

A05-2340, A05-2341, A05-2342, A05-2343

STATE OF MINNESOTA
IN COURT OF APPEALS

Kenneth Brown and Robert Banks,
individually and on behalf of the State of Minnesota

Respondents,

vs.

Cannon Falls Township, a political subdivision of the
State of Minnesota; Gary Hovel, an individual;
Lawrence D. Johnson, an individual; and
Keith Mahoney, an individual,

Appellants.

BRIEF AND APPENDIX OF AMICUS CURIAE
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**Pursuant to Rule 4 of the Special Rules of Practice for the Minnesota Court of Appeals, all cited unpublished opinions are included in Amicus Curiae MSBA's Appendix.*

INTEREST OF THE AMICUS CURIAE

The Minnesota School Boards Association (“MSBA”) is a voluntary nonprofit association of all public school boards in the State of Minnesota. MSBA represents school districts in public forums, such as the courts and the State Legislature. MSBA also provides information and services to its members and coordinates their relationships with other public and private groups. In addition, MSBA provides advice and guidance to its member school districts in a wide variety of areas, including policy matters, public finance and legal issues.

Many of the activities of MSBA, on behalf of its members, are explicitly sanctioned or recognized by the Legislature. See, e.g., Minn. Stat. § 18B.095 (requiring the commissioner to consult with MSBA to establish and maintain a registry of school pest management coordinators and provide information to school pest management coordinators; Minn. Stat. § 123B.09, subd. 2 (requiring school board members to receive training in school finance and management developed in consultation with MSBA); Minn. Stat. § 123B.91, subd. 1 (encouraging districts to use MSBA’s Model Transportation Safety Policy); Minn. Stat. § 125A.023 (requiring that MSBA appoint one member to the interagency committee to develop and implement an interagency intervention service system for children with disabilities); Minn. Stat. § 179A.04, subd. 3 (requiring MSBA, as the representative organization for Minnesota school districts, to provide a list of names of arbitrators to conduct teacher discharge or termination hearings to the Bureau of Mediation Services); and

Minn. Stat. § 354.06 (requiring that one member of the board of trustees of the Teachers Retirement Association be a representative of the MSBA).

MSBA has an ongoing relationship with the public school districts in the State of Minnesota. As *Amicus Curiae*, MSBA seeks to provide the perspectives of the public school districts in this state that will be affected by this decision.¹

STATEMENT OF THE ISSUES, CASE AND FACTS

MSBA concurs in the statement of the issues, the case and the facts contained in Appellants' brief.

ARGUMENT

I. INTRODUCTION

Without a doubt, the decision of this Court will have a significant impact on public school districts throughout the State of Minnesota. More is at stake in this matter than the interests of the immediate parties. This case will have a far-reaching impact upon all public bodies who are subject to the Open Meeting Law, Minnesota Statutes Chapter 13D (hereinafter "Open Meeting Law"), including the school boards of approximately 340 Minnesota school districts.²

¹ Rule 129.03 Certification: No party to this proceeding authored this brief in whole or in part. Further, no person or entity, other than the *Amicus Curiae*, its members or its counsel, made a monetary contribution to the preparation or submission of this brief.

² See Minn. Dep't Educ., Education Statistics Summary (2004) (see App. A23–24).

There are a variety of matters, generally not addressed by other public entities, that school districts, by law, are required to address at public school board meetings. For example, student expulsions; teacher terminations, nonrenewals and unrequested leaves of absence; superintendent hirings; consolidations, and many other issues must be acted upon at school board meetings. See Minn. Stat. § 121A.47; Minn. Stat. § 122A.40; Minn. Stat. § 123B.143; Minn. Stat. § 123A.48. For the most part, these proceedings, in whole or in part, are required to be conducted at meetings open to the public. Id.; see also Minn. Stat. § 13D.05. As a result, perhaps more than any other type of governmental entity, school districts have been entangled in numerous controversies over the interpretation of the Open Meeting Law, especially as it interacts with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. See, e.g., Clearwater v. Indep. Sch. Dist. No. 166, 231 F.3d 1122 (8th Cir. 2000); Pearson v. Indep. Sch. Dist. No. 2142, Co. No. 00-779, 2001 WL 1640071 (D. Minn. 2001) (unpublished) (see App. A14–A22); Grossman v. Sch. Bd. of Indep. Sch. Dist. No. 640, 389 N.W.2d 532 (1986); Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983); St. Cloud Newspapers, Inc. v. Dist. 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983); Minn. Educ. Ass’n v. Bennett, 321 N.W.2d 395 (Minn. 1982); Channel 10, Inc. v. Indep. Sch. Dist. No. 709, 298 Minn. 306, 215 N.W.2d 814 (1974); Unke v. Indep. Sch. Dist. No. 147, Dilworth, 510 N.W.2d 271 (Minn. Ct. App. 1994); Star Tribune v. Bd. of Educ., Special Sch. Dist. No. 1, 507 N.W.2d 869 (Minn. Ct. App. 1993); Willison v. Pine Point Experimental Sch., 464 N.W.2d 742 (Minn. Ct. App. 1991); Bena Parent Ass’n v.

