

A10-2162

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**State of Minnesota  
In Supreme Court**

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Steve Abrahamson and Tim Kotzian,

*Respondents,*

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,

*Appellants,*

and

The Minnesota Office of Administrative Hearings,

*Respondent.*

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**APPELLANTS' BRIEF AND ADDENDUM**

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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).

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## STATEMENT OF THE ISSUES

- I. Whether school districts are a “corporation” and/or school boards are “persons acting together” within the definition of “committee” in Minnesota Statutes Section 211A.01, subdivision 4.

The administrative law judge found that a school district and its school board members were not a “committee” within the meaning of Minnesota Statutes Chapter 211A. (Add. 5.) The Court of Appeals reversed and remanded, finding that a school district is a “corporation” and a school board is “persons acting together” within the meaning of Minnesota Statutes Chapter 211A which may require the filing of a campaign finance report under Minnesota Statutes Section 211A.02. (Add. 22.)

Most apposite authorities: Minn. Stat. §§ 211A.01, 211A.02, 211A.05, *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898 (Minn. Ct. App. 2010).

- II. Whether school districts are subject to Minnesota Statutes Section 211B.06?

The ALJ did not address this issue. The Court of Appeals did not address this issue.

Most apposite authorities: Minn. Stat. §§ 211B.01, 211B.04.

- III. When the record unequivocally shows that a claimed “false statement” was made in a newsletter published more than one year prior to the filing of the complaint, should the Court of Appeals have dismissed the claim for untimeliness?

The ALJ did not address this issue. The Court of Appeals declined to address the issue. (Add. 31.)

Most apposite authorities: Minn. Stat. §§ 14.69, 211B.33.

- IV. Whether the Court of Appeals erred when it found that Respondents stated a *prima facie* violation involving false statements under Minnesota Statutes Section 211B.06 when evidence in the record is contrary to Respondent’s allegation of falsity.

The ALJ reviewed all seven statements alleged by Respondents finding: Statement 1 was not a statement that could be proven true or false and that “would need” is at most a pessimistic possibility in a conditional sentence; Statement 2 was an inference or unfavorable deduction based on the assumption that the school district would dissolve and was not factually false; Statement 3 may have been gloomy, unrealistic or improbably but was not demonstrably false; Statement 4 may have been unrealistic or

speculative, but was not demonstrably false; Statements 5, 6 and 7 were concededly opinion and were not within the purview of Minnesota Statutes Section 211B.06. (Add. 6-10). The Court of Appeals reversed in part and affirmed in part finding: Statement 1 was demonstrably false because using the word “would” which is the past tense of “will” would lead an ordinary person to the conclusion that if the bond referendum did not pass, the school district would dissolve and the students would attend other schools; Statement 2 was not appealed by Respondents; Statement 3 was demonstrably false because Respondents provided evidence that the budget was actually decreasing instead of increasing at the time the statement was made; Statement 4 was not demonstrably false; and Statements 5-7 were not challenged or addressed. (Add. 29-35.)

Most apposite authorities: Minn. Stat. §§ 211B.01, 211B.06, *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981), *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437 (Minn. Ct. App. 1986).

## STATEMENT OF THE CASE

Steve Abrahamson and Tim Kotzian, Respondents (“Respondents”), filed a complaint in the Office of Administrative Hearings (“OAH”) on November 4, 2010 alleging that the St. Louis County School District, Independent School District No. 2142 (St. Louis County), Minnesota (“the School District”) and School Board members, Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson, Chet Larson and Zelda Bruns (“the School Board”) committed violations of Minnesota Statutes Chapters 211A and 211B. In this regard, Respondents alleged that the School District/School Board failed to file campaign finance reports according to Minnesota Statutes Section 211A.02. Additionally, Respondents alleged that certain statements contained in the School District’s publications were false in violation of Minnesota Statutes Section 211B.06.

The OAH chief judge assigned the complaint to an Administrative Law Judge (“ALJ”) for review. *See* Minn. Stat. § 211B.33, subd. 1 (2011). The ALJ issued his Order of Dismissal dated November 9, 2010. (Add. 1.)<sup>1</sup> More specifically, the ALJ found that a school district and/or school board were not a “committee” within Minnesota Statutes Section 211A.01, subdivision 4 and, therefore, were not required to file a campaign finance report. (Add. 5-6.) The ALJ also found that the alleged false statements were either not demonstrably false or were opinion and not within the purview of Minnesota Statutes Section 211B.06. (Add. 6-10.)

The Court of Appeals reversed the ALJ’s conclusions and found that a school district is a “corporation” and a school board is “persons acting together” thereby meeting

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<sup>1</sup> “Add. \_\_\_\_” refers to the Addendum to this brief.

the first part of the definition of “committee” in Minnesota Statutes Section 211A.01, subdivision 4 (2011). As a result, if the school district or school board acted to “promote or defeat a ballot question,” they would be subject to the campaign finance disclosures in Minnesota Statutes Section 211A.02 and possible civil and criminal penalties for failing to comply. The Court of Appeals declined to decide whether the November 4, 2010 alleged false statement contained in the September/October 2009 newsletter was untimely.<sup>2</sup> Finally, the Court of Appeals found that two claims of “false statements” stated *prima facie* violations of Minnesota Statutes Section 211B.06 and should proceed to a hearing. This Court granted the School District/School Board’s petition for review.

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<sup>2</sup> The statutory procedure under the Fair Campaign Practices Act requires that the complaint be filed with the OAH within one year of the occurrence of the act or failure to act that is the subject of the complaint, unless fraud, concealment or misrepresentation delayed discovery of the act or failure to act, which was not alleged in this case. *See* Minn. Stat. § 211B.32, subd. 2 (2011).

## STATEMENT OF FACTS

### I. The Bond Referendum Election.

The 2008/09 adopted budget showed that by the end of that fiscal year, the School District's budget would have deficit spending in the amount of \$1,973,309. (A-237.)<sup>3</sup> And, without a long-range plan, that deficit spending was projected to increase to \$4,131,829 in the 2011-12 school year. (*Id.*) As a result, the School District's unreserved fund balance of a "positive" \$5,369,126 at the end of 2008-09 was projected to be into the negative by fiscal year 2010-11. (*Id.*) The School District was at a point where it could not make further reductions to the budget without the cuts being extreme and negatively impacting the students and curriculum. While the reduction in deficit spending provided some relief, it did not solve the issues being faced by the School District, especially in light of the projected three million dollar plus deficit spending for the 2010-11 fiscal year. Consequently, the School District needed to establish a long-range plan to address its budget issues.

Whether the voters would pass a bond referendum was a huge uncertainty for the School District. Three previous operating levy ballot questions failed. (A-54.) Consequently, the School District started taking proactive measures right away as part of a long-range plan in order to begin reducing the amount of deficit spending. Those measures included the layoff of 16 teachers and the retirement of 5 teachers (who were not replaced) in the spring of 2009. This trimmed the projected expenditure for salaries and benefits from the 2009-10 proposed budget by approximately \$1,304,209. Other savings also contributed to a reduction in expenditures. Consequently, within months

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<sup>3</sup> "A-\_\_" refers to the Appendix filed with this brief.

after the ISD 2142 Long Range Plan – Financial Projection Status Quo based upon the 2008-09 budget was prepared, the School District’s adopted 2009-10 budget showed a reduction to deficit spending. (A-126.)

