

FILE NO. A09-1093

STATE OF MINNESOTA
IN COURT OF APPEALS

Paul A. Barry and David J. Spano,

Petitioners,

vs.

The St. Anthony-New Brighton Independent School District 282, Jane Eckert, David Evans, Barry Kinsey, Don Siggelkow, Leah Slye, and Mike Volna, in their capacity as School Board Members,

Respondents,

and

The Minnesota Office of Administrative Hearings,

Respondent

**BRIEF OF RESPONDENTS THE ST. ANTHONY-NEW BRIGHTON
INDEPENDENT SCHOOL DISTRICT 282, JANE ECKERT, DAVID EVANS,
BARRY KINSEY, DON SIGGELKOW, LEAH SLYE, AND MIKE VOLNA, IN
THEIR CAPACITY AS SCHOOL BOARD MEMBERS**

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LEGAL ISSUES

1. Is the School District and its School Board members a committee as defined by Chapter 211A and, as such, required to report contributions or disbursements pursuant to the reporting requirements of that Chapter?

The Minnesota Office of Administrative Hearings, hereinafter referred to as “OAH,” determined that the School District was not a corporation but a political subdivision of the state and, therefore, not a committee and not required to report expenditures or any other financial information pursuant to Chapter 211A. [Petitioners’ Appendix (“App.”), p. 3.]

2. Are the expenditures described in the Complaint (for printing, graphics, video and referendum planning) election-related expenditures?

The OAH determined that, pursuant to Minn. Stat. §211A.01, Subd. 6, these expenditures were election-related expenses and were authorized by law. The OAH also found that the Complaint did not allege that these expenses were not required or authorized by law. (App. 3 and 4.)

STATEMENT OF THE CASE

Respondent School District and Respondent School Board members agree with Petitioners’ Statement of the Case (hereinafter referred to as “Petitioners’ SOC”), except as set forth below.

Respondents disagree with the second paragraph of Petitioners’ SOC and substitute the following: The attachment to the Complaint lists “expenses as they related to our referendum campaign.” They were not “admissions . . . of public monies to

promote the passage of the ballot.” School employees did attend referendum meetings but were not paid to promote the passage; they merely spoke about ballot questions at the Vital Aging Council on April 21, 2008. (App. 8.)

In regard to the last sentence in the first paragraph on page two of Petitioners’ SOC, the correct statement would be: The OAH also determined that 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 other mechanisms other than Minn. Stat. §211A.01, such as Minn. Stat. §123B.10, Subd. 1.

The Respondents disagree with the second paragraph on page two of Petitioners’ SOC. The correct statement would be that the OAH determined that “disbursement” does not include payment by a school district for election-related expenditures required or authorized by law. The OAH explained that expenditures in the Complaint for printing, graphics, video, referendum planning, etc. appear to be election-related expenditures. The Complaint does not allege that these expenses are not authorized by law. Accordingly, the Complaint fails to state a prima facie allegation that the School District violated Minn. Stat. §211A.02, §211A.03, §211A.05, §211A.06 and §211B.15.

Respondents disagree with the use of the word “promote” in the last paragraph on page two of Petitioners’ SOC. This word is not used by the OAH in page 4 of its Memorandum. (App. 4.)

STATEMENT OF FACTS

The Respondents agree with the first paragraph of Petitioners’ Statement of Facts (hereinafter referred to as “SOF” on page three of their Brief.

The Respondents, by letter dated June 3, 2008, responded to an inquiry by the Petitioners by listing expenses related to the School District's referendum campaign. (App. 12.) Superintendent Rod Thompson and High School Principal Tom Keith spoke at the Vital Aging Council about the ballot questions on April 21, 2008 during the business day. (App. 8.) This time spent was not listed or reported as a contribution because it is not a thing of value given or loaned to a committee. (App. 4.)

Respondent School District and School Board members paid the expenses listed in the letter of June 3, 2008 (App. 12) because they were authorized by law. (App. 4.) At all times, the Respondents were not a committee because the Respondent School District is not a corporation or association but is a political subdivision and, therefore, not subject to Minn. Stat. §211A.02, §211A.03 and §211A.05. (App. 3 and 4.)

