

A10-2162

State of Minnesota
In Court of Appeals

Steve Abrahamson and Tim Kotzian,

Petitioners,

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,

The Minnesota Office of Administrative Hearings,

Respondent.

PETITIONERS' REPLY BRIEF

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INTRODUCTION

Minnesota's governing campaign reporting statutes are reflective of public policy of disclosure and accountability concerning campaign expenditures.

The Petitioners Steve Abrahamson and Tim Kotzian are impelled to reply to the Respondents Response brief for two specific reasons. First, the St. Louis County School District mistakenly proposes that Minnesota's governing campaign finance and fair campaign practices law under Minn. Stat. §§ 211A and 211B are narrowly limited to "*ad hoc*" citizens groups "formed" specifically to promote or defeat a ballot question,¹ confusing differences between policy-making with ballot question campaign promotion by school districts.

Second, the St. Louis County School District's impermissively expands the statutory law governing school district election expenditures to *include* the promotion of (or defeat of) ballot questions under Minn. Stat. § 204B.32.² No Minnesota statute gives a school district the authority to expend public taxpayer moneys to campaign for the passage or defeat of ballot questions. Again, the School District mistakenly conflates the dissemination of district related publications with the dissemination of materials as political campaigns to promote (or defeat) a ballot question. In short, the School

¹ Resp. Br. 10 (Mar. 25, 2011).

² Resp. Br. 14.

District is advocating a public policy that excuses accountability in campaign expenditures for school districts to promote a partisan position during an election-ballot campaign.

ARGUMENT

- I. **The definitional requirement of Minn. Stat. § 211B.01, subd. 4 for “committee” is inclusive to ensure accountability of campaign expenditures and not limited to only those “formed” to promote or defeat a ballot question.**

The St. Louis County School District is *not* a political subdivision for purposes of Minn. Stat. §§ 211A and 211B.³ Yet, the St. Louis County School District is advocating permissive governmental electioneering without accountability of expenditures to subsidize the promotion or defeat of a ballot question. Thus, it has no qualms that where the outcome of elections should reflect the pure will of the people, the election outcome is polluted by government electioneering supported by taxpayer moneys. This gives the school district a horse in the race – thereby shifting the source of governing power from the people to the threat of official doctrine, ultimately undermining the independent political process.

The definition of “committee” under Minn. Stat. § 211B.01, subd. 4 includes “two or more persons acting together.” In the instant case, as the OAH decision reflects, Abrahamson provided specific facts to support the

³ Pet. Br. 20-24 (Feb. 14, 2011).

allegations of the St. Louis County School District's partisan campaign promotion to pass a ballot question.⁴ This is beyond the passage of the Board's resolution *to take* the ballot question to the people, and beyond *education* on the ballot issue.⁵ The School District's electioneering brings it within the provisions of the law to report those expenditures of public funds (or contributions) as lawful disclosures for public accountability and scrutiny as actors and participants in partisan election activities.

Abrahamson is *not* supporting a viewpoint, as the School District suggests, that Minn. Stat. § 211B.01, subd. 4 creates two types of committees – those subjected to penalties under Minn. Stat. § 211A.05, subd. 1 and those that would not be.⁶ To the contrary, Abrahamson's position is that persons who act – that is two or more persons – necessarily fall under the requisites and demands of Minnesota's campaign laws inclusive of school boards and school officials. Furthermore, Abrahamson recognizes the policy-making authority of school districts, generally, but, when districts expend public funds to promote (or defeat) the passage of a ballot question, the

⁴ Pttrs. App. 4 (“[T]he Complainants have alleged specific facts to support the claim that the Respondents disseminated publications and otherwise acted to promote passage of the December 2009 ballot question....”)

⁵ *Id.*

⁶ Resp. Br. 11-12.

accountability of those expenditures falls within the statutory framework of Minnesota's campaign finance laws under Minn. Stat. §§ 211A and 211B.⁷

Likewise, the St. Louis County School District supports the OAH's mistaken and unsubstantiated position that suggests a school district may in fact expend public moneys to take a partisan position and actively campaign to promote, the passage of a ballot question using the definition of "disbursement" as its authority:

"Disbursement" does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.⁸

However, the statutory definition is a limitation *not* an expansion of the authority to expend public funds to disseminate campaign materials or other publications for school district partisan support of a ballot question. The St. Louis County School District cites *no Minnesota statute* that gives the school district specific authority to use taxpayer funds for partisan governmental electioneering to support (or defeat) ballot questions – allowing for the explicit intervention of the otherwise independent political process (or any

⁷ There are also possible constitutional violations involved regarding official partisanship through acts of disseminating campaign literature with governmental funds. Pttrs. App. 20-22. But, apparently because the complaint did not specifically identify the constitutional elements or provisions, the OAH did not opine on those issues.

⁸ Resp. Br. 13; Pttrs. App. 13.

other governmental entity, presuming for argument's sake that a school district is a governmental subdivision under Minn. Stat. §§ 211A and 211B which Abrahamson contends it is not). Here, the St. Louis County School District advocates the undermining of the political process to allow the school district to interfere with the effectiveness of the election process and the will of the people through the pollution of government funded partisan electioneering.