On June 8, 2009, the School Board of the School District adopted a Resolution Approving a Long-Range Facilities Plan (“Plan”) and Authorizing Further Proceedings Toward Implementation of the Plan. (A-20 – A-28.) The Plan provided for the upgrading of certain school buildings, the closing of certain school buildings and the construction of two new school buildings. (*Id.*) The School Board recognized that to implement the Plan it would authorize a bond referendum in the fall of 2009 seeking approximately \$78.7 million dollars. (*Id.*)

On September 14, 2009 the School Board adopted a Resolution Relating to the Issuance of School Building Bonds and Calling an Election Thereon. (A-41 – A-45.) The resolution provided for the election to be held on December 8, 2009. (*Id.*) A sample ballot question was included in the resolution. (*Id.*)

The School District published information for the resident voters about the December 8, 2009 bond referendum. One publication dated September/October 2009

included a section entitled “Tax implications of voting yes or no on December 8,” and included the following paragraph:

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.

(A-51.)<sup>4</sup>

In addition, the November 2009 School District newsletter contained an article entitled “Is dissolution of our school district possible? Decide for yourself.” (A-60.)

This article provided as follows:

Lately, some have accused ISD 2142 of using scare tactics to get people to vote for the bond referendum to fund the realignment plan on December 8. They’re claiming the school board and administration are “crying wolf” by painting too gloomy a picture about the possibility of the district dissolving if a “no” vote prevails.

(*Id.*) The article went on to state as follows:

It is important that every resident have the facts that have led the school board to believe that dissolution is probably inevitable if this bond referendum does not pass. Judge for yourself why we have reached this conclusion.

(*Id.*) The article then proceeded to lay out the facts supporting the School District’s conclusion. After doing so, the article stated as follows:

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<sup>4</sup> Respondents alleged in their complaint to the OAH that this paragraph contains a false statement and was promotional in nature based on the potential consequence that the School District “would need to dissolve.” (A-7 – A-8.)

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?

(*Id.*)

The December 2009 School District newsletter contained a section entitled “These are the reasons for the realignment plan,” which contained the following explanation:

There are several reasons this realignment plan was developed. Below is a recap:

- Today, *as enrollment continues to drop closer to 2,000 students* (compared to 2,800 just 10 years ago), ISD 2142 can no longer afford to support operations in seven different facilities. There’s just too much wasted space, and operating excess space takes valuable resources away from staff and programs that improve education for our children.
- The proposed restructuring *will allow the district to reduce 26 percent of its operational cost expenditures and 21 percent of its staffing cost.* We’ll greatly enhance educational and extra-curricular opportunities, classroom technology and many other improvements. Plus, by keeping our district in operation, our children will have more opportunities to perform in bands, participate in student government, play on sports teams and so on.
- Failure to pass this referendum will require us to close facilities and reduce programs just to remain out of debt. *Yet our schools would still be outdated* and unable to provide modern curriculum.
- 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. 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.<sup>5</sup>

- Parents in ISD 2142 have other options available to educate their children. We currently border 19 different school districts. *The more outdated our schools become, the more attractive other districts will be to our residents.*
- Every time a student leaves our district, we lose thousands of dollars in state funding. In other words, *as students leave, the money needed for our operating budget leaves with them.*
- Three times in recent years, the school board has recommended a levy to residents to increase ISD 2142's operating budget. All three times, our residents voted no. If we also vote no on a referendum, is it logical to believe residents will support the next operating levy or bond referendum if we have now voted no four straight times?

(A-49 – A-50.)

Also in the same newsletter, the School District provided responses to “Frequently asked questions about the realignment plan . . .” (A-73). Two of the questions inquired about statutory operating debt and possible dissolution, as follows:

Does going into SOD mean a district will dissolve?

No. . . .

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

The logic is unfortunately fairly straight forward 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.

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 expenses.

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<sup>5</sup> Respondents' Statement 3 as quoted was not in this document. Rather, this statement referring to the projected \$4.1 shortfall is the only statement in the document that refers to the shortfall.

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 a momentum of its own, spinning faster and quicker than we can imagine. 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 and the sooner the district's children are in sustainable settings for gaining the education they deserve.

(A-73.)

School District publications also included the reporting of comments by the Superintendent and School Board members regarding the bond referendum during a School Board study session held in September 2009.<sup>6</sup> Those comments included:

*“Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice”* added Board Member Gary Rantala.

*“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.

*“The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments so*

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<sup>6</sup> Although Respondents agreed that these three statements were opinion, they claimed that they were promotional in nature.

*hopefully voters will approve the plan and the options discussed at this study session will never have to be implemented,”* said Superintendent 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.”*

(A-54.)

The voters of the school district passed the bond referendum question on December 8, 2009.

## **II. The OAH Dismissed the Complaint.**

Respondents filed their complaint with the OAH on November 4, 2010. (A-1.) The ALJ issued his decision on November 9, 2010 dismissing the complaint in its entirety. (Add. 1.) The ALJ found that the School District and its board members were neither a “candidate” nor a “committee” within the meaning of Chapter 211A. In reaching that conclusion, the ALJ stated that school districts are “public corporations” which do not fall within the definition of corporation contained in Minnesota Statutes 211B.15. In addition, the ALJ found that school boards are charged with the responsibility of managing and operating the school district and are “unlike an *ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question.” (Add. 5.) In addition, the ALJ found that Respondents’ claimed false statements did not allege a *prima facie* violation of Minnesota Statutes Section 211B.06.

The ALJ stated that Statement 1 did not allege a *prima facie* violation for the following reasons:

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 [Appellants] 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.

(Add. 7.)

In addition, with respect to statement three, “Projected annual deficit in 2011-2012: \$4.1 million,” the ALJ found that a *prima facie* violation of Minnesota Statutes Section 211B.06 was not alleged. More specifically, the ALJ stated:

To say that the [Appellants;] 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 [Appellants] from disseminating campaign material that others regard as pessimistic or uncharitable. . . . Whether or not [Appellants’] predictions are reliable are matters that are committed to the judgment and sound discernment of the voters within the St. Louis County School District.

(Add. 8.)

The ALJ also found that Respondents conceded that Statements 5-7 were statements of opinion which did not come within the purview of Minnesota Statutes Section 211B.06. (Add. 10.)

### **III. The Court of Appeals Reversed and Remanded.**

The court of appeals found that a school district and/or school board may be a “committee” because a School District is a “corporation” and School Boards are “persons

acting together” which meet the first component of the definition of “committee” in Minnesota Statutes Section 211A.01. (Add. 20-22.) In addition, the court found that school districts “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” and that in the present case the School District “presented one-sided information on a voter issue.” (Add. 29.) As a result, Respondents set forth a *prima facie* violation of Minnesota Statutes Section 211A.02. The court reversed the OAH decision and remanded to matter back to the OAH.

The Court of Appeals also found that Statements 1 and 3 were demonstrably false and that the statements were disseminated with a high degree of awareness of their probable falsity. Consequently, Respondents also stated a *prima facie* violation of Minnesota Statutes Section 211A.06. The court reversed the OAH decision and remanded the matter back to the OAH.

The Court of Appeals also found that Statement 4 was not demonstrably false. It affirmed the OAH dismissal of the claim.

## STANDARD OF REVIEW

School districts and/or school boards are not explicitly included within the definition of “committee” in Minnesota Statutes Section 211A.01. To be a “committee,” school districts would need to be a “corporation” and school boards would need to be “persons acting together” under the statute. The statutory interpretation of Minnesota Statutes Section 211A.01, subdivision 4, is a question of law that this Court reviews *de novo*. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001); *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007).

The final decision on a complaint filed under Minnesota Statutes Section 211B.32 may be reviewed in accordance with the procedures provided in Minnesota Statutes Section 14.63 to 14.69. *See* Minn. Stat. § 211B.36, subd. 5 (2011). The scope of review is set forth in Minnesota Statutes Section 14.69, as follows:

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 submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2011).

