

STATE OF MINNESOTA

Office of the State Auditor



Rebecca Otto
State Auditor

INDEPENDENT SCHOOL DISTRICT 2142

PETITION REPORT

Description of the Office of the State Auditor

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Government Information - collects and analyzes financial information for cities, towns, counties, and special districts;

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Office of the State Auditor
525 Park Street, Suite 500
Saint Paul, Minnesota 55103
(651) 296-2551
state.auditor@osa.state.mn.us
www.auditor.state.mn.us

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INDEPENDENT SCHOOL DISTRICT 2142



Petition Report

**Office of the State Auditor
State of Minnesota**

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REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

PETITION REPORT

Petitioners
Superintendent and School Board
Independent School District 2142

INTRODUCTION

Eligible voters of St. Louis County School District, Independent School District 2142 (School District), petitioned the Office of the State Auditor to examine the books, records, accounts, and affairs of the School District in accordance with Minn. Stat. § 6.54 for the period January 1, 2009, through December 8, 2009. The certified Petition was received by the Office of the State Auditor on January 29, 2010. The statute allows the Office of the State Auditor, in the public interest, to confine the scope of the examination to less than that requested by the petition.

PETITIONERS' CONCERNS

After receipt of the Petition, the Office of the State Auditor met with a committee of Petitioners to review the Petitioners' concerns. The Petitioners alleged that School District officials, School Board members and consultants from Johnson Controls "engaged in an inaccurate and misleading campaign to promote a ballot question authorizing a \$78.8 million capital bond."¹ The Petitioners asked the Office of the State Auditor to examine the School District's records to determine whether public funds or resources were improperly used to promote a "yes" vote in the December 8, 2009, referendum. The petitioners alleged that the disseminated campaign material lacked "required neutrality" and contained "numerous and significant misstatements of fact."² The referendum sought authorization to issue general obligation school building bonds. The petitioners challenged four campaign-related School District publications and certain specific statements within the publications.

¹ Exhibit 1, p. 3. Petition.

² See Exhibit 1, p. 3.

On February 24, 2010, soon after the Petition was presented to the Office of the State Auditor, a petitioner filed an unfair campaign practices complaint.³ A subsequent unfair campaign practices complaint resulted in lengthy litigation that established the Office of Administrative Hearings, the Minnesota Court of Appeals and the Minnesota Supreme Court as the proper bodies to determine the disputed facts and issues central to this Petition.⁴ Unlike a court or the Office of Administrative Hearings, the Office of the State Auditor does not have authority to hold evidentiary hearings or to issue legal opinions, enforceable orders, or sanctions.

In a letter to the Petitioners dated May 19, 2011, the Office of the State Auditor informed them that, because litigation was currently in process that would directly impact issues and standards submitted to the Office of the State Auditor in the petition process, the Office of the State Auditor would await the conclusion of the litigation before determining whether unresolved issues remain. When the litigation was final, the Office of the State Auditor would assess the status of the Petition's issues and the applicable standards and determine how to proceed.⁵

LITIGATION

The records most relevant to the Petitioners' concerns are the Orders and Decisions issued by the Office of Administrative Hearings, the Minnesota Court of Appeals and the Minnesota Supreme Court regarding the same "campaign to promote" ISD 2142 ballot question identified in the Petition. These Orders and Decisions resulted from an unfair campaign practices complaint initiated after the Petition was certified, filed by individuals involved with the Petition.⁶ Because these Orders and Decisions resolve the issues posed in the Petition and because the Orders and Decisions are conclusive and enforceable, a detailed review of their history and an examination of their conclusions are necessary.

The summary of the relevant litigation can be found in Appendix A.

The Examination and Application of Legal Opinions can be found in Appendix B.

SUMMARY

Minnesota Statutes, chapters 211A and 211B, establish unfair campaign finance complaint processes to allow for the full consideration and resolution of these types of issues. It is now clear that a school district that disburses over \$750 to promote passage of a ballot question is subject to these processes. The litigation instituted by individuals involved in the Petition and described in Appendixes A and B has helped to define how courts and administrative fact-finders will address such issues in the future.

³ *Erickson v. Educ. Minn. Local 1406*, Notice of Determination of Prima Facie Violation, OAH 15-0325-21158-CV (Feb. 26, 2010).

⁴ *Abrahamson v. St. Louis County Sch. Dist.*, OAH 65-0325-21677-CV.

⁵ May 19, 2011, Office of the State Auditor letter. Exhibit 5.

⁶ See Exhibit 8, *Abrahamson v. St. Louis County Sch. Dist.*, OAH 65-0325-21677-CV, Findings of Fact, Conclusions of Law, and Order (May 30, 2014), and Exhibit 7, *Abrahamson v. St. Louis County Sch. Dist.*, 819 N.W.2d 129, 137 (Minn. 2012).

The concerns identified by the Petitioners and contested by the School District have been considered in an appropriate forum, having been reviewed by the Office of Administrative Hearings, the Minnesota Court of Appeals, and the Minnesota Supreme Court.

Petitioners' allegation that the School District promoted passage of the ballot question was ultimately validated. Specifically, the Office of Administrative Hearings found that the School District promoted passage of the referendum with publications that "did not present a fair and balanced representation," but instead painted a "dire picture" of the results of a "no" vote, that "unfairly presented" the true cost of approval, that stressed only exaggerated benefits of a "yes" vote, and that described "only the most extreme negative possibilities of a 'no' vote"⁷

As a result, the Office of Administrative Hearings reprimanded the School District for violating the campaign finance reporting requirements of Minn. Stat. § 211A.02.⁸ The Office of Administrative Hearings also ordered the School District to file the required campaign finance reports by August 30, 2014.⁹

In September 2014, the Office of the State Auditor contacted the Office of Administrative Hearings to verify that the required campaign finance reports had been filed by the School District, and to obtain copies. The Office of Administrative Hearings notified the Office of the State Auditor that campaign financial reports had been emailed to an Administrative Law Judge. The Office of Administrative Hearings indicated, however, that it does not accept email filing, and that the documents were not properly filed with the Office of Administrative Hearings until September 23, 2014.¹⁰

/s/Rebecca Otto

/s/Greg Hierlinger

REBECCA OTTO
STATE AUDITOR

GREG HIERLINGER, CPA
DEPUTY STATE AUDITOR

October 14, 2014

⁷ See Exhibit 8, pp. 29-31, *Abrahamson v. St. Louis County Sch. Dist.*, OAH 65-0325-21677-CV, Findings of Fact, Conclusions of Law, and Order (May 30, 2014).

⁸ Exhibit 8, p. 24.

⁹ *Id.*

¹⁰ See Exhibit 9, St. Louis County School Board Campaign Financial Reports.

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APPENDIX A

LITIGATION

After the Petition was presented to the Office of the State Auditor, a petitioner filed an unfair campaign practices complaint. The unfair campaign practices complaint in *Erickson v. Education Minnesota Local 1406*, was filed with the Office of Administrative Hearings on February 24, 2010.¹¹ It alleged that the local teachers' union prepared and disseminated false campaign material promoting the December 8, 2009, bond referendum in violation of Minnesota Statutes, section 211B.06. After an evidentiary hearing, the *Erickson* campaign complaint was dismissed by the Office of Administrative Hearings on May 18, 2010.¹² It appears the complainant is a signatory to the current Petition.

The *Erickson* result was reported in a May 28, 2010, local media summary of the Office of Administrative Hearings decision. The summary indicated the City of Orr and the City of Tower planned to file an unfair campaign practices complaint with the Office of Administrative Hearings over the allegedly false School District statements.¹³ In response, the Office of the State Auditor inquired about whether the cities were planning to litigate regarding the challenged statements made by the School District. It was confirmed that litigation was being contemplated.

A second unfair campaign practices complaint resulted in litigation that established the Office of Administrative Hearings and the courts as the proper bodies to determine the disputed facts and issues central to this Petition. The unfair campaign practices complaint in *Abrahamson and Kotzian v. St. Louis County School District*, was filed on November 4, 2010.¹⁴

The *Abrahamson* complaint alleged that, by making certain false statements, the School District and its School Board members violated provisions of Minn. Stat. chs. 211A (Campaign Financial Reports) and 211B (Fair Campaign Practices). Seven School District statements, identical to statements challenged by the Petition, were challenged in the unfair campaign practices complaint.¹⁵

¹¹ *Erickson v. Educ. Minn. Local 1406*, Notice of Determination of Prima Facie Violation, OAH 15-0325-21158-CV (Feb. 26, 2010).

¹² Exhibit 2, *Erickson v. Educ. Minn. Local 1406*, Findings of Fact, Conclusion and Order, OAH 15-0325-21158-CV (May. 18, 2010), pp. 5-7.

¹³ "Teachers throw district under the bus," www.timberjay.com/detail/7011.html (May 28, 2010) ("The judges have, essentially, already laid out half of the case that the cities of Orr and Tower plan to make to the OAH. It's very helpful to the cities' cause.") Emphasis added.

¹⁴ See Exhibit 3, *Abrahamson v. St. Louis County Sch. Dist.*, Complaint, and Exhibit 4, *Abrahamson v. St. Louis County Sch. Dist.*, OAH 48-0325-21677-CV, Order of Dismissal (November 9, 2010). One of the complainants is a signatory to the current Petition. The other complainant is an intended recipient of the Petition Report.

¹⁵ See Exhibits 1 (Petition letter), 3 (*Abrahamson* Campaign Finance Complaint), and 4 (*Abrahamson* Order of Dismissal).

Statement 1: “If residents vote no, their taxes will most likely still increase - in some cases by a large amount. That’s because if the plan is not approved, the school district would enter into ‘statutory operating debt’ by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.”

Statement 2: “[I]f a ‘no’ vote passes, you’ll likely be paying taxes of the district shown here that’s closest to your home.”

Statement 3: “Projected annual deficit in 2011-12: \$4.1 million.”¹⁶

Statement 4: “The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district’s continued operation, its implementation will provide many new opportunities for our young people’s education”

Statement 5: “Bottom line is if we don’t pass this bond referendum we’ll be putting our schools in hospice,” added Board Member Gary Rantala, who represents the Babbit-Embarrass attendance area.”

Statement 6: “Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close schools but don’t solve any of our financial challenges. These other options are not good for young people and our entire region,” said Board Chair Robert Larson.”

Statement 7: “The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, so hopefully voters will approve the plan and the options discussed at this study session will never have to be implemented,” said Superintendent Dr. Charles Rick. “Unfortunately, no matter how you look at these options if a ‘no’ vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts.”

¹⁶ During the course of litigation, other statements were also considered. For example, the following two statements from the same December 2009 newsletter were added in 2013, after remand to the Office of Administrative Hearings by the Supreme Court: (1) “A yes vote will bring about the realignment and modernizations described throughout this newsletter,” and (2) “A yes vote will keep the school district intact.” *See Abrahamson v. Indep. Sch. Dist. No. 2142*, OAH 65-0325-21677-CV, Order on Motion to Dismiss and Motion for Summary Disposition, (Aug. 2, 2013). Although this report will not attempt to track every statement considered by the Office of Administrative Hearings and the Minnesota Appellate Courts, the relevant decisions and orders are attached as exhibits.

In part, the legal analysis required deciding whether the School District was a “committee” that made “disbursements” of more than \$750, as these terms are defined in statute.¹⁷

The Administrative Law Judge ordered the complaint dismissed on November 9, 2010.¹⁸ The Administrative Law Judge reviewed all seven of the challenged statements and determined that the statements were either not demonstrably false, not factually false, or that they provided no basis for a claim of a false statement under the statute.¹⁹ The Administrative Law Judge also determined that the School District did not meet the “committee” definition.

Complainants appealed the Administrative Law Judge’s dismissal to the Minnesota Court of Appeals by filing a petition for a writ of certiorari on December 8, 2010. The Court of Appeals decision, released on August 1, 2011, differed in its analysis from that of the Administrative Law Judge. The Court of Appeals found that the statements promoted passage of the ballot question “by presenting one-sided information on a voter issue,” and concluded they were therefore not authorized by law.²⁰ The Court of Appeals found that two of the statements might be false, and that the case should be sent back to the Office of Administrative Hearings for an evidentiary hearing, but instead the School District appealed to the Minnesota Supreme Court.

The Minnesota Supreme Court released its decision on August 10, 2012. Its analysis differed from that of both the Administrative Law Judge and the Court of Appeals. The supreme court explained that the standard for a false statement under Minnesota Statutes, section 211B.06, “closely tracks the standard for actual malice.”²¹ It concluded that the statement about the \$4.1 million deficit was more like a “slanted” statement than demonstrably false, and it dismissed the false statement claim.

The supreme court declined to answer the question whether public funds can be spent to advocate for passage of a ballot question. The supreme court determined that an evidentiary hearing would be needed to determine whether the challenged statements promoted the ballot question.²² The supreme court sent the case back to the Office of Administrative Hearings for an evidentiary hearing.

¹⁷ “‘Committee’ means a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.” Minn. Stat. § 211A.01, subd. 4 (emphasis added). “‘Disbursement’ means money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. ‘Disbursement’ does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.” Minn. Stat. § 211A.01, subd. 6 (emphasis added).

¹⁸ Exhibit 4, pp. 1-2.

¹⁹ The Administrative Law Judge determined that no *prima facie* case for a violation under Minn. Stat. § 211B.06 had been stated.

²⁰ Exhibit 6, pp. 17-18. *Abrahamson*, 802 N.W.2d 393 at 403. Based on this analysis, the Court of Appeals found related expenditures not exempt for the definition of “disbursement” under Minn. Stat., ch. 211A.

²¹ Exhibit 7, p. 15, *Abrahamson v. St. Louis County Sch. Dist.*, 819 N.W.2d 129, 137 (Minn. 2012).

²² Exhibit 7, p. 20, *Abrahamson*, 819 N.W.2d 129, 139.

On May 30, 2014, the Office of Administrative Hearings released its order.²³ A panel of three Administrative Law Judges concluded that the School District was not prohibited from promoting passage of the 2009 referendum ballot question. It also concluded that complainants had established that the School District acted to “promote” the ballot question. The Administrative Law Judge Panel found that the School District had violated the campaign finance reporting requirements of Minn. Stat. § 211A.02 by failing to file required financial reports. The School District was reprimanded by the panel for its failure to file required campaign financing reports and ordered to file the required reports.²⁴

The issues raised in the Petition and the unfair campaign finance complaints involved complex issues, including issues addressed by the courts for the first time. The differences between the conclusions drawn in each of these forums emphasize the fact-based nature of the issues presented. A careful review of these issues is presented in Appendix B.

²³ See Exhibit 8, *Abrahamson v. St. Louis County Sch. Dist.*, OAH 65-0325-21677-CV, Findings of Fact, Conclusions of Law, and Order (May 30, 2014).

²⁴ *Id.*, p. 24.

APPENDIX B

EXAMINATION AND APPLICATION OF LEGAL OPINIONS

Issues Raised by Petitioners

The Petition summarized the issues raised by the petitioners about the alleged campaign to promote passage of the ballot question as “whether public funds or resources were improperly used to promote a yes vote in the December 8, 2009, referendum.”²⁵ The petitioners believed promotion of passage by the School District to be prohibited, based primarily on a 1966 Attorney General opinion. The petitioners asserted:

We believe that any official use of public resources for the presentation of information that is exaggerated, misleading, or otherwise inaccurate must inevitably be considered an improper purpose. While exaggerated and misleading statements are commonplace in political debate, such statements are invariably intended to promote one position, rather than inform voters. For the district to present exaggerated, misleading, or inaccurate statements is inherently promotional, and fails to abide by the requirements for neutrality.²⁶

The petitioners identified School District publications and questioned certain specific statements within the publications.²⁷

Underlying Questions

The Petition raised several underlying questions:

1. May a school district promote passage of a school district referendum (*i.e.*, does it have the legal authority to promote passage)?
2. Did the St. Louis County School District “promote” passage of the school district referendum authorizing the issue of school building bonds?
3. What is the legal standard for determining whether a statement is “false”?
4. Applying the standard to the statements identified by the Petition, were the statements contained in the printed materials created and distributed by the St. Louis County School District “false”?

²⁵ Exhibit 1, p. 1.

²⁶ Exhibit 1, p. 4.

²⁷ The petitioners also asserted that they believed, had the School District provided a more accurate assessment of the financial situation and effects of the bond proposal to the Minnesota Department of Education, the Department “would have been more likely to provide an unfavorable review, a decision that would have likely changed the outcome of the election.” Exhibit 1, p. 3.

Discussion

As discussed below, answers to the underlying questions can be found in the orders and decisions of the Minnesota Court of Appeals, the Minnesota Supreme Court, and the Office of Administrative Hearings.

1. May a school district promote passage of a school district referendum (*i.e.*, does it have the legal authority to promote passage)?

In 2014, the Administrative Law Judge Panel answered this question affirmatively, indicating a school district *is* allowed to promote passage of a school district referendum. The Panel stated: “There is nothing improper about a school district supporting the passage of a bonding question. . . . Minnesota’s campaign finance and reporting laws do not prohibit a school district from promoting a ballot question or urging the adoption thereof. When read together, Minn. Stat. §§ 211A.01 and 211A.02 simply require that, if a school district does promote a ballot question, it must report contributions or disbursements of more than \$750.”²⁸

2. Did the St. Louis County School District “promote” passage of the school district referendum authorizing the issue of school building bonds?

The Minnesota Supreme Court defined the term “promote” to mean “to urge the adoption of” or “advocate.”²⁹ The Supreme Court determined the application of this definition to be a question of fact and sent the matter to the Office of Administrative Hearings for an evidentiary hearing.³⁰

Applying the definition from the Minnesota Supreme Court, the Administrative Law Judge Panel reasoned “When a district’s communications or statements . . . are so one-sided that they cannot reasonably be read to mean anything but urging the passage of the referendum, then such communications have crossed the line from informational to promotional.” The Administrative Law Judge Panel concluded “that the School District acted to promote the ballot question.”³¹

The Administrative Law Judge Panel reprimanded the School District for failure to file campaign financial reports and ordered the School District to file the required reports.³²

3. What is the legal standard for determining whether a statement is “false”?

²⁸ See Exhibit 8, p. 27, *Abrahamson v. St. Louis County Sch. Dist.*, OAH 65-0325-21677-CV, Findings of Fact, Conclusions of Law, and Order (May 30, 2014). This determination followed a Minnesota Supreme Court decision that declined to answer the question and referred the matter to the Administrative Law Judge Panel. See *Abrahamson v. Indep. Sch. Dist. No. 2142*, 819 N.W.2d 129 (Minn. 2012).

²⁹ Exhibit 7, p. 13, *Abrahamson v. St. Louis County Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).

³⁰ *Id.*, p. 14. (“Whether, after the District answers the complaint and the case is fully litigated, the ALJ will ultimately find that these statements were promotional will depend on the evidence before it at that time.”)

³¹ Exhibit 8, pp. 28-31.

³² Exhibit 8, p. 24.

The Minnesota Supreme Court determined that the standard for a false statement under Minn. Stat. § 211B.06, “closely tracks the standard for actual malice.” Citing other court decisions, the supreme court explained that “actual malice” has been defined as “acting ‘with knowledge that [the statement] was false or with reckless disregard of whether it was false or not.’”³³ The supreme court explained: “Even ‘a ‘highly slanted perspective’ . . . is not enough by itself to establish actual malice.” “Using ‘worst case’ assumptions is more akin to producing a ‘slanted’ statement than it is to producing a statement that is demonstrably false.”³⁴

4. Applying the standard to the statements identified by the Petition, were the statements contained in the printed materials created and distributed by the St. Louis County School District “false”?

The Minnesota Supreme Court reviewed the challenged statement: “Projected annual deficit in 2011-12: \$4.1 million,” and concluded that the statement was not a false statement under Minn. Stat. § 211B.06.

The Administrative Law Judge Panel explained, “[w]hile overly gloomy assumptions and worst case scenarios may not be enough to form the basis of a false campaign claim under Minn. Stat. § 211B.06, they are sufficient to show that the statements are promotional and advocate for a particular result.”³⁵

³³ Exhibit 7, p. 15, *Abrahamson*, 819 N.W.2d 129, 137 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80) (1964) (citations omitted)).

³⁴ Exhibit 7, p. 20, *Abrahamson*, 819 N.W.2d 129, 139 (citations omitted).

³⁵ Exhibit 8, p. 31.

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INDEX OF EXHIBITS

Petition (Petition form and letter to the OSA w/o exhibits)	Exhibit 1
<i>Erickson v. Education Minnesota Local 1406</i> , OAH Findings of Fact, Conclusions and Order (May 18, 2010)	Exhibit 2
<i>Abrahamson and Kotzian v. St. Louis County School District</i> , Unfair Campaign Practices Complaint to the OAH (Nov. 4, 2010)	Exhibit 3
<i>Abrahamson and Kotzian v. St. Louis County School District</i> , Order of Dismissal (Nov. 9, 2010)	Exhibit 4
May 19, 2011, Office of the State Auditor Letter to Petitioners	Exhibit 5
<i>Abrahamson and Kotzian v. St. Louis County School District</i> , Minnesota Court of Appeals Decision (Aug. 1, 2011)	Exhibit 6
<i>Abrahamson and Kotzian v. St. Louis County School District</i> , Minnesota Supreme Court (Aug. 10, 2012)	Exhibit 7
<i>Abrahamson and Kotzian v. St. Louis County School District</i> , OAH Findings of Fact, Conclusions of Law, and Order (May 30, 2014)	Exhibit 8
St. Louis County School District Campaign Financial Reports properly filed on September 23, 2014	Exhibit 9

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EXHIBIT 1

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OFFICE OF THE STATE AUDITOR
STATE OF MINNESOTA
525 Park Street, Suite 500
Saint Paul, Minnesota 55103

Petition for Audit/Examination of a School District pursuant to Minn. Stat. 6.54

The entire cost of the audit, requested herein, must be paid for, under the law,
by the school district mentioned below.

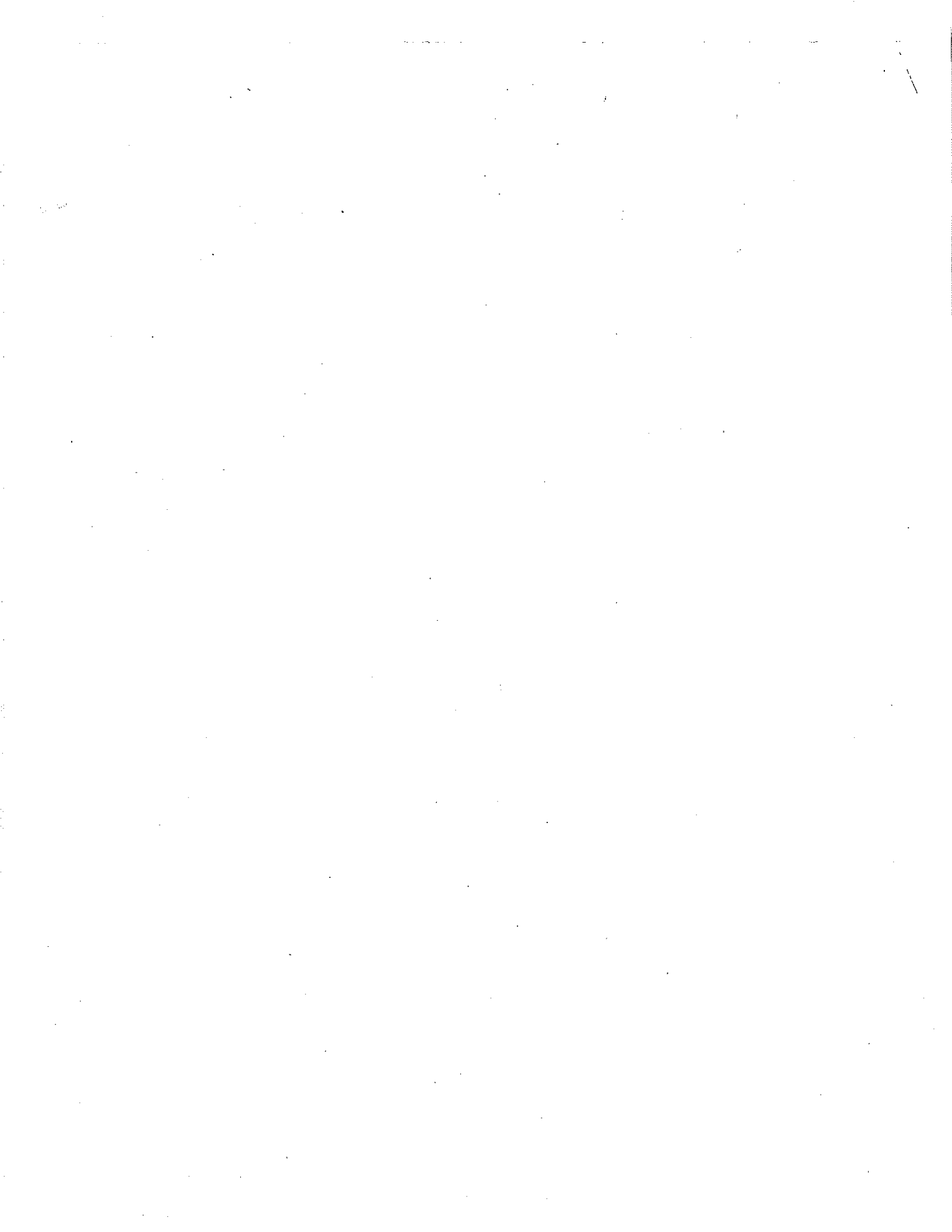
We, the undersigned eligible voters of Independent School District 2142, County of Saint Louis, Minnesota, do hereby petition the State Auditor, pursuant to law, to examine the books, records, accounts and affairs of the above school district, covering the period of Jan. 1, 2009 through Dec. 8, 2009, to determine whether public funds or resources were improperly utilized for the promotion of a yes vote in the Dec. 8, 2009 referendum.

We, the undersigned petitioners, also request that a copy of the final audit report be sent to:

Louise Redmond, City Clerk-Treasurer, Orr City Hall, PO Box 237, Orr, Minnesota 55771

and

Timothy Kotzian, City Clerk-Treasurer, Tower City Hall, PO Box 576, Tower, Minnesota 55790



Ms. Rebecca Otto
Minnesota State Auditor
Office of the State Auditor
525 Park Street, Suite 500
St. Paul, MN 55103

Dear Ms. Otto:

We are writing to you as elected officials, citizens, and taxpayers of communities within the St. Louis County School District (ISD 2142) to alert you to what we firmly believe to be an illegal and improper use of public tax dollars for the promotion of a school referendum, both to voters and the state Department of Education.

For the past several months, culminating on Dec. 8, 2009, school district officials (specifically Superintendent Charles Rick and Business Manager Kim Johnson), board members (specifically Robert Larson, Darrell Bjerklie, Chet Larson, Gary Rantala, and Tom Beaudry), and the district's hired consultants from Johnson Controls, engaged in an inaccurate and misleading campaign to promote a ballot question authorizing a \$78.8 million capital bond. These parties collectively and individually made repeated public presentations and disseminated material (which we believe was printed using public resources) that was not only lacking in required neutrality, but contained numerous and significant misstatements of fact.

In addition, these same individuals either produced, or authorized the production, of exaggerated, misleading, incomplete, or otherwise inaccurate information for presentation to the Minnesota Department of Education as part of their Review and Comment requirement. We believe that had the district provided a more accurate assessment of their financial situation and the actual effects of their bond proposal, the MDE would have been more likely to provide an unfavorable review, a decision that would have likely changed the outcome of the election.

In brief, school district officials, board members, and their consultants repeatedly stated to voters and state officials in public presentations as district representatives and in printed campaign material that the district faced a \$4.1 million budget gap and that without passage of its bond measure, the district would enter into statutory operating debt (SOD)

by June, 2011 at which point it would be required to dissolve. School officials and their consultants also maintained that dissolution would result in large tax increases for district residents. An investigation will show that the district does not face a \$4.1 million budget gap in the time frame stated and will not enter SOD by June 2011 and that district officials, board members, and their consultants were aware of this at the time they made such statements. In either case, entering SOD would not require the school district to dissolve, nor would dissolution necessarily result in large tax increases for district property owners.

As you know, Minnesota Attorney General opinions dating from 1952 and 1966 limit public officials, and specifically school district officials, to a neutral presentation of the facts surrounding a ballot question. Yet officials with ISD 2142 did not limit themselves in their public presentations or in printed publications to statements of fact. In publications produced at public expense, district officials clearly made statements and presentations of information that promoted a yes vote and presented dire consequences in the event of a no vote. While the publications or presentations did not specifically state "Vote Yes," that fact does not excuse school officials from the requirement to present information in a neutral fashion. Citing case law in his 1966 opinion, Attorney General Robert W. Mattson implied that a school district brochure that "over-dramatized" the "dire" consequences of a no vote could also run afoul of proper purpose requirements. As the AG stated, "the board made use of public funds to advocate one side only of the controversial question without affording dissenters by means of that financed medium to present their side..."

Yet officials and consultants with ISD 2142 utterly failed to provide a balanced presentation of the facts, nor did they afford dissenters (even those serving on the board) to present their side.

Implied, but not stated, in the 1966 opinion, is the requirement that any presentation of information by a school district must be factual in nature. We believe that any official use of public resources for the presentation of information that is exaggerated, misleading, or otherwise inaccurate must inevitably be considered an improper purpose. While exaggerated and misleading statements are commonplace in political debate, such statements are invariably intended to promote one position, rather than inform voters. For the district to present exaggerated, misleading, or inaccurate statements is inherently promotional, and fails to abide by requirements for neutrality. Yet, school district officials, board members, and their consultants repeatedly made such statements and presentations to the public and to state officials.

Example 1

ISD 2142's publication: "Enhancing Opportunities for our Kids' Future" (Exhibit A)

This publication, which we believe was produced by the school district at public expense, made a number of exaggerated, misleading, inaccurate, or promotional statements intended to promote a yes vote.

Statement 1: "If residents vote no, their taxes will most likely still increase-- in some cases, by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts."

This statement is false or misleading, for reasons as follows:

- 1) While claiming that the district would enter into statutory operating debt by June 2011, school district officials were fully aware at the time of this publication that they were highly unlikely to be in SOD as of June 2011 because of budget reductions that had already been approved by the school board. In subsequent media interviews, Business Manager Kim Johnson indicated that the district would make the cuts necessary, including closing schools, to avoid SOD. School officials stated publicly and in materials produced to promote the bond measure that a no vote would lead to SOD as of June, 2011, when in fact the school district had taken steps to avoid SOD as of that date.
- 2) In addition, district officials were fully aware that entering into SOD does not require a district to dissolve. Over the past 20 years, many dozens of Minnesota school districts have entered SOD and none of them have opted for dissolution in response. Department of Education officials will readily confirm this fact. The district's publication did not suggest that dissolution was a mere possibility; it stated unequivocally that it "would need to dissolve." That is, without question, an inaccurate statement.

Statement 2: "if a 'no' vote passes, you'll likely be paying taxes of the district shown here that's closest to your home."

This statement, in combination with the chart included in the district publication, is false

and misleading for two reasons.