II. Citation to Minn. Stat. § 211B .12 by the St. Louis County School District is an admission of its obligation to report the school district's electioneering campaign expenditures.

Whether a governmental entity or a school district can expend public funds to promote or defeat a ballot question is violative under either the United States or Minnesota Constitutions is a question not presently before this Court. But, there is a body of law from other states that is hostile to the proposition allowing for electioneering expenditures of this nature.⁹ For instance, a New Mexico court in *Cook v. Baca*, noted the need for the refrain of using public funds to advocate governmental partisan election positions: "At some threshold level, a public entity must refrain from spending public

⁹ This is not to suggest to this Court that opposing views do not exist. *See, e.g., Alabama Libertarian Party v City of Birmingham*, 694 F.Supp. 814 (N.D. Ala. 1988). In addition, the legality or arguments regarding "government speech" is not before this Court. *See, e.g., Rust v. Sullivan*, 500 U.S. 173 (1991).

funds to promote a partisan position during an election campaign.”¹⁰ In Colorado, a federal court reflected its concern of the impact to the democratic process and the republican form of government: “[T]he expenditure of public funds in opposition [to a citizen led constitutional amendment] violates a basic precept of this nation’s democratic process. Indeed, it would seem so contrary to the root philosophy of a republican form of government”¹¹ Likewise, in California, the state court further opined on governmental electioneering giving an advantage to one side over another in the marketplace of competing election factions: “A fundamental precept of this nation’s democratic electoral process is that the government may not ‘take sides’ in election contests or bestow an unfair advantage on one of several competing factions.”¹²

Nevertheless, in the instant case, despite no specific state law authorizing school districts or governmental entities to expend public moneys for electioneering purposes such as to promote or defeat a ballot question, the St. Louis County School District chose to engage in electioneering to promote the passage of the December 2009 ballot question. Because it did so,

¹⁰*Cook v. Baca*, 95 F.Supp.2d 1215, 1227 (D.N.M. 2000).

¹¹ *Mountain States Legal Foundation v. Denver School District #1*, 459 F.Supp. 357, 360 (D.Colo. 1978).

¹² *Stanson v. Mott*, 17 Cal.3d 206, 130 Cal.Rptr. 697, 551 P.2d 1, 9 (1976).

it must now report those expenditures in accordance with Minnesota law under Minn. Stat. §§ 211A and 211B.¹³ Here, it did not.

Here, the St. Louis County School District has taken the position that certain election related expenditures are reportable under Minn. Stat. § 211B.12 titled “Legal Expenditures.” In so doing, it has admitted to engaging in the 2009 December ballot question election campaign: “[c]onsequently, school districts are authorized by law to make election-related expenditures with respect to informing the voters on the issue that will be placed before them.”¹⁴ Minn. Stat. § 211B.12 is *not* a provision

¹³ Likewise, the OAH’s argument that the school district is obligated to disclose electioneering expenditures through other means is without merit and irrelevant. As Abrahamson argued in his principal brief, there is little burden imposed in the reporting requirements under Minn. Stat. §§ 211A and 211B. *See also*, Pttrs. App. 14. Furthermore, the statutes the OAH identifies, Minn. Stat. §§ 123B.63 and 475.51-.74, do not concern or provide provisions requiring the specific disclosure of identified election related activities and electioneering used to promote or to defeat a ballot question. OAH Dec. at 5 n.19 (Nov. 9, 2010), Pttrs. App. 5. Thus, under the OAH alternative of financial disclosure of electioneering expenditures of public funds, the public remains at a distinct disadvantage to identify those specific funds and to hold the school district and school officials accountable as is the legislative intent of campaign finance disclosure laws under Minn. Stat. §§ 211A and 211B.

¹⁴ Resp. Br. 15.

precluding reporting requirements, but identifies what is “prohibited unless the use is reasonably related to the conduct of election campaigns.”¹⁵

The constitutionality or specific challenge of the use of public funds by a school district in electioneering is not presently before the Court. But the issue of reporting under Minn. Stat. §§ 211A and 211B is. Since the OAH recognized Abrahamson’s complaint as specifically, and therefore sufficiently, pleading facts showing the St. Louis School District as “disseminat[ing] publications and otherwise act[ing] to promote passage of the December 2009 ballot question” the District did engage in the election campaign.¹⁶ Therefore, the St. Louis County School District was obligated to report its campaign expenditures (or contributions) under Minnesota’s governing law – Minn. Stat. §§ 211A and 211B.

CONCLUSION

When school districts choose to take actions in electioneering to promote or defeat a ballot question, make expenditures or receive contributions for that campaign, they are obligated to file campaign finance reports. Expending public funds requires the accountability anticipated and afforded under Minn. Stat. §§ 211A and 211B. Therefore, the OAH decision

¹⁵ Minn. Stat. § 211B.12 (2010).

¹⁶ OAH Dec. at 4; Pttrs. App. 4.

should be reversed and the matter remanded for further action in accordance with the disposition of this matter.

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Dated: April 7, 2011.

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LR 7.1(c) WORD COUNT COMPLIANCE CERTIFICATE

I, Erick G. Kaardal, certify that the Petitioner's Reply Brief complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Word 2007, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above referenced memorandum contains 1,760 words.

MOHRMAN & KAARDAL, P.A.

Dated: April 7, 2011



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