Agency decisions are presumed correct, and the Court defers to an agency’s expertise and its special knowledge in the field of its technical training, education and

experience. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). An agency's conclusions are not arbitrary and capricious if a rational connection between the facts found and the choice made is articulated. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Nat'l Audubon Soc'y v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 215 (Minn. Ct. App.1997), *rev. denied* (Minn. Dec. 16, 1997).

## ARGUMENT

### **I. A “COMMITTEE” FOR PURPOSES OF CAMPAIGN FINANCE DISCLOSURES DOES NOT INCLUDE SCHOOL DISTRICTS, SCHOOL BOARDS AND/OR SCHOOL BOARD MEMBERS.**

#### **A. Introduction.**

Minnesota Statutes Chapter 211A is a series of statutes related to campaign finance reporting. In their complaint to the OAH, Respondents alleged that the School District and/or School Board was required to file the financial report pursuant to Minnesota Statutes Section 211A.02. In this regard, Section 211A.02, subdivision 1(a) provides as follows:

A committee or a 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 listed in paragraph (b) until a final report is filed.

Minn. Stat. § 211A.02, subd. 1(a) (2011).

It is clear, therefore, that certain factors must be present before the financial reporting requirement contained in Section 211A.02, subdivision 1(a) applies. Those factors include the following: (1) “a committee or a candidate”; (2) “receives contributions or makes disbursements”; and (3) the contributions or disbursements are “more than \$750 in a calendar year.” Unless all three components are satisfied, the financial reporting requirement does not apply.

Minnesota Statutes Section 211A.01, subdivision 4 defines a “committee” for purposes of the reporting law. In this respect, “committee” is defined, in relevant part, as follows:

a corporation or association or persons acting together to . . .  
promote or defeat a ballot question.

Minn. Stat. § 211A.01, subd. 4 (2011).

A “committee” that fails to file the report required by Minnesota Statutes Section 211A.02 is subject to a penalty. In this respect, Minnesota Statutes Section 211A.05, subdivision 1 provides, in relevant part, that “[t]he treasurer of a committee 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.” Minn. Stat. § 211A.05, subd. 1 (2011).

Although the ALJ concluded that Respondents failed to state a *prima facie* case because neither the School District and/or School Board were a “committee,” the Court of Appeals found otherwise. In this regard, the Court of Appeals concluded that School Boards are “corporations” and School Boards or school board members are “persons acting together” and, therefore, may be a “committee.”

**B. The School District Is Not A “Corporation” For Purposes of Minnesota Statutes Chapter 211A.**

**1. A “corporation” must be “formed” to promote a ballot question.**

The objective of courts in construing statutes is to ascertain and effectuate the intent of the Legislature. *Peterson v. Haule*, 304 Minn. 160, 170, 230 N.W.2d 51, 57 (1975); *see* Minn. Stat. § 645.16 (2011). Where words of a statute are clear and unambiguous, courts are not free to interpret or construe the statute’s language. In such

cases, the court's duty is restricted to giving effect to the plain meaning of the statute. *McCaleb v. Jackson*, 307 Minn. 15, 17 n. 2, 239 N.W.2d 187, 188 n. 2 (1976). However, if a statute is ambiguous, courts have the responsibility to determine legislative intent and give the statute a construction that is consistent with that intent. *Beck v. City of St. Paul*, 304 Minn. 438, 445, 231 N.W.2d 919, 923 (1975); see Minn. Stat. § 645.16 (2011). Thus, the first question that must be addressed is whether the statutory language at issue in the present case is clear and unambiguous.

The Court of Appeals found that the statutory language was clear and unambiguous and concluded that school districts are "committees" for purposes of Minnesota Statutes Chapter 211A because they are "public corporations." (Add. 19.) While it is true, as the Court of Appeals notes, that "corporations" are "committees" for purposes of Chapter 211A, the conclusion reached by the Court of Appeals failed to conduct a complete analysis of statutory construction and consider Chapter 211A as a whole.

A statute is to be construed, if possible, to give effect to all of its provisions. Minn. Stat. § 645.16 (2011). In addition, this Court has acknowledged that "[w]e are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). Therefore, in determining the Legislature's intent, all of the sections in Chapter 211A must be considered as a whole.

Considering Chapter 211A as a whole reveals a legislative intent to limit the application of the chapter to committees "formed" to promote or defeat a ballot question. This intent is seen through the 1989 amendment to Minnesota Statutes Section 211A.05,

which defines the penalty for “committees” who fail to make the required reports.<sup>7</sup> According to the 1989 amendment, a “committee” must be “*formed* to promote or defeat a ballot question. . . .” Minn. Stat. § 211A.05, subd. 1 (2011) (emphasis added).

School districts carry out the constitutional mandate of providing “education as part of a general and uniform system of public schools.” See Minn. Const. XIII, sec. 1. Consequently, there can be no question that school districts are not “*formed*” to promote or defeat a ballot question. As a result, giving effect to the chapter as a whole reveals that school districts are not “committees” for purposes of Chapter 211A.

Notwithstanding the clear language of the statute, however, the Court of Appeals found that “[n]othing in the plain language of section 211A.01, subdivision 4, qualifies or restricts the term ‘corporation’ or excludes public corporations from its plain meaning.” (Add. 19.) By focusing solely on section 211A.01, subdivision 4, to the exclusion of other provisions in Chapter 211A, the Court of Appeals failed to follow the basic cannon of construction to consider the statute as a whole and in light of its surrounding sections.

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<sup>7</sup> The amendment provided, in pertinent part, 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.

In reaching its conclusion, the Court of Appeals attempted to sidestep this analysis by claiming that the 1989 amendments to Minnesota Statutes Section 211A.05, subdivision 1, fail to show a legislative intent to qualify the meaning of “committee” for the entire chapter, relying on the general penalty provision found in Minnesota Statutes Section 211A.11. This logic is diametrically opposed to the Court of Appeals decision in *City of Crystal Police Relief Ass’n v. City of Crystal*, 477 N.W.2d 728 (Minn. Ct. App. 1991), *pet. for review denied* (Minn. January 17, 1992).

In *City of Crystal*, the Court of Appeals stated that the “[a]doption of an amendment by the legislature raises a presumption that it intended to make some change in existing law (citations omitted)” *Id.* at 731. The court went on to state that “this presumption will not apply where it appears the amendment was only for clarification purposes.” *Id.*, citing *County of Washington v. Am. Fed’n of State, County & Mun. Employees Council No. 91*, 262 N.W.2d 163, 168 n. 5 (Minn. Ct. App. 1978).

In the present case, regardless of whether the 1989 amendment was “intended to make some change in existing law” or “was only for clarification purposes,” it is clear that in order for a corporation to constitute a “committee,” it must be “*formed* to promote or defeat a ballot question.” (Emphasis added.) To hold otherwise would, in effect, render the amendment a nullity, which is counter to the canons of statutory construction. *See* Minn. Stat. § 645.17 (the legislature intends the entire statute to be effective and certain); *see also Gale v. Comm’r of Taxation*, 228 Minn. 345, 349-350, 37 N.W.2d 711, 715 (Minn. 1949).

The Court of Appeals also attempts to avoid this plain language of the statute by suggesting that the 1989 amendment restricting “committees” to those “formed to

promote” only makes the penalty applicable to certain qualified “committees,” thereby effectively creating two types of “committees” covered by the chapter.<sup>8</sup> The court of appeal’s reliance upon the presence of the general penalty provision found in Minnesota Statutes Section 211A.11, however, creates a distinction without a difference. In this respect, the penalty applied under both Section 211A.05 and the “catch all” in Section 211A.11 is a misdemeanor. Therefore, if the Court of Appeals analysis was accepted as true, the 1989 amendment would be meaningless, which runs counter to the canons of statutory construction. *See* Minn. Stat. § 645.17 (2011).