- 1) The claim assumes that the district would dissolve in the event of a no vote. That assumption is false, as stated above.

- 2) Per the St. Louis County Auditor's Office, the taxes that a resident of ISD 2142 would pay under dissolution or consolidation with a neighboring district cannot be determined by the current level of taxation in neighboring districts since tax rates are based on several factors, many of which would be altered by dissolution. Yet claims to the contrary were repeated in many public presentations and in printed material produced by the school district. School district officials stated in print and in public presentations that a no vote would result in higher taxes, which was false since the district did not face a financial crisis as severe as advertised and because a budget shortfall in no way requires dissolution of a school district. In addition, the district made no effort to determine whether any individual's taxes would actually increase in the event the district did dissolve. It merely printed or presented the current tax rates of neighboring districts, which falsely implied a tax increase under dissolution.

In fact, many district residents may have experienced **tax reductions** under dissolution, since state statutes pertaining to dissolution require that any existing operating levies in the dissolving district or the district accepting territory under dissolution would be nullified in most cases (See Exhibit B). Such an eventuality would result in significant tax reductions for taxpayers of both participating districts, not the increases stated by district officials and their consultants. At no point, did district officials make note of this possibility.

Statement 3: "Projected annual deficit in 2011-12: \$4.1 million."

This \$4.1 million shortfall projection was presented in numerous public presentations as well as in printed publications by school district officials and their consultants. It was also repeated in presentations to MDE officials. This projection (see Exhibit C) was never a realistic budget projection, but was based on a set of "worst case" assumptions developed by the district's consultant, Johnson Controls, which stood to benefit financially from passage of the bond referendum. The projection assumed that no layoffs or staff reductions would occur, no steps would be taken to curb rising health insurance costs, and that energy costs would rise by ten percent annually from record highs in 2008.

This same set of projections estimated the district's general fund (Fund 01) shortfall in the 2009-10 school year at nearly \$2.7 million. Yet, on June 22, 2009, (Exhibit D) prior to these public statements and publications, the district's school board had approved a 2009-10 budget with an actual general fund shortfall of just \$458,000 (Exhibit E). As the board

minutes included in Exhibit D indicate, board members were informed that, in fact, the district's finances were "much better than previously projected."

In other word, even as they repeated the budget projections developed by Johnson Controls, school district officials knew that they no longer reflected their actual financial situation. In a subsequent media interview, Business Manager Kim Johnson acknowledged that the budget projections were not realistic, but were intended to dramatize that the district faced financial challenges. Yet this went far beyond dramatization. To continue to cite budget projections that district officials knew were outdated, not only to the public, but to state officials, borders on fraud. At a minimum, district officials and their agents had an obligation to provide the public with an accurate and realistic assessment of their finances, not exaggerations and misinformation.

Statement 4: The following extended segment makes misleading claims to voters:

"The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education.

Better learning spaces and materials.

- Classrooms wired with advanced technology for computers, projection, recording, online learning, real-time interaction with distant learning/teaching resources, and the like.
- Up-to-date textbooks and learning materials.
- Flexible laboratory spaces for sciences, shops, and technical activities.
- Computer access for every student as a basic tool for learning.

Learning centered on individual students.

- Personalized learning in which each student has his/her own Individual Learning Plan guiding their education.
- Advisors regularly working with individual students, communicating with parents.
- Enrichment and remedial programs and support available to all students geared to their Individual Learning Plans.
- Learning that is growth oriented and achievement based.

Focus on life skills.

- Students will graduate with mastery of key life-career skills including work skills, social skills, interpersonal interaction, basic living skills (homemaking, household/consumer finance, healthy lifestyle choices, problem solving, critical thinking, etc.).
- Career exploration will be a constant factor as students create and revise their Individual Learning Plans.

Expanded elementary level programming.

- Solid basic skills as foundation for all future learning.
- Combination of primary teacher with departmentalized (by subject) programming.
- Provision of advanced mathematics and science offerings.
- Third graders as fluent readers.
- Learning at student's pace.
- Active intervention and support.
- Computer skills consistently presented and achieved across district.
- Life / career exploration.
- Character education.
- Outdoor education.
- Fine arts.
- Languages including Spanish and Ojibwemowin.

Solid core programming.

- Students will be expected to achieve state standards.
- Core programming will include: Language Arts, Sciences, Social Studies, and Mathematics.

Enhanced potential for electives.

With greater resources available for programming, the district will be able to greatly expand its offerings to include dozens of modern courses. From forensic science to economics, from computer programming to graphic arts, the children of our district will have unprecedented opportunities in language arts, social studies, mathematics and sciences."

This entire section makes numerous specific promises for educational improvement that the district can in no way assure. Under state law, none of the \$78.8 million approved by voters can be utilized for textbooks or educational materials, curriculum or ILP development, teacher hiring, or new programming, all of which the district claimed would be provided by the plan. The district's plan involves capital bonding only. It does not provide additional operating funds and cannot pay for most of the educational improvements this publication claims are a part of the plan.

While district officials claimed that operational savings made possible by the school consolidation would free up funding for such improvements, those "savings" were highly speculative and based on unrealistic revenue projections. District officials at no time explained that the above-cited educational improvements were contingent on the realization of highly speculative savings and revenue increases. At no point did they state that other priorities could require the district to expend any savings achieved in other

areas. They repeatedly implied that these improvements were an integral part of the plan and would be funded by the monies received from the capital bond. As the district publication stated: **"its implementation will provide many new opportunities for our young people's education."**

District officials, board members, and their consultants knew this to be questionable, or at best a matter of opinion, not a neutral presentation of fact. At the time of these presentations, school officials, board members and consultants knew that many of the assumptions underlying their claims were unlikely to be realized. In addition, the improvements were contingent on projected enrollment increases at some school sites that were unrealistic. (See Exhibit F)

Statement 5: "Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice," added Board Member Gary Rantala, who represents the Babbitt-Embarrass attendance area.

This statement of opinion was ostensibly taken from a Sept. 9, 2009 board study session for the school district-funded publication. While Board Member Rantala was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars is improper. The school district publication provided no opportunity for those on the other side of the debate to express their opinions.

Statement 6: "Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region," said Board Chair Robert Larson.

This statement of opinion was excerpted from a Sept. 9, 2009 board study session for the school district publication. While Board Chair Larson was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars is improper. The school district publication provided no opportunity for those on the other side of the debate to express their opinions.

Statement 7: "The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, **so hopefully voters will approve the plan** [emphasis ours] and the options discussed at this study session will never have to be implemented," said Superintendent Dr. Charles Rick. "Unfortunately, no matter how you look at these options if

a 'no' vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts."

This statement of opinion was excerpted from a Sept. 9, 2009 board study session for the school district publication. While the superintendent was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars is inappropriate and illegal. The school district publication provided no opportunity for those on the other side of the debate to express their opinions.

Your office should be aware that not only was there considerable public opposition to the district's plan, members of the school board were also opposed and some of them expressed their concerns at this same Sept. 9, 2009 board meeting. Yet, at no point, did the school district publication excerpt their comments, which would have been obligatory had the school district actually intended a fair and neutral presentation of facts or opinions. The presentation of board and administrative opinion was entirely one-sided and utterly fails any test of neutrality.

Example 2

District publication: "Why realigning the district is good for all of us" (Exhibit G)

This taxpayer-funded publication offered another entirely one-sided presentation of information and continued to make misleading statements to the public about the district's financial situation as well as the implications of a no vote. It again repeats the claim of a looming \$4.1 million budget gap that district officials and consultants knew was exaggerated as well as the threat that the district would dissolve and that residents' taxes would rise in the event of a no vote.

Even the title of the publication is clearly promotional and expresses an opinion that realigning the district (which required a yes vote) "is good for all of us." This cannot be dismissed as a neutral statement. It is, on its face, promotional, and the publication provided no opportunity for those with a differing opinion to express their views.

Example 3

School district newsletter issued just prior to vote (Exhibit H):

Statement 1: "The new Cook-Orr school would be located near the junction of Hwy. 53 and Hwy. 73."

This is a misleading statement and a significant one. The school district had originally proposed to build the new school near the midway point between Cook and Orr, near the

junction of Hwys. 53 and 73. That compromise location had initially attracted support from voters in the Orr area, including from the Orr school board representative.

But the proposed school location was later changed to a site near Hwy. 53 and Olson Road, located about 4.8 miles north of Cook, and approximately 14 miles south of Orr. This change in location severely undermined support for the measure in Orr, and even elicited the eventual opposition of the Orr school board representative. Had voters in Orr believed that the new school would, in fact, be located "near the junction of Hwy. 53 and 73," it would have had the effect of encouraging greater voter support in the Orr area.

At the time of publication of this newsletter, however, the district had already signed a purchase agreement on land located near Hwy. 53 and Olson Road, so the district had no intention of locating the new school near the junction of Hwys. 53 and 73.

Statement 2: "Without adoption of the proposed plan, the projected shortfall would be near \$4.1 million for budget year 2011-12, which would place the district into statutory operating debt. In effect, without a solution the district may have to go out of business."

This statement was made in a newsletter dated December 2009. Yet, as we have proven, school district officials knew as of June 22, 2009 that the district's financial situation was nowhere near this dire. In addition, the district again implied that entering SOD (which it was not close to doing) may "have to go out of business."

Statement 3: The entire section under the headline: "Here's how kids benefit if the bond referendum passes" again repeats a laundry list of educational improvements, many of which are unrelated to capital bonding. Many of the improvements cited could not legally be funded by the bond measure. Yet the district never makes this known. The newsletter never states that the list of improvements was merely speculative, and attainable only in the event that the district's plan yielded projected savings and that other priorities did not intercede. The newsletter states: "Among the commitments voters would be making to young people are these:" There was absolutely nothing in this ballot measure that made a "commitment" to many of the items claimed in the newsletter.

Example 4

ISD 2142 Review and Comment Publication, published August 17, 2009: (Exhibit I)

Secton 6: Project Description

Page 2

The section includes an excerpt of a budget projection that cites actual budgetary data from 08-09 as well as projected 2011-12 data, suggesting a \$4.1 million budget gap.

This projection inexplicably lacks data from the 09-10 and 10-11 budget years, even though the 09-10 budget had already been approved by the ISD 2142 school board as of June 22, or nearly two months prior to publication of the document. This same gap in data was apparent in other district publications, such as the newsletter produced in December 2009 (Exhibit H).

Why would the district have failed to show the progression of budget deficits from 08-09 through 11-12?

Perhaps because the 09-10 budget approved by the board reflected significant cost reductions and some additional revenue, which had trimmed the district's general fund (Fund 01) deficit from \$1.314 million in 08-09 to just \$458,000 in the 09-10 budget. Had this budget data been included in the submission, it would likely have alerted MDE officials of the fact that the district had already implemented significant cuts that had the effect of correcting the district's financial problems, contradicting the district's argument that its financial challenges were insurmountable without approval of the \$78.8 million bond. Certainly a projected increase in the general fund deficit from \$458,000 to \$3.563 million in just two years would have raised questions with MDE officials as to veracity of the projection. Given the cost reductions and new revenue sources, the 09-10 budget is strong evidence that the district's claim of a \$3.563 million general fund deficit and a \$4.1 million total deficit in 11-12 is highly unlikely to be realized. This was known to district officials as of August 2009, when the district made its submission to the MDE and we believe the omission of budget data from 09-10 and 10-11 was not only misleading, but suggests an intent to mislead.

Section 8: Operational Costs

Page 1

The district and its consultants state to MDE officials in this section that "implementation of the long-range facilities plan will result in operating and staffing reductions." In a chart directly below, the district includes a chart outlining \$5.6 million in savings that it maintains would be achieved as a result of the plan.

An investigation of those claims will reveal, however, that many of those savings had already been realized as of the date of submission of the Review and Comment document. As an included news story from the Timberjay Newspaper (Exhibit J) reveals, many of the savings the district included as part of the \$5.6 million had already been made through staff reductions approved beginning in 2008 and continuing through 2009. Those reductions

included at least 13 teacher FTEs, the permanent reduction of an assistant superintendent position as well as one principal position and approximately 2.0 FTEs in clerical staffing. These reductions inevitably have the effect of reducing the savings impact of the restructuring.

For example, the Review and Comment submission states that the district stands to save \$1.239 million on elementary teachers and \$1.684 million on secondary teachers. That is based on a total teacher reduction of 32.65 FTEs, as stated on Line 4 in the district-produced document we have titled "FTE Reductions-Teachers" which is part of Exhibit J. **Please note that the FTE Reductions-Teachers document did not appear in the Review and Comment submission made to MDE. This information was only made public by the district upon specific request.**

Line 4 shows the difference in teacher FTEs between the 2008-09 budget year and 2011-12, which is when the district's plan is supposed to be implemented. The cited reduction of 32.65 teacher FTEs (using the district's average teacher cost of \$90,000) yields a total savings of \$2.938 million. The district's Review and Comment chart shows a savings of \$2.923 million including elementary and secondary teachers and specialists.

Yet on Line 5 of the FTE Reductions-Teachers document, the district shows the difference in teacher FTEs between the 2009-10 budget (approved in June 2009) and 2011-12. As Line 5 clearly states, the achievable teacher reductions (because of cuts in the 2009-10 budget) had actually been reduced to 18.96 FTEs, which would yield a savings of \$1.706 million, not the \$2.923 million that the district claimed to state officials. Despite the fact that the district had approved the 2009-10 budget two months prior, the district's submission makes no mention of these reductions and, in fact, continues to present to state officials that these reductions will be achieved only through approval of its restructuring plan. And since it is based on old information, it also misstates the actual number of teacher FTEs that were currently employed by the district.

This is only one example. The operational savings chart also lists savings in a number of other staffing positions. As the document titled FTE Reductions- Staff presents another case where the district's presentation to MDE overstated the actual savings achievable through its plan. While the district's Review and Comment submission includes 22.65 FTEs in staff reductions, following approval of the 2009-10 budget, the actual savings had been reduced to 13.80 FTEs. That reduces the district's purported savings by at least another \$450,000. We believe that further investigation of the district's operational savings claim will reveal other examples as well.

Yet these two cited examples alone, would appear to reduce the district's actually achievable savings from its stated \$5.622 million to \$3.995 million. We believe that had the district claimed a \$4.1 million budget shortfall (as it did claim to state officials) but presented a \$78.8 million capital plan that would reduce operational expenses by just

\$3.995 million, MDE officials would have been unlikely to provide a favorable recommendation.

Conclusion:

As stated above, we believe the school district misappropriated public resources in the promotion of a yes vote in a school referendum. As our above-cited examples make clear, district officials in public presentations and in material produced by the district to promote the referendum with the public and state officials, failed to limit themselves to an informational-only presentation. Board members in official public settings repeatedly advocated for a yes vote and the material published by the district stated or implied dire consequences, including school closures, district dissolution, and (incongruously) tax increases, should the referendum be defeated. While the printed material did not specifically state: "Vote Yes"-- that in itself does not excuse the district from its legal obligation to make factual and neutral presentations to the public. District officials, in fact, expended public resources in the dissemination of exaggerated, misleading, and promotional information to the public and state officials that was clearly designed to encourage a yes vote or a favorable rating.

We believe that this is a matter best addressed by the state auditor. As elected officials and citizens of Minnesota, we feel an obligation to report what we believe is an improper use of public resources. As such, this raises legal compliance issues which we believe to be clearly within the statutory purview of your office. There are a number of specific questions which arise from our complaint, of which we are seeking response from your office.

Question 1:

Did the school district, in fact, pay for the publications we have cited in this complaint?

Question 2:

Based on a review of the district's budget, have the budget projections produced by Johnson Controls proven to be accurate for the 2009-10 school year? Are they likely to be true for the 2010-11 school year? Please provide a detailed set of projections to justify your view.

Questions 3:

Based on a review of the district's budget, would ISD 2142 likely have faced a \$4.1 million (\$3.5 million in Fund 01) budget deficit in the 2011-12 school year without passage of the

operating levy, as district officials claimed to the public and state officials? Please provide a detailed set of projections to justify your view.

Question 4:

Based on a review of the district's budget, is the district likely or unlikely to enter statutory operating debt as of June 2011, as district officials claimed to the public and state officials? Please provide a detailed set of projections to justify your view.

Question 5:

Would entering SOD require the school district to dissolve, as district officials claimed to the public and state officials?

Question 6:

Would dissolution, as described in MS 123A.46, require residents of ISD 2142 to pay the tax rates presented to the public by the school district? Or, would dissolution, in fact, result in cancellation of existing operating levies, provided the stated exception would not apply, and possibly result in the likelihood of tax reductions, rather than increases?

Question 7:

Is a school district authorized to pay for the distribution of misleading, exaggerated, or otherwise inaccurate information to the public which is intended or tends to promote a ballot question?

Question 8:

Did the school district exceed its authority in publishing such materials in order to promote the bond referendum?

Question 9:

In submitting information to the MDE as part of the Review and Comment portion, is the district required to provide timely and accurate information regarding financial status as well as the effect of a capital project, or can it utilize less timely data if it presents a stronger argument?

Question 10:

Did the school district's presentation of operational savings achievable through its capital project reflect the most timely and accurate information to state officials?

Question 11:

Was the financial data submitted by the district to the MDE the most timely and accurate at that point?

Question 12:

Had the school district provided more timely and accurate information to MDE officials, might it have affected the decision to offer a favorable rating? Or, conversely, is the Review and Comment process merely perfunctory, without any significant oversight role?

Other issue:

We are also concerned that the district violated MS204B.18, Subd. 1 for its failure to provide compliant voting booths or stations on election day. As the statute states: "Each polling place must contain a number of voting booths or voting stations in proportion to the number of individuals eligible to vote in the precinct. Each booth or station must be at least six feet high, three feet deep and two feet wide with a shelf at least two feet long and one foot wide placed at a convenient height for writing. The booth or station shall permit the voter to vote privately and independently...All booths or stations must be constructed so that a voter is free from observation while marking ballots."

The school district failed to provide voting booths or stations meeting the criteria set forth in this statute. Despite the fact that the school district had proper voting booths available to it, the district's election overseer specifically instructed election judges not to utilize them. Instead, the district required voters to mark their ballot in the open on tables set in front of the judges' table. No shields of any kind were provided and voters could be readily observed by judges as well as other voters. In addition, voters were requested not to fold their ballots and to place them in a box directly in front of an election judge, who could readily determine how each voter had marked their ballot. This arrangement generated numerous complaints from voters, particularly from those familiar with the legal requirements pertaining to elections. The district, as the overseer of the election, was responsible for assuring compliance with state law and its failure to do so is itself a violation of law.

We submit the above information and attached exhibits in the hopes that the Office of the State Auditor will investigate and seek to uphold legal requirements in this matter. Thank you for your prompt attention to this issue.

EXHIBIT 2

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Douglas W. Erickson,
Complainant,
vs.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

Education Minnesota Local 1406,
Respondent.

The above-entitled matter came on for an evidentiary hearing on May 10, 2010, before a panel of three Administrative Law Judges: Beverly Jones Heydinger (Presiding Judge), Kathleen D. Sheehy, and James F. Cannon. The hearing record closed at the conclusion of the Complainant's case.

James Magnuson, Attorney at Law, Mohrman & Kaardal, P.A., appeared on behalf of Douglas W. Erickson (Complainant).

Meg Luger-Nikolai, Attorney at Law, Education Minnesota, appeared on behalf of Education Minnesota Local 1406 (Respondent).

STATEMENT OF ISSUE

Did Respondent violate Minn. Stat. § 211B.06 by preparing and disseminating false campaign material relating to Independent School District 2142's bond referendum election that occurred on December 8, 2009?

The panel dismissed the Complaint at the conclusion of the Complainant's case because the evidence was insufficient to prove that the Respondent made a false statement of fact, in violation of Minn. Stat. § 211B.06.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. On December 8, 2009, the St. Louis County School District (ISD 2142 or District) held a special election on a bond referendum. The referendum passed with 52 percent of the vote.¹

¹ Ex. 8.

2. Complainant is a resident of ISD 2142 who opposed the bond referendum and voted against it.²

3. Respondent is the local chapter of Education Minnesota, the state teachers' union.

4. The bond referendum was controversial, and the special election generated much public discussion and debate.³

5. On September 9, 2009, the ISD 2142 School Board met to consider various consequences and options if district voters did not pass the referendum. The Board concluded that dissolution of the school district would be the inevitable result if the referendum were to fail.⁴ It was the District's position that if the District were dissolved, the District's students would have to attend school in neighboring districts, most of which are taxed at higher rates. The District did not claim that individual property taxes would go down if the referendum passed.⁵

6. In its September/October 2009 newsletter, the District explained its position as follows:

If passed, the implementation [of the referendum] would be funded by a property tax increase of \$14 per month for every \$100,000 of home value, less homestead and other tax credits, for the next 20 years.

However, if residents vote no, their taxes will most likely still increase – in some cases by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.

Yet everyone will be impacted, even if you don't have students in the public schools. You'll then be paying the taxes of the nearest district. Right now, our taxes in the St. Louis County School District – at \$68 annually for a \$100,000 home – are significantly lower than they are in neighboring districts.⁶

7. In its December 2009 newsletter, the District again explained the tax impact of the bond referendum in a section entitled "Here's how your taxes will be impacted. Approval keeps your taxes lower than the regional average." The newsletter

² Testimony of Douglas Erickson.

³ Test. of D. Erickson.

⁴ Ex. 8, p. 4-5.

⁵ *Id.*

⁶ Ex. 7, p. 5.

included a bar graph depicting the 2010 school property taxes paid in 18 nearby school districts. The chart indicated that residents of ISD 2142 paid the lowest amount of taxes of the 19 districts surveyed. The chart explicitly explained in bulleted statements: "Long Range Plan Tax Impact: Added tax impact of Bond Referendum = \$164/year per \$100,000 Home."⁷

8. The District published a sample ballot in the Cook News Herald on November 26, 2009. The sample ballot set out the text of the referendum. Underneath the ballot question, the ballot stated in bold, "By voting 'yes' on this ballot question, you are voting for a property tax increase."⁸

9. In the days before the election, Respondent published the following advertisement in four local newspapers urging people to vote for the referendum:⁹

SAVE OUR SCHOOLS!

Vote YES for lower taxes!
Vote YES for our schools!
Vote YES for our community!
Vote YES for the passing of the referendum
on December 8th, 2009.

The bond referendum will give money to the St. Louis County District to build and remodel our schools.

Teachers Care
ISD 2142

Paid for by EdMN Local 1406
Designed by Rosa Goerdt, Cherry School

10. The Complainant did not see the advertisement before the election. He saw it after the election when he was investigating what he believed to be voting irregularities that took place on election day. He asserts that the statement "Vote YES for lower taxes!" is false because it implies that passage of the referendum would decrease property taxes for District residents. The Complainant's own property taxes

⁷ Ex. 6, p. 2.

⁸ Ex. 1.

⁹ See Exs. 1-4, 9.

increased by approximately \$500 in 2010 as a result of the passage of the referendum.¹⁰

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Campaign material is defined to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election."¹¹ The newspaper advertisements prepared and disseminated by Respondent are campaign material within the meaning of that statute.¹²

3. Minn. Stat. § 211B.06, subd. 1, provides:

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, or with respect to the effect of a ballot question, 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.

4. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.¹³

5. The Complainant has failed to demonstrate by clear and convincing evidence that the Respondent made a false statement of fact in violation of Minn. Stat. § 211B.06.¹⁴

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel makes the following:

¹⁰ Test. of D. Erickson; Ex. 10.

¹¹ Minn. Stat. § 211B.01, subd. 2.

¹² See Exs. 1-4.

¹³ Minn. Stat. § 211B.32, subd. 4.

¹⁴ See *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006), citing *Chafoulias v. Peterson*, 668 N.W.2d 642, 654-65 (Minn. 2003) (interpreting the "reckless disregard" standard to require a defendant to have made a statement while subjectively believing that the statement is probably false.)


ORDER

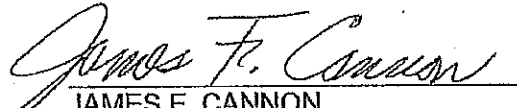
IT IS ORDERED:

That Respondent did not violate Minnesota Statutes § 211B.06 as alleged in the Complaint, and therefore the Complaint is DISMISSED.

Dated: May 18, 2010


BEVERLY JONES HEYDINGER
Presiding Administrative Law Judge


KATHLEEN D. SHEEHY
Administrative Law Judge


JAMES F. CANNON
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Complainant alleges that Education Minnesota Local 1406 falsely stated in campaign material that property taxes would be lowered if the school bond referendum passed, in violation of Minn. Stat. § 211B.06. Minn. Stat. § 211B.06 prohibits the preparation and dissemination of false campaign material. According to § 211B.06, a person must not intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of

whether it is false. A complainant must prove by clear and convincing evidence that the statement is false. A complainant must also demonstrate that the respondent made the statement while subjectively believing that the statement was probably false, or published the statement with reckless disregard of its truth or falsity.¹⁵

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact. It is not intended to prevent criticism of candidates or to prevent unfavorable deductions or inferences derived from a candidate's conduct. The statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading. Section 211B.06 does not regulate unfavorable deductions, inferences, unfair characterizations, or misleading remarks. The statute prohibits only false statements of specific fact.¹⁶

The Minnesota Supreme Court's discussion of this standard in *Kennedy v. Voss* is instructive.¹⁷ In that case, an incumbent County Commissioner complained that his opponent disseminated literature which unfairly characterized his support for programs serving the elderly. The challenger, citing the incumbent Commissioner's vote against the entire County Budget, which included funding for programs serving the elderly as well as many other appropriations, asserted that the incumbent "is not a supporter of programs for the elderly."¹⁸ The incumbent maintained that there were other votes, not cited in the challenger's literature, which made the incumbent's support of the referenced programs clear. The Minnesota Supreme Court held that inferences based on fact did not come within the purview of the statute even if the inferences are "extreme and illogical."¹⁹ The Court pointed out that the public is protected from such extreme inferences by the campaign process itself.²⁰

The statement at issue here is "Save our schools! Vote yes for lower taxes!...Vote yes for the passing of the referendum on December 8, 2009." The Complainant argues that the statement is false because his property taxes increased after the referendum passed; they were not lowered as a result of the referendum. Complainant points out that the sample ballot published in the Cook News Herald on November 26, 2009, stated clearly that "by voting "yes" on [the referendum question], you are voting for a property tax increase." Therefore, he argues, it was false for Respondent to state that property taxes would be lowered if the referendum were to pass.

The panel concludes that the statement is not false within the meaning of § 211B.06. It was the District's position that if the referendum did not pass, the District

¹⁵ See *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006).

¹⁶ See *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute).

¹⁷ *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981).

¹⁸ *Id.* at 300.

¹⁹ *Id.*

²⁰ *Id.*

would need to dissolve, and the District's students would be required to attend neighboring school districts, most of which are taxed at significantly higher rates than District 2142. The District explained its position in depth in its September/October 2009 and December newsletters. The District also provided comprehensive graphs of the tax rates of the 18 neighboring school districts in the newsletters. The District's position that residents' taxes would actually increase if the referendum failed was well established throughout the debate and discussion of the referendum. The Complainant has no evidence to suggest that the District's statements about the consequences of failure to pass the referendum were false.

Although the Respondent's statement "Vote yes for lower taxes" is incomplete and somewhat misleading, in that it does not make clear that voting yes meant that taxes would be lower than other school districts in the region, it is not false within the meaning of § 211B.06. Moreover, it is apparent from the record that the debate was framed within the community as how best to limit the size of a virtually inevitable increase in taxes, whether paid to ISD 2142 or to another neighboring district. Because the evidence presented at the hearing was insufficient to prove by clear and convincing evidence that the statement is a false statement of fact, the panel granted the Respondent's motion to dismiss the complaint at the close of the Complainant's case.

Respondent also moved for an award of attorneys' fees. Pursuant to Minn. Stat. § 211B.36, subd. 3, the panel may order a Complainant to pay the Respondent's reasonable attorney's fees and costs if the panel determines the complaint was frivolous. A frivolous claim is one that is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law.²¹ Here the complaint was found to state a prima facie violation of Minn. Stat. § 211B.06. The fact that the Complainant was not able to meet his burden of proving the case by clear and convincing evidence does not render his complaint frivolous. Therefore, Respondent's request for attorney's fees is denied.

B.J.H., K.D.S., J.F.C.

²¹ *Maddox v. Department of Human Services*, 400 N.W.2d 136, 139 (Minn. App. 1987).

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of Douglas W. Erickson vs Education Minnesota Local 1406</i>	OAH Docket No.: 15-0325-21158-CV
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Nancy J. Hansen certifies that on the 18th day of May, 2010, she served a true and correct copy of the attached Findings of Fact, Conclusions, and Order by placing it in the United States mail with postage prepaid, addressed to the following individuals:

Meg Luger-Nikolai, Esq.
Education Minnesota
41 Sherburne Avenue
St. Paul, MN 55103

James Magnuson
Attorney at Law
Mohrman & Kaardal, PA
33 South 6th Street, Suite 4100
Minneapolis, Minnesota 55402

EXHIBIT 3

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COMPLAINT TO
STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
VIOLATION OF THE FAIR CAMPAIGN PRACTICES
AND
CAMPAIGN FINANCE ACTS

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HEARINGS

Steve Abrahamson, Mayor, for the City of Tower, Minnesota,
and Tim Kotzian, Chair for the Coalition for Community Schools

Complainants,

vs.

The St. Louis County School District, Independent School District No. 2142, and in
their capacity as School Board Members for School District No. 2142, Bob Larson,
Chair, Tom Beaudry, Vice-Chair, Darrell Bjerklie, Treasurer, Gary Rantala, Clerk,
Andrew Larson, Director, Chet Larson, Director, and
Zelda Bruns, Director,

Respondents.

Introduction

This is a complaint against the St. Louis County School District, Independent School District No. 2142 and its School Board Members for failure to comply with Minnesota's Campaign Financial Reporting and Fair Campaign Practices Acts, Minn. Chaps. 211A and 211B. The School District or the Board failed to file financial reports for expenditures and in-kind contributions as required under the law for the ballot question referendum election held on December 8, 2009.

Parties

Complainants.

The complainants are the elected representatives of Minnesota cities incorporated under the laws of the state of Minnesota and existing within the boundaries of Independent School District No. 2142, as well as an ad hoc citizens group formed in May 2010 to oppose a restructuring plan of the St. Louis School District and bonding referendum election held on December 8, 2009.

Steve Abrahamson is the Mayor of the City of Tower, Minnesota. His official address is Tower City Hall, 602 Main Street, P.O. Box 576, Tower, Minnesota, 55790.

Tim Kotzian is Chair of the Coalition for Community Schools. His address for the Coalition for Community Schools is 9240 Rivers Road, Tower, Minnesota 55790.

Respondents.

The Respondents include the St. Louis County School District, Independent School District No. 2142, located at 1701 N. 9th Avenue, Virginia, Minnesota, 55792.

