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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1642**

State of Minnesota ex rel., Stev Stegner,
Relator,

vs.

Terance Smith, et al.,
Respondents,

Office of Administrative Hearings,
Respondent.

**Filed August 5, 2008
Affirmed
Minge, Judge**

Office of Administrative Hearings
File No. 11-6381-191-35-CV

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Considered and decided by Minge, Presiding Judge; Muehlberg,^{*} Judge; and
Huspeni, Judge.^{**}

^{*} Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

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UNPUBLISHED OPINION

MINGE, Judge

Relator challenges the decision of an administrative law judge (ALJ) dismissing his complaint against respondents for failure to state prima facie violations of Minn. Stat. § 211B.06 (2006) (providing penalty for dissemination of false campaign material) or of § 211B.07 (2006) (prohibiting undue influence on voters). Because we conclude that relator's complaint does not state a prima facie violation of either provision, we affirm.

FACTS

Relator Stev Stegner challenged and defeated the incumbent mayor of Forest Lake, respondent Terance Smith, in the fall 2006 election. Because of what he considered unusual and offensive campaign activities, Stegner filed a July 2007 complaint with the Office of Administrative Hearings (OAH) alleging unfair campaign practices. Stegner's complaint recounted that a woman identifying herself as "Sara Goldberg" contacted him in September 2006. Ms. Goldberg claimed that her children were the victims of anti-semitism in the Forest Lake schools and requested a meeting with Stegner at the Holy Land Café on Central Avenue in Minneapolis. Stegner arrived at the café at the appointed time. After waiting several minutes, he was approached by a veiled woman who told him Goldberg would not be coming.

About three days later, Stegner was contacted by a Forest Lake businessman who told Stegner that respondent Andy Meyer had shown him "government surveillance photos" of Stegner reportedly taken by a national security agency. Stegner's administrative complaint states that

Meyer went on to explain [that] the [photos] depicted Stegner meeting at the same place [the Holy Land Café] and with the same people and purpose as convicted Muslim terrorist and supposed 9/11 . . . hijacker Zacarias Moussaoui. Meyer went on to warn that “anyone reading the Torah should be concerned about Stegner running for office since he was studying the Koran” which must concern both Jews and Christians. Meyer also explained Stegner . . . want[ed] to save a deteriorating water tower and thereby keep all towers on one side of Trunk Highway 61 making them more susceptible to Stegner’s scheme to subject Forest Lake to terrorist attack.

Stegner’s complaint further stated that respondents Meyer, Janice Ochs, and Anne Gabriel approached other Forest Lake residents with allegations that Stegner was a dangerous terrorist and a “bad Muslim as a result of his preying upon underage Muslim girls with offers of money for sexual favors and having impregnated at least one young girl.” Stegner claimed that his opponent, respondent Smith, was aware of this conduct and that by “remaining silent while other [r]espondents acted with his knowledge, consent or connivance, . . . Smith engaged in conduct for which Minn. Stat. § 211B.17 (2006) would have required forfeiture of municipal office.” Stegner further claimed that respondents were jointly and severally liable for pain, injury, and damage to himself, his family, and his business in an amount exceeding \$50,000.

In August 2007, the ALJ dismissed Stegner’s complaint in its entirety on the ground that Stegner failed to allege prima facie violations of Minn. Stat. §§ 211B.06, .07, .17. This certiorari appeal follows.

DECISION

A party aggrieved by a final decision in an administrative, unfair-campaign-practices proceeding under Minn. Stat. § 211B.32 (2006) is entitled to judicial review as provided in the Administrative Procedure Act (Minn. Stat. § 14.63 to 14.69). Minn. Stat. § 211B.36, subd. 5 (2006). Agency decisions are presumed correct, and this court defers to an agency's expertise and its special knowledge in the field of its technical training, education, and experience. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). An agency decision will be reversed only when it constitutes an error of law, when the findings are arbitrary and capricious, or when the findings are unsupported by substantial evidence. *In re Hutchinson*, 440 N.W.2d 171, 176 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989).