The Respondents did not file any financial reports as provided for in Minn. Stat. §211A because the law does not apply to them. (App. 3.)

STANDARD OF REVIEW

A. Decisions of the Office of Administrative Hearings.

The scope of review is set forth in Minn. Stat. §14.69. Judicial review is to determine whether the OAH decision is in violation of the Constitution, in excess of statutory authority, made upon an unlawful procedure, affected by other error of law, unsupported by substantial evidence in view of the entire record or arbitrary or capricious.

The party seeking review of an agency's decision has the burden of proving ground for reversal. The agency's decision is presumed to be correct by a reviewing

court. *Shagalow v. State, Dept. of Human Services*, 725 N.W. 2d 380 (Minn. App. 2006). A reviewing court will not disturb an agency's decision as long as the determination is supported by substantial evidence. *In re Grand Rapids Public Utilities Com'n*, 731 N.W. 2d 866 (Minn. App. 2007). Substantial evidence means (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; and (5) evidence considered in its entirety. *Minnesota Center for Environmental Advocacy v. Commissioner of Minnesota Pollution Control Agency*, 696 N.W. 2d 95 (Minn. App. 2005). The Appellate Court retains the authority to review de novo errors of law. *In re Grand Rapids Public Utilities Commissioner, supra*. Upon review, the Appellate Court does not substitute its judgment for that of the agency. *In re Grand Rapids Public Utilities Commissioner, supra*. An agency's decision is arbitrary and capricious if it relied on factors not intended by the Legislature. *In re Claim for Benefits by Sloan*, 729 N.W. 2d 629 (Minn. App. 2007).

ARGUMENT

I. PREFACE

In the Petitioner's initial Complaint, the specific statutes that were allegedly violated were Minn. Stat. §211A.02, §211A.03, §211A.05, §211A.06 and §211B.15, Subd. 9. (App. 6 – 9.) These were the same statutes that were addressed in the Administrative Law Judge's Order of Dismissal. (App. 1 – 5.) Therefore, Petitioners' arguments relative to Minn. Stat. §211B.01, Subd. 1 on page 11, §211B.01, Subd. 4 on

pages 8, 9, 14 and 16 and §211B.01, Subd. 5 on page 8 of Petitioners' Brief should be stricken and not be considered by this Court.

The only specific reference to Chapter 211B in Petitioners' Complaint is to Minn. Stat. §211B.15. Likewise, the only reference made to Chapter 211B by the OAH is to Minn. Stat. §211B.15.

II. RESPONDENTS ARE NOT SUBJECT TO MINNESOTA CAMPAIGN FINANCIAL REPORTS LAW, MINN. STAT. §211B.01, ET SEQ.

Minn. Stat. §211A.01, Subd. 4 defines a "committee" as follows:

"Subd. 4. Committee. '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."

Pursuant to Minn. Stat. §211A.01, neither the Respondent School District nor its School Board members are a "committee" because the Respondents are not a corporation. The word "corporation," as used in this section, does not specifically include a school district or school board members.

However, the definition of a candidate, as set forth in Minn. Stat. §211A.01, Subd. 3, includes the following language: "'Candidate' means an individual who seeks nomination or election to a county, municipal, school district, or other political

subdivision office.” The statute specifically refers to a “school district” as a political subdivision wherein it states “or other political subdivision.”

Furthermore, Minn. Stat. §211A.01, Subd. 6 also refers to a school district as a political subdivision as follows: “‘Disbursement’ does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.” This provision does not state “or a public corporation.” It states “or other political subdivisions.” “Other” means in addition to the previously listed political subdivisions.

Minn. Stat. §211A.01, Subd. 2 refers to a school district as a political subdivision as follows:

“Subd. 2. Ballot question. ‘Ballot question’ means a proposition placed on the ballot to be voted on by the voters of one or more political subdivisions but not by all the voters of the state.”