Each School District Board Member served and continues to serve as a Board member for the relevant time period regarding the events described in the instant Complaint specifically relating to the December 8, 2009 ballot question: Bob Larson – January 2009 to January 2013; Tom Beaudry – November 2008 to January 2011; Darrell Bjerklie – November 2006 to January 2011; Gary Rantala – January 2009 to January 2011; Andrew Larson – January 2007 to January 2011; Chet Larson – January 2009 to January 2013; and Zelda Bruns – January 2009-2013. Their personal addresses are unknown but, as Board members, they receive correspondence at 1701 N. 9th Avenue, Virginia, Minnesota.

Background Facts

Independent School District No. 2142, through its School Board members acting as an association, caused a ballot question election seeking the authorization to issue general obligation school building bonds in an amount not to exceed \$78.8 million.¹ The ballot election was held on December 8, 2009.²

Prior to December 8, 2009, the School District and the School District Board promoted the passage of the ballot question through the use of public funds or “in-

¹ Ex. C.

² *Id.*

kind” contributions, i.e., valued services without actual payment. The Board members acted as a whole to approve the school budget and for all expenditures inclusive of all moneys spent or receipt of contributions, inclusive of in-kind contributions, to promote the ballot question. In addition, the School District, through the District’s Superintendent, caused the approved expenditures to occur, and on behalf of the Board and the District, accepted in-kind contributions related to the ballot question. All of this particular activity required the School District to make reports under Minnesota’s Campaign Finance laws.

Johnson Controls, Inc. is an agent of the Independent School District No. 2142. It is under contract with the District, approved by the Board for among other things, providing reports or studies for the District. The District used its agent Johnson Controls, Inc. to assist in the preparation of materials to promote the passage of the December ballot question. It is believed that Johnson Controls also sub-contracted to other parties to assist in the promotion of the passage of the ballot question. Johnson provided or prepared or had others provide or prepare communications to residents of Independent School District No. 2142 to promote the passage of the December ballot. The contract Johnson Controls has with the School District is paid for with taxpayer moneys.³

The contract between Johnson Controls and the District is a financial benefit to Johnson Controls, and as an agent of the District its promotion of the ballot question its actions were those of the District and its’ School Board.

In short, Independent School District No. 2142 allowed the contributions, expenditures to occur, and approved the expenditures, and encouraged the School District to incur the expenses or otherwise accept valued in-kind contributions to promote the passage of the ballot questions in the December 2009 election. As the Board resolved in June 8, 2009 adopting a long-range plan that facilitated the December 2009 ballot question:

By adopting this Long-Range Facilities Plan, *the Board authorizes all necessary action* to implement this Plan.⁴

At all times, the School District and its Board knew or should have known that Minnesota law required the filing of financial reports for ballot question referenda.

The School Board is responsible for the adoption of the budget for Independent School District No. 2142. The money the District receives are funded

³ See, e.g., Ex. A, District Board Minutes (June 8, 2009); Ex. B, District Board Minutes (June 22, 2009).

⁴ Ex. B, District Board Minutes (June 8, 2009) (Emphasis added).

by taxpayers and are therefore public funds. Each of the complainants are private citizens and as public officials pay taxes as residents within the District's political boundaries that contribute to District school funding.

Each of the complainants opposed the ballot question referendum.

The School District, through the approval of the School Board, publishes "newsletters" or similar publications for public consumption inclusive of direct mailings to residents within Independent School District No. 2142. All of these expenditures are a part of the Board's approved District budget.

In addition, the School District, besides paying for the cost of publication, also pays for the postage required for the mailings of the publications. The postage is paid for through public funds.

The School District or the Board did not provide a filed financial report for public consumption. The School District or the Board did not file any financial reports relating to the December 2009 ballot question referendum with the proper authorities.

At no time did the School District publish for public consumption the opinions, statements or facts regarding issues and facts opposing the ballot question. The dissenters, such as the Complainants did not have access to District publications and therefore their public funds to challenge the facts, opinions, statements, or issues as presented by the proponents of the December 2009 ballot question.

Claims Under Minnesota Campaign Laws

The acts and omissions of the Respondents violated Minnesota campaign laws. School District publications sent to or provided for the consumption of residents within Independent School District No. 2142 are paid for by District funds. The moneys are public funds. Public funds entrusted to the School Board belong equally to proponents as well as opponents of the December 8, 2009 ballot question.

The use of funds to finance, not just the presentation of facts, but to persuade voters on only one side of the ballot question is an expenditure not authorized specifically by the legislature and therefore is unlawful.

Here, the School Board and Independent District No. 2142 have not expended public funds in a lawful or reasonable manner because the expenditures were made in a manner to support one side of the December 2009 ballot question which gave the dissenters no opportunity to present their side. The dissenters did not have access to District publications, to submit for consideration to School

District residents the dissenters' challenge to the District's facts, statements, opinions, or issues when the District or its agent(s) distributed communications to School District residents. Each of the District's communications used public funds in their creation and distribution.

Because the communications promoted the passage of the December 2009 ballot question, any expenditure relating to that promotion and using public funds is a campaign expenditure. Any in-kind contribution relating to the promotion of the December 2009 ballot question is a campaign expenditure. Such expenditures include those of the District's agent, here for instance, Johnson Controls, Inc. (inclusive of its sub-contractors).

The School District or the Board violated Minn. Stat. § 211A.02 for failing to file financial reports because it expended moneys of over \$750 in a single calendar year relating to the December 2009 ballot question. The School District or the Board violated Minn. Stat. § 211A.03 for failure to file a final financial report. The School District or the Board violated Minn. Stat. § 211A.05 for intentionally failing to file a financial report. The School District or the Board violated Minn. Stat. § 211A.06 for failure to report or keep an accurate account of those expenditures or valued in-kind contributions.

The School District or the Board violated Minn. Stat. § 211A.06 for failure to account from which public funds were transferred as contributions to the School District's campaign to promote passage of the ballot question.

As further discussed and supported below, the Complainants assert that because the Respondents sought and did promote the passage of a school district ballot question that they must be considered a committee under Minn. Stat. § 211A, as the Minnesota Court of Appeals recognized in *Barry v. St. Anthony-New Brighton Independent School Distr.* 282, 781 N.W.2d 898, 903 (Minn. App. 2010).

On August 24, 2009, the School Board approved the ballot question and the election regarding the authorization to issue general obligation school building bonds in the amount not to exceed \$78.8 million. After that decision, the Board used an existing contract with Johnson Controls to assist with the District's communications to the public, using the District's logo, information, and other data, to promote and encourage the passage of the ballot.

While public school district officials may present facts to the voters, they are prohibited from advocating one side of a controversial question without affording the dissenters the opportunity and the means to present their side. By not affording the dissenters that opportunity to present their side of the controversy through the same medium used by the school district, any expenditure associated with the dissemination of the school district's position is subject to question and its propriety.

Here the information disseminated by the School District and by Johnson Controls, as an agent acting under contract with the School District, was not in the first instance neutral, and in the second instance, presented factual information the dissenters deemed inaccurate and misleading. The School District did not invite, encourage, or publish the dissenters' challenges — thereby prohibiting them from doing so and failing to provide them with an avenue to refute the District's promotion of the ballot question.

Importantly, the presentation of the District's position on the ballot question was the outright promotion of the ballot question for its passage. It is improper and illegal to promote a ballot question using public funds without providing dissenters the same avenue to provide an opposition to the ballot questions.

For instance, as early as June 2009, the District Board recognized that the District's finances were "much better than previously projected."⁵ In contrast to Johnson Controls projection of a \$2.7 million deficit,⁶ the outcome — confirmed by the District's year-end audit — affirmed the dissenters' projections and therefore arguments against the December ballot.⁷ Despite the disparity realized *before* the December ballot, *before* October District communications to the public,⁸ *before* the November District communications to the public,⁹ and *before* the District's December communications to the public,¹⁰ the District did not disclose the pertinent information. More importantly, as stated throughout this complaint, the District failed to provide to the dissenters an opportunity to communicate their beliefs, findings and opinions within the very forum in which the District promoted the ballot question.

In brief, the School District's promotion of the passage of the ballot question referendum was based on exaggerated statements regarding the District's financial condition, combined with a false claim that failure to approve the referendum would result in dissolution of the School District and large tax increases for residents.

And the School District's claim regarding dissolution was central to its political campaign for passage of the bond referendum, as the Office of Administrative Hearings has determined:

⁵ Ex. B, District Board Minutes (June 22, 2009).

⁶ Ex. I, Financial Assessment & Five Year Budget Projection, Prepared by Johnson Controls, Inc. and Ehlers & Associates.

⁷ Ex. L, (Budget analysis provided by the District to the public); Ex. M, Financial Statements and Supplemental Information for Year Ended June 30, 2009.

⁸ Exs. E and F.

⁹ Ex. G.

¹⁰ Ex. H.

It was the District's position that if the referendum did not pass, the District would need to dissolve, and the District's students would be required to attend neighboring school districts....¹¹

Because the School District expended public funds to disseminate these arguments, their claims must be an accurate and neutral presentation of fact. If not, their claims are inherently promotional or political in nature, and any funds expended by the School Board and the School District are subject to the reporting requirements of Minn. Stat. §§ 211A.02, 211A.03, and 211A.06.

Examples of inaccurate or misleading statements are found throughout School District publications, inclusive of the one entitled "Enhancing Opportunities For Our Kids' Future, paid for by School District." They include, but are not limited to:

Statement 1:

"If residents vote no, their taxes will most likely still increase— in some, by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts."¹²

This statement is false or misleading. School District officials were aware that entering into statutory operating debt does not require a district to dissolve. Over the past 30 years, dozens of Minnesota school districts have entered a state of statutory operating debt. None have opted for dissolution or were otherwise required to dissolve by another authority. This is also a violation of Minn. Stat. § 211B.06.

The School District's disseminated publications did not merely suggest that dissolution was a mere possibility in the event of entering into statutory operation debt; without question it stated that the District "would need to dissolve" were it to enter a statutory operating debt status. This is an inaccurate, false, and at best, a misleading statement. The intent and effect is the District's promotion of the passage

¹¹ *Erickson v. Education Minnesota Local 1406*, Docket#15-0325-21158-CV, May 18, 2010.

¹² Ex. E.

of the December 2009 ballot question — a “Yes” vote — by portraying overly-dire consequences resulting from a negative vote.

Past Minnesota Attorney General opinions on this type of issue reflect an accepted position for this State that a school district publication that “over-dramatized” the “dire” consequences of a “no” vote could also run afoul of proper purpose requirements, regardless of whether it explicitly requests a “yes” vote.

Statement 2:

"[I]f a 'no' vote passes, you'll likely be paying taxes of the district shown here that's closest to your home."¹³

This statement, in combination with the chart included in the district publication, is false and misleading. This is also a violation of Minn. Stat. § 211B.06.

First, the claim assumes that the District would dissolve in the event of a “no” vote. Even if a school district enters into a statutory operating debt status, it does not follow that it must dissolve. That assumption made as a statement is false. A possible consequence does not make it a fact as stated above.

In addition, during the period of the referendum campaign, Minn. Stat. § 123A.73 subd.3, effective during the 2009 ballot election campaign, in part governed Minnesota’s school district dissolution process. The statutory requirement included at the time of the completion of any dissolution (should it occur):

As of the effective date of the voluntary dissolution of a district and its attachment to one or more existing districts pursuant to section 123A.46, the authorization for all referendum revenues previously approved by the voters of all affected districts for those districts pursuant to section 126C.17, subdivision 9, or its predecessor provision, is canceled.

In other words, if the St. Louis County School District ever did choose to dissolve, the cancellation of existing operating levies (unless the pre-existing district has 90% of the tax base in the enlarged district) would result in a *reduction* of taxes. The School District publications never explained the full tax consequence of Minn. Stat. § 123.76 in the District’s publication disseminated to the public with public funds. Likewise, the dissenters did not have the opportunity to challenge the District’s position on this statement, as the District used its information in a manner to promote the passage of the ballot question with a “yes” vote.

¹³ Ex. E.

Statement 3:

“Projected annual deficit in 2011-12: \$4.1 million.”¹⁴

This \$4.1 million shortfall projection was presented in public presentations by the School Superintendent as well as in School District (and its agent) printed publications. It was also repeated in presentations to MDE officials in the Review and Comment document submitted as part of the bond referendum approval process. The dissenters disagreed with the projections District relied upon for bond promotional purposes. In fact, the dissenters viewpoint was later proven where District deficits were far from the projections — millions of dollars.¹⁵

This projection reflected “worst case” assumptions developed through the District’s agent Johnson Controls.¹⁶ As the District’s agent during the campaign to pass the December 2009 ballot question, Johnson Controls also was in a position of financial gain from the passage of the ballot. It has a contract with the District for instance, to assist with the planning and development of new schools financially supported through the \$78.8 million ballot question referendum. Nevertheless, the budget projection was never a realistic budget projection, because the projection assumed that no teacher layoffs or staff reductions would occur, no steps would be taken to curb rising health insurance costs, and that energy costs would rise by ten percent annually from record highs in 2008.

This same set of projections estimated the School District’s general fund (Fund 01) shortfall in the 2009-10 school year at nearly \$2.7 million. Yet, on June 22, 2009, prior to these public statements and publications, the School Board had approved a 2009-10 budget with an actual general fund shortfall of just \$458,000, total general fund decrease of \$842,000, or a total deficit of all funds of \$833,000.¹⁷

Even as they repeated the budget projections developed by the District’s agent Johnson Controls, School District officials knew that they no longer reflected their actual financial situation. In a subsequent media interview, for instance, School

¹⁴ Ex. H. This figure was reproduced and stated in reliance as part of Johnson Controls, Inc. projects and study, Ex. K.

¹⁵ See e.g., Ex. L.

¹⁶ Ex. K.

¹⁷ Ex. J.

District Business Manager Kimberly Johnson was quoted acknowledging that the budget projections were not realistic, but were intended to dramatize that the district faced financial challenges. Yet, this dramatization is contrary to State Attorney General Opinions that like the School District's publications, find these type of statements as "over-dramatized" — the "dire" consequences of a "no" vote runs afoul of proper purpose requirements, regardless of whether it explicitly requests a "yes" vote. Here, to continue to cite budget projections that district officials knew were outdated to the public can not be construed as a neutral presentation of facts. This too (as described above) is a violation of Minn. Stat. § 211B.06.

Finally, the dissenters were not given an opportunity to challenge the District's position on the budget, projections in publications the District or its agent disseminated to the public using public funds.

The following extended segment makes misleading and promotional claims to voters violating the provisions of Minn. Stat. § 211B.06.

Statement 4:

The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education.

Better learning spaces and materials.

- Classrooms wired with advanced technology for computers, projection, recording, online learning, real-time interaction with distant learning/teaching resources, and the like.
- Up-to-date textbooks and learning materials.
- Flexible laboratory spaces for sciences, shops, and technical activities.
- Computer access for every student as a basic tool for learning.

Learning centered on individual students.

- Personalized learning in which each student has his/her own Individual Learning Plan guiding their education.

- Advisors regularly working with individual students, communicating with parents.
- Enrichment and remedial programs and support available to all students geared to their Individual Learning Plans.
- Learning that is growth oriented and achievement based.

Focus on life skills.

- Students will graduate with mastery of key life-career skills including work skills, social skills, interpersonal interaction, basic living skills (homemaking, household/consumer finance, healthy lifestyle choices, problem solving, critical thinking, etc.).
- Career exploration will be a constant factor as students create and revise their Individual Learning Plans.

Expanded elementary level programming.

- Solid basic skills as foundation for all future learning.
- Combination of primary teacher with departmentalized (by subject) programming.
- Provision of advanced mathematics and science offerings.
- Third graders as fluent readers.
- Learning at student's pace.
- Active intervention and support.
- Computer skills consistently presented and achieved across district.
- Life / career exploration.
- Character education.
- Outdoor education.
- Fine arts.
- Languages including Spanish and Ojibwemowin.

Solid core programming.

- Students will be expected to achieve state standards.
- Core programming will include: Language Arts, Sciences, Social Studies, and Mathematics.

Enhanced potential for electives.

With greater resources available for programming, the district will be able to greatly expand its offerings to include dozens of modern courses. From

forensic science to economics, from computer programming to graphic arts, the children of our district will have unprecedented opportunities in language arts, social studies, mathematics and sciences.¹⁸

This entire section makes numerous specific promises for educational improvement that the district can in no way assure. Those promises include up-to-date textbooks, computer access for every student, and every item listed under "Learning centered on individual students"; "Focus on life skills"; "Expanded elementary level programming"; "Solid core programming"; and "Enhanced potential for electives".

Under state law, none of the \$78.8 million in capital bonding funds approved by voters can be utilized for textbooks or educational materials, curriculum or Individual Learning Plan development, teacher hiring, or new programming, all of which the district claimed would be provided by the plan. The School District's plan involves capital bonding only. It does not provide additional operating funds and cannot pay for most of the educational improvements this publication claims are a part of the plan.

School District officials claimed that operational savings made possible by the school consolidation would free up funding for such improvements. The dissenters, represented by the Complainants, challenged those "savings" as highly speculative, based on unrealistic revenue projections. But, District publications did not allow the dissenters to express their challenges.

District officials at no time explained that the above-cited educational improvements were contingent on the realization of what the dissenters assert as highly speculative savings and revenue increases. At no point did they state that other priorities could require the district to expend any savings achieved in other areas, or that School District revenues might be less than projected. The School District's publication repeatedly implied that these improvements were an integral part of the plan and would be funded by the monies received from the \$78.8 million in bonding it was promoting. As the district publication stated: "its implementation will provide many new opportunities for our young people's education."

¹⁸ Ex. E.

Another example of District officials, board members, and their agents questionable projections, that as presented were not neutral presentation of facts, includes the omission of the state of State school budget funding. Instead of the District's projections of an assumed two-percent annual increase, State aid has either been stagnate or decreasing. Nowhere in the District publications does *this* particular challenge to District "facts" is made or otherwise allowed. Thus, while public funds were expended to promote the passage of the December 2009, no public funds were expended to allow the dissenters to challenge the Districts advocacy.

In addition, the budget projection assumed that the School District would save \$90,000 for each teacher FTE eliminated as a result of the restructuring plan. Yet the School District and Johnson Controls officials working on the plan knew that those savings would be far less than that (approx. \$60,000 per FTE). By purporting savings they knew to be inaccurate, School District officials knowingly misrepresented the actual benefits of the restructuring plan in an effort to promote passage of the bond referendum.¹⁹

Statement 5:

"Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice," added Board Member Gary Rantala, who represents the Babbitt-Embarrass attendance area.²⁰

This statement of opinion was ostensibly taken from a Sept. 9, 2009 board study session for the school district-funded publication. While Board Member Rantala was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars requires financial disclosure. The School District publication provided no opportunity for those on the other side of the debate to express their opinions.

Statement 6:

"Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close

¹⁹ Ex. N. (handwriting on the original).

²⁰ Ex. E.

schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region," said Board Chair Robert Larson.²¹

This statement of opinion was excerpted from a Sept. 9, 2009 board study session for the School District publications disseminated to residents in Independent School District No. 2142. While Board Chair Larson was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars requires financial disclosure. The School District publication provided no opportunity for those on the other side of the debate to express their opinions.

Statement 7:

"The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, *so hopefully voters will approve the plan* [emphasis ours] and the options discussed at this study session will never have to be implemented," said Superintendent Dr. Charles Rick. "Unfortunately, no matter how you look at these options if a 'no' vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts."

This statement of opinion was taken from a Sept. 9, 2009 board study session and used in the School District publication. While the superintendent was free to state his opinion on this question in a letter to the editor or as a private citizen, its appearance in a publication paid for with tax dollars requires financial disclosure. The school district publication provided no opportunity for those on the other side of the debate to express their opinions.

It must be noted that not only was there considerable public opposition to the School District's plan, members of the School Board were also opposed and some of them expressed their concerns at this same Sept. 9, 2009 board meeting. Yet, at no point, did the School District publication excerpt their comments, which would have been obligatory had the school district actually intended a fair and neutral presentation of facts or opinions. The dissemination of board member opinion was

²¹ Ex. E.

entirely one-sided and inherently promotional, therefore requiring disclosure under Minnesota Campaign laws.

The School District paid the partial or full cost of the production and distribution of materials inclusive of those entitled "Enhancing Opportunities For Our Kids' Future." The cost of this material was in excess of \$750.

The District and the Board, with Board approval, relied upon a previously obtained and District paid report(s) authored by Johnson Controls to convert certain contents of that report into promotional materials in favor of the passage of the December 8, 2009 ballot question. Johnson Controls also hired others such as Ehlers and Associates, Inc. and Greenfield Communications for District report(s) that were later used in part for the promotion of the December ballot question:

It is the District's intent to continue to work with JCI [Johnson Controls] and Team to assist and lead the implementation of the adopted plan. JCI and Team of professionals will provide necessary project planning, program management ... and commissioning services to ensure this project's complete success....²²

The converted information, which repeated statements and arguments already stated above, was compiled within District newsletters and disseminated. The printing costs of the newsletter exceeded \$750.

In addition, the information relied upon in the District's ballot promotion material, converted from previously obtained reports (or studies), was not identified as a contribution in the District's budget as campaign related activities. For example, the District used a Long Range Plan Tax Impact graph in its newsletter (*see* December 2009 Ex.H). Ehlers and Associates, Inc. prepared the original graph for Johnson Controls. The District paid for this graph and since it was used in the promotional material for the passage of the ballot question, the work must be identified as a campaign expenditure. The converted data was valued in excess of \$750.

The District is the holder of a U.S. Postal paid permit "No. 7." This permit allows for the bulk mailing of material to residents within the St. Louis County School District. The promotional materials, specifically newsletters, were then disseminated throughout District 2142 using the U.S. mail through the District's U.S. Postal paid permit.²³ The value of the U.S. mail distribution was in excess of \$750.

²²Ex. O. (The document is signed June 8, 2009 and July 20, 2009.)

²³ *See e.g.*, Exs. F, G, H.

The Board is responsible for the passage of the District's budget, inclusive of expenditures and payment of salaries or wages for services rendered by teachers, administrators, and aides (teacher or student). The moneys paid are for services conducted on school grounds or for school business during school operation hours.

The School District or the Board violated Minn. Stat. § 211B.15, subd. 9 for contributing to a media project that is controlled by the School District to encourage people to vote for the passage of the ballot questions on December 8, 2009. In particular, the District distributes a newsletter to residents within the District. It is also the holder of a U.S. Postal paid permit "No. 7." This permit allows for the bulk mailing of material to residents within the St. Louis County School District. In November, the District did send through the use of its postage permit, promotional materials encouraging the passage of the ballot question through the favorable vote on the ballot question.

Expenditures listed and provided other media projects used in the promotion of the School District's referendum ballot question.

Any expenditures associated with the December 2009 ballot question were not set out in a manner in the District's budget for the public to readily identify them as campaign ballot question expenditures. Nevertheless, under Minnesota law the District with the approval of the District's School Board, having expended moneys or having received contributions of any kind, was required to file campaign finance reports. They did not in violation of governing Minnesota law.


Conclusion

This complaint provides the OAH with sufficient evidence for prima-facie violations of Minn. Stat. §§ 211A.02, .03, and .05 (failure to file a statement); and 211B.06 and therefore the claimants respectfully request a formal hearing on the violations as outlined.

Oath

I, Steve Abrahamson, under penalty of perjury, swear or affirm that the statements I have made in this complaint are true and correct based upon the information made available to me and asserted to the best of my knowledge.

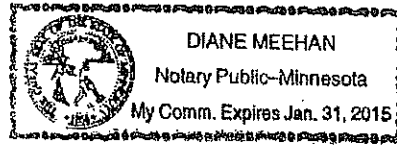
Dated: 11/2, 2010.



Mayor Steve Abrahamson
Tower, Minnesota

Sworn and signed before me
this 2nd day of Oct 2010,
St. Louis County, State of Minnesota.

Diane J. Meeker
Notary Public



Oath

I, Tim Kotzian, under penalty of perjury, swear or affirm that
the statements I have made in this complaint are true and correct based upon the
information made available to me and asserted to the best of my knowledge.

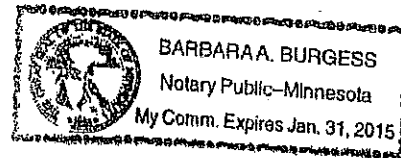
Dated: 11-2-10, 2010.

[Signature]
Tim Kotzian, Chair
Coalition for Community Schools

RECEIVED
2010 NOV -4 AM 7:47
ADMINISTRATIVE
HEARINGS

Sworn and signed before me
this 2 day of Nov 2010,
St. Louis County, State of Minnesota.

Barbara A. Burgess
Notary Public



Subd. 3. Voluntary dissolution; referendum revenue.

As of the effective date of the voluntary dissolution of a district and its attachment to one or more existing districts pursuant to section 123A.46, the authorization for all referendum revenues previously approved by the voters of all affected districts for those districts pursuant to section 126C.17, subdivision 9, or its predecessor provision, is canceled. However, if all of the territory of any independent district is included in the enlarged district, and if the adjusted net tax capacity of taxable property in that territory comprises 90 percent or more of the adjusted net tax capacity of all taxable property in an enlarged district, the enlarged district's referendum revenue shall be determined as follows:

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EXHIBIT 4

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Steve Abrahamson and Tim Kotzian,
Complainants,

vs.

The St. Louis County School District,
Independent School District No. 2142,
Bob Larson, Tom Beaudry, Darrell
Bjerklie, Gary Rantala, Andrew Larson,
Chet Larson, and Zelda Bruns, in their
capacity as School Board Members,

Respondents.

ORDER OF DISMISSAL

TO: Eric Kaardal, Attorney at Law, Mohrman & Kaardal, P.A.; and Respondents.

On November 4, 2010, Tower Mayor Steve Abrahamson and Tim Kotzian, Chair of the Coalition for Community Schools, filed a Complaint with the Office of Administrative Hearings alleging that the St. Louis County Independent School District No. 2142 and the individual members of its School Board violated provisions of Minnesota Statutes, Chapters 211A and 211B.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 4, 2010, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on November 4, 2010.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state *prima facie* violations of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, 211A.06, 211B.06 or 211B.15, subd. 9.

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

IT IS ORDERED:

That the Complaint filed by Steve Abrahamson and Tim Kotzian against the St. Louis County School District, Independent School District No. 2142, and School Board Members Bob Larson, Tom Beaudry, Darrell

Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns is
DISMISSED.

Dated: November 9, 2010

/s/ Kathleen D. Sheehy for _____
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

This Campaign Complaint concerns the December 8, 2009 special election on the St. Louis County School District's bond referendum ballot question.¹ The Complainant Steve Abrahamson is the Mayor of Tower, Minnesota, a city within the boundaries of Independent School District No. 2142; and Complainant Tim Kotzian is the Chair of an ad hoc citizens group formed to oppose the School District's restructuring plan and bonding referendum.

According to the Complaint, St. Louis County Independent School District No. 2142, through its School Board members, caused a ballot question election seeking authorization to issue general obligation school building bonds in an amount not to exceed \$78.8 million. The Complaint alleges that the School District and its School Board members engaged in campaign activities in support of the ballot question that violated fair campaign practices and financial reporting laws. Specifically, the Complaint alleges that the Respondents violated Minn. Stat. §§ 211A.02 (financial report), 211A.03 (final report), 211A.05 (failure to file statement), 211A.06 (failure to keep account), 211B.06 (false campaign material), and 211B.15, subd. 9 (prohibited corporate contributions).

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.² For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.³ 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.⁴

¹ Minn. Stat. § 211B.32, subd. 2 (Campaign complaints must be filed with the Office of Administrative Hearings within one year after the occurrence of the act or failure to act that is the subject of the complaint.)

² *Barry and Spano v. St. Anthony-New Brighton Independent School District 282*, 781 N.W.2d 898, 902 (Minn. App. 2010).

³ *Id.*

⁴ *Id.*

The Complaint alleges that the St. Louis County School District violated campaign financial reporting laws by failing to report expenditures it made and in-kind contributions it received to promote the passage of the December 2009 ballot initiative. According to the Complaint, the School District and School Board allowed contributions, approved expenditures, and encouraged the School District to incur expenses or to otherwise accept in-kind contributions to promote the passage of the ballot question in the December 2009 election.

The Complainants argue generally that the public funds entrusted to the School District belong equally to proponents and opponents of the December 2009 ballot question and that the School District's use of funds to promote only the passage of the ballot question was an unlawful expenditure not authorized by the legislature.

Specifically, the Complaint alleges that the School District used public funds to pay Johnson Controls, Inc. to assist in the preparation and dissemination of newsletters and other materials to residents of ISD 2142 to promote the passage of the ballot question.⁵ The Complaint alleges that the Respondents expended more than \$750 relating to the December 2009 ballot question and that Respondents knew Minnesota law required the filing of financial reports for ballot question referendums and failed to provide those reports in violation of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, and 211A.06. Additionally, the Complaint alleges that the School District and the School Board violated Minn. Stat. § 211B.06 by disseminating material that included false statements with respect to the effect of the ballot question, and that they violated Minn. Stat. § 211B.15, subd. 9, by contributing to a media project controlled by the School District to encourage passage of the ballot question.

Chapter 211A Claims

Chapter 211A is applicable to ballot questions to be voted on by voters of one or more political subdivisions but not by all the voters of the state. Section 211A.02 requires that a candidate or committee who receives contributions or makes disbursements of more than \$750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750 and must continue to make reports as provided in Minn. Stat. §§ 211A.03 and 211A.05 until a final report is filed. The receipt of "contributions" or the making of "disbursements" is the threshold requirement for the filing obligation. Under Minn. Stat. § 211A.06, a treasurer who fails to keep a correct account of money received for a committee "with the intent to conceal receipts or disbursements, [or] the purpose of receipts or disbursements" is guilty of a misdemeanor.

Minnesota Statutes § 211A.01 defines a "candidate" to mean, in relevant part, an individual who seeks nomination or election to a county, municipal, school district, or other political subdivision office.⁶ A "committee" is defined to

⁵ Complaint Exs. D-H (St. Louis County Schools Newsletters, October – December 2009).

⁶ Minn. Stat. § 211A.01, subd. 3.

mean "a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question."⁷

The Complaint maintains that the School District is subject to the campaign finance reporting requirements of chapter 211A. The Complainants allege that any disbursement by the School District relating to the promotion of the ballot question is a campaign expenditure, and any in-kind contribution relating to the promotion of the ballot question is a campaign contribution. The Complainants assert further that because the Respondents promoted passage of the ballot question they must be considered a committee under Minn. Stat. § 211A.01, subd. 4. The Complainants cite to *Barry and Spano. v. St. Anthony-New Brighton Independent School District 282*,⁸ in support of their claim that Respondents be considered a committee for purposes of campaign financial reporting.

