondent Anne Gabriel**

The Complaint alleges that on October 30, 2006, Respondent Anne Gabriel approached Mr. El Ewert at a funeral and told him that Mr. Stegner was Muslim who preyed upon poor young Muslim women who were in the country illegally, and that Mr. Stegner associated with Muslim terrorists. According to the Complaint, Respondent Gabriel had discussed these allegations earlier with Respondents Smith, Meyer and Nelson, and thereafter “began promoting a media investigation during the final week before the election.”<sup>[6]</sup>

### **Allegations against Respondent Terance Smith**

The Complaint alleges that all of the above actions of the other Respondents were undertaken with the knowledge, consent or connivance of Respondent Smith in order to assist him in obtaining his re-election as mayor. The Complaint contends that each Respondent acted as Respondent Smith’s agent and that Smith conspired with and aided and abetted the other Respondents to pervert the election for mayor of the City of Forest Lake.

### **Allegations against Respondent Dawn Nelson**

The Complaint alleges only that Ms. Nelson is a close friend of Respondent Meyer who worked on Terance Smith’s campaign, and was “often seen in the company of Ms. Meyer and her youthful entourage.”

### **Allegations against John Doe and Mary Roe**

The Complaint alleges that John Doe and Mary Roe are persons not presently identified who conspired with the other Respondents in spreading false campaign material and threats of force, damage, terrorist attack, and spiritual injury if Mr. Stegner were elected over Respondent Smith.

### **Minnesota Statutes § 211B.06**

The Complainant maintains that the Respondents made and published false statements about his personal and political acts and character knowing the statements were false or with reckless disregard as to whether they were false in violation of Minn. Stat. § 211B.06. The Complainant further maintains that the Respondents violated Minn. Stat. § 211B.06 by luring him to the Holy Land Café for the purpose of:

taking clandestine photos which could be combined and used with false representations to create campaign literature that depicted Stegner as a

Muslim terrorist consorting with other terrorists at places frequented by Al Qaida members like Zacarias Moussaoui planning terrorist attacks on Forest Lake and people of the Jewish and Christian faith contrary to the provisions of Minn. Stat. § 211B.06.

Section 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 or tends to injure or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false. “Campaign material” is defined as “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.”<sup>[7]</sup> The definition is limited to written (and arguably visual) *material*. Oral statements fall outside of the definition and cannot form the basis of a claim under Minn. Stat. § 211B.06.<sup>[8]</sup> Therefore, the oral statements allegedly made by the Respondents, no matter how outrageous or libelous, fall outside the definition of campaign material and cannot form the basis of a claim under Minn. Stat. § 211B.06. These allegations are therefore dismissed.

The only allegation in the complaint that may state a violation of the prohibition against false campaign material is the claim concerning the dissemination of the photographs. The Complainant appears to argue that the photographs of him standing in line and sitting at a table at the Holy Land Café are “campaign material” and that they were produced and disseminated by Respondent Meyer with the knowledge of Respondent Smith and others for the purpose of influencing the Forest Lake mayoral election.

Assuming the photographs are campaign material, the Complainant has failed to allege that the photographs are false campaign material. Instead, the Complainant concedes that photographs accurately show him at the Holy Land Café. He argues, however, that he was lured to the café under false pretenses, and that the photographs were used by Ms. Meyer to spread false rumors about him being a Muslim and a terrorist. Again, the oral statements allegedly made by Ms. Meyer cannot form the basis of a claim under Minn. Stat. § 211B.06. Because the photographs themselves are not false campaign material but accurate representations of Mr. Stegner at a restaurant, the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06. These allegations as against all the Respondents are dismissed.

### **Minnesota Statutes § 211B.07**

The Complainant maintains that the Respondents chose to spread false allegations about Mr. Stegner that were particularly “threatening in terms of likely to cause violence, damage, harm, loss, and temporal and spiritual injury” to Jewish and Christian voters, and in so doing deprived the Forest Lake community of the free exercise of the right to vote contrary to Minn. Stat. § 211B.07.

Minnesota Statutes § 211B.07 prohibits undue influence on voters and provides as follows:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

Minn. Stat. § 211B.07 is directed against threats made to compel voters to vote in a particular manner. The Complainant has failed to allege that any of the Respondents used or threatened force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote against Mr. Stegner. At most, the Complaint alleges that Respondents Meyer and Ochs preyed on residents' general fear of terrorism by telling people that Mr. Stegner was a Muslim who fraternized with terrorists, and that as such he would make Forest Lake more vulnerable to terrorist attacks. While these scare tactics are reprehensible, particularly since they are grounded in bigotry, they do not amount to a specific direct or implied threat made by the Respondents against voters. The Administrative Law Judge concludes that the Complainant has failed to establish a prima facie violation of Minn. Stat. § 211B.07 and these claims as to all the Respondents are dismissed.

### **Minn. Stat. § 211B.17**

Minn. Stat. § 211B.17 provides that if a candidate is found guilty of violating chapter 211B, the court, after entering the adjudication of guilty, shall enter a supplemental judgment declaring that the candidate has forfeited the nomination or office. The Complainant maintains that, by remaining silent while the other Respondents engaged in illegal conduct with his knowledge or consent, Respondent Smith is subject to the provisions of Minn. Stat. § 211B.17. The Complainant further contends that, despite the fact that Respondent Smith lost the election, a "supplemental judgment declaring Respondent Smith to have forfeited his appointed municipal [office] is appropriate" because Smith engaged in conduct that would have required forfeiture of his office had he won the election.

Because the Administrative Law Judge has dismissed the Complainant's claims under Minn. Stat. §§ 211B.06 and 211B.07, it is unnecessary to address his claim under Minn. Stat. § 211B.17. However, the ALJ notes that this provision applies only when a court has found the candidate "guilty" of violating this chapter. Although the provisions of chapter 211B provide for criminal penalties, this current proceeding is an administrative process. A criminal conviction for violating a provision under chapter 211B may only be pursued by the appropriate county attorney,<sup>[9]</sup> and an adjudication of guilty may only be made by a district court. The Administrative Law Judge lacks the jurisdiction to find a party "guilty" of a criminal offense. Moreover, Minn. Stat. § 211B.17 is inapplicable because Respondent Smith lost the election. He has no municipal office to forfeit.

The Complaint is dismissed in its entirety.

**B.L.N.**

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<sup>[1]</sup> Attachment 2 (The photos appear to show Mr. Stegner in line at the counter of the Holy Land Café and sitting at a table at the Holy Land Café. The Complaint maintains that Mr. Stegner was “lured” to the café by the Respondents under false pretenses for the purpose of taking the photos.)

<sup>[2]</sup> Attachment 5 (Affidavit of Cook).

<sup>[3]</sup> Attachment 3 “Synopsis of Stegner Report”.

<sup>[4]</sup> Attachments 6 and 7 (Affidavit of Winnick and Sarafolean).

<sup>[5]</sup> Attachment 5 (Affidavit of Cook).

<sup>[6]</sup> Attachment 8 (Affidavit of Ewert).

<sup>[7]</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>[8]</sup> See, *Koalska v. Juneau*, OAH Docket No. 7-6312-16225-CV (Dismissal Order dated October 20, 2004) (Given the current definition of “campaign material” and the legislative history, which includes the deletion of the phrase “false statement” from the predecessor statute, the Administrative Law Judge concluded that “campaign material” is limited to written matter and excludes oral statements).

<sup>[9]</sup> Minn. Stat. § 211B.35, subd. 2.