It does not state “public corporation.” It states voters in a “political subdivision” and refers to “ballot questions.” A ballot question and the promoting of a ballot question are the subject of this proceeding. If a school district is not a “political subdivision” then the voters of a school district cannot vote on a ballot question. Only voters of a political subdivision can vote. The Respondent School District is a “political subdivision” and not a “corporation” as provided in Minn. Stat. §211A.01, Subd. 4.

Petitioners contend, in the first paragraph on page 11, that the definition of a school district in Minn. Stat. §200.02, Subd. 19 is consistent with Minn. Stat. §123A.55. Minn. Stat. §200.02, Subd. 19 defines a school district as “an independent, special or

county school district.” It does not define school district as a “public corporation.” Since the terms defined in Minn. Stat. §200.02, Subd. 1 apply to the Minnesota Election Law, including Minn. Stat. §211A.01, this definition would apply to the terms in Minn. Stat. §211A.01. Therefore, pursuant to definition of the term “committee” in Minn. Stat. §211A.01, Subd. 4, a school district is not a corporation or an association. It is simply a school district. The only place that a “school district” is referenced is in Minn. Stat. §211A.01, Subds. 2, 3 and 6 and then as a “political subdivision.”

During the School Board’s deliberation on whether to schedule an election on the issuance of bonds, Minn. Stat. §211A.01, Subd. 4 provides that “promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.” Therefore, according to Petitioners’ arguments, any school board member who makes a motion, seconds a motion or votes “yes” on a motion to schedule an election, would be prohibited from taking any action. This would also apply to school board members voting “no.”

Minn. Stat. §211A.05, Subd. 1 provides, in part: “. . . 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.”

Minn. Stat. §211A.05, which was cited in Petitioners’ Complaint (App. 8) and cited by the Administrative Law Judge (App. 2, 3 and 4) was amended by the *Laws of Minnesota 1989*, Chap. 291, Art. 1, Section 31 as follows:

“Sec. 31. Minnesota Statutes 1988, section 211A.05, subdivision 1, is amended to read:

Subdivision 1. PENALTY. A candidate who intentionally fails to file a report required by section 211A.02 is guilty of a misdemeanor. ~~A member~~ The treasurer of a committee ~~that formed to promote or defeat a ballot question~~ who intentionally fails to file a report required by section 211A.02 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 contributions 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. The secretary of state shall prepare blanks for this certification. An officer who issues a certificate of election to a candidate ~~with knowledge that the candidate's financial statement has not been filed~~ who has not certified that all reports required by section 211A.02 have been filed is guilty of a misdemeanor.”

The amendment specifically refers to Minn. Stat. §211A.02 and thereby, all of the reports required to be filed by law. However, the amendment changes the assessment of a penalty from when “a member of a committee” that fails to file a report required by

Section 211A.02 to “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.

This legislation added another qualification to the meaning of the term “committee,” namely, “formed to promote or defeat a ballot question.” Respondent School District and its School Board members were not formed to promote the ballot questions, which is the subject of this proceeding. Therefore, neither the Respondent School District nor the Respondent School Board members can be found to have violated Minn. Stat. §211A.02 through §211A.06 because they cannot be a committee as defined in Minn. Stat. §211A.01, Subd. 4 because they were not formed to promote a ballot question.

In construing a statute, the intention of the legislature can be ascertained by considering a former law. *See* Minn. Stat. §645.16. Former Minn. Stat. §211A.05, Subd. 1 was amended by *Laws of Minnesota 1989*, Chapter 291, Art. 1, Section 31, Subd. 1. The amendment provided that the “committee” referred to in the statute is one formed to promote or defeat a ballot question. Neither the Respondent School District nor Respondent School Board meet the requirement/definition. In addition, Minn. Stat. §211A.01, Subds. 3 and 6 refer to school districts as political subdivisions.

III. EXPENSES RELATED TO THE REFERENDUM WERE AUTHORIZED BY LAW

Op. Atty. Gen. 159b-11, September 17, 1957, is directly related to this proceeding. A school district conducted an educational program to present to the voters recommendations contained in a survey of local schools made by the Bureau of Field

Studies of the University of Minnesota, and also to present facts and figures relating to present and proposed school facilities, increased taxes, financial problems and answer innumerable questions raised by the voters.