In *Barry*,⁹ a complaint similar to the one at hand was filed against a school district and school board members alleging that the district and board violated provisions of Chapter 211A by failing to file required financial reports relating to expenditures allegedly made to promote passage of a school bond referendum ballot questions. The complaint was dismissed by the administrative law judge on the grounds that neither the school district nor the school board met the statutory definition of a "committee." On appeal, the Minnesota Court of Appeals did not determine whether a school district and school board may be considered a corporation or association of two or more people acting together for purposes of the definition of committee. Instead, the Court affirmed the dismissal of the complaint on the grounds that it failed to allege specific facts to support its general allegation that the expenditures and communications were made to promote passage of the ballot question.¹⁰

In this case, the Complainants have alleged specific facts to support their claim that the Respondents disseminated publications and otherwise acted to promote passage of the December 2009 ballot question. For example, the School District disseminated newsletters to residents of the district that encouraged voters to vote yes on the ballot question and highlighted the benefits to children and families if the bond referendum were to pass.¹¹ Therefore, if the Respondents fall within the statutory definition of a "committee" as either a corporation or an association, the reporting requirements of chapter 211A may apply.

A school district is a political subdivision of the state, and its board members are the elected governing body for the political subdivision.¹² School

⁷ Minn. Stat. § 211A.01, subd. 4.

⁸ 781 N.W.2d 898 (Minn. App. 2010).

⁹ 781 N.W.2d 898.

¹⁰ 781 N.W.2d at 903.

¹¹ See, Complaint Exs. D-H (St. Louis County Schools Newsletters, October-December 2009).

¹² Minn. Stat. §§ 466.01 and 471.345 define school district as a "municipality" for purposes of Municipal Tort Liability Act and Uniform Municipal Contracting Law.

districts are classified as "public corporations."¹³ They are not operated for the principal purpose of conducting a business and they do not have shareholders or publicly traded stock.¹⁴ School board members are charged with the responsibility of managing and operating the school district. Unlike an *ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question, school board members are the elected policy-makers for the district.¹⁵

Consistent with prior decisions of the OAH on this issue,¹⁶ the Administrative Law Judge concludes that the St. Louis County School District and its Board members are neither a candidate nor a committee within the meaning of chapter 211A, and are not required to report contributions or disbursements through the reporting requirements of that chapter. As political subdivisions of the state, school districts are required to make available to the public all of their revenues, expenditures, and other financial information through mechanisms other than 211A.¹⁷

In addition, the Complaint alleges that the School District violated Minn. Stat. § 211A.02 because it made disbursements of more than \$750 in a calendar year relating to the December 2009 ballot question. A "disbursement" means money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. "Disbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.¹⁸ The expenditures described in the complaint (newsletter publications and mailing costs) appear to be, at least in part, election-related expenditures.¹⁹ School Districts are authorized to hold referendum elections for residents to approve the sale of bonds, under certain conditions and procedures. The Complainants have failed to point to any authority to support their argument that these election-related expenditures were unlawful or that the School District was prohibited from using any public funds to promote passage of the ballot question.²⁰

Even if the school district were properly considered a "candidate" or "committee" subject to the filing requirements of chapter 211A, the specific expenses at issue fall within the statutory exemption for election-related expenditures and are not "disbursements" for purposes of campaign finance reporting. Accordingly, the Complaint fails to state a *prima facie* allegation that the School District violated Minn. Stat. §§ 211A.02, 211A.03, 211A.05 or 211A.06

¹³ Minn. Stat. § 123A.55.

¹⁴ See Minn. Stat. § 211B.15.

¹⁵ See Minn. Stat. § 121A.17.

¹⁶ See, *Barry and Spano, v. St. Anthony-New Brighton Independent School District 282*, OAH No. 3-6326-20564-CV, Dismissal Order (May 21, 2009); and *Wigley v. Orono Public Schools*, OAH No. 3-6326-19653-CV, Prima Facie Determination (May 1, 2008).

¹⁷ See e.g., Minn. Stat. § 123B.10, subd. 1, and §§ 123B.75 - .77.

¹⁸ Minn. Stat. § 211A.01, subd. 6.

¹⁹ Minn. Stat. §§ 123B.63, 475.51 - .74.

²⁰ See Complaint at 5-6.

by failing to file any financial reports disclosing these disbursements. These allegations are dismissed.

Minn. Stat. § 211B.06

The Complainants also argue that the Respondents disseminated false campaign material to promote passage of the ballot question. Minn. Stat. § 211B.06 prohibits intentional participation in the preparation, dissemination, or broadcast of campaign material with respect to the effect of a ballot question that is designed to promote or defeat the ballot question, that is false and which the person knows is false or communicates to others with reckless disregard of whether it is false.

As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact and not against unfavorable deductions or inferences based on fact.²¹ Moreover, the burden of proving the falsity of a factual statement cannot be met by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial.²² Finally, 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.²³

The term "reckless disregard" was added to the statute in 1998 to expressly incorporate the "actual malice" standard applicable to defamation cases involving public officials from *New York Times v. Sullivan*.²⁴ Based upon this standard, the complainant has the burden at the hearing to prove by clear and convincing evidence that the respondent either published the statements knowing the statements were false, or that it "in fact entertained serious doubts" as to the truth of the publication or acted "with a high degree of awareness" of its probable falsity.²⁵

The Complainants argue that seven statements in various School District publications were false, inaccurate or misleading. Each statement will be considered below:

²¹ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

²² *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

²³ *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);

²⁴ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964); *State v. Jude*, 554 N.W.2d 750, 754 (Minn. App. 1996).

²⁵ See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); see also *Riley v. Jankowski*, 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

Statement 1:

If residents vote no, their taxes will most likely still increase -- in some, by a large amount. That's because if the plan is not approved, the school district would enter into "statutory operating debt" by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in the school district would then go to the neighboring school districts.²⁶

The Complainants argue that the statement that the school district "would need to dissolve" is false because entering into statutory operating debt does not require that a school district dissolve. According to the Complaint, dozens of school districts have entered into statutory operating debt over the past 30 years and none have opted or been required to dissolve.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to this statement. According to the statement, the State of Minnesota recognizes school districts that enter into statutory operating debt as ones that can no longer balance their expenditures and revenues, and ones that "would need to dissolve." Whether or not the State *recognizes* school districts that enter into statutory operating debt as ones that *would need* to dissolve, is not a statement that can be proven true or false. The statement reflects an inference and the phrase "would need" is at most a pessimistic possibility in a conditional sentence. The Respondents did not state that St. Louis County School District will dissolve or will be required to dissolve if it enters into statutory operating debt. The statement may be misleading or unfair but it is not demonstrably false and there is nothing in the record to show it was disseminated with a high degree of awareness of its probable falsity.

Statement 2:

[I]f a "no" vote passes, you'll likely be paying taxes of the district shown here that's closest to your home.²⁷

The Complainants argue that the statement is false and misleading because it based on the assumption that the school district will dissolve in the event of a "no" vote. In addition, the Complainants maintain that the School District did not explain the full tax consequences in the event the School District did dissolve, which, according to the Complainants, could result in a reduction in taxes.

²⁶ Complaint Ex. E.

²⁷ Complaint Ex. E.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to this statement. The statement that voters "will likely" pay taxes of a neighboring district is an inference or unfavorable deduction based on the assumption that the school district would dissolve. It is not a factually false statement.

Statement 3:

Projected annual deficit in 2011-12: \$4.1 million.²⁸

The Complainants contend that this projection was based on worst case assumptions developed through the School District's agent Johnson Controls, Inc. According to the Complaint, the budget projection was not realistic because it assumed that no teacher layoffs or staff reductions would occur, no steps would be taken to curb rising health care costs, and that energy costs would rise by 10 percent annually from record high levels in 2008.²⁹

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to statement 3. To say that the Respondents' budget forecast was gloomy, unrealistic or improbable, is not to say that it was demonstrably false. There is a difference. The Fair Campaign Practices Act does not prohibit Respondents from disseminating campaign material that others regard as pessimistic or uncharitable.³⁰ Because nothing in the record shows that the Respondents' statements are demonstrably false, and circulated with some awareness of that falsity, they are not items that the State may reach, regulate, outlaw or punish. Whether or not Respondents' predictions are reliable are matters that are committed to the judgment and sound discernment of the voters within the St. Louis County School District.

Statement 4:

The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education.

Better learning spaces and materials.

Classrooms wired with advanced technology for computers, projection, recording, online learning, real-time interaction with distant learning/teaching resources, and the like.

Up-to-date textbooks and learning materials.

²⁸ Complaint Ex. H.

²⁹ Complaint at 9.

³⁰ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981).

Flexible laboratory spaces for sciences, shops, and technical activities.

Computer access for every student as a basic tool for learning.

Learning centered on individual students.

Personalized learning in which each student has his/her own Individual Learning Plan guiding their education.

Advisors regularly working with individual students, communicating with parents.

Enrichment and remedial programs and support available to all students geared to their Individual Learning Plans.

Learning that is growth oriented and achievement based.

Focus on life skills.

Students will graduate with mastery of key life-career skills including work skills, social skills, interpersonal interaction, basic living skills (homemaking, household/consumer finance, healthy lifestyle choices, problem solving, critical thinking, etc.)

Career exploration will be a constant factor as students create and revise their Individual Learning Plans.

The passage continues by listing "Expanded elementary level programming," "Solid core programming," and "Enhanced potential for electives," as other benefits of passage of the December 2009 ballot initiative.³¹

The Complainants contend that the entire passage under statement 4 "makes numerous specific promises for educational improvement that the district can in no way assure." The Complainants point out that under state law, none of the \$78.8 million in capital bonding funds approved by voters can be used for textbooks, educational materials, teacher hiring, or new programming. The Complainants acknowledge that School District officials were claiming that operational savings made possible by the school consolidation would free up funding for such improvements. The Complainants argue, however, that the School District's projected savings were highly speculative and based on unrealistic revenue projections. In addition, the Complainants assert that the School District never explained that the potential educational improvements listed under statement 4 were contingent on these highly speculative savings and revenue increases.

The Administrative Law Judge finds that the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to the claims made in statement 4. As with statement 3, Respondents claims of educational improvements that will result from the passage of the ballot question may be

³¹ Complaint Ex. E.

unrealistic or speculative, but that does not make them factually false. Moreover, Respondents' alleged failure to explain the speculative nature of the operational savings does not provide the basis for a complaint under Minn. Stat. § 211B.06. There is no requirement that campaign material be thorough or complete. Minnesota's appellate courts have repeatedly held that the statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading.³²

Statement 5:

"Bottom line is, if we don't pass this bond referendum we'll be putting our schools in hospice," added Board Member Gary Rantala, who represents the Babbitt-Embarrass attendance area.³³

Statement 6:

"Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options are close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region," said Board Chair Robert Larson.³⁴

Statement 7:

"The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, so *hopefully voters will approve the plan* [emphasis ours] and the options discussed at this study session will never have to be implemented, said Superintendent Dr. Charles Rick. Unfortunately, no matter how you look at these options if a 'no' vote prevails, the board has little choice other than to close schools and make severe program cuts. It is becoming more apparent that our children would then ultimately have to attend school in other districts."

The Complainants concede that statements 5, 6 and 7 are statements of opinion. They argue, however, that these opinions should not have appeared in School District publications paid for by tax dollars without the opposing point of view being afforded the same access.

Statements of opinion do not come within the purview of Minn. Stat. § 211B.06. In addition, there is no requirement under § 211B.06 that the Respondents present both sides of the ballot question.³⁵ The Administrative Law

³² See *Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute.)

³³ Complaint Ex. E.

³⁴ Complaint Ex. E.

³⁵ See *Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute.)

Judge finds the Complainants have failed to allege a *prima facie* violation of Minn. Stat. § 211B.06 with respect to statements 5, 6 and 7.

Minn. Stat. § 211B.15, subd. 9

The Complainants also allege that the School District violated Minn. Stat. § 211B.15, subd. 9. In general, Minn. Stat. § 211B.15 prohibits corporate contributions. Subdivision 9 provides that "it is not a violation of this section for a corporation to contribute to or conduct public media projects to encourage individuals to attend precinct caucuses, register, or vote if the projects are not controlled by or operated for the advantage of a candidate, political party, or committee." Neither the School District nor its Board members meet the definition of a corporation (defined for purposes of this provision as a corporation organized for profit that does business in this state; a nonprofit corporation that carries out activities in this state; or a limited liability company that does business in this state).³⁶ The statute does not apply to the St. Louis County Independent School District No. 2142. Accordingly, the Complaint fails to allege a *prima facie* violation of Minn. Stat. § 211B.15, subd. 9.

For all of these reasons, the Administrative Law Judge finds that the Complainants have failed to allege *prima facie* violations of Minn. Stat. §§ 211A.02, 211A.03, 211A.05, 211A.06, 211B.06 and 211B.15 on the part of the St. Louis County School District and/or its Board members. The Complaint is dismissed in its entirety.

S.M.M.

³⁶ Minn. Stat. § 211B.15, subd. 1.

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EXHIBIT 5

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REBECCA OTTO
STATE AUDITOR

May 19, 2011

STATE OF MINNESOTA
OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@state.mn.us (E-Mail)
1-800-627-3529 (Relay Service)

Steve Abrahamson
c/o City of Tower
P.O. Box 576
Tower, Minnesota 55790

Tim Kotzian
c/o City of Tower
P.O. Box 576
Tower, Minnesota 55790

Marshall Helmberger
c/o Timberjay Newspapers
414 Main St.
PO Box 636
Tower, Minnesota 55790

Dear Mr. Abrahamson, Mr. Kotzian and Mr. Helmberger,

On May 12, 2011, the Minnesota Court of Appeals heard oral arguments in *Abrahamson and Kotzian v. St. Louis County School District*, Minn. Ct. App. Doc. No. A10-2162.¹ This litigation directly impacts issues and standards submitted to the Office of the State Auditor in the petition process in which you have been involved.

The Office of the State Auditor must therefore await the conclusion of the litigation before it can determine whether unresolved issues remain. When the litigation is complete, the Office of the State Auditor will assess the status of the petition's issues and the applicable standards and determine how to proceed.

Because information related to the audit itself are not public under Minn. Stat. § 6.715 until a final report is issued, the Office of the State Auditor cannot comment further.

Sincerely,

Mark F. Kerr
Assistant Legal Counsel
(651) 296-4717

Cc: Erick G. Kaardal
Michelle D. Kenney

¹ The appeal was taken from a November 9, 2010 Office of Administrative Hearings Order of Dismissal, *Abrahamson and Kotzian v. St. Louis County School District*, OAH Doc. No. 48-0325-21677-CV.



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EXHIBIT 6

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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2162**

Steven Abrahamson, et al., complainants,
Relators,

vs.

The St. Louis County School District,
Independent School District No. 2142, et al.,
Respondents,

Office of Administrative Hearings,
Respondent.

Filed August 1, 2011
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Office of Administrative Hearings
Agency File No. 48-0325-21677-CV

Erick G. Kaardal, Mohrman & Kaardal P.A., Minneapolis, Minnesota (for relators)

Stephen M. Knutson, Michelle D. Kenney, Knutson, Flynn & Deans P.A., Mendota Heights, Minnesota (for The St. Louis County School District, et al.)

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

Considered and decided by Minge, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

SYLLABUS

1. A school district, school board, and board members fall within the definition of "committee" in Minnesota Statutes, chapter 211A, and are subject to the chapter's campaign-finance reporting requirements.

2. A school district's use of public funds to influence or to promote the passage of a ballot question is an expenditure not authorized by law.

3. A school district's expenditures of public funds to promote the passage of a ballot question are not election-related expenditures required or authorized by law and therefore constitute "disbursements" under Minnesota Statutes, chapter 211A.

OPINION

SCHELLHAS, Judge

By writ of certiorari relators appeal from an administrative-law judge's dismissal of their complaint for failing to allege a prima facie violation of Minnesota Statutes chapter 211A or section 211B.06. We affirm in part, reverse in part, and remand.

FACTS

On November 4, 2010, relators Stephen Abrahamson and Tim Kotzian filed with the Minnesota Office of Administrative Hearings (OAH) a complaint against respondents St. Louis County School District, Independent School District No. 2142, and the seven members of its school board. Abrahamson is the mayor of the City of Tower, and Kotzian is chair of the coalition for community schools. Relators allege violations of the fair-campaign-practices and campaign-finance acts.

According to the complaint, the school district and board members caused a ballot-question election to be held on December 8, 2009. The ballot question sought voters' authorization to issue general-obligation school-building bonds in an amount not to exceed \$78.8 million. Relators allege that, prior to the election, the school district and board promoted the passage of the ballot question through the use of public funds.

Relators further allege that the school district and board allowed contributions, approved expenditures, and encouraged the district to incur expenses or to otherwise accept in-kind contributions. They generally allege that the public funds belonged equally to proponents and opponents of the ballot question and that the school district's use of funds to promote the passage of the ballot question was an unlawful expenditure not authorized by the legislature.

Relators specifically allege that the school district used public funds to pay Johnson Controls Inc. for its assistance in preparing and disseminating newsletters and other materials to residents of the school district to promote the passage of the ballot question. Relators allege that the school district and its board allowed, approved, and encouraged the costs with knowledge of the relevant financial-reporting requirements under Minnesota law. According to the complaint, neither the school district nor the board filed any financial reports relating to the ballot question.

Relators allege that the school district and board violated the following statutes: Minn. Stat. §§ 211A.02, .03, .05, and .06 (2010), by expending more than \$750 related to the ballot question and knowingly failing to file financial reports; Minn. Stat. § 211B.06 (2010), by disseminating material that included false statements concerning the effect of the ballot question; and Minn. Stat. § 211B.15, subd. 9, (2010), by contributing to a media project controlled by the school district to encourage passage of the ballot question.

On November 9, an OAH administrative-law judge (ALJ) dismissed relators' complaint for failure to allege prima facie violations of Minn. Stat. §§ 211A.02, .03, .05,

.06, 211B.06, or 211B.15, subd. 9. In a memorandum accompanying the order, the ALJ stated that, because neither the school district nor board members are a "candidate" or a "committee," as defined in chapter 211A, they are not subject to the reporting requirements of chapter 211A. The ALJ further stated that, even if the district were subject to the filing requirements in chapter 211A, the expenditures at issue are election-related expenditures not within the definition of "disbursement" in chapter 211A, and therefore not subject to reporting. Concerning the alleged false statements, the ALJ concluded that the statements are either not demonstrably false or are opinion and not within the purview of section 211B.06. And, concerning relators' claim that the school district violated section 211B.15, subdivision 9, by contributing to a media project it controlled to encourage passage of the ballot question, the ALJ concluded that the claim failed because neither the school district nor its board members fall within the definition of "corporation" applicable to that section.

Relators petition for a writ of certiorari.

ISSUES

- I. A school district, school board, and board members fall within the statutory definition of "committee" under Minnesota Statutes, chapter 211A?
- II. Are the school district's expenditures made in connection with the ballot-question election "disbursements" subject to campaign-finance-reporting requirements under chapter 211A?
- III. Does relators' complaint set forth a prima facie violation of Minnesota Statutes section 211B.06?

ANALYSIS

To set forth a prima facie violation of chapter 211A or 211B, a complaint filed with the OAH must “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). If an ALJ determines that the complaint does not set forth a prima facie violation, the ALJ must dismiss the complaint. Minn. Stat. § 211B.33, subd. 2(a) (2010). A reviewing court may affirm a decision dismissing a complaint, remand for further proceedings, or “reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are” affected by error of law or “unsupported by substantial evidence in view of the entire record.” Minn. Stat. § 14.69 (2010).

In this case, the ALJ concluded in his order memorandum that “the St. Louis County School District and its Board members are neither a candidate nor a committee within the meaning of chapter 211A, and are not required to report contributions or disbursements through the reporting requirements of that chapter.” “When a decision turns on the meaning of words in a statute or regulation, a legal question is presented. In considering such questions of law, reviewing courts are not bound by the decision of the agency and need not defer to agency expertise.” *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39–40 (Minn. 1989) (citations omitted).

I. Application of Reporting Requirements in Chapter 211A

The ALJ acknowledged in his order memorandum that if the school district and board members “fall within the statutory definition of a ‘committee’ as either a corporation or an association, the reporting requirements of chapter 211A may apply,” but the ALJ concluded otherwise as quoted above. On appeal, both relators and respondents argue that the statute is clear and unambiguous, but their interpretations are opposite. Relators argue that the school district, school board, and board members are included in the unambiguous meaning of “committee,” while respondents argue that neither the school district, school board, nor its members are included in the plain meaning of “committee.”

We review the ALJ’s statutory interpretation de novo. *See Barry*, 781 N.W.2d at 901 (stating that this court reviews questions of statutory interpretation de novo). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). “Every law shall be construed, if possible, to give effect to all its provisions.” *Id.* “When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” *Id.* Courts presume that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.” Minn. Stat. § 645.17(1) (2010). If a statute’s language is clear and unambiguous, a reviewing court must give effect to its plain meaning and refrain from engaging in any further interpretation. *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn.

2004). A statute is ambiguous if the language used in the statute is subject to more than one reasonable interpretation. *State v. Wukawitz*, 662 N.W.2d 517, 525 (Minn. 2003).

In relevant part, chapter 211A defines “committee” broadly as a “corporation or association or persons acting together to . . . promote or defeat a ballot question.” Minn. Stat. § 211A.01, subd. 4 (2010). The legislature did not qualify the general terms or explicitly exclude any types or categories of corporations, associations, or persons acting together. The general terms and the disjunctive “or” in the statutory language provide a broad and expansive definition of “committee,” not a narrow and restrictive definition. We address separately whether the school district and its board members are included in the definition of committee under section 211A.01, subdivision 4.

A. School District

The ALJ concluded that the school district is not a “committee” within the meaning of section 211A.01, subdivision 4, because it is defined as a municipality for purposes of municipal tort liability under Minn. Stat. § 466.01 (2010) and municipal contracting law under Minn. Stat. § 471.345 (2010), and because it is classified as a public corporation under Minn. Stat. § 123A.55 (2010). We disagree with the ALJ’s conclusion. We conclude that the plain and unambiguous meaning of “committee” in chapter 211A includes school districts.

Under section 211A.01, subdivision 4, a corporation is a committee. “Corporation” is defined as “[a] body that is granted a charter recognizing it as a separate legal entity having its own rights, privileges, and liabilities distinct from those of its members,” “[s]uch a body created for purposes of government,” and “[a] group of people

combined into or acting as one body.” *The American Heritage Dictionary of the English Language* 410 (4th ed. 2000) [hereinafter *American Heritage Dictionary*]. And, in multiple instances, Minnesota law defines a school district as a “municipal corporation” or “public corporation.” *E.g.*, Minn. Stat. § 123A.55; *Dep’t of Highways v. O’Connor*, 289 Minn. 243, 245, 183 N.W.2d 574, 576 (1971); *Village of Blaine v. Indep. Sch. Dist. No. 12*, 272 Minn. 343, 350, 138 N.W.2d 32, 38 (1965). A “public corporation” is a corporation “created by the state as an agency in the administration of civil government.” *Black’s Law Dictionary* 393 (9th ed. 2009). Nothing in the plain language of section 211A.01, subdivision 4, qualifies or restricts the term “corporation” or excludes public corporations from its plain meaning. Statutory categorization of school districts as “public corporations” therefore supports, rather than hinders, a conclusion that school districts fall within the meaning of “committee.” We conclude that a school district, as a public corporation, is a “committee” within the meaning of section 211A.01, subdivision 4.

Respondents argue that this court should construe the meaning of “corporation” in section 211A.01, subdivision 4, in accordance with its definition in Minnesota Statutes section 211B.15, subdivision 1, which appears not to include public corporations. Respondents argue without authority that the legislature intended that this limited definition of “corporation” be applied to preclude a school district’s inclusion as a “committee” in section 211A.01, subdivision 4. But respondents’ argument is misplaced because section 211B.15, subdivision 1, specifically provides that the definition of “corporation” is “[f]or purposes of this section.” Nothing in the language of section

211B.15, subdivision 1, or chapter 211A suggests that the limitations in the definition of “corporation” in section 211B.15, subdivision 1, apply to the meaning of “corporation” in section 211A.01, subdivision 4.

Respondents also argue that, because “school district” is defined in Minnesota Statutes section 200.02, subdivision 19, as “an independent, special, or county school district,” and is not included in the definition of committee in section 211A.01, subdivision 4, a school district cannot be included in the definition of committee under section 211A.01, subdivision 4. But chapter 200 also defines “political party,” “major political party,” and “eligible voter.” Minn. Stat. § 200.02, subs. 6, 7, 15 (2010). And respondents’ reasoning would lead to the absurd result that because political parties, major political parties, and eligible voters are defined in chapter 200 but not included in the definition of committee in section 211A.01, subdivision 4, they cannot be deemed a committee within the meaning of section 211A.01, subdivision 4, and, therefore, are not subject to the reporting requirements in chapter 211A. We reject respondents’ argument.

We conclude that a school district falls within the unambiguous statutory definition of “committee” in chapter 211A. Accordingly, a school district is subject to campaign-finance reporting requirements under Minn. Stat. §§ 211A.02, .03, .05, and .06. The ALJ erred by concluding that the school district is not a “committee” within the meaning of chapter 211A and not subject to campaign finance reporting.

B. School Board Members

Although “committee” includes “persons acting together to . . . promote or defeat a ballot question,” Minn. Stat. § 211A.01, subd. 4, the ALJ distinguished the board

members from an “*ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question,” and concluded that they are “elected policy-makers for the district” and not a “committee” as defined in chapter 211A. We disagree. Members of a school board are persons, and according to the complaint, the board members took action to promote a ballot question. Therefore, under the plain language of the statute, the board members are a “committee.”

Respondents argue that the board members are not a “committee.” They point to section 211A.05, subdivision 1, which states that “[t]he treasurer of a committee formed to promote or defeat a ballot question” is guilty of a misdemeanor if the treasurer intentionally fails to file a required report or certification required. Respondents assert that the legislature intended “committee” to mean only “a committee formed to promote or defeat a ballot question.”

But section 211A.01, subdivision 4, states that, “‘Committee’ means a corporation or association or *persons acting together* to influence the nomination, election, or defeat of a candidate or to *promote or defeat a ballot question.*” (Emphasis added.) Respondents’ argument ignores the plain language of the statute. We disagree that, by providing the penalty applicable to a treasurer of a “committee formed to promote or defeat a ballot question,” section 211A.05, subdivision 1, shows a legislative intent to qualify the meaning of “committee” for the entire chapter. Respondents argue that ignoring the section 211A.05 language leads to an absurd result because a “committee” not “formed to promote or defeat a ballot question,” will not be subject to a penalty. But

respondents' argument is unconvincing because section 211A.11 includes penalties for violations of chapter 211A for which no other penalty is provided.

We conclude that school board members fall within the unambiguous statutory definition of "committee" in chapter 211A. Accordingly, board members are subject to campaign-finance reporting requirements under Minn. Stat. §§ 211A.02, .03, .05, and .06. The ALJ erred by concluding that the board members are not a "committee" within the meaning of chapter 211A and not subject to campaign finance reporting.

II. School District's Expenditures Described in the Complaint Constitute "Disbursements" under Chapter 211A

A committee that makes disbursements of more than \$750 in a calendar year is subject to campaign-finance reporting requirements. Minn. Stat. § 211A.02. A "disbursement" includes "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent." Minn. Stat. § 211A.01, subd. 6 (2010). A disbursement "does not include payment by a . . . school district or other political subdivision for election-related expenditures required or authorized by law." *Id.*

Relators allege in their complaint that the school district paid money for the preparation and publication of materials promoting passage of the ballot question and postage for mailing the publications. Relators argue that the expenditures are unauthorized by law. Because the expenditures at issue are monies that were conveyed, they fall within the statute's broad definition of "disbursements." *See id.* (defining "disbursement" to include "money . . . directly or indirectly conveyed"). Without making

specific findings or citing authority, the ALJ concluded that even if the school district were a “candidate” or “committee” subject to filing requirements, the expenses at issue fall within the exemption for election-related expenditures and are not “disbursements.” No caselaw addresses the meaning of “disbursements” or the scope of the exemption for “election-related expenditures.” We must determine whether the school district’s expenditures fall within the exemption for election-related expenses “required or authorized by law.” *See id.*

We first consider whether the expenses are required by law. Section 204B.32, subdivision 1(d), requires school districts to compensate election judges and sergeants-at-arms. School districts are also required to cover the costs of “printing the school district ballots, providing ballot boxes, providing and equipping polling places and all necessary expenses of the school district clerks in connection with school district elections not held in conjunction with state elections.” Minn. Stat. § 204B.32, subd. 1(d) (2010). If “school district elections are held in conjunction with state elections, the school district shall pay the costs of printing the school district ballots, providing ballot boxes and all necessary expenses of the school district clerk.” *Id.* Section 204B.32 also identifies categories of expenditures that may be allocated to school districts, including “postage for absentee ballots and applications; preparation of polling places; preparation and testing of electronic voting systems; ballot preparation; publication of election notices and sample ballots; transportation of ballots and election supplies; and compensation for administrative expenses of the county auditor, municipal clerk, or school district clerk.”

Id., subd. 2 (2010). These expenditures are limited to those necessary to ensure that the voting procedure is valid and that voters can vote.

Relators argue that the school district's expenditures do not fall within any of the identified categories in section 204B.32. We agree. The expenditures at issue—newsletter publications promoting passage of a ballot question and postage for the dissemination of the newsletters—do not fall within the election-related expenses identified in section 204B.32. We conclude that the expenditures are not required by law within the meaning of section 211A.01, subdivision 6. Because the expenditures are not required by law, we must consider whether they are authorized by law.

Citing an opinion of the Minnesota Attorney General, No. 159b-11, issued September 17, 1957, respondents assert that the expenditures are authorized by law. Respondents argue that the attorney general opinion authorizes the expenditures. *See* Minn. Stat. § 8.07 (2010) (stating attorney general opinions on school matters are decisive until court of competent jurisdiction decides otherwise). “While the attorney general’s opinions are entitled to careful consideration at all times, they are not binding upon the courts.” *Village of Blaine*, 272 Minn. at 353, 138 N.W.2d at 39. We consider the attorney general opinions to be instructive because the issue before us is one of first impression.

In Opinion No. 159b-11, the attorney general responded to the following question: “May the School District expend funds for printed literature, newspaper space and radio time to conduct an education program for such purposes?” The attorney general opined that a reasonable amount of school district funds could be expended to disseminate

information to voters to inform them on the issue before them. The attorney general cited statutory authority that vests the care, management, and control of the business of an independent school district in the school board and noted that a school district “has general charge of the business of the district, the school houses, and of the interests of the schools.” See Minn. Stat. §§ 123B.02, subd. 1, .09, subd. 1 (2010) (vesting care, management, and control of school district, school houses, and interests of schools in school board).

Citing an opinion of the Minnesota Attorney General, No. 159a-3, issued May 24, 1966, relators argue that the expenditures are unauthorized by law because the newsletter publications did not “inform” voters on the issue. Instead, they promoted one side of the ballot question—the passage of the ballot question—and are not authorized specifically by the legislature. In Opinion No. 159a-3, the attorney general responded to the following questions:

- (1) In making oral presentations to citizens’ groups concerning a forthcoming bond election may members of the School Board of an independent school district advocate the passage of a bond issue for the construction, modification, etc. of schools?
- (2) During the ‘campaign’ involving the question of the issuance of bonds for the construction, modification, etc. of schools of an independent school district may school districts pay the mailing cost of literature printed at the expense of others, which literature urges in the name of the school board or otherwise the passage of the bond issue, so long as the expenses are reasonable?
- (3) During the campaign involving the question of the issuance of bonds for the construction, modification,

etc. of schools may an independent school district pay for the cost of the literature, as well as the mailing cost of literature which urges in the name of the School Board or otherwise the passage of the bond issue, so long as the expenses are reasonable?