Indep. Sch. Dist. No. 115, 381 N.W.2d 517 (Minn. Ct. App. 1986); Clearwater v. Indep. Sch. Dist. No. 166, Co. No. C1-01-555, 2001 WL 1155706 (Minn. Ct. App. 2001) (unpublished) (see App. A1–A5); Matter of Expulsion of Krueger, Co. No. C2-97-1448, 1998 WL 88215 (Minn. Ct. App. 1998) (unpublished) (see App. A10–A13). Thus, school districts are greatly impacted by the requirements of the Open Meetings Law.

Certainly, the Open Meeting Law was enacted for the public's benefit, including the constituencies of this state's many school districts. If, however, the decision of the trial court is upheld in this case, the public will not benefit. As set forth more fully below, the trial court erroneously interpreted the Open Meeting Law and imposed penalties against public officials that never were intended to be imposed. Allowing such a holding to stand will impose a much higher burden upon all public officials, including numerous school board members who perform an unselfish and time-consuming service to the citizens of the communities they serve. In the end, the public is not served by a law when it is interpreted to benefit the individual plaintiff at the expense of the community as a whole.

II. GOVERNMENT OFFICIALS ARE NOT SUBJECT TO REMOVAL FROM OFFICE FOR MULTIPLE OPEN MEETING LAW VIOLATIONS ADJUDICATED IN A SINGLE PROCEEDING.

MSBA and its members have no direct interest in the removal of Appellants from office. They are affected, however, by the underlying determination of the trial court as it may affect the public service of its members as well. Thus, it is important for the Court to

consider not just the actions of the individual Appellants in this matter, but how the ruling of the trial court ultimately may affect all public officials.

In this matter, the trial court determined that a plaintiff may bring a single action for numerous violations of the Open Meeting Law, and if three or more intentional violations are found, a public official may be removed from office. (Appellants' App., p. A-82, ¶ 41.) With respect to removal of officials from office, the trial court erroneously relied on the Minnesota Supreme Court's decision in Claude v. Collins, 518 N.W.2d 836 (Minn. 1994), for the position that the Appellants committed eight separate and unrelated violations authorizing removal from office. (Appellants' App., p. A-82, ¶ 41.) Claude v. Collins, was decided upon the 1992 version of Minnesota Statutes Section 13D.06, subdivision 3, which since has been amended. Id. at 838. In fact, legislative changes were prompted by the facts that arose out of Claude v. Collins. See 1994 Minn. Laws, c. 618, art. 1, § 39.

In this regard, Minnesota Statutes Section 13D.06 formerly provided, in pertinent part, as follows:

. . . Upon a third violation by the same person connected with the same governing body, such person shall forfeit any right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. . . .

Minn. Stat. § 13D.06, subd. 3 (1992) (emphasis added). The portion of the statute italicized above was amended in 1994 and presently provides as follows:

. . . If a person has been found to have intentionally violated this section in three or more actions brought under this section involving the same governing body, such person shall forfeit any right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. . . .

Minn. Stat. § 13D.06, subd. 3 (2005) (emphasis added). Based upon the clear language of the present statute, the Open Meeting Law no longer contains the standard for removal enumerated in Claude v. Collins; namely, only the existence of three separate and unrelated violations. Rather the law now provides that, regardless of the number of violations, three court actions must be brought, and won, prior to removal.