**2. The term “corporation” in Section 211A.01, subdivision 4 does not include school districts.**

The Court of Appeals looked to authority outside of the Election Law to determine whether school districts are “corporations” for purposes of the definition of “committee” in Minnesota Statutes Section 211A.01, subdivision 4. In reaching this conclusion, the Court of Appeals stated “in multiple instances, Minnesota law defines a school district as a ‘municipal corporation’ or a ‘public corporation.’ (citations omitted).” (Add. 19.) Upon reaching this conclusion, the Court of Appeals stopped its analysis without considering the use of the word “corporation” by the Legislature in other laws or that school districts are specifically defined in the Election Law. When consideration is given to those provisions it becomes clear that school districts are not “corporations” for purposes of Minnesota Statutes Chapter 211A.

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<sup>8</sup> More specifically, the Court of Appeals’ decision results in all corporations being a “committee” subject to a misdemeanor penalty under Minnesota Statutes Section 211A.11 and only corporations “formed” to promote a ballot question are a “committee” subject to a misdemeanor penalty under Section 211A.05.

School districts have been distinguished by the Legislature in numerous other areas of law. A sampling of the laws in which the Legislature differentiates school districts from corporations includes the following:

- Minnesota Statutes Section 181.940, subdivision 3, relating to parenting leaves, defines the term “employer” as including “an individual, corporation, . . . group of persons, state, county, town, city, school district, or other governmental subdivisions.” Minn. Stat. § 181.940, subd. 3 (2011).
- Minnesota Statutes Section 181.945, subdivision 1(c) defines “employer” for purposes of bone marrow, organ, and blood donation leaves as including “an individual, corporation, . . . group of persons, state, county, town, city, school district, or other governmental subdivisions.” Minn. Stat. § 181.945, subd. 1(c) (2011).
- Minnesota Statutes Section 181.60, subdivision 2, defines “employer” for purposes of Minnesota Statutes Sections 181.60 to 181.62 to include “any . . . corporation . . . .” The Minnesota Attorney General opined that the failure of the Legislature to include the state or its agencies or subdivisions in the definition of employer rendered Minnesota Statutes Section 181.61 inapplicable to the Hennepin County Nursing Board (a government agency.) Op. Atty. Gen. No. 125a-33 (August 27, 1963). (A-234.)

The above statutes, which are only a representative sample, evince a clear legislative intent to exclude school districts from the general term “corporation.” See *Brandt v. Hallwood Mgmt. Co.*, 560 N.W.2d 396, 400 (Minn. Ct. App. 1997) (“It was established that when construing statutes a reviewing court cannot supply that which the

Legislature purposefully omits or inadvertently overlooks. (Citations omitted.)”  
Therefore, the Court of Appeals erred when it concluded that by using the word  
“corporation” alone in Section 211A.01, subdivision 4, the Legislature intended to  
include all corporations, including “public corporations” and school districts.

In addition, the definition of “school district” in the Election law simply cannot be  
ignored. Although Chapter 211A does not include a definition of “corporation,” it does  
specifically include a definition of “school district.”

A major change to the Election Law was made during the 1987 legislative session  
when school district elections were included in the general election law for the first time.  
*See* 1987 Minn. Laws Ch. 266, Art. 1, sec. 3. With this change, the term “school district”  
was specifically included and defined in the Election Law at Minnesota Statutes Section  
200.02, subdivision 19, as follows:

“School district” means an independent, special, or county school  
district.

Minn. Stat. § 200.02, subd. 19 (2011).

The amending legislation specifically included a reference to “school district”  
countless times throughout the Chapter. *See* 1987 Minn. Laws Ch. 266. This action to  
consistently refer to school districts as “school districts” throughout the Election Law,  
evidences the legislative intent that those laws specifically referring to school district, as  
opposed to “corporations,” are the laws that apply to school districts. *See, e.g.,* Minn.  
Stat. §§ 200.02, 203B, 204B, 204C, 204D, 205A, 206 and 209.

The Legislature amended Minnesota Statutes Chapters 211A and 211B the  
following year in 1988. *See* 1988 Minn. Laws Ch. 578. Those amendments did not

include any reference to “school district” in the definition of “committee” although Minnesota Statutes Section 211A.01, subdivision 1 and Section 211B.01, subdivision 1, specifically incorporated the definition of “school district” in Section 200.02, subdivision 19, into Chapters 211A and 211B.

The legislative treatment of the term “corporations” to not include “school districts” as a general matter and the Election Law specifically referencing school districts demonstrate that the Legislature did not intend for the provisions in Chapter 211A and 211B.06 to apply to “school districts.” Therefore, the plain language of the statute does not support the conclusion that a school district is a “corporation” for purposes of Minnesota Statutes Section 211A.02, subdivision 1. *See Brandt* at 400 (“Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.”)

**3. Finding that school districts are “corporations” under Chapter 211A is inconsistent with legal authority that prohibits the expenditure of public funds to promote a favorable vote.**

If school districts are corporations as the Court of Appeals found, then under Chapter 211A school districts can expend funds to promote a ballot question. This, however, is directly contrary to the general rule previously articulated by the Minnesota Attorney General and adopted by the Court of Appeals in this case, that school districts can only expend funds to provide factual information.

In Chapter 211A a “committee” may expend funds to promote a ballot question and must file a report once more than \$750 has been spent. Thus, accepting the Court of Appeals decision, the School District, as a committee, could have spent up to \$750 to promote the bond referendum without having to file any report. This conclusion is

directly contrary to *Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills Township*, 13 N.J. 172, 98 A.2d 673 (New Jersey 1953), and other similar cases that prohibit school districts from spending any money on the promotion of a ballot question.<sup>9</sup>

Similarly, the definition of “committee” in Chapter 211B is virtually identical to the definition of “committee” in Section 211A.01, subdivision 4. According to Minnesota Statutes Section 211B.04, any campaign material must include a disclaimer in substantially the following form:

Prepared and paid for by the . . . committee, . . . (address), in  
support of . . . (insert name of candidate or ballot question).

Minn. Stat. § 211B.04(b) (2011). As “campaign material” under Chapter 211B must be disseminated “for the purpose of influencing voting,” which school districts cannot do, it would be absurd to suggest that the disclaimer provision applied to school districts. *See* Minn. Stat. § 211B.01, subd. 2 (2011); *see also* Minn. Stat. § 645.17(1) (“the legislature does not intend a result that is absurd”).

Additionally, in Chapter 211B, there is a specific statute relating to political contributions by corporations. In this regard, the statute defines a “corporation” and addresses a corporation’s ability to make a contribution to expenditure related to a ballot

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<sup>9</sup> This Court has held that “[t]he legislature, in passing a new law, is presumed to have acted with due deliberation and with knowledge of and due regard for existing laws.” *Strizich v. Zenith Furnace Co.*, 176 Minn. 554, 557, 223 N.W. 926, 927 (Minn. 1929); *see Kilowatt Org. (TKO) Inc. v. Dep’t of Energy, Planning and Dev.*, 336 N.W.2d 529, 533 (Minn. 1983). As the Minnesota Attorney General Opinion referred to by the Court of Appeals had been in existence for over 20 years prior to the recodification of Chapter 211A, the Legislature is presumed to have acted with due deliberation of, knowledge of, and due regard for that opinion. With this being the case, finding that school districts are subject to Chapter 211A would lead to an absurd result.

question. More specifically, Minnesota Statutes Section 211B.15 defines a “corporation” as:

For purposes of this section, "corporation" means:

- (1) a corporation organized for profit that does business in this state;
- (2) a nonprofit corporation that carries out activities in this state; or
- (3) a limited liability company formed under chapter 322B, or under similar laws of another state, that does business in this state.

Minn. Stat. § 211B.15, subd. 1 (2011).