Noting its earlier Opinion No. 159b-11, the attorney general opined that, even if the expenses are reasonable, a school district may not use public funds to print and mail literature that urges voters to pass a bond referendum. The attorney general predicted that Minnesota courts would decide the issues "in harmony" with caselaw from another jurisdiction, which had addressed the issue. *See Citizens to Protect Pub. Funds v. Bd. of Ed. of Parsippany-Troy Hills Twp.*, 98 A.2d 673, 677-78 (N.J. 1953).

In *Citizens to Protect Public Funds*, a school board used public funds to print and distribute a booklet that presented facts about a proposed building program. *Id.* at 674. Three pages exhorted voters to "Vote Yes!" and warned of negative consequences for failing to vote yes. *Id.* The New Jersey Supreme Court held that absent legislative authorization, public funds may not be used to advocate one side of a voter issue and that, therefore, a municipal corporation was prohibited from using public funds to advocate only one side of a controversial issue. *Id.* at 677. The court explained its reasoning as follows:

We do not mean that the public body formulating the program is otherwise restrained from advocating and espousing its adoption by the voters. Indeed, as in the instant case, when the program represents the body's judgment of what is required in the effective discharge of its responsibility, it is not only the right but perhaps the duty of the body to endeavor to secure the assent of the voters thereto. The question we are considering is simply the extent to and manner in which the funds may with justice to the

rights of dissenters be expended for espousal of the voters' approval of the body's judgment. Even this the body may do within fair limits. The reasonable expense, for example, of the conduct of a public forum at which all may appear and freely express their views pro and con would not be improper. The same may be said of reasonable expenses incurred for radio or television broadcasts taking the form of debates between proponents of the differing sides of the proposition. *It is the expenditure of public funds in support of one side only in a manner which gives the dissenters no opportunity to present their side which is outside the pale.*

Id. at 677-78 (emphasis added). In *Citizens*, the court concluded that the board advocated only "one side . . . of [a] controversial question without affording the dissenters the opportunity by means of that financed medium to present their side." *Id.* at 677.

In another leading case, the California Supreme Court held that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." *Stanson v. Mott*, 551 P.2d 1, 3 (Cal. 1976). In *Stanson*, the "director of the California Department of Parks and Recreation . . . had authorized the department to expend more than \$5,000 of public funds to promote the passage of [a] bond issue" for future acquisition of park land and recreational and historical facilities. *Id.* at 3. The court stated: "Although the department did possess statutory authority to disseminate 'information' to the public relating to the bond election, the department, in fulfilling this informational role, was obligated to provide a fair presentation of the relevant facts." *Id.*

Other jurisdictions that have addressed the issue have also disapproved of the use of public resources that do not fairly and impartially educate the electorate, but instead

are intended to sway voters. See *Coffman v. Colo. Common Cause*, 102 P.3d 999, 1013 (Colo. 2004) (holding that when public funds are used to inform public about ballot measure, information must present both sides of issue); *Palm Beach Cnty. v. Hudspeth*, 540 So.2d 147, 154 (Fla. Dist. Ct. App. 1989) (stating county “should allocate tax dollars to educate the electorate on the purpose and essential ramifications of referendum items, [but] it must do so fairly and impartially”); *Smith v. Dorsey*, 599 So.2d 529, 542 (Miss. 1992) (finding “compelling wisdom and sound logic” in cases recognizing a “balanced, informational role in educating the local community about referendum proposals”); *Phillips v. Maurer*, 490 N.E.2d 542, 543 (N.Y. 1986) (holding that advertisement urging voters to support budget and bond issue proposal impermissibly exhorted the electorate to support the board’s position); *Dollar v. Town of Cary*, 569 S.E.2d 731, 734 (N.C. Ct. App. 2002) (affirming preliminary injunction because town’s promotional, rather than informational, advertisements promoted certain council candidates).

In this case, based on their complaint, the ALJ determined that relators (1) alleged specific facts to support the claim that respondents disseminated publications and otherwise acted to promote passage of the ballot question and (2) alleged specific facts showing that the expenditures paid for the dissemination of one-sided information on a voter issue. We conclude that the school board lacked express legislative authority for the expenditures at issue and that the caselaw in other jurisdictions is persuasive. We therefore hold that, although a school district may expend a reasonable amount of funds for the purpose of educating the public about school-district needs and disseminating facts and data, a school district may not expend funds to promote the passage of a ballot

question by presenting one-sided information on a voter issue. In this case, the school board's expenditures—public funds used to promote the passage of the ballot question by presenting one-sided information on a voter issue—were not authorized by law. We therefore conclude that the expenditures by the school district are election-related expenditures not required or authorized by law and not exempt from the definition of “disbursement” under chapter 211A. Because the expenditures are “disbursements,” they are subject to campaign-finance reporting under section 211A.02. The ALJ erred in concluding that the expenditures are not “disbursements” and in concluding that relators failed to state a prima facie violation of chapter 211A's reporting requirements.

III. Minnesota Statutes Section 211B.06 Claims

Minnesota Statutes section 211B.06 prohibits a person from intentionally participating in the preparation or dissemination of campaign material “with respect to the effect of a ballot question, that is designed or tends 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.” Minn. Stat. § 211B.06, subd. 1. At the evidentiary hearing, the complainant bears the burden of proving a violation of section 211B.06 by clear-and-convincing evidence. Minn. Stat. §§ 211B.32, subd. 4, .35 (2010).

Section 211B.06 is directed at false statements of fact and not against unfavorable deductions or inferences based on fact, even if they “may be considered extreme and illogical.” *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981). The burden of alleging facts sufficient to show falsity cannot be satisfied by alleging that the statement is not true in every detail; if a statement is true in substance, inaccuracies of expression or detail

are immaterial. *Cf. Jadwin v. Minneapolis Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986) (stating burden of proof concerning falsity of statement in libel action). Expressions of opinion are not actionable if “the audience would understand the statement is not a representation of fact.” *Id.*

Because the plain language of section 211B.06 includes the definition of actual malice set forth in *Chafoulias v. Peterson*, 668 N.W.2d 642, 654–55 (Minn. 2003), that definition applies to a complaint filed in the OAH alleging a violation of section 211B.06. *Riley v. Jankowski*, 713 N.W.2d 379, 399 (Minn. App. 2006), *review denied* (Minn. July 19, 2006). “Actual malice is a term of art; it means that the [person] acted with knowledge that the publication was false or with reckless disregard of whether it was false or not.” *Chafoulias*, 668 N.W.2d at 654 (quotation omitted). Reckless disregard for the truth is a subjective standard, requiring that the person made a statement “while subjectively believing that the statement is probably false.” *Id.* at 655.

The ALJ concluded that relators failed to allege a prima facie violation of section 211B.06. Relators identify four statements from their compliant that they allege are false statements that violate Minn. Stat. § 211B.06, but only challenge the ALJ’s conclusions concerning three of the statements.¹

A. Statement Number One

Relators allege that the following statement is false:

¹ In their complaint, relators identify seven statements and number them one through seven. In their appellate brief, they explain that in the complaint they only allege that statements numbered one through four are false. For purposes of our analysis, we refer to the statements at issue by the numbers attributed to the statements in the complaint.

If residents vote no, their taxes will most likely still increase—in some cases, by a large amount. That’s because if the plan is not approved, the school district would enter into “statutory operating debt” by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.

Specifically, relators allege that the phrase “would need to dissolve” is false because entering into statutory operating debt does not require that a district dissolve. According to the complaint, “Over the past 30 years, dozens of Minnesota school districts have entered a state of statutory operating debt. None have opted for dissolution or were otherwise required to dissolve by another authority.”

Respondents argue that the claim concerning statement number one is untimely because the statement was made more than one year prior to the date that relators filed their complaint. *See* Minn. Stat. § 211B.32, subd. 2 (2010) (stating complaint must be filed within one year after occurrence of act that is subject of complaint). But respondents did not make this argument to the ALJ; the ALJ did not address whether a claim concerning statement number one was time barred; and we cannot discern from the record whether the ALJ addressed the timing of the filing of the complaint. We therefore do not reach respondents’ argument based on untimeliness.

The ALJ found that statement number one is not demonstrably false because it “reflects an inference and the phrase ‘would need’ is at most a pessimistic possibility in a conditional sentence.” Relators argue that the statement is definitive because “would” is the past tense of “will.” We agree. *See American Heritage Dictionary, supra*, at 1984

(defining “would” as the “[p]ast tense of will”). The statement would lead an ordinary reader to the definitive conclusion that if the bond referendum did not pass, the school district would be forced to dissolve and children in the district would be forced to attend school in other districts. *Cf. Jadwin*, 390 N.W.2d at 442 (giving words of alleged libel their “obvious and natural meaning”).

With respect to the subjective component required by section 211B.06, relators allege that, “School District officials were aware that entering into statutory operating debt does not require a district to dissolve.” The ALJ concluded that “there is nothing in the record to show [statement number one] was disseminated with a high degree of awareness of its probable falsity.” We disagree. Statement number one states that if the ballot question did not pass, “the school district would enter into statutory operating debt,” and that the district “would need to dissolve.” Relators allege that school district officials “were aware that entering into statutory operating debt does not require a district to dissolve.” Because relators allege facts that, if true, would be sufficient to show that statement number one is false and that school district officials made the statement with awareness that it was false, the ALJ erred by concluding that relators did not allege a prima facie violation of section 211B.06.

B. Statement Number Three

Relators allege that the statement, “Projected annual deficit in 2011–12: \$4.1 million” is false. According to the complaint, this projection was presented in public presentations by the school superintendent and in district publications. Relators allege that the projection is false because in June 2009, prior to the public statements of the

projection, the school board approved a 2009–10 budget with a total shortfall of \$833,000. Relators allege that the “projection reflected ‘worst case’ assumptions” and is not realistic because it “assumed that no teacher layoffs or staff reductions would occur, no steps would be taken to curb rising health insurance costs, and that energy costs would rise by ten percent annually from record highs in 2008.”

The ALJ concluded that stating that the projection was “gloomy, unrealistic or improbable, is not to say that it was demonstrably false.” Relators argue that they demonstrated that the statement is false because they showed that “before the [d]istrict promoted the passage of the ballot question using a \$4.1 million deficit for 2011–12, the deficits were not growing, but decreasing.” We agree. Evidence in the record shows that the 2009–10 adopted budget’s shortfall was less than the shortfall in the 2008–09 adopted budget. Relators allege that, “School District officials knew that they no longer reflected their actual financial situation. In a subsequent media interview, for instance, School District Business Manager Kimberly Johnson was quoted acknowledging that the budget projections were not realistic, but were intended to dramatize that the district faced financial challenges.” The ALJ concluded that, “nothing in the record shows” that statement number three was “circulated with some awareness of . . . falsity.” We disagree. The record contains relators’ allegations that school district officials knew that the budget projection made in statement number three did not reflect their actual financial situation and that one official publicly acknowledged that “budget projections were not realistic.”

Because relators allege facts, that if true, would be sufficient to prove that statement number three is demonstrably false and that school district officials either knew that the statement was false or recklessly disregarded whether the statement was false, the ALJ erred by concluding that relators failed to allege a prima facie violation of section 211B.06.

C. Statement Number Four

Relators allege that the following statement is false: "The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education."² Relators allege that in this statement the school district made specific promises for educational improvement that it cannot assure because the monies from the capital bonding funds cannot be utilized for many of the educational improvements the district claims will result from the passage of the ballot question. In the complaint, relators acknowledge that school officials stated that "operational savings made possible by the school consolidation would free up funding," but allege that school officials failed to explain that the "educational improvements were contingent on the realization of . . . highly speculative savings and revenue increases." Relators assert that the statement is false because the district "can in no way assure the promises made," but do not provide evidence or allege specific facts to support this assertion.

² The educational opportunities are listed after the allegedly false statement under the following headings: "Better learning spaces and materials," "Learning centered on individual students," "Focus on life skills," "Expanded elementary level programming," "Solid core programming," and "Enhanced potential for electives."

In concluding that relators did not show that this statement was demonstrably false, the ALJ found that the school district's "claims of educational improvements that will result from the passage of the ballot question may be unrealistic or speculative, but that does not make them factually false." The ALJ concluded that the district's "alleged failure to explain the speculative nature of the operational savings does not provide [a] basis for a complaint under Minn. Stat. § 211B.06." We agree. The ALJ properly concluded that showing that the educational opportunities are speculative, or even unrealistic, does not show that the statement is demonstrably false and that relators' allegations concerning statement number four are insufficient to show a violation of section 211B.06.

DECISION

The school district, school board, and board members are subject to campaign-finance reporting because they fall within the definition of "committee" in chapter 211A. The school district's expenditures of public funds to promote the passage of the ballot question were not authorized by law. The school district's expenditures are not election-related expenditures required or authorized by law; they are not exempt from the definition of "disbursements" under chapter 211A.

Because the school district, school board, and board members fall within the meaning of "committee" in chapter 211A, because the school district's expenditures are "disbursements" under chapter 211A, and because relators alleged a prima facie violation of section 211B.06 with respect to statements number one and three in their complaint, the ALJ erred by dismissing relators' complaint. Because relators failed to allege a prima

facie violation of section 211B.06 concerning statement number four, we affirm in part, reverse in part, and remand.

Affirmed in part, reversed in part, and remanded.

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EXHIBIT 7

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STATE OF MINNESOTA

IN SUPREME COURT

A10-2162

Court of Appeals

Page, J.
Concurring, Anderson, Paul H., J.
Concurring and dissenting, Stras, J., and
Anderson, G. Barry, J.

Steven Abrahamson, et al.,

Respondents,

vs.

Filed: August 10, 2012
Office of Appellate Courts

The St. Louis County School District,
Independent School District No. 2142,
et al.,

Appellants,

Office of Administrative Hearings,

Respondent.

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, Minnesota, for respondents
Abrahamson and Kotzian.

Stephen M. Knutson, Michelle D. Kenney, Knutson, Flynn & Deans, P.A., Mendota
Heights, Minnesota, for appellants.

Lori Swanson, Attorney General, Nathan J. Hartshorn, Assistant Attorney General,
St. Paul, Minnesota, for respondent Office of Administrative Hearings.

SYLLABUS

1. A school district is a corporation within the meaning of Minn. Stat. ch. 211A (2010) and therefore is subject to the campaign-finance reporting requirements of that chapter if the district acts “to promote or defeat a ballot question.”

2. The complaint alleged facts sufficient to make out a prima facie case under Minn. Stat. ch. 211A (2010) that the school district acted to promote a ballot question.

3. A claim alleging a violation of Minn. Stat. § 211B.06 (2010) is untimely under Minn. Stat. § 211B.32, subd. 2 (2010), if the allegedly false statement was made more than one year before the complaint was filed.

4. The complaint alleging a false statement based on a “worst case” assumption failed to state a prima facie violation of Minn. Stat. § 211B.06.

Affirmed in part, reversed in part, and remanded.

OPINION

PAGE, Justice.

This case requires that we interpret provisions of Minn. Stat. chs. 211A and 211B (2010). Specifically, we must determine whether a school district is subject to the campaign-finance reporting requirements found in chapter 211A and whether the complaint in this matter stated a claim under section 211B.06, which prohibits the dissemination of false campaign material. We hold that a school district is a “corporation” under section 211A.01, subdivision 4, and therefore can qualify as a “committee” subject to chapter 211A’s campaign-finance reporting requirements if it acts “to promote or defeat a ballot question.” Because appellants’ complaint, filed with the

Office of Administrative Hearings (OAH), stated a prima facie claim that the school district here was a “committee” under section 211A.01, subdivision 4, that “promote[d] . . . a ballot question,” the administrative law judge assigned to the matter erred in dismissing the complaint without an evidentiary hearing. We also hold that the complaint failed to state a prima facie violation of section 211B.06 with respect to two allegedly false statements. Therefore, we affirm in part, reverse in part, and remand to the OAH for further proceedings consistent with this opinion.

On December 8, 2009, the St. Louis County School District (District) held a special election on a referendum that sought voter authorization for the school district to issue building bonds. At the time the school district passed the resolution to hold the special election, the district included seven schools and approximately 2,000 enrolled students. According to a resolution adopting a long-range facilities plan and approved at the June 8, 2009, school board meeting, enrollment in the school district had declined over the previous ten years by about 800 students and was expected to decline by another 100 students by 2013. The purpose of the long-range plan was to address the enrollment declines and the budget problems accompanying the declines. The District’s long-range plan called for the closure of two schools and the construction of two new, more centrally-located, schools. On September 14, 2009, the school board approved the placement of a referendum on the ballot at a special election to be held on December 8,

2009.¹ The ballot question was whether to authorize the school district to issue “school building bonds in an amount not to exceed \$78,800,000.” Between September 14, 2009, and the special election, the board distributed newsletters and other publications that contained information about the ballot question.

On November 4, 2010, respondents Steven Abrahamson and Tom Kotzian filed a complaint with the OAH against the District and seven school board members. *See* Minn. Stat. § 211B.32, subd. 1 (2010) (requiring a complaint alleging a violation of chapter 211A or 211B to be filed with the OAH). The complaint alleged that the District violated the campaign-finance reporting requirements of Minn. Stat. ch. 211A by not reporting expenditures incurred in promoting passage of the December 8, 2009, ballot question. The complaint also alleged that the District violated Minn. Stat. § 211B.06 (2010) by disseminating false statements in connection with the ballot question. Specifically, it is alleged the school district contracted with a consulting company that, on its own or through subcontractors, “provid[ed] reports or studies for the District” and “assist[ed] in the preparation of materials to promote the passage of the December ballot question.” The complaint also alleged that the District paid the cost of publication and postage for distributing the newsletters or similar publications with public funds. The

¹ A school district may, on its own motion, call a special election “to vote on any matter requiring approval of the voters of a district.” Minn. Stat. § 205A.05, subd. 1 (2010). Generally, authorization for a school district to issue building bonds requires voter approval. *See* Minn. Stat. § 475.58, subd. 1 (2010).

District did not report its publication and distribution expenditures as allegedly required by chapter 211A.

An administrative law judge (ALJ) dismissed respondents' complaint, without an evidentiary hearing, for failure to state a prima facie case. See Minn. Stat. § 211B.33, subd. 2(a). The ALJ ruled that school districts are not subject to chapter 211A's campaign-finance reporting requirements because they do not qualify as "committees" within the meaning of that term in chapter 211A. Alternatively, the ALJ ruled that, even if school districts are "committees," the specific expenses alleged in the complaint to have been unlawful fell within the exemption in the definition of "disbursement" under Minn. Stat. § 211A.01, subd. 6, for election-related expenditures.² In reaching these conclusions, the ALJ relied on two previous OAH decisions, both of which held that a school district is not a committee within the meaning of Minn. Stat. § 211A.01, subd. 4, and is therefore not subject to chapter 211A's reporting requirements. See *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282* (OAH) (May 21, 2009), *aff'd on other grounds*, 781 N.W.2d 898 (Minn. App. 2010); *Wigley v. Orono Pub. Sch.* (OAH) (May 1, 2008). Finally, the ALJ held that none of the four allegedly false statements recited in the complaint were false.

² Financial reporting requirements under section 211A.02 apply to committees that "make[] disbursements of more than \$750 in a calendar year." Minn. Stat. § 211A.02, subd. 1(a). But, "[d]isbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law." Minn. Stat. § 211A.01, subd. 6.

By writ of certiorari, respondents Abrahamson and Kotzian sought review in the court of appeals of the ALJ's holdings that school districts are not subject to chapter 211A and that the complaint did not state a prima facie violation of section 211B.06 with respect to three of the four statements alleged in the complaint to have been false. The court of appeals affirmed in part, reversed in part, and remanded. *Abrahamson v. St. Louis Cnty. Sch. Dist.*, 802 N.W.2d 393, 406 (Minn. App. 2011). The court reversed the ALJ's holding that a school district does not qualify as a committee under chapter 211A, and held that school districts are subject to the campaign-finance reporting requirements of that chapter. *Id.* at 399. The court also reversed the ALJ's holding that the expenditures alleged in the complaint were not "disbursements," concluding that the District's expenditures were neither required nor authorized by law. *Id.* at 403. Finally, the court reversed the ALJ's dismissal of the section 211B.06 claims with respect to two of the statements, but affirmed with respect to another of the statements. *Id.* at 404-06. Abrahamson and Kotzian did not challenge the ALJ's conclusion regarding a fourth statement. *Id.* at 404.

We granted the District's petition for further review. The questions in this case are: (1) whether the St. Louis County School District is a "committee" within the meaning of that term in chapter 211A, and therefore subject to campaign-finance reporting requirements; and (2) whether the complaint stated a prima facie case for violation of the prohibition under Minn. Stat. § 211B.06 against making false statements to promote or defeat a ballot question.

Our review is governed by Minn. Stat. § 14.69 (2010). We may affirm the agency's decision or remand for further proceedings. *Id.* Or, we may reverse or modify the decision "if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are: (a) in violation of constitutional provisions; or (b) in excess of the statutory authority or jurisdiction of the agency; or (c) made upon unlawful procedure; or (d) affected by other error of law; or (e) unsupported by substantial evidence in view of the entire record as submitted; or (f) arbitrary or capricious." *Id.* The posture of this case is similar to a motion to dismiss under Minn. R. Civ. P. 12.03 because the ALJ concluded that the complaint does not state prima facie violations of applicable provisions of chapters 211A and 211B. As a result, we "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of" the complainant. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

I.

First, we consider whether the St. Louis County School District is a "committee" within the meaning of chapter 211A and is therefore subject to that chapter's campaign-finance reporting requirements. Whether the District is a "committee" within the meaning of chapter 211A is a question of statutory interpretation, which we review de novo. *See St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989); *see also State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004). We construe the words of a statute "according to their common and approved usage." Minn. Stat. § 645.08(1) (2010). Our goal in interpreting statutes is to ascertain and effectuate the

intent of the legislature. Minn. Stat. § 645.16 (2010). But, when the language of a statute is unambiguous, we will not disregard the letter of the law to pursue the spirit of the law. *Id.*

As a preliminary matter, we note that, although the complaint names the District and its individual school board members separately, we refer to the District and school board members collectively as the “District,” and do not consider separately whether the school board members themselves constitute a “committee” within the meaning of chapter 211A. We do this because, as we read the complaint, the school board members were named in the complaint only in their official capacities; as such, they act only through the board and only on behalf of the District in that capacity. *See* Minn. Stat. §§ 123B.09, subd. 1 (placing “care, management, and control” of district in school board); 123B.85, subd. 4 (2010) (establishing a school board as the governing body of a school district). Thus, the court of appeals erred when it separately addressed whether individual board members, acting together in their official capacity, are a “committee” within the meaning of chapter 211A. *See Abrahamson*, 802 N.W.2d at 399.

We begin with the plain language of the statute. Minnesota Statutes § 211A.02 imposes reporting requirements on “[a] committee or a candidate who receives contributions or makes disbursements of more than \$750 in a calendar year.” A “committee,” in turn, is “a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to promote or defeat a ballot question.” Minn. Stat. § 211A.01, subd. 4. Nothing in the express terms of either section 211A.01 or 211A.02 includes or excludes school districts from the reporting

requirements. But, the express terms of section 211A.01, subdivision 4, do include a “corporation.”

The District argues that the reference to “corporation” in Minn. Stat. § 211A.01, subd. 4, should be read to exclude public corporations such as school districts. The District further argues that chapter 211A is limited to committees specifically formed to promote or defeat a ballot question, which is not the purpose of forming a school district. Finally, the District argues that characterizing it as a “corporation” within the meaning of chapter 211A is inconsistent with other legal authority that prohibits the expenditure of public funds to promote a favorable vote on a ballot question. We consider, and reject, each of these arguments in light of the plain language of the statute and statutory interpretation principles.

First, although a school district is a public corporation under Minnesota law, *see* Minn. Stat. § 123A.55 (2010), the District argues that the reference to “corporation” in Minn. Stat. § 211A.01, subd. 4, should not be read to refer to all corporations and, in fact, should be read to specifically exclude school districts. In support of its argument, the District points to several statutes that refer separately to “corporation” and “school district” in the same definition. *See* Minn. Stat. §§ 181.940, subd. 3 (2010) (including both “corporation” and “school district” in the definition of “employer”); 181.945, subd. 1(c) (2010) (including both “corporation” and “school district” in the definition of “employer”). The District also points to the definition of “school district” in another provision of election law, Minn. Stat. § 200.02, subd. 19 (2010) (defining “school district” to mean “an independent, special, or county school district”).

Given that the Legislature has specifically designated school districts as public corporations, *see* Minn. Stat. § 123A.55 (2010), excluding school districts from the definition of “corporation” under Minn. Stat. § 211A.01, subd. 4, simply because other statutes refer separately to “corporations” and “school districts” ignores the plain meaning of section 211A.01, subdivision 4. The plain meaning of “corporation” is broad and includes public corporations. *See, e.g., American Heritage Dictionary* 410 (5th ed. 2011) (defining “corporation” as “[a]n entity such as a business, municipality, or organization, that involves more than one person but that has met the legal requirements to operate as a single person, so that it may enter into contracts and engage in transactions under its own identity”); *see also Village of Blaine v. Indep. Sch. Dist. No. 12*, 272 Minn. 343, 350-51, 138 N.W.2d 32, 38 (1965) (characterizing school districts as “quasi-public corporations”). Had the Legislature intended to exclude school districts from the application of chapter 211A, it could have done so explicitly. In light of the breadth of section 211A.01, we cannot assume that the Legislature intended to exclude public corporations such as school districts from the meaning of the word “corporation.” Indeed, the fact that the Legislature used a broad term without limiting its scope is indicative of an intent to encompass all forms of corporate bodies, including public corporations such as school districts. *See* Minn. Stat. § 645.16 (2010) (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”).

Moreover, reading chapter 211A as a whole, as we must, *see* Minn. Stat. § 645.16 (“Every law shall be construed, if possible, to give effect to all its provisions.”), suggests

the Legislature contemplated that school districts are subject to chapter 211A's campaign-finance reporting requirements. A "committee" is required to file financial reports if, among other things, it "makes disbursements of more than \$750 in a calendar year." Minn. Stat. § 211A.02, subd. 1(a). But, "[d]isbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law." Minn. Stat. § 211A.01, subd. 6. If school districts were not within the scope of chapter 211A, then it would have been unnecessary for the Legislature to exclude school district expenditures "required or authorized by law" from the statutory definition of "disbursement."

Alternatively, the school district argues it is not a committee because a school district is not "formed to promote or defeat a ballot question." Subdivision 4 of section 211A.01 defines a committee, among other things, as a corporation that "promote[s] or defeat[s] a ballot question." Minn. Stat. § 211A.01, subd. 4. But, the statute refers to the *activities* conducted by the committee, not the reason for the committee's existence. Again, had the Legislature intended to limit the scope of "committees" subject to the reporting requirements of chapter 211A to those "formed" for the purpose of promoting or defeating a ballot question, it could easily have done so. But the word "formed" is not explicitly or by reasonable implication a part of section 211A.01, subdivision 4, and we will not read that word into the statute. *See Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010) (noting that this court may not add words to a statute).

Finally, the District argues that because public funds cannot be used to advocate one side of a voter issue, it could not have expended funds to promote or defeat a ballot

issue and therefore cannot be a “committee” within the meaning of chapter 211A. In making the argument, the District relies on cases decided by courts in other jurisdictions and on an opinion of the Minnesota Attorney General. *See Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Twp.*, 98 A.2d 673 (N.J. 1953); Op. Att’y Gen. 159a-3 (May 24, 1966). Whether public funds can be expended to advocate for only one side of a ballot question is a question of first impression for our court; however, it is a question we need not decide here for two reasons. First, the District’s argument misunderstands the purpose of chapter 211A: it does not *authorize* (or prohibit) promotional expenditures; it simply imposes reporting obligations. Second, there is no reason to believe that the Legislature intended to require reporting of only those expenditures authorized by law. In fact, the definition of “disbursement” suggests the opposite conclusion: school district payments that are not for “election-related expenditures *required or authorized by law*” are subject to reporting. *See* Minn. Stat. § 211A.01, subd. 6 (emphasis added). We therefore conclude that the District is a “committee” under Minn. Stat. § 211A.01, subd. 4.

Next, we consider whether the complaint alleged sufficient facts to state a prima facie claim that the District promoted the ballot question. Although we conclude that a “committee” need not have been *formed* “to promote or defeat a ballot question,” the committee must nevertheless “act[] . . . to promote or defeat a ballot question” in order to be subject to the reporting requirements of section 211A.02, subdivision 1(a). *See* Minn. Stat. §§ 211A.01, 211A.02. The complaint alleged the District made numerous statements that were promotional by conveying exaggerated statements regarding the

District's financial condition and false statements suggesting that defeat of the resolution would cause taxes to increase. The complaint included exhibits to support the allegations. See Minn. Stat. § 211B.32, subd. 3 ("The complaint must . . . detail the factual basis for the claim that a violation of law has occurred."); *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 903 (Minn. App. 2010) ("[W]ithout any factual allegations about the content of the [school district's and school board's] communications, there is no basis to conclude that . . . the school district and the school board were acting to promote or defeat a ballot question.").

Whether the complaint sufficiently alleged that the District promoted the ballot question depends on the meaning of the term "promote." This is also a question of first impression for our court. We construe words "according to their common and approved usage." Minn. Stat. § 645.08. "Promote" means to "urge the adoption of" or "advocate." *American Heritage Dictionary* 1410 (5th ed. 2011).

Here, the materials published by the District in the weeks leading up to the special election included statements that if the referendum was defeated, taxes would "most likely still increase," that defeat of the referendum would lead to district dissolution "as an inevitable consequence," and that defeat of the referendum would "put[] every school in the district at the risk of closure." The materials also discussed the numerous ways in which the additional funding would benefit the educational opportunities available to the District's students. These statements, by their very nature, "urge[d]" the passage of the ballot question. Viewing the reasonable inferences to be drawn from these facts in the light most favorable to the complainants, as we must, see *Bodah*, 663 N.W.2d at 553, we

conclude that the complaint sufficiently alleges that the statements were promotional. Whether, after the District answers the complaint and the case is fully litigated, the ALJ will ultimately find that these statements were promotional will depend on the evidence before it at that time. See *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739-40 (Minn. 2000) (noting that “we will not uphold a [Rule 12] dismissal ‘if it is possible on any evidence *which might be produced*, consistent with the pleader’s theory, to grant the relief demanded’ ” (emphasis added) (quoting *N. States Power Co. v. Franklin*, 265 Minn. 391, 395; 122 N.W.2d 26, 29 (1963))). Thus, our conclusion that the complaint states a prima facie claim that the District made promotional statements does not resolve whether Abrahamson and Kotzian will ultimately prevail on their claim.