In their brief, Appellants provide an accurate depiction of the legislative history leading to the changes to the Open Meeting Law with respect to a public official's removal of office. This history evidences the Legislature's intent in making the foregoing revisions, which we will not reiterate here. What is important for the Court to recognize, however, is that these changes were not prompted by the mere interest of a few individuals but due to the devastating effect the previous legislation would have upon public entities as a whole based upon the ruling in Claude v. Collins.

As the Court will note, MSBA was instrumental in seeking changes in the law to preclude the very outcome that occurred in the case at hand. (Appellants' App. A-252 (testimony of Tom Deans, legal counsel for MSBA)). As testified to before the Legislature, it was MSBA's position, as well as that of other public entities, that by allowing the removal of a government official from office for several violations arising from one court action, a

government official did not have notice of the alleged wrongdoing. Thus, a public official did not have the opportunity to correct a misinterpretation of the law. Instead, the former law provided a vehicle to remove government officials, without notice, by bringing one action for several separate violations at one time. Such a practice is contrary to the purpose of the Open Meeting Law and detrimental to the operations of a school district. It provides a political mechanism for removal of school officials, it discourages individuals from serving in public office and creates disruption of school district business.

In this regard, it should be noted that the interpretation of the Open Meeting Law can be a very difficult legal issue. See, e.g., Annandale Advocate v. City of Annandale, 435 N.W.2d 24, 33 (Minn. 1989) (“The question of how to discuss private data at open meetings is determinative in this case and involves difficult questions of statutory interpretation and public policy”). As endorsed by the court decisions interpreting this law, lawyers and judges frequently disagree as to its requirements. Yet, there is an expectation that school board members, most of whom are not formally educated in the law and, in particular, the Open Meeting Law, implement these requirements. It has been recognized that public officials, newly elected to office, should be granted some time to become knowledgeable with the requirements of the Open Meeting Law. See, e.g., Claude v. Collins, 518 N.W.2d 836 (Minn. 1994) (in referring to the Open Meeting Law, the court stated: “elected public officials must be allowed a reasonable period to learn their duties”). However, given the complexity of the Open Meeting Law, there are circumstances where numerous violations

unwittingly could occur in a very short period of time. As a result, it would be relatively easy to remove some or all of the members of a school board under the trial court's ruling.

For example, there are situations across this state where the majority of a school board consists of newly elected members. Many school boards meet numerous times in a month for regular and special meetings, including scheduled work sessions, negotiation sessions and committee meetings, where there may be no "seasoned" board member present. Within one month's time, the majority of the school board may have committed more than three Open Meeting Law violations. Under this scenario, if the trial court's decision were applied, nearly the entire school board could be removed from office if their actions were challenged. In those situations where, for instance, the election was hotly contested or there is a particularly volatile political issue within the community (i.e. school curriculum, contract negotiations, layoffs, etc.) a school board member's actions easily could be challenged for political motivations. The school district then would be operating with few board members until a new election is conducted. As a result, there may be difficulties in obtaining a quorum of a school board in order to conduct business. School matters may be neglected as there are insufficient numbers of members to attend to the various committees. There will be additional financial costs in running a virtually new election. In the end, educational services provided to students will suffer.

Aside from the disruption and chaos such actions could cause, imposing such severe penalties provides little incentive for community members to run for school board office. It

is becoming increasingly problematic, not only in Minnesota but across the nation, for many school districts to find individuals who are willing to serve on the school board.³ One reason why individuals choose not to run for office is the increasing demands placed upon them in office. Often school board members run unopposed, or elections are required to be cancelled because no one is running. Limited competition for elected positions reduces the level of competition, which is the best way to obtain the most qualified candidates. When few people are willing to serve on a school board, less can be accomplished by a school board, and the quality of educational services declines.

In summary, it should be recognized that public officers perform an unselfish and valuable service to the citizens of the communities they serve. They often act with little or no pay and devote hours each month to time-consuming public business. The purpose of the Open Meeting Law is not to punish public servants but to provide a mechanism to ensure that they understand that law and have a reasonable opportunity to learn and correct their mistakes. Allowing a public officer's removal through one court action provides no reasonable notice for an individual to make such corrections. To benefit the public, the Open Meeting Law must be enforced practically and realistically to best serve the public interest. It is for these reasons, that the law was changed to allow public servants notice of their mistakes and the opportunity to correct them. As the trial court's decision did not recognize

³ See *In Some Communities, Fewer People are Willing to Run for the School Board*, *School Board News* (National School Boards Association, Alexandria, VA), Aug. 12, 2003. (see App. A25–A27).

this change in the law, the decision to remove Appellants for multiple violations of the Open Meeting Law should be reversed.