The same section authorizes a corporation to make contributions or expenditures regarding a ballot issue, as follows:

A corporation may make contributions or expenditures to promote or defeat a ballot question, to qualify a question for placement on the ballot unless otherwise prohibited by law, or to express its views on issues of public concern. A corporation may not make a contribution to a candidate for nomination, election, or appointment to a political office or to a committee organized wholly or partly to promote or defeat a candidate.

Minn. Stat. § 211B.15, subd. 4 (2011). Consequently, those corporations that fall within the definition of “corporation” in Minnesota Statutes Section 211B.15, subdivision 1 are specifically authorized to make contributions or expenditures to promote or defeat a ballot question.

The term “committee” in both Chapters 211A and 211B is defined almost identically and includes “corporations.” Under Chapter 211A a corporation can expend funds to promote a ballot question, and is required to file a financial report under Minnesota Statutes Section 211A.02 when more than \$750 in expenditures is made. Under Chapter 211B certain types of corporations can make expenditures to promote a

ballot question. The term “corporation” is defined only in Section 211B.15 and does not include school districts. Consequently, a school district could not spend funds to promote a ballot question under Section 211B.15. This is consistent with the general rule that school districts cannot spend money to promote a ballot question.

The Court of Appeals’ decision finding that a school district is a “corporation” under Chapter 211A, however, is directly contrary to the general rule that school districts cannot spend money to promote a ballot question. A “corporation” that is a “committee” under Section 211A.01, subdivision 4, can only violate the reporting requirement in Section 211A.02, subdivision 1(a) if more than \$750 is expended and a report is not made. Consequently, a “corporation” is allowed to spend up to \$750 without filing a report; however, a school district cannot spend even \$1 to promote. This result further demonstrates that the Legislature did not intend that the definition of “committee” in either Section 211A.01 or Section 211B.01 apply to school districts.

School districts are not “formed” to promote a ballot question and, therefore, are not “committees” under Chapter 211A. Further support for this conclusion is found in the Legislature’s use of “corporation” in other statutes, the specific definition of “school districts” in the Election Law, the use of the word “committee” in Chapter 211B, and the specific definition of “corporation” in Section 211B.15, all of which support a more narrow interpretation of “corporation” in the definition of “committee” than given by the Court of Appeals. Thus, the court of appeal’s expansive view of “corporation” to include school districts should be reversed.

**C. The School Board and Its Individual Members Are Not “Persons Acting Together” for Purposes of Chapter 211A.**

The definition of “committee” also includes “persons acting together . . . to promote or defeat a ballot question.” Minn. Stat. § 211A.01, subd. 4. The Court of Appeals, in concluding that a school board and its school board members are included within the definition of “committee,” adopted an extremely broad interpretation of the phrase “persons acting together.” (Add. 22.) In doing so, the Court of Appeals rejected the ALJ’s determination that “persons acting together” for purposes of the statute are an “*ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question,” as opposed to a school board which are “elected policy-makers for the district.” (Add. 20.)

The court of appeals’ analysis and ultimate conclusion is flawed in several respects. First, the Court of Appeals’ interpretation fails to give effect to all of the provisions in the statute. *See* Minn. Stat. § 645.16 (2011). Using the court’s expansive interpretation of the phrase “persons acting together,” would render the references to “corporation” and “association” superfluous. A corporation or association cannot act alone. They are operated and overseen by persons acting together as a single body.<sup>10</sup> As a result, using the Court of Appeals’ expansive interpretation of “persons acting together” completely removed the need to also include a “corporation” or “association” in the definition of “committee.” It is fundamental that when determining legislative intent all

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<sup>10</sup> Indeed, the Court of Appeals recognized as much when it relied upon the definition of “corporation” in *The American Heritage Dictionary of the English Language* 410 (4th ed. 2000) which includes “[a] group of people combined into or acting as one body.” (Add. 18-19.)

words in a statute must be given meaning. The Court of Appeals' decision did not do that.

A review of other statutes applicable to school districts supports the conclusion that the Legislature does not adhere to the all encompassing interpretation of "persons acting together" advocated by the Court of Appeals. As stated earlier, numerous statutes differentiate between school districts and "groups of persons." *See, e.g.*, Minn. Stat. § 181.940, subd. 1 (2011) and Minn. Stat. § 181.945, subd. 1(c) (2011).

Second, the Court of Appeals' interpretation fails to consider the statute as a whole and in consideration of other sections within the chapter. In considering the statute and chapter as a whole, it is clear that the Legislature intended that in order for "persons acting together" to constitute a "committee," it must have been "*formed* to promote or defeat a ballot question." (Emphasis added.) The same argument made above involving the School District applies here. School Boards and their individual members are not "formed" for the purpose of promoting or defeating a ballot question. They are the elected policy makers for the school district. *See* Minn. Stat. § 123B.02, subd. 1 (2011) ("The board must have the general charge of the business of the district, the school houses, and the interests of the schools thereof"). As there can be no question that school boards are not "*formed* to promote or defeat a ballot question," school board members do not constitute a "committee" for purposes of the statute.

**D. The School District, School Board and School Board Members Did Not "Promote" the Ballot Question.**

The final component of the definition of "committee" is that the "corporation" or "persons acting together" acted "to promote the ballot question." *See* Minn. Stat. §

211A.01, subd. 4 (2011). If the Court finds that School District and/or School Board are not a “corporation” or “persons acting together,” then they cannot be a “committee” and the reporting requirements of Section 211A.02 do not apply. As a result, consideration of whether the School District and/or School Board promoted the ballot question becomes unnecessary. However, assuming for the sake of argument that the Court finds that the School District and/or the School Board do fall within the purview of Section 211A.02, a determination must be made as to whether the School District and/or School Board promoted the ballot question.

The Court of Appeals accepted the ALJ’s blanket conclusion that Respondents “alleged specific facts to support their claim that [the School District/School Board] disseminated publications and otherwise acted to promote passage of the December 2009 ballot question” because “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.” (Add. 4.) The ALJ cited to no specific facts and provided no analysis regarding this general conclusion.

Although the ALJ must accept the facts and evidence provided in the initial complaint as true, such acceptance does not automatically lead to the conclusion that the School District/School Board newsletters “promoted” passage of the ballot question. In fact, a review of the record demonstrates otherwise.

Minnesota appellate courts have not addressed the issue of what constitutes the “promotion” of a ballot question, but other states have. Respondents and the Court of Appeals place great reliance on *Citizens to Protect Public Funds, supra*. Importantly, the *Citizens to Protect Public Funds* court recognized that the school district had implied

powers 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.”<sup>11</sup> *Id.* at 179, 98 A.2d at 677. The court further acknowledged that “[t]he need for full disclosure of all relevant facts is obvious, and the board of education is well qualified to supply the facts,” and “a fair presentation of the facts will necessarily include all consequences, good and bad, of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences as may be foreseen.” *Id.* at 180, 98 A.2d at 677. The problem that the court had with the board’s brochure was the last three pages where “[t]he exhortation ‘Vote Yes’ is repeated on three pages, and the dire consequences of the failure so to do are overdramatized . . . .” *Id.*

*Citizens to Protect Public Funds* does not make the reporting of “dire consequences” alone enough to render the statement promotional or advocacy. To do so would negate the possibility that the facts actually support the conclusion of dire consequences in the event the ballot issue is not passed. What *Citizens to Protect Public Funds* does prohibit is the “over dramatization” of “dire consequences” by presenting the information in “a dramatic or highly emotional way.” *The American Heritage Dictionary* 214 (2d college ed. 1983). It is against this backdrop that the alleged promotional statements in the present case are reviewed:

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<sup>11</sup> In the present case, the Court of Appeals correctly found that 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. (Add. 28.)

**Statement 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, 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 to go to neighboring school districts.