Because a school district is a “corporation” within the meaning of chapter 211A and because the complaint sufficiently alleges that the District made statements that promoted passage of the ballot question, we affirm the court of appeals’ reversal of the ALJ’s dismissal of the complaint’s chapter 211A claim.³

³ The ALJ resolved this claim on the alternate ground that even if school districts are subject to chapter 211A’s reporting requirements, “[t]he Complainants have failed to point to any authority to support their argument that these election-related expenditures were unlawful or that the School District was prohibited from using any public funds to promote passage of the ballot question.” As a result, the ALJ concluded that the “specific expenses at issue” were not “disbursements” under chapter 211A. See Minn. Stat. § 211A.01, subd. 6 (“ ‘Disbursement’ does not include payment by a . . . school district . . . for election-related expenditures required or authorized by law.”). Whether the statements and therefore the expenditures here were required or authorized by law is unclear on this record. Thus, we cannot conclude as a matter of law that these statements and therefore expenditures were required or authorized by law.

(Footnote continued on next page.)

II.

Next, we consider whether the ALJ erred when it dismissed the complaint's claims alleging a violation of Minn. Stat. § 211B.06.

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 . . . effect of a ballot question, that is designed or tends 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.

Minn. Stat. § 211B.06, subd. 1.

The language of section 211B.06 closely tracks the standard for actual malice. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (defining “actual malice” as acting “with knowledge that [the statement] was false or with reckless disregard of whether it was false or not”); *Chafoulias v. Peterson*, 668 N.W.2d 642, 654 (Minn. 2003) (same); *Fitzgerald v. Minn. Chiropractic Ass’n, Inc.*, 294 N.W.2d 269, 270 (Minn. 1980) (defining “actual malice” as “either actual knowledge of the falsity of the publication or reckless disregard of whether it is false or not”). Actual malice can be shown if the statement was fabricated by the defendant; was the product of the defendant’s imagination, or was based on an unverified source. *Chafoulias*, 668 N.W.2d at 654

(Footnote continued from previous page.)

We note, however, that other states have addressed whether ballot question expenditures were required or authorized, *see, e.g., Vargas v. City of Salinas*, 205 P.3d 207, 229-31 (Cal. 2009); *Stanson v. Mott*, 551 P.2d 1, 10-11 (Cal. 1976); *Phillips v. Maurer*, 490 N.E.2d 542, 543 (N.Y. 1986); *Dollar v. Town of Cary*, 569 S.E.2d 731, 733-34 (N.C. App. 2002).

(citing *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968)). “[A] ‘highly slanted perspective’ . . . is not enough by itself to establish actual malice.” *Id.* at 655 (quoting *Stokes v. CBS, Inc.*, 25 F. Supp. 2d 992, 1004 (D. Minn. 1998)).

The complaint alleges that four statements made by the District were false; however, only two statements remain at issue here:⁴

- Statement 1:⁵ [I]f residents vote no, their taxes will most likely still increase—in some cases, by a large amount. That’s because if the plan is not approved, the school district would enter into “statutory operating debt” by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.
- Statement 3: Projected annual deficit in 2011-12: \$4.1 million.

The ALJ dismissed the claims with respect to both of these statements for failure to state a prima facie violation; the court of appeals reversed. *Abrahamson v. St. Louis Cnty. Sch. Dist.*, 802 N.W.2d 393, 404-05 (Minn. App. 2011). When we review dismissals for failure to state a claim, we ask “whether the complaint sets forth a legally sufficient claim

⁴ Abrahamson did not seek court of appeals review of the ALJ’s dismissal of the allegations of the complaint that rested on statement two, so the ALJ’s holding with respect to statement two is not before us. Abrahamson argues in his brief to our court that the court of appeals erred in affirming dismissal of the false statement claim with respect to statement four, but because he did not request cross-review of that issue, it is waived. See Minn. R. Civ. App. P. 117, subd. 4 (permitting party opposing supreme court review to file response to petition for review and to “conditionally seek review of additional designated issues not raised by the petition”); see also *Peterson v. Wilson Twp.*, 672 N.W.2d 556, 558 n.3 (Minn. 2003) (deeming issue waived because party did not seek cross-review in its response to opposing party’s petition for further review).

⁵ Our numbering scheme is consistent with the numbering of the statements in the complaint.

for relief' and our standard of review is de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

1. Statement One

We begin with the question of whether the complaint established a prima facie violation of section 211B.06 with respect to statement one. The District argues that the complaint was untimely with respect to statement one and that the statement, even if false, does not violate section 211B.06. We agree with the District that the complaint was untimely with respect to statement one.

Under Minn. Stat. § 211B.32, subd. 2, and with exceptions not applicable here, a complaint alleging violations of chapter 211B "must be filed . . . within one year after the occurrence of the act or failure to act that is the subject of the complaint." The allegedly false statement appeared on a flyer dated September/October 2009, a copy of which is attached as an exhibit to respondents' complaint. The complaint was filed on November 4, 2010.

The court of appeals did not rule on the school district's argument regarding timeliness, noting "the ALJ did not address whether a claim concerning statement number one was time barred." *Abrahamson*, 802 N.W.2d at 404. Respondents argue this court may not address the timeliness of the complaint with respect to statement one because the argument was not raised previously.

Minnesota Statutes § 211B.36, subd. 5 (2010); provides: "A party aggrieved by a final decision on a complaint filed under [Minn. Stat. § 211B.32] is entitled to judicial review of the decision as provided in [Minn. Stat. §§ 14.63-.69 (2010)]." In determining

whether we can reach the District's arguments concerning the timeliness of the complaint, we therefore turn to sections 14.63 to 14.69. Minnesota Statutes § 14.69 provides:

In a judicial review under sections 14.63 to 14.68; the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Because Minn. Stat. § 211B.32, subd. 2, requires the complaint to have been filed within one year of the publication of statement one, the ALJ lacked statutory authority to consider it. *See* Minn. Stat. § 14.69(b); *see also* *Martin v. Morrison Trucking, Inc.*, 803 N.W.2d 365, 369 (Minn. 2011) (interpreting the statute governing the jurisdiction of the workers' compensation court of appeals to determine whether court exceeded its jurisdiction); *Langer v. Comm'r of Revenue*, 773 N.W.2d 77, 81 (Minn. 2009) (concluding that tax court lacked subject-matter jurisdiction over a claim because the party failed to comply with the statutorily created time limit to file an appeal). Therefore,

we reverse the court of appeals and reinstate the ALJ's dismissal of Abrahamson's section 211B.06 claim with respect to statement one.

2. *Statement Three*

Finally, we turn to the question of whether respondents established a prima facie violation of section 211B.06 with respect to statement three: "Projected annual deficit in 2011-12: \$4.1 million." The complaint alleges that statement three was based on "worst case" assumptions. The complaint further alleges that the "budget projection was never a realistic budget projection" and, at the time statement three was made, the District "knew that [the budget projections] no longer reflected their actual financial situation." According to the complaint, statement three suggests the District's deficit was increasing, but at the time the statement was made the District's deficit was actually decreasing.

Exhibit H to the complaint includes the following statement: "This 2008-2009 adopted budget shortfall is projected to be \$1.5 million. Without adoption of the proposed plan, the projected shortfall would be near \$4.1 million for budget year 2011-2012, which would place the district into statutory operating debt."⁶ According to the complaint, a \$4.1 million shortfall "reflected 'worst case' assumptions" and "was never a realistic budget projection." The complaint questions the objectivity of the entity,

⁶ The District argues that the claim with respect to statement three fails because the exact phrase "Projected annual deficit in 2011-12: \$4.1 million" does not appear in any of the publications referenced in the complaint. Because we ultimately resolve this issue on the merits in the District's favor, and because we "construe all reasonable inferences in favor of" the complainant, *Bodah*, 663 N.W.2d at 553, we decline to decide whether the complaint should have been dismissed with respect to statement three solely because the complaint did not recite verbatim the alleged false statement.

Johnson Controls, that developed the District's budgets, noting that Johnson Controls stood to gain from future consulting contracts if voters approved the referendum. The complaint further alleges that actual deficits proved to be far less than the projections.

Although the complaint questions the District's motives in doing so, the complaint acknowledges that the District projected a deficit of \$4.1 million for the 2011-12 budget year. Even "a 'highly slanted perspective' . . . is not enough by itself to establish actual malice." *Chafoulias*, 668 N.W.2d at 655 (quoting *Stokes*, 25 F. Supp. 2d at 1004). Using "worst case" assumptions is more akin to producing a "slanted" statement than it is to producing a statement that is demonstrably false. We thus conclude that the complaint fails to state a prima facie violation of section 211B.06 with respect to statement three. We therefore reverse the court of appeals and reinstate the ALJ's dismissal of Abrahamson's and Kotzian's section 211B.06 claim with respect to statement three.

Affirmed in part, reversed in part, and remanded.

CONCURRENCE

ANDERSON, Paul H., Justice (concurring).

I concur in the result reached by the court, but I write separately to express my concern that the court's decision may be read to chill the obligation of a school district to educate voters on the purposes and effects of a district-proposed ballot question. The court's decision should not be read to thwart a school board when the board seeks to fulfill this obligation. Notwithstanding Minn. Stat. §§ 211A.01-.02 (2010), our statutes implicitly authorize school districts to make reasonable expenditures to explain a proposed ballot question to voters and to assist voters in reaching an informed decision when voting on that question.

In *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills Township*, the New Jersey Supreme Court addressed election expenditures by a school district that had proposed a referendum to issue school building bonds. 98 A.2d 673, 674 (N.J. 1953). Before the election, the school district's board appropriated funds to print and circulate a publicity booklet entitled "Read the Facts Behind the Parsippany-Troy Hills School Building Program." *Id.* On the cover and on two pages, the booklet said: "Vote Yes." *Id.*

Writing for the New Jersey court, Justice William J. Brennan, Jr.—who 3 years later would become an associate justice on the United States Supreme Court—began by noting that New Jersey school districts had a statutory duty to provide adequate facilities for all schoolchildren. *Id.* at 676. Justice Brennan said:

Every school district is obligated to provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. . . . The elected board . . . in a township school district . . . with the previous authority of a vote of the legal voters of the district may erect[,] enlarge, [and] improve school buildings and borrow money therefor

Id. (citations omitted) (internal quotation marks omitted) (internal ellipses omitted).

Justice Brennan explained that this statutory obligation implicitly conferred authority to school districts to spend public funds educating voters on the consequences of bond referenda. *See id.* (“The power . . . is to be found by necessary or fair implication in the powers expressly conferred”). Specifically, Justice Brennan concluded that school districts had a right to make

reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgment when voting upon the proposal. In these days of high costs, projects of this type invariably run into very substantial outlays. This has tended to sharpen the interest of every taxpayer and [voter] in such projects.

Id.

As it was in New Jersey in 1953, so it is in Minnesota in 2012. Our statutes require school districts to “furnish school facilities to every child of school age residing in any part of the district.” Minn. Stat. § 123B.02, subd. 2 (2010). As Justice Brennan said, “The importance of the proper discharge of this responsibility cannot be overemphasized.” *Citizens to Protect Pub. Funds*, 98 A.2d at 676. Further, our statutes expressly authorize school districts to issue school building bonds, Minn. Stat. § 475.52, subd. 5 (2010), and our statutes require districts to obtain the approval of voters before issuing the bonds, Minn. Stat. § 475.58 (2010). In addition, Minnesota school districts

have an obligation to provide citizens with a full and fair disclosure of district business. *Cf.* Minn. Stat. § 13D.01, subd. 1(b)(1) (2010) (mandating that all meetings of the governing body of a school district “must be open to the public”); Minn. Stat. § 123B.09, subds. 10-11 (2010) (requiring school districts to “adequately inform the public” of official proceedings).

Therefore, when viewed as a whole, our statutes implicitly authorize school districts to make reasonable expenditures to educate voters about district-proposed ballot questions. *See Smith v. Dorsey*, 599 So. 2d 529, 549 (Miss. 1992) (“Recognizing that a school board is tasked under state law with the responsibility of constructing schoolhouse facilities, an implicit incident to this obligation could include reasonable, non-partisan expenditures designed to give the community relevant information to aid in making an informed decision at the polls.” (emphasis omitted) (citing *Citizens to Protect Pub. Funds*, 98 A.2d 673)). Our decision in this case does not alter that implied authority.

Read together, Minn. Stat. § 211A.01, subd. 4, and Minn. Stat. § 211A.02, subd. 1, require a school district “acting . . . to promote or defeat a ballot question” to report “contributions” or “disbursements of more than \$750.” In other words, these statutes neither authorize a school district to, nor prohibit a school district from, acting to promote or defeat a ballot question. Rather, these statutes simply provide that if a school district

acts to promote or defeat a ballot question, the district may be subject to reporting requirements.¹

Here, respondents' complaint identified several statements published by the St. Louis County School District (District) that arguably promoted passage of the District's proposed \$78,800,000 school-building bond referendum. In particular, the complaint identified District publicity materials that included the following statements:

- Statement 1: "[I]f residents vote no, their taxes will most likely still increase—in some cases, by a large amount. That's because if the plan is not approved, the school district would enter into 'statutory operating debt' . . . and would need to dissolve."
- Statement 2: "[I]f a 'no' vote passes, you'll likely be paying taxes of the district . . . that's closest to your home."
- Statement 3: "Projected annual deficit in 2011-12: \$4.1 million."

I conclude that respondents' complaint, when all of its allegations are accepted as true and those allegations are viewed in the light most favorable to the respondents, satisfies the threshold imposed by Minn. Stat. § 211B.33, subd. 2(a) (2010). *See Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 42 (Minn. 2009). In other words, the complaint "set[s] forth a prima facie violation of chapter 211A" by alleging that the District acted to promote the ballot question. Minn. Stat. § 211B.33, subd. 2(a); *see Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. App. 2010) (explaining

¹ The court notes that several other courts have adopted a general rule that school districts and other public bodies may not spend public funds to promote ballot questions. *See, e.g., Smith*, 599 So. 2d at 541-42 (collecting cases). The court acknowledges, however, that we have not previously answered that question, and we need not answer it here.

that section 211B.33, subdivision 2(a), requires a complainant to “include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A” (citing *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979)).

I note, however, that at this stage of the litigation, it is premature to conclude that the District promoted passage of the ballot question. Thus, I disagree with the court’s conclusion that the District’s statements “by their very nature ‘urge[d]’ the passage of the ballot question.” Such a conclusion is at a minimum premature and may well be presumptuous, especially because there is no evidence that the District used the words “Vote Yes,” or any analogous phrase. Cf. *Citizens to Protect Pub. Funds*, 98 A.2d at 674. But I conclude that the court gets it right two sentences later when it says: “Whether, after the District answers the complaint and the case is fully litigated, the [Administrative Law Judge (ALJ)] will ultimately find that these statements were promotional will depend on the evidence before [the ALJ] at that time.” That is because the question of whether the District promoted the referendum is a fact question to be decided in the first instance by the ALJ.

Therefore, I agree with the court that this matter should be remanded so that the ALJ may hold an evidentiary hearing to consider all of the facts and circumstances relevant to answering that question, as well as any defenses that the District may have. One of those relevant circumstances is the District’s right—indeed duty—to educate voters on the purposes and effects of the proposed ballot question, and whether it was that duty that the District fulfilled here.

CONCURRENCE & DISSENT

STRAS, Justice (concurring in part, dissenting in part).

I join Part I of the court's opinion. I also agree that respondents' claim that the St. Louis County School District (District) violated Minn. Stat. § 211B.06 (2010) with respect to statement one is time-barred. *See* Minn. Stat. § 211B.32, subd. 2 (2010) (requiring violations of chapter 211B to be filed within one year after the "occurrence" underlying the complaint). I respectfully dissent, however, from the court's conclusion that respondents failed to allege a prima facie violation of section 211B.06 with respect to statement three: "[p]rojected annual deficit in 2011-12: \$4.1 million."

The court concludes that statement three may have been "slanted," but that it did not rise to the level of a demonstrably false statement sufficient to satisfy the actual malice requirement in section 211B.06. As the court acknowledges, however, we must assume the facts alleged in the complaint are true and draw all reasonable inferences in favor of the complainant in reviewing a dismissal on the pleadings. *See Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010). In this case, one passage in the complaint directly alleges the falsity of the statement and adequately pleads actual malice by the District. Specifically, respondents allege the District disseminated statement three even though it "*knew* that [the budget projections] no longer reflected [the District's] actual financial situation." Accepting that allegation as true, and construing the complaint liberally, I would conclude that respondents have adequately pled the dissemination of knowingly or recklessly false campaign material by the District in violation of Minn. Stat. § 211B.06. *See Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 45 (Minn. 2009) (noting that the

complaint is to be liberally construed in reviewing a judgment on the pleadings). Accordingly, I would remand for further proceedings on respondents' claim that statement three violates section 211B.06.

ANDERSON, G. Barry (concurring in part, dissenting in part).

I join in the concurrence and dissent of Justice Stras.

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EXHIBIT 8

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Steve Abrahamson and Tim Kotzian,

Complainants,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The St. Louis County School District,
Independent School District No. 2142,
Bob Larson, Tom Beaudry, Darrell
Bjerklie, Gary Rantala, Andrew Larson,
Chet Larson, and Zelda Bruns, in their
capacity as School Board Members,

Respondents.

The above-entitled matter came on for an evidentiary hearing on December 12 and 13, 2013, and January 24, 2014, before a panel of three Administrative Law Judges: Ann C. O'Reilly (Presiding Judge), Barbara L. Neilson, and Kirsten Tate (Panel). Post-hearing briefs were filed on April 30, 2014, and the hearing record closed on May 15, 2014, with the receipt of correspondence related to Exhibit 24.

Erick G. Kaardal and William H. Mohrman, Mohrman, Kaardal & Erickson, P.A., represent Steve Abrahamson and Tim Kotzian (Complainants).

Stephen M. Knutson and Michelle D. Kenney, Knutson, Flynn & Dean, P.A., represent the Respondents St. Louis County School District, Independent School District No. 2142 (School District); and Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns, who are all former or current members of the St. Louis County School District School Board (School Board), all collectively referred to herein as the School District or District).¹

¹ Although the Complaint names the School District and its individual School Board members separately, the Panel will refer to the School District and School Board members collectively as the "District" or "School District." As noted by the Minnesota Supreme Court, the School Board members were named in the Complaint only in their official capacities and, as such, they acted only through the Board and only on behalf of the School District in their official capacity. See, *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129, 133 (Minn. 2012) (citing Minn. Stat. §§ 123B.09, subd. 1, and 123B.85, subd.4).

STATEMENT OF ISSUES

1. Did the Respondent School District act as a "committee" to "promote" a December 2009 school bond ballot question?

2. If yes, did the Respondent School District make "disbursements," as defined in Minn. Stat. § 211A.01, subd. 6, which were in excess of \$750 in a calendar year?

3. If yes to both questions above, did the Respondents violate Minn. Stat. §§ 211A.02, 211A.03, 211A.05, and 211A.06, by failing to file campaign financial reports for disbursements made in promotion of the ballot question?

SUMMARY OF CONCLUSIONS

The Panel concludes that the Complainants have established that the School District acted to "promote" the ballot question at issue and expended more than \$750 in disbursements, as defined by law. The Panel further concludes that the Complainants have established that the School District violated Minn. Stat. § 211A.02 by failing to file certain campaign finance reports, but that the Complainants failed to establish that the School District violated Minn. Stat. §§ 211A.03, 211A.05 or 211A.06.

Based upon the evidence in the record and the arguments of the parties, the Panel makes the following:

FINDINGS OF FACT

1. The St. Louis County School District (School District) serves numerous communities located in St. Louis County, Minnesota.² The District encompasses approximately 4,200 square miles, making it, geographically, the largest school district in Minnesota.³

2. Complainant Stephen Abrahamson is the Mayor of the city of Tower, which is located within the boundaries of the School District.⁴ Complainant Tim Kotzian is the Chair of the Coalition for Community Schools, an *ad hoc* citizens group formed in May 2010 to oppose the restructuring of the School District and the bond referendum, which is the subject of the Complaint in this case.⁵

3. In 2007, the School District operated seven K-12 schools.⁶ The schools were located in the cities of Orr, Cook, Tower-Soudan, Babbitt-Embarrass, Cherry, Cotton, and Saginaw (AlBrook).⁷

² Ex. R at 1.

³ Testimony (Test.) of Charles Rick at 519; Ex. R at 1.

⁴ Test. of Stephen Abrahamson at 41.

⁵ Complaint at 2.

⁶ Test. of C. Rick at 511-512; Ex. A at 3.

⁷ Ex. A at 3.

4. Since 1999, the School District has experienced declining enrollment.⁸ Between 1999 and 2008, the School District's K-12 enrollment declined 28 percent, dropping from 2,914 to 2,101 students.⁹ It was projected that the decline in enrollment would continue through the 2017-2018 school year.¹⁰

5. The School District has also experienced budget shortfalls since at least the 2007-2008 school year, which resulted in deficit spending.¹¹ On three occasions prior to 2009, the School Board placed levy questions on the ballot to increase the District's operating budget.¹² All three times, residents voted down the referenda.¹³

6. In late 2006, the School District contracted with Johnson Controls, Inc. (Johnson Controls), to assist the District with strategic and long range planning.¹⁴ Over the course of six months, a group of 24 individuals, including School District staff, School Board members, and community members, worked together to develop a five-year strategic plan for the School District.¹⁵ Johnson Controls staff facilitated the meetings for the group.¹⁶

7. On June 11, 2007, the School District adopted a five-year strategic plan (Strategic Plan).¹⁷ The Strategic Plan called for the School District to: expand and enhance its organizational, instructional, and curriculum design; engage community support; restructure facilities based on students' needs; and build and market the School District's identity.¹⁸

Adopted 2008-09 Budget

8. Kim Johnson, the District's Business Manager, is responsible for managing and overseeing the School District's accounts, payroll, and budget.¹⁹ The District operates on a fiscal year, roughly consistent with the school year.²⁰

9. In preparing the School District's budget for the next fiscal year, Johnson takes into account several variables, including the estimated student enrollment, staffing needs, and anticipated revenue.²¹ Typically, the School Board adopts the budget for

⁸ Ex. R at 1, 4, and 8; Test. of S. Abrahamson at 109-110; Test. of Marshall Helmberger at 455.

⁹ Ex. R at 1 and 8.

¹⁰ *Id.*

¹¹ Test. of S. Abrahamson at 110; Ex. D.

¹² Ex. 10 at 2; Test. of M. Helmberger at 316.

¹³ Ex. 10 at 2; Test. of S. Abrahamson at 110-111.

¹⁴ Ex. A; Test. of C. Rick at 509, and 521-522.

¹⁵ *Id.*

¹⁶ Test. of C. Rick at 509-511, and 522; Ex. A.

¹⁷ Test. of C. Rick at 515-516; Ex. A.

¹⁸ Test. of C. Rick at 513-515; Ex. A at 6-7.

¹⁹ Test. of Kim Johnson at 236.

²⁰ *Id.*

²¹ Test. of K. Johnson at 236-237.

the upcoming fiscal year by June 30th of the previous year.²² For example, the budget for the 2008-2009 school year was adopted by the School Board by June 30, 2008.²³

10. The School District's budget for fiscal year 2008-2009, which was adopted in June 2008, showed a projected deficit of \$1,973,309.²⁴ Accordingly, the School Board realized that drastic budget and spending changes would be necessary.²⁵

School District's Long Range Planning Process

11. Prior to the start of the 2008-2009 school year, the School Board began the process of developing long range plans for the School District.²⁶ As part of the planning process, the School Board considered whether the District could continue to maintain seven schools.²⁷ The School District decided to again enlist the assistance of Johnson Controls and other consultants to conduct financial analyses and develop a long range plan for the District.²⁸ Once again, the District held numerous meetings, facilitated by Johnson Controls, to obtain public input in the development of the District's long range plans.²⁹

12. On August 19, 2008, Johnson Controls and its contractor, Ehlers & Associates, Inc. (Ehlers), a financial planning and public finance firm, released a financial analysis and five-year budget projection for the School District.³⁰ The financial report noted the severe budget challenges facing the District due, in part, to declining enrollment and minimal increases in state funding.³¹ The report explained that the very large geographic area served by the District exacerbated its financial difficulties as District buses were required to travel many miles to small schools distributed throughout the area.³² The report projected that the District would be in deficit spending through the 2013-2014 school year.³³

13. Along with the financial analysis, Johnson Controls contracted with Architectural Resources, Inc. to prepare an evaluation of the School District's seven K-12 facilities.³⁴ The majority of the District's K-12 facilities at that time were built around 1930, with two schools being built in 1959.³⁵ Given the age of the facilities, the facilities report noted that there were many deferred maintenance issues that needed to be

²² *Id.*

²³ *Id.* at 237.

²⁴ Exs. B and 4; Test. of K. Johnson at 238.

²⁵ Test. of C. Rick at 516-520.

²⁶ *Id.* at 521-522.

²⁷ *Id.*

²⁸ Exs. D and E.

²⁹ Test. of K. Johnson at 299-300; Test. of Rick at 522-524; Exs. D, E, F, I, K and N.

³⁰ Ex. D; Ex. M at 3; Test. of C. Rick at 522.

³¹ Ex. D at 2.

³² *Id.*

³³ Ex. D.

³⁴ Ex. E; Test. of C. Rick at 522-523.

³⁵ Ex. E at 2.

addressed.³⁶ The facilities evaluation was part of the School District's long range planning process.³⁷

14. In March 2009, Kim Johnson prepared financial projections for use by the District and Johnson Controls in its long range planning process.³⁸ The financial projections were for three years (through the 2011-2012 fiscal year), and were based on the figures in the District's adopted 2008-2009 budget.³⁹ The projections were also dependent upon certain assumptions, the most significant being that: (1) the District would not implement *any* cost-saving changes (i.e., the District would maintain the status quo); (2) staffing would remain the same (i.e., no lay-offs would occur); (3) certain fixed expenses would continue to increase; and (4) State per-pupil aid would increase by only two percent for both the 2010-2011 and 2011-2012 school years.⁴⁰

15. Based on this "do nothing" or "status quo" scenario, Kim Johnson's financial projections predicted that the School District would see a deficit of \$2.76 million in fiscal year 2009-2010, and a deficit of \$4.1 million in fiscal year 2011-2012.⁴¹ The decision to base the District's long range financial projections on the 2008-2009 adopted budget with a "do nothing" or "status quo" scenario was made by Kim Johnson in consultation with the School District's consultants and administrators.⁴²

16. Beginning in January 2009, the School Board began holding public meetings called "study sessions" to consider various long range planning options to address the projected budget deficits.⁴³ Representatives from Johnson Controls presented projected cost analyses for the different options.⁴⁴

17. Most of the options that Johnson Controls presented at public meetings included closing several old schools, remodeling some schools, and building new schools in new locations.⁴⁵

18. At the June 8, 2009 School Board meeting, the Board considered long range facilities plan options.⁴⁶ After taking public comment, the Board adopted a "Resolution Approving a Long Range Facilities Plan and Authorizing Further Proceedings Toward Implementation of the Plan."⁴⁷

19. The "Long Range Facilities Plan" approved by the School Board consisted of:

³⁶ *Id.*

³⁷ Test. of C. Rick at 523-524.

³⁸ Ex. J; Test. of K. Johnson at 238-239, and 271-273.

³⁹ Exs. J and 4; Test. of K. Johnson at 238-239.

⁴⁰ Test. of K. Johnson at 238-239; Ex. J.

⁴¹ Ex. J; Test. of K. Johnson at 242 and 245; Test. of C. Rick at 525; Ex. J.

⁴² Test. of K. Johnson at 272-273.

⁴³ Test. of C. Rick at 522 and 539; Exs. 1, K, and M at 3.

⁴⁴ Exs. I and K; Test. of C. Rick at 522 and 539.

⁴⁵ Test. of M. Helmberger at 329, 334-335; Ex. P.

⁴⁶ Ex. M.

⁴⁷ *Id.*; Test. of C. Rick at 526-528.

- Closing the AlBrook and Cotton schools and constructing a new school near the center of an area that would serve the Albrook-Brookston-Cotton-Meadowlands attendance areas;
- Remodeling the Cherry School to serve the Cherry-North-Cotton-Makinen areas;
- Closing the Cook and Orr schools, and constructing a new school to serve both attendance areas;
- Remodeling the Babbitt and Tower schools with Babbitt remaining a Pre-K through 12 school, and Tower becoming a Pre-K through 6 school, with a potential charter secondary school at the site.⁴⁸

20. To finance the Long Range Facilities Plan, the District would need to obtain significant additional funding.⁴⁹ Accordingly, in the Resolution Adopting the Long Range Facilities Plan, the School Board agreed to authorize a bond referendum in the fall of 2009 in an amount of approximately \$78.8 million -- the amount necessary to build and remodel the schools identified in the Long Range Facilities Plan.⁵⁰

21. In addition to the Long Range Facilities Plan, the District also addressed its immediate budgetary crisis.⁵¹ To that end, the School Board decided to reduce staff.⁵² At the end of the 2008-2009 school year, the School District laid-off 16 full-time teachers and gave five teachers early retirement.⁵³ This measure resulted in a significant cost savings, which carried forward into the 2009-2010 school year and beyond.⁵⁴

22. At the next School Board meeting on June 22, 2009, Kim Johnson addressed the Board regarding the 2009-2010 budget.⁵⁵ Johnson reported that the School District's finances, while "still in the red," were "much better than previously projected" in her March 2009 financial analysis.⁵⁶ Johnson explained that the improved finances were due, in part, to the reduction of 21 teachers, and the absence of any major health, safety, or capital projects.⁵⁷

⁴⁸ Exs. M and R; Test of T. Watson at 213-214; Test. of K. Johnson at 245; Test. of M. Helmberger at 468-469; Test of C. Rick at 526-527, and 644.

⁴⁹ Ex. M at 4-5.

⁵⁰ Ex. M.

⁵¹ Ex. 5 at 3; Test. of C. Rick at 527.

⁵² Ex. N; Ex. 5 at 3.

⁵³ Ex. 5 at 3.

⁵⁴ Ex. 4; Test. of K. Johnson at 242.

⁵⁵ Ex. 5 at 3.

⁵⁶ *Id.*

⁵⁷ *Id.*

23. The School District's finances were also improved by better-than-expected revenues from tax-forfeited land sales and federal forestry funds.⁵⁸ The District typically receives revenue from tax-forfeited land sales in the first part of May.⁵⁹

24. The School Board voted on June 22, 2009, to adopt the 2009-2010 budget.⁶⁰ The 2009-2010 adopted budget showed a projected deficit of \$833,396 – significantly less than the \$1.9 million deficit projected in the 2008-2009 adopted budget.⁶¹

25. At that same June 22, 2009 meeting, the Board passed a Resolution authorizing the District to hire Johnson Controls to implement the Long Range Facilities Plan.⁶²

26. In July 2009, the School Board entered into a contract with Johnson Controls for "Phase III" of the Long Range Facilities Plan.⁶³ Phase III consisted of: (1) preparing a Review and Comment Document for the Department of Education outlining the proposed restructuring; (2) performing financial planning for the Long Range Facilities Plan; (3) developing an "educational approach" for modernizing the District; (4) creating a "transition plan"; (5) preparing a "communication plan"; and (6) conducting a site assessment.⁶⁴

27. During the July 20, 2009 School Board meeting, the Board noted that, with respect to the Long Range Facilities Plan, "[t]he financial plan and projections are in the process of being updated and should be available by the middle of August."⁶⁵ Ultimately, Johnson Controls did not obtain or utilize new financial projections despite Kim Johnson's statement at the June 2009 School Board meeting that the District's actual finances were "much better" than projected in March 2009.⁶⁶ As a result, the Board continued to use Kim Johnson's March 2009 financial projections, which were based on the adopted budget for 2008-2009, in subsequent information it distributed about the District's financial condition.⁶⁷

⁵⁸ Test. of K. Johnson at 241.