The question that was presented to the Attorney General was: "May the School District expend funds for printed literature, newspaper space and radio time to conduct an educational program for such purpose?"

The Attorney General determined that "If the voters of the district will have to exercise their judgment on the subject matter contained in the survey, then the facts and data of the survey should be made known to them; they should not be left either uninformed or misinformed." How the information will best be made available to the voters is a matter for the board to decide. For that purpose, a reasonable amount of district funding may be expended for the dissemination of information. What is a reasonable amount is for the board to decide.

The Attorney General based his opinion on *Laws of Minnesota 1957*, Chapter 947, Art. V, Section 3, Subd. 1, that the management and care of the business of an independent school district is vested in the school board and *Laws of Minnesota 1957*, Chapter 947, Art. V, Section 4, Subd. 1, which provided that the board shall have the general charge of the business of the district, the school houses and the interests of the schools thereof.

Op. Atty. Gen. 155B-1, March 3, 1955 determined that the school board could employ the Bureau of Field Studies and Services, College of Education, University of Minnesota to conduct a survey of the School District to inform the district what it needs

in the way of school buildings. The Attorney General applied Minn. Stat §125.01, now §123B.09, and Minn. Stat. §125.06, Subd. 1, now §123B.02, Subd. 1, which provide that the management and business of the school district is vested in the school board. The School Board does not know what it needs and the Bureau of Field Studies does know. Therefore, it is in the interest of the School Board to hire the Bureau to inform the School Board what it needs.

Minn. Stat. §8.07 provides as follows:

“The attorney general on application shall give an opinion, in writing, to county, city, town, public pension fund attorneys, or the attorneys for the board of a school district or unorganized territory on questions of public importance; and on application of the commissioner of education shall give an opinion, in writing, upon any question arising under the laws relating to public schools. On all school matters such opinion shall be decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.”

Since no court of competent jurisdiction has decided otherwise, these attorney general opinions shall be decisive in that a school has the authority by statute to inform the voters of the facts and figures related to the referendum question. In addition, a school board has the authority to hire an outside source to advise the school board to what it needs. These two opinions have been in effect for over fifty (50) years without being set aside by a court of competent jurisdiction.

Minn. Stat. §211A.01, Subd. 6 defines “disbursement” as follows:

“**Subd. 6. Disbursement.** ‘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.”

The facts and figures relating to present and proposed school facilities, increased taxes, financial problems and to answer innumerable questions that may be raised by voters pursuant to the 1957 Attorney General Opinion.

The 1957 Attorney General Opinion also determined that the voters should not be left uninformed or misinformed. How the information will best be made available to the voters is for a school board to decide. Lastly, the amount of funding for this purpose is for a school board to decide.

Minn. Stat. §123B.02, Subd. 1 provides:

“**Subdivision 1. Board authority.** The board must have the general charge of the business of the district, the school houses, and of the interests of the schools thereof. The board’s authority to govern, manage, and control the district; to carry out its duties and responsibilities; and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature.”

Minn. Stat. §123B.09, Subd. 1 provides, in part, as follows:

“Subdivision 1. School board membership. The care, management, and control of independent districts is vested in a board of directors, to be known as the school board”

The Respondent School District and its School Board members did not make any contribution, as defined in Minn. Stat. §211A.01, Subd. 5 as follows:

“Subd. 5. Contribution. ‘Contribution’ means anything of monetary value that is given or loaned to a candidate or committee for a political purpose. ‘Contribution’ does not include a service provided without compensation by an individual.”

The School District could not contribute anything of monetary value to itself, nor did any of its School Board members contribute anything of monetary value to the School District, namely, to a committee, which Petitioner alleges to include the School District, as a corporation. Petitioners did not prove that the School District contributed anything of monetary value to itself, nor its School Board members, to themselves to influence or promote the passage of either of the ballot questions.

Attendance at a public or private meeting by the Superintendent and/or High School Principal, during which the referendum was discussed, is not a thing of value given or loaned to a committee and, therefore, not a contribution. (App. 4.)

Therefore, the disbursements set forth in the Superintendent’s letter dated June 3, 2008 (App. 12) were authorized by law.