(A-7.)

This statement explains relevant facts about the possible consequences if the referendum vote failed. There is little question based on the financial condition of the School District that the School District would go into statutory operating debt if the proposed Long-Range Facilities Plan was not fully implemented. In fact, Respondents do not claim otherwise. (A-7-A-8.) Rather, what Respondents take issue with is the possibility of dissolution in the event the School District entered into statutory operating debt. (A-7). The fact is, however, that dissolution is a real possibility if a school district ultimately doesn’t have the funds to operate its schools. *See* Minn. Stat. § 123A.60 and §§ 123A.64 to 123A.72 (2011). While there is little question that potential dissolution would constitute a dire consequence, there is equally no question that such a consequence was foreseeable. It was also not overly dramatized as reflected by the totality of information provided by the School District. Consequently, Statement 1 was not promotional in nature.

**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.

(A-8.)

As the *Citizens to Protect Public Funds* court recognized, “a fair presentation of the facts will necessarily include . . . the increased tax rate . . .” *Citizens to Protect Pub. Funds* at 180, 98 A.2d at 677. This statement simply explains the potential tax consequences to the residents in the event that the school district dissolved and the land of the School District was attached to neighboring school districts. When a school district must cease operations because it no longer has the funds to exist, involuntary dissolution occurs and referendum revenue previously approved by the school district to which the dissolved district is attached is applied to the entire area of the newly enlarged district. *See* Minn. Stat. § 123A.73 (2011).<sup>12</sup> Since the School District did not previously have a levy referendum in place, the School District residents attaching to another school district would “likely be paying the taxes of the district . . . that’s nearest to . . . [their] home . . . .” As Respondents did not challenge this statement as false on appeal, they concede that it is true. That being the case, it is disingenuous at this point to claim that it is promotional.

**Statement 3:**

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

(A-9.)

This statement does not appear in any School District publication and, for that reason alone should be dismissed. The closest published “statement” that can be found in Respondents’ submission is “[t]his 2008-09 adopted budget shortfall is projected to be

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<sup>12</sup> In the event of involuntary dissolution, “[t]he authorization for any referendum revenue previously approved shall not be affected by the attachment and shall apply to the entire area of the district as enlarged by the attachment.” Minn. Stat. § 123A.73, subd. 2 (2011).

\$1.5 million. Without adoption of the proposed plan, the projected shortfall would be near 4.1 million for the budget year 2011-2012 . . .” (A-69.) Read together, it is clear that the projected shortfall for the 2008-09 budget year was projected to be \$1.5 million and, if no action was taken by the School District, the projected shortfall would increase to \$4.1 million for the 2011-12 school year.

Respondents also alleged in their complaint that the projection was false because it “reflected ‘worst case’ assumptions,” and “the budget projection was never a realistic budget projection.” (A-9.) This claim, however, fails to take into account what comprised the “proposed plan.” The “proposed plan” was the Long-Range Facilities Plan which encompassed significant staff reductions, operating costs and making major improvements to School District facilities. The projected \$4.1 million “shortfall” was based on the School District not implementing any of the components of the Long-Range Facilities Plan, including staff reductions and operating costs. (*See* A-237.)

Contrary to Respondents’ claim, the School District’s projection realistically presented the financial facts based upon the facts known to the School District coupled with certain assumptions based on cost increase trends. The projection assumed the status quo without implementation of any parts of the Long-Range Facilities Plan. Therefore, even if the statement that was published was considered, it was not promotional.

**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.

(A-10 – A-12.) That introductory statement was followed by examples of new opportunities for education that the School District intended to provide through implementation of its plan. Respondents contend that this statement appearing in the School District's September/October 2009 newsletter was promotional. (A-13.)

A review of the statement in question reveals that Respondents' contention is misplaced. First, the statement merely sets forth anticipated improvements in educational opportunities which was recognized as permissible by the *Citizens to Protect Public Funds* court. *Citizens to Protect Pub. Funds* at 180, 98 A.2d at 673. Second, Respondents' claim that this statement is promotional is, in part, predicated on their assertion that the educational improvements, constitute "promises . . . that the district can in no way assure." (A-12.) Such an assertion mischaracterizes the statement as it merely set forth anticipated improvements as opposed to promises as claimed by Respondents. Further support for this characterization can be found in the School District's December 2009 newsletter which states that the educational improvements would be "commitments voters would be making to young people. . . ." (A-70.)

Finally, Respondents attempt to support their claim that this statement is promotional on the fact that bond proceeds cannot "be utilized for textbooks or educational materials," etc. (A-12.) Once again, this mischaracterizes the statement as

the School District does not state anywhere that that bond proceeds can be used for such purposes

**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.

(A-13.)

Respondents also take issue with the aforementioned statement by School Board member Gary Rantala set out in the September/October 2009 newsletter. (A-54.) While Respondents concede that this statement constituted one Board Member’s “opinion,” they contend that the statement is promotional in nature. Such a contention not only mischaracterizes the statement, but also ignores the underlying facts as well.

Presumably, Respondents’ contention centers on the use of the word “hospice” which is defined as “a home for the sick or poor.” *Webster’s New Twentieth Century Dictionary Unabridged* (2d ed.) (1977). There is little question that the School District was experiencing significant financial issues. There is also little question that the School District had seven school buildings, all of which were underutilized and in need of repair. Finally, there is little question that the School District could not sit back and do nothing which would have resulted in the closure of several schools, and the continued operation of outdated and deficient schools. With this in mind, it is inconceivable that Board Member Rantala’s stated opinion could be characterized as an over-dramatization, as opposed to factual information.

**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.

Respondents also claim that the above quote by Board Chair Robert Larson contained in the September/October 2009 newsletter was promotional. (A-55.) As was the case with Statement 5, Respondents concede that this statement was an expression of opinion by one Board Member.

In addition, in order to determine if the statement at issue was promotional, as opposed to factual, one must consider the statement as a whole. In this respect, Respondents have conveniently ignored the remainder of Board Chair Larson’s statement as follows: “We’ve already cut programs and teachers several times to make ends meet, and going any further will only cause parents to open enroll their children elsewhere. If we close schools, which ones do we close?” (A-55.) Obviously, Respondents do not take issue with this portion of Board Chair Larson’s statement as they do not include it as a basis for their complaint. (A-14.)

Thus, when considering the statement as a whole, it merely sets forth both sides of the issue, namely that previous cuts in programs and teachers had not alleviated the significant financial woes, and that further cuts, by themselves, would result in more students leaving the School District. This is precisely the type of information that courts have found school districts have the power, and indeed the duty, to provide. *See Citizens to Protect Pub. Funds* at 180, 98 A.2d at 677.

**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 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.”*

(A-55.)

Finally, Respondents take issue with a statement made by the School District’s Superintendent of Schools which is set out in the September/October 2009 newsletter.

(A-55.) Once again, Respondents acknowledge that this statement represented the opinion of its speaker.

This statement is also not promotional for essential the same reasons as the previous statement. In this respect, reviewing the statement as a whole reveals that the Superintendent was merely making a statement of fact, namely that if the ballot question did not pass, the School Board would have to close schools and make program cuts which would, in all likelihood, result in more students leaving the School District. This was clearly a foreseeable consequence if the ballot question did not pass which the School District was under a duty to provide.

The above review reveals that the School District and/or School Board did not “promote” the ballot question as found by the Court of Appeals. Consequently, the School District and/or School Board were authorized to expend reasonable funds to inform the resident voters about the ballot issue. As a result, the School District

expenditures were not “disbursements” under Chapter 211A and, therefore, not subject to campaign-finance reporting.