⁵⁹ *Id.* at 241-242, 283; Ex. 23.

⁶⁰ Exs. 4 and 5.

⁶¹ Ex. 4.

⁶² Ex. 5.

⁶³ Ex. 24.

⁶⁴ *Id.* at 1-2. Notably, Exhibit 24 did not include the pages discussing what exactly Johnson Controls would do as part of the "Communications Plan," the cost of which was \$58,000. See Exs. 22 and 24. If that "Communications Plan" included a marketing plan for the bond referendum, then that information would have been significant to Complainants' case.

⁶⁵ Ex. 24 at first page of July 20, 2009 School Board meeting. The minutes also state, "One of the district's challenges is communicating through marketing. There will be ads in the newspapers from now until November." *Id.* It is unclear what this is referring to because the remaining pages of the minutes were not included in Exhibit 24. An important question left unanswered is what types of "advertisements" were being prepared by the District or Johnson Controls.

⁶⁶ Test. of C. Rick at 579-584; Ex. 5 at 3.

⁶⁷ Ex. J; Ex. 10 at 2.

28. As required in Minnesota for the proposed construction of new public school facilities, Johnson Controls prepared, and the School District submitted, the Long Range Facilities Plan for Review and Comment to the Minnesota Department of Education (Department) on September 2, 2009.⁶⁸ The Department issued a favorable review and comment to the School District on September 29, 2009.⁶⁹

29. On September 9, 2009, the School Board met in a study session to consider the various consequences and options for the School District should voters not approve the bond referendum.⁷⁰ The study session was open to the public and its purpose was to respond to the public's questions as to what would happen in the event the ballot question did not pass.⁷¹ At the study session, the Board discussed possible programming cuts, teacher layoffs, and school closures that would result if the referendum failed.⁷² Again, the discussions were based on the March 2009 financial analysis that projected a \$4.1 million deficit for the 2011-2012 school year, as opposed to the adopted 2008-2009 budget, which projected a significantly smaller deficit.⁷³

Approval of Ballot Question Regarding the Referendum

30. On September 14, 2009, the School Board adopted a Resolution approving for placement on the ballot a referendum seeking authorization to issue general obligation school building bonds in an amount not to exceed \$78.8 million.⁷⁴ The special election on the ballot question was scheduled to occur on December 8, 2009.⁷⁵

31. The Resolution also included a sample ballot.⁷⁶ The ballot question was as follows:

⁶⁸ Ex. 6. Minnesota Statutes section 123B.71 requires a review and comment statement be submitted to the Department on the educational and economic advisability of all proposed public school construction projects.

⁶⁹ Ex. T.

⁷⁰ Ex. 7 at 5; Ex. S at 1; Test. of S. Abrahamson at 131; Test. of K. Johnson at 300; Test. of C. Rick at 540 and 551; R. Larson at 678-679.

⁷¹ Test. of C. Rick at 540; Test. of Robert Larson at 678-679.

⁷² *Id.*

⁷³ Test of C. Rick at 588-589.; Ex. J.

⁷⁴ Ex. S at 3.

⁷⁵ *Id.*

⁷⁶ Ex. S at 6

To vote for a question, fill in the oval next to the word "YES" for that question.
To vote against a question, fill in the oval next to the word "NO" for that question.

**SCHOOL DISTRICT BALLOT QUESTION 1
APPROVAL OF SCHOOL DISTRICT BOND ISSUE**



YES



NO

Shall the school board of Independent School District No. 2142 (St. Louis County) be authorized to issue its general obligation school building bonds in an amount not to exceed \$78,800,000 to provide funds for the acquisition and betterment of school sites and facilities, including, the construction and equipping of a new school to serve the Albora-Brookston-Cotton-Meadowlands attendance areas; the construction and equipping of a new school to serve the Cook and Orr attendance areas; and the remodeling and renovation of the Cherry, Babbitt and Tower Schools?

**BY VOTING "YES" ON THIS BALLOT QUESTION, YOU
ARE VOTING FOR A PROPERTY TAX INCREASE.**

School District Newsletters and Publications

32. Beginning in September 2009, the District began publishing pamphlets and newsletters addressing the Long Range Facilities Plan and ballot question.⁷⁷

33. Complainants assert that the District promoted the passage of the December 8 referendum through four specific publications prepared and distributed at the direction of the District and/or its Board.⁷⁸ The first publication is a six-page brochure prepared by Johnson Controls, dated September/October 2009 (hereafter referred to as the "September/October 2009 Publication").⁷⁹ The other three publications identified by Complainants are monthly newsletters that the District distributed.⁸⁰ The newsletters are identified herein as the "October 2009 Newsletter,"⁸¹ the "November 2009 Newsletter,"⁸² and the "December 2009 Newsletter."⁸³

34. For years, the School District has prepared and published newsletters that it distributes to District residents, updating them on the issues affecting the District and its schools.⁸⁴ In 2009, the School District issued the newsletters on a monthly basis.⁸⁵

35. To prepare and distribute the newsletters, the School District paid a local newspaper, the *Cook News Herald*, a fee for printing, based upon the number of pages

⁷⁷ Exs. 7-10.

⁷⁸ See Complaint.

⁷⁹ Ex. 7.

⁸⁰ Exs. 8-10.

⁸¹ Ex. 8.

⁸² Ex. 9.

⁸³ Ex. 10.

⁸⁴ Test. of K. Johnson at 262-264.

⁸⁵ Exs. 8-10.

in the newsletter, plus the cost of actual postage to mail the newsletter to each household in the District.⁸⁶

36. The School District included articles about the Long Range Facilities Plan and proposed bond referendum in each of the three District newsletters it distributed between October and December 2009.⁸⁷

37. At the hearing, the Complainants identified 17 specific statements contained in the September/October 2009 Publication and the October through December 2009 Newsletters, which they contend promoted the passage of the December 8, 2009 ballot question. Each of the statements are identified below.

September/October 2009 Publication

38. The first publication at issue in this case is a September/October 2009 Publication prepared by Johnson Controls.⁸⁸ The publication looked similar in format to the School District newsletters and prominently displayed the School District's logo on the first page.⁸⁹ The publication is six pages long, and is devoted entirely to discussion of the Long Range Facilities Plan⁹⁰ and the bond referendum.⁹¹ The record does not include evidence of the cost of this publication.⁹²

39. The title of the publication is "Enhancing Opportunities for Our Kids' Future."⁹³ The publication contains six "articles," the headlines of which read:

- How Realigning Schools Improves Education;
- Tax Implications of Voting Yes or No on December 8;
- 93% of Us Say It's Too Expensive to Keep 7 Schools;
- How Will Our New and Remodeled School Buildings be Better?;
- Realities of Why the District Needs to Change; and
- Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.⁹⁴

⁸⁶ Test. of K. Johnson at 263-264; Exs. 19-21. Note that the printing cost of the December 2009 Newsletter (a 12-page document) was \$1,975, whereas the printing cost for the October 2009 and November 2009 Newsletters (each eight pages) was \$1,350.

⁸⁷ Exs. 7-10.

⁸⁸ Ex. 7; Test. of K. Johnson at 267-270.

⁸⁹ Ex. 7.

⁹⁰ The Long Range Facilities Plan is referred to throughout the four newsletters distributed by the District as a "realignment" of the District or a "realignment plan." See Exs. 7-10.

⁹¹ Ex. 7.

⁹² Test. of K. Johnson at 268-269.

⁹³ Ex. 7.

⁹⁴ *Id.*

Statement No. 1

40. The article entitled, "How Realigning Schools Improves Education," contains a statement that reads:

The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district's continued operation, its implementation will provide many new opportunities for our young people's education.⁹⁵

41. This statement is identified by Complainant as the first statement (Statement No. 1) which "promotes" the bond referendum.

42. This statement is followed by an extensive list of ways the Long Range Facilities Plan will enhance educational opportunities for students in the District.⁹⁶ Examples include: "Up-to-date textbooks and learning materials"; "Personalized learning in which each student has his/her own Individual Learning Plan guiding their education"; "Third Graders as Fluent Readers"; "Life/Career Exploration"; and "Languages including Spanish and Ojibwemowin."⁹⁷

43. The publication contains several other statements that the Complainants contend promoted the ballot question.

Statement No. 2

44. In the article entitled, "Tax Implications of Voting Yes or No on December 8," there contains a statement that reads:

However, if residents vote no, their taxes will most likely still increase – in some cases, by a large amount. That's because if the plan is not approved, the school district would enter into 'statutory operating debt' by June 2011, which means the State of Minnesota recognizes that the school district can no longer balance its expenditures and revenues, and would need to dissolve. Children in this school district would then go to neighboring school districts.⁹⁸

45. The "operating debt" of a school district is defined by statute as the net negative unreserved general fund balance calculated as of June 30 of each year.⁹⁹ Statutory Operating Debt (SOD) refers to when a school's operating debt is more than 2½ percent of the most recent fiscal year's expenditure amount.¹⁰⁰ If a school is determined to be in SOD, it is required to develop a three-year financial plan to exit

⁹⁵ *Id.* at 1.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Ex. 7 at 2.

⁹⁹ Minn. Stat. 123B.81, subd. 1.

¹⁰⁰ Test. of T. Watson at 195; See, Minn. Stat. § 123B.81, subd. 2.

SOD, and that plan must be approved by its board and the Commissioner of the Department of Education (Commissioner).¹⁰¹

46. To avoid entering into SOD, a school district could implement cost savings by eliminating staff, closing facilities, cutting programs, or initiating other cost saving measures.¹⁰² However, once a district enters SOD, it *must* immediately reduce deficit expenditures, as approved by the Department, or the district will be denied state aid.¹⁰³ SOD does not automatically result, however, in dissolution of a school district.¹⁰⁴ In lieu of dissolution, a school district may restructure and/or voluntarily consolidate with neighboring school districts.¹⁰⁵

47. Entering SOD does not require that a school district dissolve.¹⁰⁶ Every year, approximately 25 to 30 school districts are placed in SOD.¹⁰⁷ Given that school districts are provided three years to implement a financial plan to exit SOD, it is unlikely that a district will dissolve.¹⁰⁸ Between 1980 and 2012, only two school districts in Minnesota were dissolved pursuant to Minn. Stat. § 123A.46.¹⁰⁹ Indeed, in the last 20 years, no school district has dissolved in Minnesota.¹¹⁰ All other reorganizations have involved consolidation with other districts under Minn. Stat. § 123A.48, or cooperation and combinations under Minn. Stat. § 123A.35.¹¹¹

Statement No. 3

48. Also in the article entitled, "Tax Implications of Voting Yes or No on December 8," the School District makes the following statement:

If a "no" vote passes, you'll likely be paying taxes of the district shown here [referring to a chart] that's nearest to your home. In addition, your ability to influence decisions in the new district would undoubtedly be reduced because the majority of voters would be located right in the neighboring city.¹¹²

49. The chart depicts the "total school taxes payable [in] 2009 on a home with a taxable market value of \$100,000."¹¹³ It compares the then-current tax rate in

¹⁰¹ Test. of T. Watson at 195-196; See, Minn. Stat. §§ 123B.81 and 123B.83.

¹⁰² Test. of T. Watson at 190-194.

¹⁰³ Minn. Stat. § 123B.83, subd. 4.

¹⁰⁴ See *generally*, Minn. Stat. § 123B.83.

¹⁰⁵ Ex. 12.

¹⁰⁶ Test. of T. Watson at 190-194.

¹⁰⁷ *Id.* at 194.

¹⁰⁸ *Id.* at 195-196.

¹⁰⁹ See <http://education.state.mn.us/MDE/SchSup/SchFin/FinMgmt/DistOrg/> at School District Reorganization 1980-2012.

¹¹⁰ Test. of T. Watson at 209-210; Test. of C. Rick at 615-616.

¹¹¹ See <http://education.state.mn.us/MDE/SchSup/SchFin/FinMgmt/DistOrg/> at School District Reorganization 1980-2012.

¹¹² Ex. 7 at 2.

¹¹³ *Id.*

St. Louis County School District (before the levy) with the then-current tax rate of other districts in the area.¹¹⁴

Statement No. 4

50. In an article on page three of the September/October 2009 Publication, the School District summarized the results of a “scientific survey” conducted in August 2009 to gauge how adults within the District feel about how the District operates and possible restructuring plans.¹¹⁵ The headline of the article reads, “93% of us say it’s too expensive to keep 7 schools.”¹¹⁶ Complainants identified the headline, itself, as promoting the ballot question.

Statement No. 5

51. The article on page four of the September/October 2009 Publication is entitled, “Realities of Why the District Needs Change.”¹¹⁷ The article was written by Superintendent Charles Rick (Rick) about the Long Range Facilities Plan.¹¹⁸ A block quote from Rick states, “The plan might not be perfect, but it provides the modern education our young people deserve.”¹¹⁹ Complainants assert that the quote was promotional.

52. The last three statements identified as promotional in the September/October 2009 Publication are contained in an article entitled, “Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.”¹²⁰ Each of these three statements involves quotes from Superintendent Rick, Board Chair Robert Larson, and Board Member Gary Rantala.¹²¹

Statement No. 6

53. The first quote identified by the Complainants as promotional is attributed to Superintendent Rick and states:

The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, so hopefully voters will approve the plan and the options discussed at this study session will never have to be implemented.¹²²

Statement No. 7

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 5.

¹²¹ *Id.* at 5-6.

¹²² *Id.* at 5.

54. The second quote is from Board Chair Robert Larson and states:

Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region.¹²³

Statement No. 8

55. The third quote is from Board Member Gary Rantala, in which he states, "Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice."¹²⁴ It was Rantala's opinion that if the bond referendum did not pass, the School District would have a limited life span due to the decreasing student enrollment and bleak financial situation.¹²⁵

October 2009 Newsletter

56. In addition to the September/October 2009 Publication prepared by Johnson Controls, the District also addressed the Long Range Facilities Plan and bond referendum in its October, November, and December 2009 district-wide newsletters.¹²⁶

57. The October 2009 Newsletter reprinted all five of the articles from the September/October Publication prepared by Johnson Controls: "Enhancing Opportunities for Our Kids' Future,"¹²⁷ "Realities of Why the District Needs to Change," "Tax Implications of Voting Yes or No on December 8," "Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass," "93% of Us Say It's Too Expensive to Keep 7 Schools," and "How Will Our New and Remodeled School Buildings Be Better?"¹²⁸ Essentially, the October 2009 Newsletter was a reprint of the September/October Publication.

58. The School District spent \$2,406.94 to print and mail the eight-page October 2009 Newsletter to District residents.¹²⁹

59. The Complainants have identified two additional statements contained in the October 2009 Newsletter as promoting the bond referendum:

Statement No. 9

- The headline, "Enhancing Opportunities for Our Kids' Future."¹³⁰

¹²³ *Id.*

¹²⁴ *Id.* at 6.

¹²⁵ *Id.*; Test. of Gary Rantala at 723-724.

¹²⁶ Exs. 8, 9 and 10.

¹²⁷ Retitled from "How Realigning Schools Improves Education," which appeared in the September/October 2009 Publication.

¹²⁸ Ex. 8. *Compare*, Ex. 7.

¹²⁹ Ex. 19.

¹³⁰ Ex. 8 at 1.

Statement No. 10

- The title of Superintendent Rick's article, "Realities of Why the District Needs to Change."¹³¹

November 2009 Newsletter

60. In November 2009, the District published its November 2009 Newsletter, which was circulated to all households in the District.¹³² The November 2009 Newsletter contains three articles about the Long Range Facilities Plan and the December 8 bond referendum:

- Is Dissolution of Our School District Possible? Decide for Yourself;
- Department of Education says IDS 2142's Realignment Plan is 'Educationally and Economically Advisable'; and
- Here's How Kids Benefit if the Bond Referendum Passes.¹³³

61. All other articles in the newsletter relate to other School District "news" or matters.¹³⁴

62. The School District spent \$2,388.69 to print and mail the eight-page November 2009 newsletter to District residents.¹³⁵

Statement No. 11

63. The front page of the November 2009 Newsletter includes an article entitled, "Is Dissolution of Our School District Possible? Decide for Yourself."¹³⁶ The Complainants have identified the title of the article as promoting the ballot question.

64. The article, written by Superintendent Rick and School Board Chair Robert Larson, discusses the possibility of the District dissolving in the event the referendum failed.¹³⁷ Specifically, Rick and Larson note:

(1) There is no 'magic plan.' (2) Reorganization is inevitable, whether ISD 2142 continues in operation or if the district dissolves and students are transferred to other school districts. (3) Delaying a decision on a plan will only create deeper economic problems for a district facing a huge budget deficit in the next several years.¹³⁸

¹³¹ *Id.*

¹³² Ex. 9.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Ex. 20.

¹³⁶ Ex. 9 at 1.

¹³⁷ *Id.*

¹³⁸ *Id.*

65. Rick and Larson go on to state:

None of this will result in immediate dissolution of the school district. But, how much more do you think we can cut if we continue to have an operating deficit every year?¹³⁹

December 2009 Newsletter

66. On November 30, 2009, immediately before the December 8, 2009 special election, the School District published its last newsletter of 2009 -- the December 2009 Newsletter.¹⁴⁰ The December 2009 Newsletter contains seven articles about the Long Range Facilities Plan and the December 8 bond referendum.¹⁴¹ The articles are entitled:

- Vote on Tuesday, December 8th! Here's What You're Voting On;
- These are the Reasons for the Realignment Plan;
- Here's How Your Taxes will be Impacted *Approval Keeps Your Taxes Lower than the Regional Average*;¹⁴²
- Here's How Kids Benefit if the Bond Referendum Passes;
- Citizens Invited to Help Design the New Schools;
- Frequently Asked Questions About the Realignment Plan, Funding and More; and
- Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.¹⁴³

67. The School District spent \$3,005 to print and mail the 12-page December 2009 newsletter to District residents.¹⁴⁴

Statement No. 12

68. The front page of the December 2009 Newsletter states in large, bold font: "Vote on Tuesday, December 8th!"¹⁴⁵ The article beneath the headline is entitled, "Here's What You're Voting On," and briefly summarizes the School District's Long

¹³⁹ *Id.*

¹⁴⁰ Exs. 10 and 21.

¹⁴¹ *Id.*

¹⁴² Emphasis supplied in original.

¹⁴³ Ex. 10. The last article is reprinted from the September/October 2009 Publication and the October 2009 Newsletter.

¹⁴⁴ Ex. 21.

¹⁴⁵ Ex. 10 at 1.

Range Facilities Plan.¹⁴⁶ The Complainants have identified the headline, "Vote on Tuesday, December 8th!" as promoting the ballot question.

Statement No. 13

69. In the article entitled, "These are the Reasons for the Realignment Plan," the School District makes the following statement:

Without adoption of the proposed plan, the projected shortfall would be near \$4.1 million for budget year 2011-2012, which would place the district into statutory operating debt. In effect, without a solution[,] the district may have to go out of business. Our kids would then need to be split up and sent to schools in various neighboring districts.¹⁴⁷

70. The projected \$4.1 million budget shortfall referred to in the article was based on the School District's March 2009 Long Range Facilities Plan financial projections which used the adopted budget for fiscal year 2008-2009 as its baseline, and assumed no cost reduction measures would be implemented.¹⁴⁸ As set forth above, the District's adopted 2009-2010 budget recognized that the projected shortfall would be substantially less than originally anticipated in March 2009 because of the teacher reductions implemented at the end of the 2008-2009 school year and the receipt of additional revenue.¹⁴⁹

71. Nonetheless, the School District decided to use March 2009 financial projections based on the adopted budget for 2008-2009 to stress to voters that the District was in trouble financially and that "doing absolutely nothing" was not a feasible option.¹⁵⁰

Statement No. 14

72. The second page of the December 2009 Newsletter includes a chart showing the tax implications of the proposed bond referendum.¹⁵¹ The headline above the chart reads: "Here's how your taxes will be impacted -*Approval keeps your taxes lower than the regional average.*"¹⁵² The Complainants have identified the headline and the chart as promoting the ballot question.

73. The chart shows that the regional average for school property taxes was \$321/year per \$100,000 home.¹⁵³ The chart also depicts that the school property taxes in the District were \$55/year per \$100,000 home *prior to* the 2009 proposed levy.¹⁵⁴

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*; Test. of K. Johnson at 245.

¹⁴⁹ Ex. 5 at 3; Test. of K. Johnson at 241.

¹⁵⁰ Test. of K. Johnson at 298.

¹⁵¹ Ex. 10 at 2.

¹⁵² *Id.* (Emphasis in original).

¹⁵³ *Id.*; Test. of S. Abrahamson at 474-475.

¹⁵⁴ Ex. 10 at 2 (emphasis supplied in original).

While the chart notes that after the levy, the school taxes would increase by \$164/year per \$100,000 home, the chart does not use that figure in the graph.¹⁵⁵ Instead, the graph compares the District's taxes prior to the 2009 proposed levy with the current taxes for neighboring districts.¹⁵⁶ This is contrary to the title of the graph ("Here's how your taxes will be impacted"), which represents, in emphasized italics, that approval of the referendum will keep "taxes lower than the regional average."¹⁵⁷ To be clear and accurate, the chart should have compared the after-levy taxes (\$219/year per \$100,000 home) with the neighboring districts, to show the true effect of the referendum.

Statement No. 15

74. The third page of the December 2009 Newsletter reprints an article re-titled, "Here's How Kids Benefit if the Bond Referendum Passes," which appeared in all prior publications.¹⁵⁸ In it, the School District lists the "many positives for our children if the referendum does pass."¹⁵⁹ This article is nearly identical to the article entitled, "How Realigning Schools Improves Education," printed in the September/October 2009 Publication; the article entitled, "Enhancing Opportunities for Our Kids' Future," appearing in the October 2009 Newsletter; and the article entitled, "Here's How Kids Benefit if the Bond Referendum Passes," published in the November 2009 Newsletter.¹⁶⁰

75. Included among the "benefits" identified if the referendum passes are such things as:

- Up-to-date textbooks and learning materials
- Personalized learning in which each student has his/her own Individual Learning Plan guiding their education
- Enrichment and remedial programs and support to all students geared to their Individual Learning Plan
- Provision of advanced mathematics and science offerings
- Third-graders as fluent readers
- Character Education
- Languages including Spanish and Ojibwemowin¹⁶¹

76. The article concludes that:

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 3.

¹⁵⁹ *Id.*

¹⁶⁰ Exs. 7, 8, and 9.

¹⁶¹ Ex. 10 at 3.

With greater resources available for programming, the district will be able to greatly expand its offerings to include dozens of modern courses. From forensic science to economics, from computer programming to graphic arts, the children of our district will have unprecedented opportunities in language arts, social studies, mathematics, and science.¹⁶²

77. Complainants contend that the article was promotional because the bond referendum was not a general obligations levy.¹⁶³ The bond was specifically earmarked for the construction of new school facilities and the renovation of older school facilities, not the implementation of programming, staff salaries, or other such operating expenses.¹⁶⁴

Statement No. 16

78. The December 2009 Newsletter also included an article entitled, "Frequently Asked Questions About the Realignment Plan, Funding and More."¹⁶⁵ The article includes the following question and answer:

Does going into SOD mean a district will dissolve?

No. Some districts enter SOD each year in Minnesota and, in the short term, they work their way out of it. The issue for any district emerging from SOD is what were the cuts and changes that had to be made to balance the budget and rebuild financial reserve? Were these cuts all 'fat' or did they remove some bone? As the result of the budget cuts is the district providing quality educational opportunities for its students? Is the district still competitive with its neighboring districts?¹⁶⁶

Statement No. 17

79. The article continues with the following question and answer:

Question: So why will ISD 2142 dissolve if it goes into SOD?

Answer: The logic is unfortunately fairly straightforward and it goes like this:

First, the district will be effectively unable to raise revenues – three straight operating levies have failed, and, if the bonding referendum fails, it is improbable that a fourth levy would be passed.

¹⁶² Ex. 7 at 1; Ex. 8 at 1; Ex. 9 at 7; and Ex. 10 at 3.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Ex. 10 at 4-6.

¹⁶⁶ *Id.*

Second, to balance the budget at the level that needs attention, the district will be forced to close 2-4 schools AND make cuts to programming and other expense.

Third, the district already loses 20 percent of its student pool to adjoining districts through open enrollment. The closure of schools, cutting of programming, and no investment into new or remodeled facilities means that students will occupy crowded, outmoded buildings with diminished programming. The probability of more students leaving the district through open enrollment is very high.

Fourth, each student leaving the district takes with him/her roughly \$9,000 in state aid, which further reduces revenues which requires additional cuts which exacerbate the problems which will cause more students to leave.

This downward spiral will gain momentum of its own, spinning faster and quicker than we can image. Much sooner than later, ISD 2142 will be a shell of a district. Dissolution and consolidation with adjoining districts will be the sensible option. The sooner that happens, the sooner the district's children are in sustainable settings for gaining the education they deserve.¹⁶⁷

80. Complainants cite this question and answer section as promoting the ballot question.

Audit and Unanticipated Funding

81. An audit of the School District's finances was conducted in October and November 2009.¹⁶⁸

82. On December 22, 2009, the School District received the audited financial statements for fiscal year 2008-2009.¹⁶⁹ Instead of the \$1.9 million deficit projected in the adopted budget for fiscal year 2008-2009, the audit showed that the District had a deficit of approximately \$803,000 as of June 30, 2009.¹⁷⁰ The audit also revealed that the School District had a reserve of \$4.4 million.¹⁷¹

83. Factors that contributed to the School District's improved financial situation were the receipt of unexpected revenue from the sale of tax forfeited land and federal forest reserves, as well as additional state funding.¹⁷²

¹⁶⁷ *Id.*

¹⁶⁸ Test. of K. Johnson at 237-238; Ex. 23.

¹⁶⁹ Exs. 2 and 23. *Compare*, Exs. J and 4.

¹⁷⁰ Ex. 23 at 18 (APP. 138); Test. of K. Johnson at 241-242.

¹⁷¹ Ex. 23 at 18 (APP. 138).

¹⁷² Test. of K. Johnson at 241-242.

84. The audit confirmed Johnson's statements at the June 22, 2009 School Board meeting in which she advised the Board that the District's finances were "much better than previously projected" in her March 2009 analysis.¹⁷³

Passage of the Referendum

85. On December 8, 2009, the voters approved the bond referendum.

86. The District has not filed any campaign finance reports related to the December 8, 2009 election.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Complainants bear the burden of proving the allegations in their Complaint by a preponderance of the evidence.¹⁷⁴

3. A "preponderance of the evidence" means greater weight of the evidence. It means that all of the evidence, regardless of which party may have produced it, must lead the Panel to believe that the fact at issue is more likely true than not true.¹⁷⁵

Requirement to File Reports

4. Under Minn. Stat. § 211A.02, subd. 1, a committee or candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750; and shall continue to make the reports required under Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed under Section 211A.03.

5. Minnesota Statutes section 211A.01, subdivision 4, defines "committee" as "a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate *or to promote or defeat a ballot question.*"¹⁷⁶

¹⁷³ Ex. 5.

¹⁷⁴ Minn. Stat. § 211B.32, subd. 4.

¹⁷⁵ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn.1980); *Benson v. Northland Transp. Co.*, 200 Minn. 445, 450-51, 274 N.W. 532, 534-35 (Minn. 1937).

¹⁷⁶ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

6. The Minnesota Supreme Court has previously held in this case that a school district is a public corporation and can, therefore, be subject to Minn. Stat. § 211A.02 if the district acts to promote or defeat a ballot question.¹⁷⁷

7. According to the Minnesota Supreme Court, “promote” means to “urge the adoption of” or “advocate.”¹⁷⁸

8. The Complainants have established by a preponderance of the evidence that the Respondents promoted passage of the bonding referendum ballot question in articles published in the School District’s September/October 2009 Publication, the October 2009 Newsletter, the November 2009 Newsletter, and the December 2009 Newsletter. When read in totality, these publications served to advocate for, and urge the passage of, the December 2009 ballot question.

9. “Disbursement” is defined by statutes as “money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent.”¹⁷⁹ “Disbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.¹⁸⁰

10. Election-related expenses authorized by law include such expenses as compensation for election judges and sergeants-at-arms, and the cost of printing ballots, providing ballot boxes, and equipping polling places.¹⁸¹

11. The costs associated with preparing and disseminating the publications at issue in this matter were not election-related expenditures required or authorized by law. They are, therefore, considered disbursements under Minn. Stat. § 211A.01, subd. 6.

12. The School District made disbursements of over \$750 while acting to promote the December 2009 ballot question, and it was, therefore, required to file campaign finance reports pursuant to Minn. Stat. § 211A.02.

Required Reports

13. Minnesota Statutes section 211A.02, subdivision 1, provides that:

- (a) A committee or candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750 and

¹⁷⁷ *Abrahamson v. St. Louis County School District*, 819 N.W.2d 129, 134 (Minn. 2012).

¹⁷⁸ *Id.* at 136, citing *American Heritage Dictionary* 1410 (5th ed. 2011).

¹⁷⁹ Minn. Stat. § 211A.01, subd. 6.

¹⁸⁰ *Id.*

¹⁸¹ Minn. Stat. § 204B.32, subd. 1(c).

shall continue to make the reports listed in paragraph (b) until a final report is filed.

(b) The committee or candidate must file a report by January 31 of each year following the year when the initial report was filed and in a year when the candidate's name or ballot question appears on the ballot, the candidate or committee shall file a report:

(1) ten days before the primary or special election;

(2) ten days before the general or special election; and

(3) 30 days after a general or special election.

14. The Complainant established by a preponderance of the evidence that the School District failed to file campaign financial reports in violation of Minn. Stat. § 211A.02.

15. Pursuant to Minn. Stat. § 211A.03, a committee may file a final report when it has settled all debts and disposed of all assets in excess of \$100 in the aggregate.

16. Because there is no evidence regarding when the School District settled all debts and disposed of all assets in excess of \$100, the Complainants have failed to establish that the School District violated Minn. Stat. § 211A.03. Accordingly, this alleged violation is dismissed.

17. Minnesota Statutes section 211A.05, subdivision 1 provides, in part, as follows:

The treasurer of a committee formed to promote or defeat a ballot question who intentionally fails to file a report required by section 211A.02 or a certification required by this section is guilty of a misdemeanor. Each candidate or treasurer of a committee formed to promote or defeat a ballot question shall certify to the filing officer that all reports required by section 211A.02 have been submitted to the filing officer or that the candidate or committee has not received contribution or made disbursements exceeding \$750 in the calendar year. The certification shall be submitted to the filing officer no later than seven days after the general or special election....

18. The Complainants have failed to demonstrate that the School District intentionally failed to file a report required under Minn. Stat. § 211A.02, or a certification required by Minn. Stat. § 211A.05, subd. 1. Therefore, this alleged violation is dismissed.

19. Pursuant to Minn. Stat. § 211A.06, a treasurer or other individual who fails to keep a correct account of money received for a committee and who does this “with the intent to conceal receipts or disbursements, or the purpose of receipts or disbursements” is guilty of a misdemeanor.

20. The Complainants have failed to demonstrate that the School District failed to file financial reports with the intent to conceal disbursements in violation of Minn. Stat. § 211A.06. Therefore, this alleged violation is dismissed.

Based upon the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The School District is reprimanded for violating the campaign finance reporting requirements of Minn. Stat. § 211A.02.

2. By **August 30, 2014**, the School District shall file the required campaign financial reports with the appropriate filing officer and the Office of Administrative Hearings.

Dated: May 30, 2014

s/Ann C. O'Reilly
ANN C. O'REILLY
Presiding Administrative Law Judge

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

s/Kirsten Tate
KIRSTEN TATE
Administrative Law Judge

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

This matter is before the Panel on remand from the Minnesota Supreme Court for further evidentiary proceedings on the Complainants' allegations of campaign finance violations by the School District in connection with a 2009 school bond referendum.¹⁸² An evidentiary hearing was held over the course of three days, and the parties submitted post-hearing briefs.

The central issue before the Panel is whether the School District is a "committee" within the meaning of Minn. Stat. ch. 211A, thereby subjecting it to campaign finance reporting requirements under Minnesota law.

Minnesota Statutes section 211A.02 requires that a "committee" or a candidate who receives contributions or makes "disbursements" of more than \$750 in a calendar year submit an initial finance report within 14 days after the receipt or disbursement of more than \$750, and that the candidate or committee continue to make reports until a final report is filed.

A "committee" is defined under chapter 211A as:

[A] corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to *promote or defeat a ballot question*. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.¹⁸³

The Minnesota Supreme Court has ruled that a school district is a public "corporation" within the meaning of Minn. Stat. § 211A.02, and may be considered a "committee" for campaign financial reporting requirements if it "acts to promote or defeat a ballot question."¹⁸⁴ Thus, the threshold question before the Panel is whether the School District acted to "promote" the ballot question.

Arguments of the Parties

The Complainants argue that the School District promoted passage of the ballot question through numerous statements in newsletters and other publications it disseminated between September and December 2009. The Complainants identified

¹⁸² *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129 (Minn. 2012).

¹⁸³ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

¹⁸⁴ *Abrahamson*, 819 N.W.2d at 134-35.

17 statements or passages in four District publications that they maintain promoted passage of the December 2009 ballot question. The Complainants further contend that the School District spent more than \$750 in "disbursements" on these promotional material and, thus, was obligated to file campaign finance reports under Minn. Stat. § 211A.02.

The Complainants assert that the School District overstated its financial difficulties to the public, and misrepresented that a failure to pass the referendum would cause the District to enter into Statutory Operating Debt, resulting in dissolution. In addition, the Complainants contend that the School District's emphasis in its newsletters on the numerous ways the additional funding would benefit the educational opportunities of District students, without presenting any opposing viewpoints, arose to promotion of the ballot question.

The Complainants further argue that the School District's failure to update the District's budget projections in its newsletter articles, when it became aware -- as early as June of 2009 -- that the District's financial situation had significantly improved, was a deliberate act of promotion. The Complainants contend that the District chose to continue to use outdated and inaccurate financial information to present its financial situation in the most negative light in order to urge voters to approve the bond referendum.

In response, the School District maintains that it was authorized and, indeed, required, to provide information about the ballot question to voters.¹⁸⁵ The District asserts that it provided a fair presentation of the facts in its newsletter articles about the referendum and the Long Range Facilities Plan. The District argues that it presented both the positive aspects of the referendum (such as enhanced educational opportunities), as well as the negative aspects of the Long Range Facilities Plan (such as teacher layoffs and school closings). The District contends that it never directly urged residents to "vote yes" on the ballot question.

According to the School District, there is no dispute that it was facing significant financial difficulties and that, if the bond referendum did not pass, it would be forced to take drastic steps to reduce expenses, such as eliminating programming, further reducing staff, and closing schools. Such reductions would, in turn, decrease opportunities for students and ultimately result in the loss of students through open enrollment to other districts and the loss of state aid. The School District asserts that its attempts to explain its plans and goals, and the possible negative outcomes that could result if the ballot question failed, were informational, not promotional.

In addition, the School District contends that, even if the articles are found to be promotional, it did not make "disbursements" of more than \$750. Therefore, it was not obligated to file campaign reports. The School District maintains that it was its practice to publish a monthly newsletter to inform District residents about matters concerning the School District. Because the newsletters would have been prepared and disseminated

¹⁸⁵ *Op. Minn. Atty. Gen. No. 159a-3 (May 24, 1966).*

at the same cost even if there was not referendum in December 2009, the District argues that the cost of the newsletters cannot be deemed reportable campaign "disbursements."

Analysis

In Minnesota, school districts have a legal duty to furnish school facilities to every child of school age residing in their districts.¹⁸⁶ In furtherance of that duty, school districts are expressly authorized to issue school building bonds for the "acquisition or betterment of school facilities."¹⁸⁷ Before such bonds may be issued, however, a school district is required to obtain approval from the voting public, as such bonds will likely result in tax increases to homeowners in the district.¹⁸⁸

Minnesota law also imposes upon school districts an obligation to inform the public of their financial conditions, of official proceedings, and of district business.¹⁸⁹ Inherent in the requirement to obtain voter approval of a bond initiative and the mandated transparency for school districts established in law, is the duty to inform the public about a bond referendum; the stated need for such action; and the impact and effects of the passage or non-passage of a ballot question.

Obviously, a school district that is proposing a bonding referendum is in favor of the passage of such ballot question. The call for a referendum is asking permission from the taxpayers to increase taxes to pay for expenses that the school board has deemed important and necessary. Therefore, a school district's position on a bonding question is apparent: the district hopes the public will pass the measure and increase school funding.

There is nothing improper about a school district supporting the passage of a bonding question. Indeed, by passing a resolution to place a referendum on the ballot, a school board is acknowledging that its board seeks, and the board believes, that such additional taxpayer funding is necessary for the operation or benefit of the district. Accordingly, a school district's bias in favor of its own referendum is clear.

Minnesota's campaign finance and reporting laws do not prohibit a school district from promoting a ballot question or urging the adoption thereof. When read together, Minn. Stat. §§ 211A.01 and 211A.02 simply require that if a school district does promote a ballot question, it must report contributions or disbursements of more than \$750.

The central issue in this case is whether the publications disseminated by the School District were informational materials about the referendum, the District's financial conditions, and the Long Range Plan; or whether they were promotional, advocating in

¹⁸⁶ Minn. Stat. § 123B.02, subd. 2.

¹⁸⁷ Minn. Stat. § 475.52, subd. 5.

¹⁸⁸ Minn. Stat. § 475.58.

¹⁸⁹ See e.g., Minn. Stat. § 123B.10 (requiring a school board to annually notify the public of its revenue, expenditures, fund balances, and "other relevant budget information"); Minn. Stat. § 123B.09, subds. 10 and 11 (requiring school districts to "adequately inform the public" of meetings and official proceedings); and Minn. Stat. § 13D.01 (mandating that all meetings of a school board be open to the public).

favor of the passage of the referendum. To that end, the Minnesota Supreme Court has established guidance for this Panel.

The Court has defined the term “promote,” for purposes of Minn. Stat. ch. 211A, as meaning “to urge the adoption of” or “advocate.”¹⁹⁰ This is substantially more than merely informing the public about the financial condition of the district or the determined need for the issuance of bonds.

The line between informational and promotional communication is often a fine one. For example, urging voters to vote in a special election and informing them of the date of the election is not advocating for one side or the other. Nor is explaining the school board’s rationale for seeking additional bond financing, including explaining the district’s financial condition and the consequences if a bond initiative is not passed.

When a district’s communications or statements, however, are so one-sided that they cannot reasonably be read to mean anything but urging the passage of the referendum, then such communications have crossed the line from informational to promotional. In such case, the district is subject to the Section 211A campaign finance reporting requirements.

Here, Complainants have identified 17 statements or passages which they contend are promotional. These separate statements must necessarily be read in context and in the totality of the newsletter campaign initiated by the District, in consultation with Johnson Controls, from September through December 2009. The Panel concludes that when reading the four publications together, they cannot be interpreted as anything but urging the adoption of the bonding referendum. Therefore, they are, indeed, promotional.

In the first September/October 2009 Publication, prepared by Johnson Controls, and then reprinted by the District in its October 2009 Newsletter, the District lists the various collateral benefits that would befall students in the schools if the bond initiative passed and the Long Range Facilities Plan was fully adopted.¹⁹¹ These benefits included such things as “Third graders as fluent readers,” “Character education,” “advanced mathematics and science offerings,” and “Personalized learning.”¹⁹² While these benefits may be logical outgrowths of increased funding for public schools, they are not necessarily directly related to the construction bond which was the subject of the referendum. The bond financing was earmarked expressly for the construction and remodeling of school facilities. It was not a general obligations levy.

While the September/October 2009 Publication and October 2009 Newsletter briefly acknowledge that a “yes” vote in the election will increase taxes, they go on to state:

¹⁹⁰ *Abrahamson*, 819 N.W.2d at 136, quoting *American Heritage Dictionary* 1410 (5th ed. 2011).

¹⁹¹ Exs. 7 and 8.

¹⁹² *Id.* at 1.

However, if residents vote no, their taxes will most likely still increase – in some cases, by a large amount. That’s because if the plan is not approved, the school district *would* enter into ‘statutory operating debt’ by June 2011...and *would* need to dissolve. Children in this school district *would* then go to neighboring school districts.¹⁹³

Such passage represented to the public that the School District *will* – not simply might – enter SOD without the bonding measure, and *would* – not simply could – be forced to dissolve if the referendum failed.

The articles bluntly conclude: “In effect, the voters’ decision could determine if the school district remains in operation or dissolves.”

The statements are then underscored by another article in the same publications in which School Board member Gary Rantala is quoted as saying, “Bottom line is[,] if we don’t pass this bond referendum, we’ll be putting our schools in hospice.”

These passages, when read in the context of the District’s 2009 updated financials (which were known by the School Board well before the time of publication), and the extreme rarity of school district dissolution in Minnesota, did not present a fair and balanced representation to the public about the effects of a “no” vote. Instead, they painted a dire picture in which rejection of the referendum would almost certainly result in the dissolution of the entire school district, and would then result in children being forced to attend neighboring school districts with higher property taxes.

In reality, entering into SOD does not necessarily result in dissolution of a school district. Rather, it only requires that a district limit its expenditures and/or file a special operating plan with the Department of Education detailing how the district plans to reduce its deficit expenditures.¹⁹⁴ Dissolution is not an inevitable or unavoidable consequence of entering into SOD. In other words, dissolution is not a certain result. Therefore, representing to the public that the School District would dissolve and children would be forced to enroll in other school districts was an exaggeration intended to urge the adoption of the referendum.

Similarly, in the November 2009 and December 2009 Newsletters, the District emphasized the numerous benefits that would result if the ballot measure passed and the disastrous consequences that would befall residents if the ballot question failed.¹⁹⁵ In addition, the District unfairly represented its financial condition in an effort to garner support for the ballot initiative.

For example, the December 2009 Newsletter states:

This 2008-2009 adopted budget shortfall is projected to be \$1.5 million.
Without the adoption of the proposed plan, the projected [budget] shortfall

¹⁹³ Exs. 7 and 8 at 2 (emphasis added).

¹⁹⁴ See, Minn. Stat. § 123B.83.

¹⁹⁵ See, Ex. 9 at 1 and 7; Ex. 10 at 1-7.

would be near \$4.1 million for budget year 2011-2012, which would place the district into statutory operating debt. In effect, without a solution[,] the district may have to go out of business.¹⁹⁶

Notably, the December 2009 Newsletter was printed and distributed nearly six months after the School District was informed by Kim Johnson that the projected budget shortfall was significantly less than originally projected in March 2009. Indeed, the 2009-2010 adopted budget (adopted in June 2009) showed a \$833,396 deficit – nearly half of the deficit projected in the 2008-2009 adopted budget.¹⁹⁷ Yet the District refers to the 2008-2009 adopted budget in the December 2009 Newsletter in the present tense (“This 2008-2009 adopted budget shortfall **is** projected to be \$1.5 million.”¹⁹⁸), making it appear as if the 2008-2009 projections were still current and accurate. However, at the time the December 2009 Newsletter was published, the District was halfway into the 2009-2010 school year, and the 2009-2010 budget had already been adopted, which showed an improved financial situation.

In addition, the December 2009 Newsletter contained a graph comparing the School District’s then-current tax rate (\$55/year per \$100,000 home) against other school districts in the area.¹⁹⁹ The chart was used to communicate the point that approval of the referendum would still keep residents’ taxes lower than surrounding school districts. The title of the chart and article was:

Here’s how your taxes will be impacted
*Approval keeps your taxes lower than the regional average*²⁰⁰

The title of the article/chart would suggest that it is comparing the tax rate of the District with surrounding districts after the levy was passed. Instead, the chart compared the tax rate *before* the referendum, not *after* its passage. Therefore, it did not fairly demonstrate how approval of the referendum would still keep taxes lower than surrounding districts.

The tax rate after the referendum was \$219/year per \$100,000 home, not \$55/year per \$100,000 home, as the chart represented. To be accurate with the chart’s title and headline, the chart should have compared \$219/year to the surrounding districts, not the \$55/year figure. In this way, the chart unfairly presented the true cost of approving the referendum and was slanted in favor of approval of the referendum.

Finally, the December 2009 Newsletter contained a “question-answer” section discussing the Long Term Facilities Plan. While the District answers the question, “Does going into SOD mean a district will dissolve?” with a qualified “no” answer, it follows up the question with, “So why **will** ISD 2142 dissolve if it goes into SOD?”²⁰¹

¹⁹⁶ Ex. 10 at 2 (emphasis supplied in original).

¹⁹⁷ Ex. 4.

¹⁹⁸ Ex. 10 at 2 (emphasis added).

¹⁹⁹ *Id.*

²⁰⁰ Emphasis supplied in original.

²⁰¹ Ex. 10 at 6 (emphasis added).

The second question (Statement No. 17) essentially reverses the answer given in the first question (Statement No. 16), by representing that the District **will** dissolve.

Consistent with the District's prior statements, the carefully crafted questions and answers set forth in the December 2009 Newsletter represented to the public that going into SOD was inevitable and that without the passage of the referendum, the District would, in fact, dissolve. This is the same type of rhetoric that the District used in the September/October 2009 Publication and the October 2009 Newsletter.

In short, by stressing only exaggerated benefits of a "yes" vote and then describing only the most extreme negative possibilities of a "no" vote, the District was not providing balanced informational material to its readers; it was advocating for a specific result -- the passage of the ballot question. While overly gloomy assumptions and worst case scenarios may not be enough to form the basis of a false campaign claim under Minn. Stat. § 211B.06, they are sufficient to show that the statements are promotional and advocate for a particular result.

When taken as a whole, a reasonable reader must conclude that all four publications were urging the passage of the referendum, not presenting neutral information about both sides of the bonding issue. The Panel thus concludes that the School District acted to promote the ballot question. As such, the District was subject to the campaign finance reporting requirements set forth in Minn. Stat. ch. 211A, if it made disbursements in excess of \$750 in one year.

Calculation of the Amount of Disbursements

Because the Panel concludes that the School District acted as a "committee" to promote the ballot question when it disseminated the newsletters and publications identified above, the Panel must next decide whether the District received or made "disbursements" in excess of \$750 in one year. If the District made disbursement of more than \$750 in one year, then it was subject to the campaign reporting requirements of Minn. Stat. ch. 211A.

Complainants assert that the entire costs of the newsletters and publication were "disbursements" reportable by the School District. Complainants established that the District spent between \$2,400 and \$3,000 on each of the publications prepared and disseminated in October, November and December of 2009.²⁰²

"Disbursements" are defined in Minn. Stat. § 211A.01, subd. 6, as:

[M]oney, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. 'Disbursement' does not include payment by a...school district...for election-related expenditures required or authorized by law.

²⁰² Exs. 7-10, 18-21. Complainants did not submit documentation of the cost of the September/October 2009 Publication, which was prepared by Johnson Controls.

The District does not assert that the costs of the newsletters were "election-related expenditures required or authorized by law." Instead, the School District states that in 2009, it was printing and disseminating a monthly newsletter to every household in the District. Therefore, the District argues that it would have printed and disseminated the October, November, and December 2009 Newsletters irrespective of whether the referendum was placed on the ballot. As a result, the District contends that the costs of the newsletter should not be deemed "disbursements" for purposes of campaign finance reporting requirements.

The Panel disagrees. While monthly newsletters would have been disseminated by the District regardless of the referendum, the School District used the newsletters as its medium to promote the ballot question. By using the newsletters to promote its election agenda, the costs of those newsletters – or at least a proportional share of those costs – became "disbursements" reportable under Minn. Stat. ch. 211A, as described below.

Allocation of Costs as Disbursements

The entire September/October 2009 Publication was devoted to the ballot question and Long Range Facilities Plan. The Complainants identified eight specific statements or passages in the publication as being promotional, and the Panel concludes that the entire publication was promotional.²⁰³ Therefore, the School District was required to report as disbursements what it spent to have the entire September/October 2009 Publication prepared, printed, and mailed to District residents.²⁰⁴

In contrast, only a portion of the October, November and December Newsletters addressed the ballot question. Consequently, the School District should apportion the costs of those newsletters in relation to the number of pages that addressed the ballot question or Long Range Facilities Plan.

With respect to the October 2009 Newsletter, only four of the eight pages were devoted to the ballot question.²⁰⁵ The Complainants identified two statements on the four pages as promotional; and the Panel concludes that four of the eight pages of the newsletter were promotional. The School District spent \$2,406.94 in printing and mailing this newsletter.²⁰⁶ Therefore, the School District was required to report half of the total amount (or \$1,203.47) as a campaign disbursement, together with any other costs associated with preparing those four pages.

Only two of the November 2009 Newsletter's eight pages were devoted to the ballot question.²⁰⁷ The School District spent \$2,388.69 printing and mailing the

²⁰³ Ex. 7.

²⁰⁴ The cost of this publication is unknown.

²⁰⁵ Ex. 8.

²⁰⁶ Ex. 19.

²⁰⁷ Ex. 9.

November 2009 Newsletter to District residents.²⁰⁸ Therefore, the School District was required to report one-fourth (or \$597.17) as a campaign disbursement, together with any other costs associated with preparing those pages.

Finally, six pages of the 12-page December 2009 Newsletter were devoted to the ballot question. The School District spent \$3,004.59 to print and mail the December 2009 Newsletter to District residents.²⁰⁹ Thus, the School District was required to report half of this cost (or \$1,502.30) as a campaign disbursement, together with any other costs associated with preparing these pages.

In sum, the total amounts spent on the preparation and dissemination of the printed materials, after apportionment, exceeded \$750. Accordingly, the School District was required to file the financial reports mandated by Minn. Stat. § 211A.

Section 211A.02: Financial Reports

Minnesota Statutes section 211A.02, subdivision 1(a) requires that a committee that receives or makes disbursements of more than \$750 in a calendar year submit an initial report to the filing officer within 14 days after the committee receives or makes disbursements of more than \$750.

Section 211A.02, subdivision 1(b) requires that a report be filed by January 31 of each year following the initial report and in the year when a ballot question appears on the ballot. The committee shall continue to submit such reports until a final report is filed.²¹⁰ In addition, a committee must file a report 10 days before the special election and 30 days after the special election.²¹¹

The Complainants have established that the School District acted as a committee to promote a ballot question. The Complainants have further established that the School District made disbursements in excess of \$750 in 2009. Therefore, the School District was required to file the reports mandated by Minn. Stat. § 211A.02. By failing to make the required reports, the School District is in violation of Minn. Stat. § 211A.02, subd. 1.

Section 211A.03: Final Reports

Minnesota Statutes section 211A.03 provides as follows:

A candidate or committee may file a final report when all debts have been settled and all assets in excess of \$100 in the aggregate are disposed of. The final report may be filed at any time and must include the kinds of information contained in the financial statements required by section

²⁰⁸ Ex. 20.

²⁰⁹ Ex. 21.

²¹⁰ Minn. Stat. § 211A.02, subd. 1(b).

²¹¹ *Id.*

211A.02 for the period from the last previous report to the date of the final report.

The filing of a final report may occur at any time. Therefore, the Complainants have failed to establish that the School District violated Minn. Stat. § 211A.03 by not filing a final report. Once the School District has filed the reports required under Minn. Stat. § 211A.02, it should file a final report.

Section 211A.05: Failure to File a Statement

Minnesota Statutes section 211A.05 governs the penalty and process for candidates and committees who fail to file financial reports required by Minn. Stat. § 211A.02. Minnesota Statutes section 211A.05, subdivision 1 provides, in part, as follows:

The treasurer of a committee formed to promote or defeat a ballot question who intentionally fails to file a report required by section 211A.02 or a certification required by this section is guilty of a misdemeanor. Each candidate or treasurer of a committee formed to promote or defeat a ballot question shall certify to the filing officer that all reports required by section 211A.02 have been submitted to the filing officer or that the candidate or committee has not received contribution or made disbursements exceeding \$750 in the calendar year. The certification shall be submitted to the filing officer no later than seven days after the general or special election....

While the Complainants have established that the School Board made disbursements of more than \$750, they have failed to establish by a preponderance of the evidence that the School District *intentionally* failed to file campaign finance reports or a certification that less than \$750 in disbursements were made. At the time that the Complaint was filed, this was a case of first impression. As a result, the School District reasonably believed and asserted a colorable legal argument that it was not a "committee" under the campaign finance and reporting laws. Moreover, Complainants have failed to show that the School District knew of its obligation to file reports under chapter 211A and that it intentionally refused to do so. Accordingly, the alleged violation of Minn. Stat. § 211A.05 is hereby dismissed.

Section 211A.06: Failure to Keep Accounts

Minnesota Statutes section 211A.06 provides that a treasurer or individual who fails to keep a correct account of money received for a committee "with the intent to conceal receipts or disbursements, [or] the purpose of receipts or disbursements" is guilty of a misdemeanor. The statute does not penalize merely inaccurate record-keeping. It penalizes the intentional concealment of receipts or disbursements.

The Complainants failed to establish that the School District or any individual affiliated with the School District failed to report campaign disbursements with the intent to conceal such actions from anyone. First, there is no evidence in the record that the

School District knew that it had an obligation to file reports. Prior to this case, no school district in Minnesota has previously been held to comply with the reporting requirements of Minn. Stat. § 211A.02. There is no evidence that the District had knowledge of its obligation to report and intentionally failed to do so. Accordingly, the alleged violation of Minn. Stat. § 211A.06 is hereby dismissed.

Penalty and Conclusion

Having found that the School District violated the reporting requirements of Minn. Stat. § 211A.02, the Panel may make one of several dispositions: (1) the Panel may issue a reprimand; (2) the Panel may impose a civil penalty of up to \$5,000; and/or (3) the Panel may refer the Complaint to the appropriate county attorney for criminal prosecution.²¹²

The Panel imposes only a reprimand as this is a matter of first impression. On at least two occasions prior to this case,²¹³ the Office of Administrative Hearings held that school districts were not committees within the meaning of chapter 211A and, therefore, were not subject to the reporting requirements. That holding was only recently reversed by the Minnesota Court of Appeals and ultimately the Minnesota Supreme Court.²¹⁴ Consequently, the School District had little guidance with respect to Section 211A reporting requirements. The Panel thus concludes that the imposition of a reprimand is all that is warranted.

The School District is hereby directed to file the required campaign financial reports with the appropriate filing officer and the Office of Administrative Hearings by August 30, 2014.

A.C.O., B.L.N., K.T.

²¹² Minn. Stat. § 211B.35, subd. 2.

²¹³ See, *Barry v. St. Anthony–New Brighton Indep. Sch. Dist. 282*, OAH Docket 3-6326-20564 (May 21, 2009), *aff'd on other grounds*, *Barry v. St. Anthony–New Brighton Indep. School District 282*, 781 N.W.2d 898 (Minn. Ct. App. 2010); *Wigley v. Orono Pub. Sch.*, OAH Docket 3-6326-19653 (May 1, 2008).

²¹⁴ *Abrahamson v. St. Louis County School Dist.*, 802 N.W.2d 393 (Minn. Ct. App. 2011); *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129 (Minn. 2012).

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EXHIBIT 9

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KNUTSON FLYNN & DEANS P.A.

1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120
651.222.2811 fax 651.225.0600
www.kfdmn.com

JAMES E. KNUTSON (RETIRED)
JOSEPH E. FLYNN (1936-2011)
THOMAS S. DEANS
STEPHEN M. KNUTSON
MICHELLE D. KENNEY
PETER A. MARTIN*

*Also Admitted in Wisconsin

September 22, 2014

Via U.S. Mail

Donna E. Nelson
Court Administrator
Minnesota Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

**RE: *In the Matter of Steve Abrahamson & Tim Kotzian v. St. Louis County
School District, Independent School District No. 2142, et al.***
OAH 65-0325-21677

Dear Ms. Nelson:

It has been brought to our attention that the enclosed documents have not been received for filing in your office. Consequently, enclosed for filing in the above-referenced matter are the following documents:

1. Campaign Financial Report, dated August 29, 2014, with attached Campaign Finance Report-Disbursements that was filed with the School District Clerk on August 29, 2014.
2. Campaign Financial Report, dated September 3, 2014, with attached Campaign Finance Report-Disbursements (Amended) that was filed with the School District Clerk on September 3, 2014.

If you have any questions, please contact us.

Sincerely yours,

Stephen M. Knutson
Michelle D. Kenney

c: Ann C. O'Reilly, Administrative Law Judge (email only)
Erick Kaardal, Esq. (email only)

CAMPAIGN FINANCIAL REPORT

(All of the information in this report is public information)

Name of candidate, committee or corporation St. Louis County School District
 Office sought or ballot question _____ District # 2142

Type of report _____ Candidate report
 _____ Campaign committee report
 _____ Association or corporation report
 _____ Final report

Period of time covered by report:
 from 10/1/09 to 2/4/10

CONTRIBUTIONS RECEIVED

Give the total for all contributions received during the period of time covered by this report. Contributions should be listed by type (money or in-kind) rather than contributor. See note on contribution limits on the back of this form. Use a separate sheet to itemize all contributions from a single source that exceeded \$100 during the calendar year. This itemization must include name, address, employer or occupation if self-employed, amount and date for these contributions.

CASH \$ _____ TOTAL CASH-ON-HAND \$ _____
 IN-KIND + \$ _____
 TOTAL AMOUNT RECEIVED = \$ _____

DISBURSEMENTS

Include the amount, date and purpose for all disbursements made during the period of time covered by report. Attach additional sheets if necessary. See attached 9/3/14 Amended Disbursements

Date	Purpose	Amount
TOTAL		

CORPORATE PROJECT EXPENDITURES

Corporations must list any media project or corporate message project for which contribution(s) or expenditure(s) total more than \$200. Submit a separate report for each project. Attach additional sheets if necessary.

Project title or description _____

Date	Purpose	Name and Address of Recipient	Expenditure or Contribution Amount
TOTAL			

I certify that this is a full and true statement. Kim Johnson 9/3/14
 Signature Date

Printed Name Kim Johnson Telephone 218 749-8130 Email (if available) kjohnson@isd2142.k12.mn.us
 Address 1701 Nth 9th Ave. Virginia, MN 55792

Report

Office

Name

For Office Use Only:

Campaign Finance Report - Disbursements (Amended)
St. Louis County School District, No. 2142

9/3/2014

Date	Purpose	Amount
10/1/2009	District newsletters conference call	\$ 104.65
10/20/2009	Printing & Postage 1/2 of the October District Newsletter	\$ 1,203.47
11/11/2009	Printing & Postage 1/4 of the November District Newsletter	\$ 597.17
11/11/2009	Writing, editing, overseeing design, layout, & printing of brochure; study session recap news release; writing for District newsletters.	\$ 3,584.79
1/14/2010	Printing & Postage 1/2 of the December District Newsletter	\$ 1,502.30
2/1/2010	Drafting, writing, and reviewing newsletter pages; conference calls; reviewing and revising Q&A versions & charts	\$ 4,550.44
2/4/2010	Printing brochure	\$ 1,018.90
	TOTAL	\$ 12,561.72

CAMPAIGN FINANCIAL REPORT

(All of the information in this report is public information)

Name of candidate, committee or corporation St. Louis County School District

Office sought or ballot question _____ District # 2142

Type of report _____ Candidate report
 Campaign committee report
 Association or corporation report
 Final report

Period of time covered by report:
 from 10/01/09 to 2/01/2010

CONTRIBUTIONS RECEIVED

Give the total for all contributions received during the period of time covered by this report. Contributions should be listed by type (money or in-kind) rather than contributor. See note on contribution limits on the back of this form. Use a separate sheet to itemize all contributions from a single source that exceeded \$100 during the calendar year. This itemization must include name, address, employer or occupation if self-employed, amount and date for these contributions.

CASH \$ 0 TOTAL CASH-ON-HAND \$ 0
 IN-KIND + \$ 0
 TOTAL AMOUNT RECEIVED = \$ 0

DISBURSEMENTS

Include the amount, date and purpose for all disbursements made during the period of time covered by report. Attach additional sheets if necessary. See attached

Date	Purpose	Amount
TOTAL		

CORPORATE PROJECT EXPENDITURES

Corporations must list any media project or corporate message project for which contribution(s) or expenditure(s) total more than \$200. Submit a separate report for each project. Attach additional sheets if necessary.

Project title or description _____

Date	Purpose	Name and Address of Recipient	Expenditure or Contribution Amount
TOTAL			

I certify that this is a full and true statement. Kim Johnson 8/29/14
Signature Date

Printed Name Kim Johnson Telephone 218 749-8130 Email (if available) kjohnson@isd2142.k12.mn.us
 Address 1701 Nth 9th Ave. Virginia, MN 55790

Report
Office
Name
For Office Use Only:

Campaign Finance Report - Disbursements
St. Louis County School District, No. 2142

8/29/2014

Date	Purpose	Amount
10/1/2009	District newsletters conference call	\$ 104.65
10/20/2009	Printing & Postage 1/2 of the October District Newsletter	\$ 1,203.47
11/11/2009	Printing & Postage 1/4 of the November District Newsletter	\$ 597.17
11/11/2009	Writing, editing, overseeing design, layout, & printing of brochure; study session recap news release; writing for District newsletters.	\$ 3,584.79
1/14/2010	Printing & Postage 1/2 of the December District Newsletter	\$ 1,502.30
2/1/2010	Coordinating, drafting, design one page flyer, design of 2 pg & 4 pg flyers; writing newsletter pages; conference calls; reviewing Q&A versions & charts	\$ 4,150.20
	TOTAL	\$ 11,142.58