At the Petitioners' request, the School District listed expenses related to the referendum campaign. (App. 12.) The list included the printing costs for St. Anthony Village election ballots, professional services for St. Anthony Village election ballots and the City of New Brighton election. These disbursements were specifically authorized by Minn. Stat. §211A.01, Subd. 6 and Minn. Stat. §204B.32.

Nowhere in their Complaint do Petitioners attempt to specifically describe what the other expenses were for. Could Wold Architects' services be for preliminary architectural planning pursuant to the 1957 Attorney General Opinion? Could Decision Resources' services be to inform the School Board what it needs pursuant to the 1995 Attorney General Opinion? Could School Finances' services have been to also advise the School Board what it needs pursuant to the 1955 Attorney General Opinion or facts and figures relative to the referendum pursuant to the 1957 Attorney General Opinion? Could the video by Destin Deets have been produced to answer questions by the voters or make known to the voters about present and projected school facilities, increased taxes, financial problems, etc pursuant to the 1957 Attorney General Opinion? Could the referendum assistance by Schroeder Communications, which might have resulted in the printing of a referendum brochure been to present facts and figures relating to present and proposed school facilities, increased taxes, financial problems and to answer innumerable questions that may be raised by voters pursuant to the 1957 Attorney General Opinion?

Petitioners have presented no evidence to answer these questions. They have presented no evidence to show that these expenses were not incurred by the School District for the purposes described in the Attorney General Opinions. These expenses

would be authorized by both Minn. Stat. §123B.02, Subd. 1 and §123B.09, Subd. 1. Therefore, they would be authorized by law for disbursements as set forth in Minn. Stat. §211A.01, Subd. 6.

CONCLUSION

Neither the Respondent School District nor the Respondent School Board members were a “committee,” as defined in Minn. Stat. §211A.01, Subd. 4. School districts are “political subdivisions,” as provided in Minn. Stat. §211A.01, Subd. 2, 3 and 6.

Neither the Respondent School District nor the Respondent School Board members are a committee formed to promote the ballot questions, which are the subject matter of this proceeding pursuant to Minn. Stat. §211A.05. Therefore, pursuant to Minn. Stat. §211A.05, Respondents are not required to file any of the reports required by Minn. Stat. §211A.02.

The expenditures made by the Respondent School District, as set forth in the Superintendent’s letter dated June 3, 2008 (App. 12) were made either pursuant to, or as authorized by law such as Minn. Stat. §123B.10, Subd. 1 or Minn. Stat. 123B.02, Subd. 1 or Minn. Stat. §123B.09, Subd. 1. The Attorney General, in Op. Atty. Gen. 155B-1, March 3, 1955 held that such expenditures were authorized by law to make sure that the voters were either uninformed or misinformed. Pursuant to Minn. Stat. §8.07, attorney general opinions on school matters are decisive until otherwise decided by a court of competent jurisdiction. These opinions are entitled to careful consideration where they are of long standing and accompanied by administrative reliance thereon. These opinions

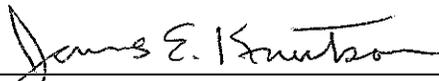
have been in effect for over fifty (50) years without challenge. They have been relied upon by not only Respondents but school districts throughout the state.

The Respondents respectfully request that the Writ of Certiorari be dismissed.

Respectfully submitted,

Dated: August 17, 2009

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Hearings,
Respondent.

**CERTIFICATION OF
BRIEF LENGTH**

**COURT OF APPEALS
NO.: A09-1093**

**OFFICE OF ADMINISTRATIVE
HEARINGS DOCKET
OAH 3-6326-20564-CV**

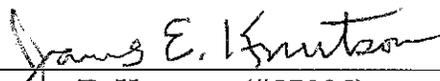
**DATE OF DECISION:
MAY 21, 2009**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds.1 and 3, for a brief produced with a proportional font. The length of this brief is 3,826 words. This brief was prepared using Microsoft Office Word 2003.

KNUTSON, FLYNN & DEANS, P.A.

Dated: August 17, 2009

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