This court reviews de novo alleged errors of law that arise when an agency decision is based on the meaning of words in a statute. *In re Denial of Eller Media Company's Applications for Outdoor Advertising Device Permits in the City of Mounds View*, 664 N.W.2d 1, 7 (Minn. 2003). The goal of statutory interpretation is to effectuate the intent of the legislature, and every law must be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16 (2006); *see also In re Appeal of Staley*, 730 N.W.2d 289, 297 (Minn. App. 2007) (“[I]t is a cardinal rule of statutory interpretation that we read each statutory provision in reference to the whole statute.”). If the statute is unambiguous, further construction of its language is not permitted. *Molloy v. Meier*, 679 N.W.2d 711, 723 (Minn. 2004).

I.

The fundamental issue raised is whether the ALJ erred by determining that Stegner failed to allege prima facie violations of Minn. Stat. §§ 211B.06, .07 (2006).¹ At oral argument, Stegner asserted that the following paragraphs in the complaint stated prima facie violations:

1. [O]n or about September 2006, a group promoting the election of incumbent Mayor Terry Smith . . . initiated a plan to use false campaign material and threats of violence, terrorist attack, damage and spiritual injury as part of a strategy applying religious and ethnic bigotry to defeat challenger Stegner.

. . . .

16. Respondents made and published false statements about the personal and political character of . . . Stegner knowing they were false or with reckless disregard as to their truth or falsity.

17. Respondents lured . . . Stegner to the Holy Land Café for the purpose of taking clandestine photos which could be and were 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 . . . contrary to the provisions of Minn. Stat. § 211B.06.

18. . . . Respondents schemed over and chose those false representations of Stegner which would appear most threatening in terms of likely to cause violence, damage, harm, loss and temporal and spiritual injury to the Jewish and Christian targets of *jihad* . . . in order to deprive the Forest Lake Community and its citizens of the free exercise of the

¹ Stegner does not challenge the ALJ's determination that his complaint fails to state a prima facie violation of Minn. Stat. § 211B.17 (2006), and we therefore limit our review to an examination of sections 211B.06, .07.

right to vote contrary to the provisions of Minn. Stat. § 211B.07.

A. Minn. Stat. § 211B.06 (Dissemination of False Campaign Material)

Stegner claims that “photographs combined with an interpretive script” are prohibited “campaign material” within the meaning of section 211B.06. We note at the outset that paragraphs 1, 16, and 17 of Stegner’s complaint to the OAH are drafted broadly and may therefore state *prima facie* violations of section 211B.06. However, Stegner made additional statements in the complaint and attached affidavits that describe the exact type of campaign material that he claims constitute a violation of the law. Accordingly, we review Stegner’s complaint and the attachments as a whole to determine whether the outrageous oral statements about Stegner represented prohibited campaign material when accompanied by photographic depictions of him at the Holy Land Café.

Section 211B.06 provides that

[a] person is guilty of a gross misdemeanor who intentionally participates in 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 . . . that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

(Emphasis added.) “‘Campaign material’ means any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election” Minn. Stat. § 211B.01, subd. 2 (2006). If a party alleging a violation of section 211B.06 does not set forth a “*prima facie* violation” of the provision, the ALJ must dismiss the complaint. Minn. Stat. § 211B.33, subd. 2(a) (2006). “*Prima facie*” means

“[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.” *Black’s Law Dictionary* 1228 (8th ed. 2004). “Prima facie evidence” is “[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.” *Id.* at 598.

Oral Misrepresentations

Stegner contends that “campaign material” may include an oral component. The ALJ concluded that the “oral statements allegedly made by the Respondents, no matter how outrageous or libelous, fall outside the definition of campaign material.” The ALJ determined that the plain language of the current statute and the legislative history² of the provision support the conclusion that oral statements do not constitute campaign material.

The statutory definition of campaign material supports the ALJ’s determination. See Minn. Stat. § 211B.01, subd. 1. Oral statements are clearly not “literature” or “publications.” Furthermore, “material” is generally understood to mean “[t]he substance or substances out of which a thing is or can be made” but also can be an idea that is to be refined and made or incorporated into a “finished effort.” *The American Heritage College Dictionary* 853-54 (4th ed. 2002). The oral statements attributed to respondents here were never used to create a material substance or finished effort that was subsequently disseminated among the electorate. We also note that the meaning of campaign material is indicated in the phraseology of Minn. Stat. § 211B.04(a) (2006).