III. THE OPEN MEETING LAW DOES NOT AUTHORIZE AN AWARD OF MORE THAN \$13,000 FOR REASONABLE COSTS, DISBURSEMENTS AND ATTORNEY FEES.

MSBA's members also will be greatly impacted if the trial court's decision to award more than \$13,000 in a civil action is upheld. The Open Meeting Law provides for the award of "reasonable attorney fees of up to \$13,000 to any party in an action under this chapter." See Minn. Stat. § 13D. 06, subd. 4(a). Following the trial in this matter, the trial court awarded a total of \$26,000 in this action, \$13,000 to each Respondent. Yet, the clear language of the statute does not provide for an award of more than \$13,000, regardless of the number of parties involved, in any one action brought under the Open Meeting Law. The Legislature did not intend for large awards against public officials for violation of the Open Meeting Law. If this award is allowed to stand, it will set an erroneous precedent which will be costly to school districts across the state.

The portion of the Open Meeting law that addresses an award of attorney fees and costs provides as follows:

In addition to other remedies, the court may award reasonable costs, disbursements, and reasonable attorney fees of up to \$13,000 to any party in an action under this chapter.

Minn. Stat. § 13D.06, subd. 4(a).

At the outset, it should be noted that statutory provisions for attorney's fees are to be strictly construed. See, e.g., Barrett v. Hampe, 237 Minn. 80, 53 N.W.2d 803 (1952); In re Brundin, 112 F. 306 (D. Minn. 1901). Because government entities essentially are waiving their sovereign immunity by the statutory provision of attorney fees, it is important that statutes allowing attorney fees against a government entity should be construed in favor of the government entity. See, e.g., Resolution Trust Corp. v. Eason, 17 F.3d 1126 (8th Cir. 1994); McLarty v. U.S., 6 F.3d 545 (8th Cir. 1993). Based upon the clear and unambiguous language of the statute, as set forth in Appellants' Brief, it is clear that the trial court only had the authority to award a total of \$13,000 *per action* to the parties in this matter.

While this portion of the Open Meeting Law has not been addressed by the courts, the courts have discussed the ability of a court to award statutory attorney fees to more than one plaintiff in an action against the same defendant. In this regard, it generally has been held that where several actions are brought in one complaint or are consolidated against the same defendant, or where several plaintiffs are party to an action against one defendant, multiple plaintiffs are not allowed to each collect the statutory maximum of attorney fees. See, e.g., Barry v. McGrade, 14 Gil. 214, 14 Minn. 286, 1869 WL 2314 (1869) (where multiple defendants with identical interests are successful in an action, and appear by the same attorney, there should be only one award of attorney fees as costs); Salo v. Duluth & Iron Range R.R. Co., 124 Minn. 361, 145 N.W. 114 (1914). Thus, the trial court's interpretation

of the civil penalty in the Open Meeting Law also is not consistent with interpretation normally given to such statutes.

The purpose of awarding statutory attorney fees against public entities is to deter intentional violations of the law. However, this purpose is balanced with the realities of imposing such costs against the government. As with other statutes that limit the amount of attorney fees a party may be awarded against a government entity, the primary reason why the Open Meeting Law is capped at \$13,000 is to prevent a floodgate of litigation and a windfall for a plaintiff at public expense. Again, Appellants correctly recite in their brief the legislative history of the Open Meeting Law which evidences the intent of the statutory cap. For the reasons that follow, the imposition of attorney fee awards against public bodies and its members are costs that school districts can ill afford.

At the outset, school districts already are faced with limited budgets and underfunded programs. Legal costs presently comprise a large a portion of school district budgets that taxpayers end up paying.⁴ Allowing an indeterminable amount of fees, dependent upon the number of plaintiffs claiming relief, imposes unpredictable expenses and could break most school district budgets.

In this regard, an award of costs, disbursements, or attorney fees incurred or awarded against a public official may be paid by the public body. See Minn. Stat. § 13D.06,

⁴ See *Legal Fees Can Constitute A Significant Component of School Board Budgets, School Board News* (National School Boards Association, Alexandria, VA) (App. A28).

subd. 4(c). Thus, it is possible that the taxpayers ultimately will be responsible for such costs. Again, the purpose of the Open Meeting Law is to benefit the public as a whole, not to reward an individual plaintiff for protracted litigation. Yet, the trial court's decision provides a windfall of attorney fees to a prevailing party at the cost of the taxpayers. As the purpose of the Open Meeting Law is to benefit the public, high awards of attorney fees for violations will contradict the Legislature's intent in imposing such fines.

More important, perhaps, than the financial costs is the effect a threat of such high personal liability has on potential public officials. The potential of personal liability deters members of the community from becoming involved in public office. As a result, fewer members of the community will be willing to risk their personal assets to serve in office. Again, it will be the education system that suffers when the pool of public office candidates diminishes.

As these reasons evidence, the Legislature did not intend for multiple parties to receive awards exceeding the statutory maximum. Thus, the trial court's award must be reversed. Alternatively, the award should be reduced to the statutory maximum of \$13,000.

IV. RELIANCE UPON THE ADVICE OF COUNSEL NEGATES A FINDING OF AN INTENTIONAL VIOLATION OF THE OPEN MEETING LAW.

Ultimately, the trial court awarded attorney fees in this matter based upon its determination that Appellants intentionally violated the law. The trial court held that Appellants' reliance upon the advice of legal counsel was not reasonable or in good faith due to counsel's "obvious conflict of interest" in personally representing one of the Appellants

on issues related to his feedlots. The trial court's determination that Appellants' violations were intentional also was erroneous as a matter of law.

At the outset, a client's ability to rely upon the advice of counsel has been a recognized defense to a claim of an intentional violation of the law. See State v. Jacobson, 681 N.W.2d 398 (Minn. Ct. App. 2004), aff'd 697 N.W.2d 610 (Minn. 2005). The Court of Appeals has opined that seeking the legal advice of counsel on an issue involving the interpretation of the Open Meeting Law, even if the legal opinion is incorrect, evidences reasonable reliance and is to be encouraged. See, e.g., Mankato Free Press Co. v. City of North Mankato, Co. No. C9-98-677, 1998 WL 865714 *3 (Minn. Ct. App. 1998) (unpublished) (see App. A6–A9) (respondent's action in confirming the legality of their actions under the Open Meeting Law with legal counsel, even though the legal opinion was incorrect, evidenced care to conform with the dictates of the statute, not manipulation of the law), aff'g 563 N.W.2d 291, 293 (Minn. Ct. App. 1997); Claude v. Collins, 518 N.W.2d 836, 843 (Minn. 1994) (public officials should seek the advice of legal counsel where they are inexperienced or ignorant of the law to avoid violations of the Open Meeting Law).

In general, the courts have held that reliance on the advice of counsel will be reasonable depending upon the competency and standing of the lawyer as well as the quality and reasonableness of the advice. See, e.g., U.S. v. Farber, 630 F.2d 569, 572 (8th Cir. 1980) (defendant did not seek competent legal advice but that of disbarred attorney). In this instance, there were no findings by the trial court that Appellants' counsel was incompetent

or in poor standing. Similarly, there was no finding of bad faith on the part of counsel or that the advice, even if wrong, lacked quality or reasonableness.

As set forth above, it is often difficult to interpret and reconcile the Open Meeting Law with other legal responsibilities of public entities. See Annandale Advocate v. City of Annandale, 435 N.W.2d 24, 33(Minn. 1989). It is perhaps for this reason that the Legislature provided public entities with the ability to request an opinion from the Minnesota Department of Administration as to their obligations under the Open Meeting Law and rely on that opinion to avoid the penalties of a potential violation. See Minn. Stat. 13.072; 2003 Minn. Laws 1st Sp. Sess., Ch. 8, Art. 2, §§ 1 and 2.⁵ However, this resource was not available when the alleged violations occurred in this matter. Nonetheless, based upon the ambiguity in the law, depending upon the facts at issue, there has been, and will continue to be, questions as to when special meeting notice requirements may be triggered. In these instances, as was the situation in the case at hand, legal advisors may not have any guidance or authority upon which they can rely.

⁵ As of 2003, the Legislature provided the Minnesota Department of Administration with the authority to issue opinions as to the interpretation and compliance by public entities with the Open Meeting Law. See Minn. Stat. § 13.072, subd. 1(a). A government entity, members of a body subject to Chapter 13D, or person that acts in conformity with a written opinion of the commissioner issued to the government entity, members, or person or to another party is not liable for fines, awards of attorney fees, or any other penalty under Chapter 13D. See Minn. Stat. § 13.072, subd. 2. Additionally, a member of a body subject to Chapter 13D is not subject to forfeiture of office if the member was acting in reliance on an opinion. Id.

Even if this Court were to agree with the trial court that the alleged violations did occur, as pointed out in Appellants' Brief, there were legitimate reasons for Appellants' counsel to advise his clients as he did based on the facts and law in place at that time.

Nonetheless, the trial court determined that Appellants' reliance upon the advice of legal counsel was not reasonable or in good faith considering counsel's "obvious conflict of interest." The conflict of interest was based upon counsel's disclosure of his representation of one of the Appellants on issues related to his feedlots and that these feedlots were the subject of disputes with one of the Respondents. (Appellants' Brief, p. A-79, ¶ 18). The trial court's assumption that a possible conflict of interest exists, based upon mere dual representation, without more, should not show that reliance by a government official on such advice is in bad faith.

If such dual representation is deemed to be an automatic conflict of interest which removes a public entity client's ability to rely upon the advice of a government-appointed attorney, public entities will suffer. While the facts of this case are very specific with respect to the relationship between Appellant and counsel in this instance, the Court should note that these types of relationships are common among public entities.

Issues with respect to the Open Meeting Law often rise at a moment's notice while meetings are being conducted. If advice is needed during these proceedings but cannot be obtained as school district counsel has a conflict of interest, it would be necessary for public business to be delayed until such advice can be obtained from another attorney. Such red

tape not only would slow important school board decisions, but, in some instances, could impinge on a school district's ability to act within the time constraints of the law. See, e.g., Minn. Stat. § 121A.47 (requiring expulsion proceedings to be conducted within 15 days); Minn. Stat. § 122A.40 (requiring nonrenewal and unrequested leave decisions to be made within the statutory time frame).

Yet, if school boards and other public entities are required to call into question their advice from counsel, they will be placed in an unconscionable position. As set forth above, the Open Meeting Law, which regularly is dealt with by public officials, is a complex law often subject to more than one reasonable interpretation. See, e.g., Mankato Free Press Co. v. City of North Mankato, 563 N.W.2d 291, 293 (Minn. Ct. App. 1997). Public entities should be encouraged to seek the advice of counsel to avoid potential violations of the law. See Mankato Free Press Co., 1998 WL 865714 at *3. Yet, if the availability of such advice is limited and public entities are not permitted to rely upon such advice, there is little incentive to obtain such opinions. Furthermore, if a public entity is required to seek multiple opinions where a possible conflict may arise, the costs of legal representation will soar, particularly when there often are situations where advice is needed as to the Open Meeting Law. To require public entities to face such hardships certainly does not benefit the public. For these reasons, the decision of the trial court, that Appellants' reliance upon the advice of counsel was not reasonable or in good faith, should be reversed.

CONCLUSION

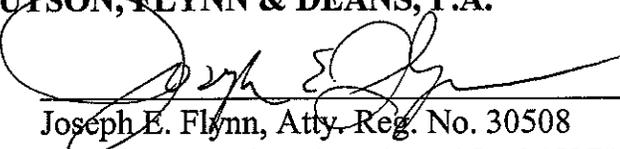
Amicus Curiae MSBA respectfully requests that this Court find that the trial court erred in its findings of a violation of the Open Meeting Law and an award of attorney fees. The decision of the trial court was based upon an erroneous interpretation of the law which, if affirmed, will violate the very intent of the Open Meeting Law. The impact of the trial court's decision will be financially and practically burdensome for school districts and other public entities. By imposing penalties under the conditions set forth by the trial court, board members will not be encouraged to seek legal advice. As a result, the intended purpose of the law, to discourage violations, will not be furthered. In essence, the limited facts of this case will have a detrimental impact upon the practices of public entities as a whole and the public's ability to obtain information under the Open Meeting Law.

For all of the above reasons, as well as those cited by Appellants, MSBA respectfully requests that the Court reverse the decision of the trial court and vacate the imposition of penalties and the award of attorney fees.

Respectfully submitted,

KNUTSON, FLYNN & DEANS, P.A.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).