### **III. THE SCHOOL DISTRICT DID NOT VIOLATE MINNESOTA STATUTES SECTION 211B.06.**

#### **A. The School District Is Not Subject To Minnesota Statutes Section 211B.06.**

Respondents alleged in their complaint to the OAH that the School District disseminated false campaign material in order to promote passage of the bond referendum. Minnesota Statutes Section 211B.06 provides, in pertinent part, as follows:

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 (2011). “Campaign material,” for purposes of Chapter 211B, is defined as “any literature, publication or material that is disseminated for the purpose of influencing voting at a primary or other election.” Minn. Stat. § 211B.01, subd. 2 (2011). There is no dispute that school districts do not have the authority to expend funds to disseminate literature “for the purpose of influencing voting . . . .” Thus, as school districts lack the authority to prepare and disseminate campaign material, regardless of whether it is false, the arguments regarding the applicability of Chapter 211A to school district apply with equal force here. Consequently, the OAH lacked subject matter jurisdiction to consider Respondents’ claims alleging violations of Minnesota Statutes Section 211B.06 and such claims should be dismissed accordingly.

**B. Assuming, *Arguendo*, That Minnesota Statutes Section 211B.06 Applied To School Districts, The School District Publications Were Not “Campaign Material” Because They Did Not “Influence Voting.”**

A publication is not “campaign material” unless it has the “purpose of influencing voting.” Thus, the statement at issue must promote a “yes” vote before it can be classified as “campaign material.” Respondents identified four “statements” from the School District publications that they alleged violated Minnesota Statutes Section 211B.06. Of those four “statements” only two “statements” are at issue before this Court.<sup>13</sup>

As discussed in detail above, Statements 1 and 3 were not promotional in nature. Consequently, it must also be true that they did not “influence voting.” Thus, Statements 1 and 3 do not constitute campaign material and they cannot form the basis for “false campaign material” in violation of Minnesota Statutes Section 211B.06.

**C. Even Assuming For The Sake Of Argument That The Statements Were Campaign Material, Which They Were Not, They Were Not False.**

In order to state a *prima facie* violation of the statute, a complainant must establish that (1) a person intentionally participated in the preparation, dissemination or broadcast of campaign material that is (2) false and (3) that the person knows is false, or communicates to others with reckless disregard of whether it is false. The ALJ reviewed all seven statements alleged by Respondents to be false and found that no false statements were made. In addition, the ALJ found that the record did not include evidence that the statements were disseminated with a high degree of awareness of its probable falsity.

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<sup>13</sup> Respondents did not challenge the ALJ’s dismissal of Statement 2 on appeal and, consequently, conceded that it was true. In addition, the Court of Appeals correctly found that Statement 4 was not false. (Add. 35.)

Therefore, the ALJ dismissed the complaint based upon the failure of Respondents to demonstrate a *prima facie* violation for any of the seven alleged statements.

Respondents did not appeal the ALJ's decision for Statements 2, 5, 6 and 7. Consequently, the Court of Appeals reviewed only Statements 1, 3 and 4. The Court of Appeals correctly found that Statement 4 was not a "false statement," and affirmed its dismissal. Consequently, only Statements 1 and 3 remain for review by this Court.

**1. The Petitioners Failed To Establish Intentional Participation**

Although not addressed by the ALJ, Respondents failed to identify in their complaint to the OAH the "person" who intentionally participated in the preparation and dissemination of the alleged false campaign material. Respondents put forth no evidence to suggest that any of the School Board members had any involvement in preparing or disseminating the publications they rely upon for their complaint. Therefore, a *prima facie* violation of Minnesota Statutes Section 211B.06 was not established by the complaint and dismissal of the remaining claims is appropriate.

**2. Statement 1.**

**a. The ALJ did not have subject matter jurisdiction over this untimely claim.**

The statutory process for reviewing complaints filed under the Fair Campaign Practices Act starts with a *prima facie* review by an ALJ. *See* Minn. Stat. § 211B.33 (2011). The ALJ must render a decision within one to three business days of receipt. *See id.* The procedure does not provide for a respondent to submit a response during the *prima facie* review phase. *See id.* As a result, the School District appeared in this matter for the first time before the Court of Appeals.

Under Minnesota Statutes Section 14.69, an agency decision may be reversed or modified “if the substantial rights of the petitioners may have been prejudiced because of findings, inferences, or decisions that are in excess of the statutory authority or jurisdiction of the agency.” *See* Minn. Stat. § 14.69 (2011). The Court of Appeals declined to render a decision regarding the School District’s argument that Respondents’ claim with respect to Statement 1 was untimely because it clearly occurred more than one year prior to the complaint’s filing. The court further stated that it was unclear whether the OAH addressed the issue or whether the School District raised the issue below. The ALJ did not review Respondents’ individual claims when he considered the complaint for timeliness, but rather considered only the complaint as a whole, finding it was filed within twelve (12) months of the December 8, 2009 election. In addition, the School District did not address the issue because the School District was not provided the opportunity to submit a response to the ALJ. The Court of Appeals’ conclusion, however, disregards the clear statutory procedure including the express timelines contained therein.

The statutory procedure provides that a complaint must be filed with the OAH within one year of the alleged act or failure to act that is the subject of the complaint.<sup>14</sup> *See* Minn. Stat. § 211B.32, subd. 2 (2011). Evidence in the record clearly shows that Statement 1 was printed in only one flyer distributed by the School District dated September/October 2009. (A-50-A51.) The complaint was filed on November 4, 2010,

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<sup>14</sup> The statute provides a tolling period if fraud, concealment or misrepresentation prohibits discovery of the claim within the one year period. Minn. Stat. § 211B.32, subd. 1 (2011). Respondents have not made any claim that the tolling provision would be applicable in the present case and, as they failed to make such a claim before the Court of Appeals, are precluded from doing so now.

alleging Statement 1 was false. Therefore, the complaint with respect to Statement 1 was unequivocally untimely.

The School District and School Board do not dispute the Court of Appeals' authority to hear and determine appeals from agency decisions. The jurisdictional question in the present case is whether the OAH wrongly exercised its jurisdiction over the claim related to Statement 1. The statutory procedure for Fair Campaign Practices Act complaints clearly gives the OAH authority to act only with respect to those claims filed within one year of the alleged act or failure to act. *Id.* The untimely claim removed the claim from the subject matter jurisdiction of the OAH. The claim should therefore be dismissed.

**b. The Statement Was Not False.**

This Court determined that Minnesota Statutes Section 211B.06 is directed against false statements of specific facts. *See Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981). The statute does not prohibit inferences or implications, even if misleading. 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. *See Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986).

The Court of Appeals found that the phrase “would need to dissolve” in Statement 1 was false. In doing so, the Court of Appeals accepted Respondents' argument that “would” is the past tense of “will” and, therefore, “[t]he 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.” (Add. 31-32.)

In reaching this conclusion, however, the Court of Appeals failed to consider the definition of “will,” which is far from definitive as claimed by the court. According to *Webster’s Third New International Dictionary*, the word “will” is defined as “used to express frequent, customary, or habitual action or natural tendency or disposition.” *Webster’s Third New International Dictionary*, 2616 (1993). As discussed above, dissolution is a real possibility if a school district does not have the funds to operate its schools. See Minn. Stat. § 123A.60 and §§ 123A.64 to 123A.72 (2011). Thus, Statement 1 is not demonstrably false.

Additional support for the conclusion that the statement was merely a “pessimistic possibility” as found by the ALJ, as opposed to the resolute certainty found by the Court of Appeals, is contained in other statements regarding the possibility of dissolution by the School District. In this regard, the November 2009 newsletter contained an article entitled “Is dissolution of our school district possible? Decide for yourself.” (A-60.) In this article the School District specifically stated as follows:

Lately, some have accused ISD 2142 of using scare tactics to get people to vote for the bond referendum to fund the realignment plan on December 8. They’re claiming the school board and administration are “crying wolf” by painting too gloomy a picture about the possibility of the district dissolving if a “no” vote prevails.

(*Id.*) The article went on to state as follows:

It is important that every resident have the facts that have led the school board to believe that dissolution is probably inevitable if this bond referendum does not pass. Judge for yourself why we have reached this conclusion.

(*Id.*) The article then proceeded to lay out the facts supporting the school district's conclusion. After doing so, the article stated as follows:

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.

(*Id.*)

The School District again addressed the question of statutory operating debt and dissolution in the December 2009 newsletter "Frequently asked questions about the realignment plan . . . ." (A-73.) This section addressed questions such as:

Does going into SOD mean a district will dissolve?

No. . . .

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

The logic is unfortunately fairly straight forward 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.

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 expenses.

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 a momentum of its own, spinning faster and quicker than we can imagine. 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 and the sooner

the district's children are in sustainable settings for gaining the education they deserve.

(A-73.)

Consequently, the evidence supplied by Respondents does not support the conclusion that Statement 1 was false. Therefore, the ALJ's decision dismissing Statement 1 should be affirmed.

Even if, for the sake of argument, the Court found Statement 1 to be demonstrably false, the Court should find that nothing in the record shows it was disseminated with a high degree of awareness of its probable falsity. As shown more fully above, dissolution was a real possibility if the School District did not have the funds to operate its schools. Additionally, in subsequent newsletters the School District explained its reasoning and that dissolution would not be immediate. These facts refute the Court of Appeals' finding that the School District disseminated false information with a high degree of awareness of its probable falsity.

**3. Statement 3.**

**a. The Alleged Statement Was Not Published And, Therefore, Is Not Campaign Material.**

The Petitioners alleged that the following statement was false in violation of Minnesota Statutes Section 211B.06,

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

(A-9.)

Respondents failed to provide any evidence that the alleged Statement 3 in its alleged form was ever actually made. A review of Exhibit H, cited by Respondents as

evidence of the “statement,” is completely devoid of the alleged statement. (A-68.) This fact, in and of itself is fatal to Respondents’ claim.

The Court of Appeals, also without reference to any substantiating evidence, found “the complaint alleged was presented in public presentations by the School Superintendent and district publications.” No support exists anywhere in the record for this statement. Consequently, if the statement was not made, it is axiomatic that the School District cannot be found to have made a false statement.<sup>15</sup>

**b. The Reference to a Budget Shortfall in Exhibit H Is Not False.**

The reference to a “projected shortfall” of \$4.1 million in Exhibit H was the following:

This 2008-09 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 the budget year 2011-2012 . . .

(A-69.)

There can be little question that the two sentences are intertwined and must be read together. The first sentence refers the adopted budget in 2008-09 and the second sentence is a projection into the future three years later assuming no changes were made. This projection realistically presented the financial facts if the School District did nothing and merely maintained the status quo without implementing any parts of the plan. It was reflected in the ISD 2142 Long Range Plan – Financial Projection Status Quo. (A-237.) Therefore, the statement was not demonstrably false as found by the ALJ (“[t]o say that

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<sup>15</sup> It must be equally true that “campaign material” is limited to written matter and excludes oral statements. As a result, Respondents’ claim that the “statement” was made in public presentations given by the superintendent must be rejected.

the [School District's] budget forecast was gloomy, unrealistic or improbable, is not to say that it was demonstrably false.”) (Add. 8.)

In fact, Respondents stated that 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 insurance costs, and that energy costs would rise by ten percent annually from record highs in 2008.” (A-9.) Since Respondents were able to explain the assumptions used in developing the projection, it was clear that they had knowledge of and understood the assumptions and the effect of those assumptions on the projection. Respondents then compared the projection to the approved 2009-10 School Board approved budget which was not based upon the assumptions used in developing the projection, but was instead based upon then current information after implementing a component of the Long-Range Facilities Plan through teacher layoffs and retirements.<sup>16</sup> As a result, Respondents compared apples to oranges which does not amount to a false statement.

Although the “statement” cannot be found in the record, the Court of Appeals used information in the record to support its conclusion that the statement was false. In this regard, the Court of Appeals turned to the record that “before the [d]istrict promoted passage of the ballot question using a \$4.1 million deficit for 2011-2012 the deficits were not growing but decreasing.” (Add. 33.) Similarly, the Court of Appeals relied upon

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<sup>16</sup> The Court of Appeals also relied upon Respondents’ unfounded, unsupported and bare allegation that the School District’s Business Manager in a subsequent media interview “was quoted acknowledging that the budget projections were not realistic, but were intended to dramatize that the district faced financial challenges.” (Add. 33.) (No evidence supporting this alleged media interview was provided by Respondents.)

information on the record showing that the 2009-10 adopted budget's shortfall was less than the 2008-09 budget. (Add. 33.) The Court of Appeals' conclusion was based upon the apples to oranges comparison shown above.

Even assuming, for the sake of argument, that the projection was not realistic, it did not amount to being false. This was echoed by the ALJ's finding that "nothing in the record shows that the [School District's] statements are demonstrably false . . . they are not items that the State may reach, regulate, outlaw or punish," and dismissal should be affirmed. (Add. 8.)

In addition, since there is no support for the allegation that Statement 3 was even made, the School District or School Board cannot be held for knowing that Statement 3 was false or communicated with reckless disregard as to whether it was false. Respondents claim that the School District knowingly made false statements by citing to budget projections that were known to be outdated. Even the information contained in the newsletter shows that the projections were made upon 2008-09 budget information. Therefore, Respondents failed to meet their *prima facie* burden and the ALJ's decision should be affirmed.

### **CONCLUSION**

In order to constitute a "corporation" for purposes of Minnesota Statutes Chapter 211A, the "corporation" must be "formed" to promote a ballot question. As school districts are not "formed" to promote a ballot question, they are not a "corporation" under Chapter 211A. Consequently, school districts do not fall within the definition of "committee" in Chapter 211A and, as a result, are not subject to the reporting requirements of that Chapter.

By the same token, school board members are not “persons acting together” for purposes of Chapter 211A. Therefore, board members are not within the definition of a “committee” under Chapter 211A, rendering the reporting requirement in that Chapter inapplicable in the present case.

Assuming, *arguendo*, that school districts and/or school board members did fall within the definition of “committee” in Chapter 211A, neither the School District nor School Board members promoted the ballot question at issue in the present case. Rather, the School District and/or School Board members merely provided voters with relevant facts to aid them in reaching an informed decision. Thus, the School District and/or School Board members, were not subject to the reporting requirements of Chapter 211A.

In respect to Respondents’ claim that the School District violated Minnesota Statutes Section 211B.06 by allegedly disseminating false campaign material, such a claim is unwarranted as Section 211B.06 does not apply to school districts for essentially the same reasons that Chapter 211A does not apply. Therefore, such claims should be dismissed.

Even assuming, for the sake of argument, that Section 211A.06 did apply in the present case, Respondents’ claims should be dismissed as the alleged statements were not “campaign material” in that they did not influence voting. Respondents’ claim with respect to one of the statements at issue was not timely, and none of the statements at issue were false.

Thus, with the exception of the court of appeal's decision with respect to Statement 4, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

Dated: November 17, 2011

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STATE OF MINNESOTA  
IN SUPREME COURT

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Steve Abrahamson and Tim Kotzian,

Respondents,

vs.

**CERTIFICATION OF  
BRIEF LENGTH**

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,

**Appellate Court Case No. A10-2162**

Appellants,

and

The Minnesota Office of Administrative  
Hearings,

Respondent.

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 12,645 words. This brief was prepared using Microsoft Office Word Version 2003 SP3.

Dated: November 17, 2011

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