² Stegner contends that the ALJ erred by determining that the legislature purposely deleted “false statement” from earlier versions of section 211B.06, subd. 1. Because our plain-language analysis of sections 211B.01, subd. 2, .06, subd. 1, resolves the questions before us, we do not further examine the legislative history of the subdivision.

That section states that “[a] person who participates in the . . . dissemination of campaign material . . . that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer . . . is guilty of a misdemeanor.” *Id.* This provision indicates that “campaign material” is viewed by the legislature as written matter that is capable of being appropriately labeled.

Accordingly, we conclude that the oral statements attributed to respondents do not constitute “campaign material” within the meaning of section 211B.01, subd. 2. However, this leaves the question of whether the photographs of Stegner accompanied by false oral statements violate section 211B.06.

Photographs Accompanied by False Campaign Statements

Stegner’s complaint refers to the photographs as part of the effort to discredit his candidacy. Stegner alleges that respondent Meyer visited a Forest Lake businessman and showed him “government surveillance photos” of Stegner at the Holy Land Café while making false and outrageous statements. Accordingly, the question is whether Meyer’s reprehensible oral claims about Stegner’s person could be considered prohibited “campaign material” by virtue of the contemporaneous presence of photographic portrayals of the candidate.

While the photographs of Stegner at the Holy Land Café cannot be considered “literature,” such photographs could be considered “material.” See Minn. Stat. § 211B.01, subd. 2. “Disseminate” means to “[t]o spread abroad; promulgate: disseminate information.” *The American Heritage College Dictionary* 409 (4th ed. 2002). Because photos represent a “substance” out of which a thing can be made, such as

a campaign piece, we agree that photographs may represent “material” used to influence voting.

But here, Stegner makes no claim that the photographs themselves were falsified—the photos accurately represent Stegner’s visit to the Holy Land Café. Although Stegner may have been lured to the restaurant under false pretenses and Meyer subsequently showed the photos while making false *oral* claims about Stegner, the photos themselves were accurate depictions of the candidate.

Accordingly, because (1) the photographs are not *false* campaign material; and (2) Meyer’s outrageous oral claims about Stegner do not constitute campaign literature, publications, or material prohibited by the plain language of section 211B.01, subd. 2, we conclude that the ALJ did not err by dismissing Stegner’s complaint under section 211B.06.

B. Minn. Stat. § 211B.07 (Undue Influence On Voters)

Stegner argues that his complaint stated a *prima facie* violation of section 211B.07, which provides that

[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.

As stated previously, respondent Meyer allegedly told several Forest Lake residents that Stegner was involved with Muslim terrorists and planned to subject the municipal water supply to terrorist attack. Stegner contends that the various misrepresentations by respondents amount to indirect threats of harm if enough people ultimately voted to elect him mayor.

We agree with Stegner that respondents' statements are reprehensible. The question is whether the plain language of section 211B.07 reaches the type of statements made here. The statute is designed to prohibit threats of action or retaliation against a voter *by* the speaker or those in league with the speaker if the voter votes in a certain way or if a certain candidate is elected. Examples include loss of housing or employment. Here, neither Meyer nor anyone under her control directly used or threatened to use force, coercion, or violence against Forest Lake voters if they voted for Stegner over Smith. Meyer communicated predictions about the sort of harm *Stegner*, a third party, would cause if he were elected mayor of Forest Lake. Although such statements may provide grounds for a defamation claim, section 211B.07 is a more limited provision. *See Riley v. Jankowski*, 713 N.W.2d 379, 398-99 (Minn. App. 2006) (noting that a complaint under Minn. Stat. § 211B.06 is different from a defamation claim).

Unfortunately, exaggerated, even outlandish, claims about candidates are a part of political discourse. In heated elections, people frequently extol the virtues of one candidate while preaching the evils and dangers of electing another. While such claims may indicate extremely poor judgment or be misleading or even scary, such statements

do not represent a direct threat by the speaker or those in league with the speaker to harm or injure a voter if he or she votes a certain way.

We recognize that relator Stegner's complaint alleges that respondents made incredibly reprehensible claims about the consequences of electing Stegner mayor of Forest Lake. However, we conclude that because Stegner's complaint did not allege a prima facie violation of section 211B.07, the ALJ did not err by dismissing the claim.

Affirmed.

Dated: