

ELECTION ISSUES ENLIVEN FALL CAMPAIGNS

**By Marshall H. Tanick
(mtanick@mansfieldtanick.com)
Mansfield, Tanick & Cohen, P.A.
1700 U. S. Bank Plaza South
Minneapolis, MN 55402
Tel: 612/339-4295
FAX: 612/339-3161**

The elections this fall raised a number of political issues from the high-profile race for the U.S. Senate in Minnesota to low level municipal contests. Looming in the background, and sometimes in the forefront, were legal issues relating to election law in Minnesota. The tendency for elections to spill over from the polling places to the courtrooms, as highlighted by the Bush-Gore Florida recount in 2000, has been manifested in Minnesota, too, during the past election season.

After the Bush-Gore battle, Congress enacted the Help American Vote Act (HAVA), which establishes a number of requirements for the mechanics of holding elections. But most election litigation revolves around state law, including the Minnesota Fair Campaign Practices Act (FCPA).

Candidates and supporters engaged in a number of contested court cases dealing with a variety of election laws. It can be anticipated that even more election battles will lead to litigation during the next general election, in 2008, when the race for President tops the ballot, along with miscellaneous other state wide, county, and local campaigns.

Here's a glimpse at some of the more interesting and important Minnesota election laws that enliven the fall campaign season.

- The law requires employers to give employees time-off to vote on Election Day. Under Minn. Stat. § 204C.04, subd. 1,
- The FCPA generally prohibits “false and misleading” campaign practices. One provision, Minn. Stat. § 211B.02, proscribes individuals from stating or implying that they have the “support or endorsement” of a political party. This proscription generally bars candidates from using the name of a political party, without modifier, unless the candidate has been officially endorsed by the party. Thus, candidates cannot use in their literature the name of the party, unless they are endorsed, without stating that they are a party “member” or some other modifying words.
- Another Minnesota law gives political parties the protection of the use of their names. Under Minn. Stat. § 202A.11, subd. 2,

"[a] major political party which has adopted a party name is entitled to the exclusive use of that name for the designation of its candidates on all ballots ..."
- Criminal penalties also can be attached to improper campaign practices. For example, under Minn. Stat. § 211B.06, it is a gross misdemeanor for an individual to make false and misleading statements during a campaign if the individual makes statements the person "knows is "false" or "with reckless disregard of whether it is false." This standard, borrowed from defamation law, may be invoked against candidates or others involved in the political

process. In addition, county attorneys have the power under Minn. Stat. § 211B.16 to prosecute any violation of the FCPA.

- Minnesota law also regulates how individuals may be identified on a ballot. Candidates often like to be referred by nick-names on the ballot, but the law limits their use. In order for an individual to use a nick-name on the ballot, it must be a name that is not “descriptive” and is one by which they are generally known. The measure, Minn. Stat. § 204B.35, came into play when former St. Paul Police Chief William Finney tried to use the name “Chief” on the ballot in his campaign against incumbent Ramsey County Sheriff Robert Fletcher, who countered by asking to be able to use the word “Sheriff” on the ballot. Ramsey County District Court Judge Kathleen Gearin rejected both of their attempts, ruling that the designations would violate the statute because they are “descriptive” in nature, rather than real nick-names by which the candidates were generally known to the public.
- Judicial elections in Minnesota are fairly tame this year, with only eight contested races throughout the state. Future elections may be more free-wheeling as a result of rulings by the U.S. Supreme Court and the Eighth Circuit Court of Appeals over the past few years allowing candidates to judicial office to state their position on controversial issues to seek and obtain endorsements by political parties. The two cases, *Republican Party of Minnesota v. White*,

536 U.S. 765 (2002) and *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir., 2005) *cert. denied*, 126 S.Ct. 1165, had been regarded wearily by observers who feel they may unleash divisive, costly races for judicial offices. This year, however, there were only two political party endorsements for judicial positions, and one of them, for Supreme Court Justice G. Barry Anderson, was declined by the jurist, who ran unopposed anyway. Only one other judicial candidate sought and accepted a party endorsement. The jury is still out on whether Minnesota judicial elections will turn into the type of partisan races that have been troublesome in other states.

- But judicial elections do have one significant difference under Minnesota state law than races for other positions. Under Minn. Stat. § 204B.36, subd. 5, incumbent judges are permitted to have the term “incumbent” attached to their name in elections, unlike other office holders seeking re-election. The Minnesota Supreme Court in *Peterson v. Stafford*, 490 Minn. N.W.2d 418 (Minn. 1992), ruled that the use of the designation “incumbent” for sitting judges running does not unfairly favor them at the expense of their non-incumbent opponents. The Court reasoned that the misappropriate designation is rational even though it results in not treating "all candidates with absolute equality."

There are a number of other measures at the Federal, State and local levels that regulate elections. Some of them were invoked by candidate and their parties this year and many are likely to be the source of litigation in future election campaigns.

Marshall H. Tanick has represented a number of candidates in election campaigns in Minnesota. He can be reached at 612-339-4295 (ext. 216) or by email at: mtanick@mansfieldtanick.com.

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