

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Daniel J. Potter,

Complainant,
vs.

ORDER OF DISMISSAL

Brad Hinseth, Tom Carr, Kim Linner,
Jeff Huber, and Dennis Heuer,

Respondents.

On October 24, 2008, Daniel J. Potter filed a Complaint with the Office of Administrative Hearings alleging Respondents Brad Hinseth, Tom Carr, Kim Linner, Jeff Huber, and Dennis Heuer violated Minn. Stat. §§ 211B.04, 211B.06, 211A.02, and 211A.13.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 24, 2008, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent to each Respondent by United States mail on October 24, 2008.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not support a prima facie violation of Minn. Stat. §§ 211B.04, 211B.06, 211A.02, and 211A.13.

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 Daniel J. Potter against Respondents Brad Hinseth, Tom Carr, Kim Linner, Jeff Huber, and Dennis Heuer is DISMISSED.

Dated: October 29, 2008

/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 Complainant is a candidate for one of two open seats on the Grant City Council. Respondents Kim Linner, Jeff Huber and Dennis Heuer are also candidates for Grant City Council. Respondent Tom Carr is a candidate for Mayor of Grant, and Respondent Brad Hinseth is a current member of the Grant City Council, who, it is presumed, is not a candidate in the 2008 election.¹

The Complainant alleges that Respondent Brad Hinseth knowingly prepared and disseminated false campaign material and made numerous false statements about the Complainant with the intent of injuring the Complainant's character and defeating the Complainant in his election bid for City Council. The Complainant also alleges that the campaign material disseminated by Mr. Hinseth lacked a disclaimer in violation of Minn. Stat. § 211B.04.

In addition, the Complainant alleges that Respondent Brad Hinseth, along with Respondents Tom Carr, Jeff Huber, Kim Linner and Dennis Heuer are "collecting donations and pooling those funds without the proper campaign committee formed, which violates portions of 211A." The Complainant claims that Respondent Brad Hinseth has used funds and/or resources of his city council campaign committee (including email lists and/or mailing lists) to disseminate the false campaign material at issue without reporting the campaign expenditure. Lastly, the Complainant alleges that Respondents Carr, Huber, Linner and Heuer have not reported Hinseth's contribution to their campaigns.

The Administrative Law Judge will address each of the allegations below.

Minn. Stat. § 211B.04

On April 26, 2006, the Minnesota Court of Appeals issued its decision in *Riley v. Jankowski*,² holding that the disclaimer requirement of Minn. Stat. § 211B.04 violates the First Amendment of the U.S. Constitution by directly regulating the content of pure speech and that there is no way to narrowly construe the statute to avoid the constitutional violation. Because the Minnesota Court of Appeals has determined that Minn. Stat. § 211B.04 is unconstitutional on its face, and therefore unenforceable, this allegation against Respondent Hinseth is dismissed.

¹ The Administrative Law Judge so assumes because the Complaint alleges that Respondent Hinseth is promoting the candidacies of others, but not himself, for the same office he holds currently.

² 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

Minn. Stat. § 211B.06

The Complainant has attached a copy of an email that appears to have been sent by Respondent Brad Hinseth (Bradley@votebrad.org) to Grant residents regarding the upcoming election. In the email, Respondent Hinseth endorses Respondents Carr, Huber, Linner and Heuer. The Complainant alleges that the following statements in the email are false and were disseminated in violation of Minn. Stat. § 211B.06:

The rest of the Council candidates, in my opinion, are running out of self-interest rather than public interest. They want to change or ignore the safeguards (permits and ordinances) that protect Grant and its residents in order to benefit themselves and their friends. In my opinion, they are saying one thing to get elected in order to do another once in office.

The Complainant also alleges that Respondent Hinseth has made numerous false (oral) statements about the Complainant including that the Complainant is not who he says he is.

Minnesota Statutes § 211B.06, subd. 1, prohibits intentional participation:

... [i]n 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, . . . 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.

“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.”³ The definition is limited to written material. Oral statements (other than paid political advertising) fall outside of the definition and cannot form the basis of a claim under Minn. Stat. § 211B.06.⁴ Therefore, the only allegation in the complaint that may state a violation of the prohibition against false campaign material concern the statements identified in the email.

In *Kennedy v. Voss*,⁵ the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not

³ Minn. Stat. § 211B.01, subd. 2.

⁴ 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).

