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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0049**

Jan Thronson,  
Relator,

vs.

The Rochester Post Bulletin,  
Respondent,

Office of Administrative Hearings,  
Respondent.

**Filed June 10, 2013  
Affirmed  
Worke, Judge**

Office of Administrative Hearings  
File No. 60-3025-30235

Jan Thronson, Rochester, Minnesota (pro se relator)

Mark R. Anfinson, Minneapolis, Minnesota (for respondent The Rochester Post Bulletin)

Lori Swanson, Attorney General, St. Paul, Minnesota (for Office of Administrative Hearings)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Larkin, Judge.

## UNPUBLISHED OPINION

**WORKE**, Judge

Relator argues that the administrative-law judge (ALJ) erred by finding that he failed to establish a prima facie case that respondent newspaper violated Minn. Stat. § 211B.05, subd. 4 (2012) by publishing articles about the incumbent city council president who remained on the ballot and won reelection after he died. We affirm.

### FACTS

In 2012, relator Jan Thronson ran against the incumbent, Dennis L. Hanson, for Rochester City Council President. Hanson passed away unexpectedly after filing for reelection. Although desiring to remove Hanson from the ballot, his family was legally prohibited from doing so.

After Hanson's death, respondent The Rochester Post Bulletin (RPB) published articles regarding Hanson and how his death would affect the election. Relator filed a complaint with respondent Office of Administrative Hearings (OAH) alleging that the RPB violated the Fair Campaign Practices Act by reporting on Hanson.

The ALJ determined that the reports on Hanson's death and the effect of his death on the race were not advertisements or editorials on behalf of Hanson designed to influence the election, but rather were "legitimate and important news" articles. The ALJ dismissed relator's complaint after concluding that it failed to state a prima facie violation of Minn. Stat. § 211B.05, subd. 4. Relator challenged the ALJ's decision by petitioning for a writ of certiorari.

## DECISION

Relator argues that the evidence he presented was sufficient to establish a prima facie violation of Minn. Stat. § 211B.05, subd. 4. A complaint filed with the OAH alleging a violation of Minn. Stat. § 211B.05, subd. 4 must “detail the factual basis for the claim that a violation of law has occurred.” Minn. Stat. § 211B.32, subs. 1, 3 (2012). The ALJ must make a preliminary determination for its disposition. Minn. Stat. § 211B.33, subd. 1 (2012). “If the [ALJ] determines that the complaint does not set forth a prima facie violation . . . the [ALJ] must dismiss the complaint.” *Id.*, subd. 2(a) (2012). “A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in sections 14.63 to 14.69.” Minn. Stat. § 211B.36, subd. 5 (2012).

Determining whether relator’s complaint set forth a prima facie violation of Minn. Stat. § 211B.05, subd. 4, involves interpretation and application of the statute to the facts. We review questions of statutory construction de novo. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007).

[O]n matters of statutory interpretation, this court is not bound by the determination of an administrative agency. The manner in which the agency has construed a statute may be entitled to some weight, however, where (1) the statutory language is technical in nature, and (2) the agency’s interpretation is one of long-standing application.

*Arvig Tel. Co. v. Nw. Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978); *see also In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010). “[A] complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would

be sufficient to prove a violation of chapter 211A or 211B.” *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. App. 2010).

Relator argues that the RPB violated section 211B.05, subdivision 4 of the Fair Campaign Practices Act, which provides:

Unpaid material published in a newspaper, magazine, or other publication that is: (1) in unique typeset or otherwise differentiated from other unpaid material, (2) designed to influence or attempt to influence the voting at any election or the passage or defeat of legislation, and (3) not placed on the editorial page must be clearly identified as an editorial opinion.

Minn. Stat. § 211B.05, subd. 4. Relator submitted several articles with his complaint that he claims show that the RPB violated the statute by using different typeset when referring to Hanson and by trying to sway the voting by devoting coverage to Hanson. Relator alleged that the RPB violated the statute on 25 occasions.

The ALJ appropriately determined that relator failed to establish a prima facie violation of the statute. Relator’s specific allegations include: reporting on the race prior to Hanson’s death; the public-access programming guide; general election coverage; reporting in late June 2012, when Hanson died, devoted to Hanson’s service to the community; and reporting on how the election would proceed after Hanson’s death. The unpaid material in the RPB is not “in unique typeset or otherwise differentiated from other unpaid material,” and it is not “designed to influence or attempt to influence the voting at any election” because it is reporting on a unique situation. The RPB reported on the death of the city council president, and it paid tribute to an individual who served his community for many years. The RPB also reported on the effect that Hanson’s death

would have on the election, which was legitimate reporting on issues that readers/voters would have concerns about during the election process.

**Affirmed.**