⁵ 304 N.W.2d 299 (Minn. 1981).

against unfavorable deductions, or inferences based on fact - even if the inferences are “extreme and illogical.”⁶ The Court pointed out that the public is protected from such extreme and illogical inferences by the ability of other speakers to rebut these claims during the campaign process.⁷ In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.⁸

The Administrative Law Judge concludes that both the statements: “The rest of the Council candidates, in my opinion, are running out of self-interest rather than public interest,” and “In my opinion, they are saying one thing to get elected in order to do another once in office,” are statements of opinion and are not actionable under Section 211B.06. Whether the Complainant and the other candidates are motivated by self-interest or the public interest is a matter of opinion and not something that can be proven factually true or false. And the statement that the Complainant and the other candidates are “saying one thing” to get elected and will do something else once in office, is a prediction based on opinion, and not a factually false statement. Accordingly, these statements are insufficient to state a prima facie violation of Minn. Stat. § 211B.06.

Finally, the statement, “They want to change or ignore the safeguards (permits and ordinances) that protect Grant and its residents in order to benefit themselves and their friends,” is also insufficient to state a prima facie violation of Minn. Stat. § 211B.06. A reasonable reader would understand this claim to be an opinion or inference regarding future events. The Complainant cannot establish that the negative prediction is demonstrably a false statement of fact. Under the statute, it is his burden to demonstrate that the statement is false; not the Respondent’s burden to show that his statement is beyond dispute.⁹

The Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to the identified statements, and these allegations are dismissed.

Minn. Stat. § 211A.02

The Complainant alleges that Respondent Hinseth, along with the other named Respondents, are seeking and collecting donations and pooling these funds “without the proper campaign committee formed.” The Complainant cites to Minn. Stat. § 211A.02.

Minnesota Statutes § 211A.02, subdivision 1 requires a “committee” that receives contributions or makes disbursements of more than \$750 in a calendar

⁶ *Id.* at 300.

⁷ *Id.*

⁸ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

⁹ *See, Hill v. Notch*, OAH Docket No. 8-6326-17585-CV.

year to submit an initial report with the filing officer within 14 days after the committee receives or makes disbursements of over \$750. A “committee” is defined, in part, as an association or persons acting together to promote or defeat a candidate or ballot question.¹⁰

The Complainant has failed to allege any facts to support finding that any of the Respondents have received or made disbursements of more than \$750 in a calendar year. As a result, the Complaint is insufficient to support a prima facie violation of Minn. Stat. § 211A.02. This allegation is dismissed.

Minn. Stat. § 211A.13

Minn. Stat. § 211A.13 prohibits candidates for political subdivision offices from accepting contributions from the principal campaign committee of a candidate *as defined in section 10A.01, subdivision 34*. It also prohibits candidates from making contributions to a principal campaign committee, unless the contribution is made from the personal funds of the candidate. The prohibition in section 211A.13 is limited to transfers of funds between candidates for local office and the principal campaign committees of Chapter 10A candidates.¹¹

The Complainant alleges that Respondent Brad Hinseth used funds and/or resources from his campaign committee (including email lists and/or mailing lists) in disseminating the email at issue. The copy of the email indicates that it was sent from bradley@votebrad.org. The Complaint suggests that by doing so, Respondent Hinseth made in-kind contributions to Respondents Carr, Linner, Huber and Heuer, in violation of Minn. Stat. § 211A.13. The Complaint further alleges that, by accepting the contributions, Respondents Carr, Linner, Huber and Heuer violated Minn. Stat. § 211A.13.

Minnesota Statutes § 10A.01, subdivision 34, governs the principal campaign committees of candidates for state, legislative, or judicial offices. Chapter 10A does not apply to candidates for local office. Because Respondents Tom Carr, Kim Linner, Jeff Huber, and Dennis Heuer do not meet the definition of “candidate” in Section 10A.01, the Complainant has failed to support a prima facie violation of 211A.13 based on their alleged acceptance of a contribution from Respondent Hinseth. Moreover, because Respondent Hinseth is not currently a candidate for office, neither he nor his campaign committee are prohibited under Minn. Stat. § 211A.13 from making a contribution to other candidates’ campaign committees. The Administrative Law Judge concludes that Complainant has failed to establish a prima facie violation of Minn. Stat. § 211A.13 with respect to the Respondents and these allegations are dismissed.

The Complaint is dismissed in its entirety.

R.C.L.

¹⁰ Minnesota Statutes § 211A.01 (4) (2004).

¹¹ See, Op. At. Gen., 627e, Aug. 1, 1994.

