

State Of Minnesota In Supreme Court

A10-2162

Steven 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,

The Minnesota Office of Administrative Hearings,

Respondent.

RESPONDENTS' BRIEF AND APPENDIX

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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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ISSUES PRESENTED¹

I.

Minnesota's campaign finance reporting laws define a "committee" as two or more persons acting together to promote, or defeat, a ballot question. When a school board of more than two members directs or approves expenditures of moneys to participate in political campaigns for use, for instance, to disseminate statements and materials to promote the passage of a ballot question, must it report those expenditures or contributions in accordance with Minnesota's campaign finance reporting laws?

Court of Appeals Decision: The school board was a "committee" as defined under Minnesota's Campaign Finance Reports Act and had acted to promote a ballot question and therefore, was subject to campaign finance reporting requirements. The decision reversed the Office of Administrative Hearings Judge's conclusion finding that the school board was not a "committee."

Apposite Statutes or Cases: Minn. Stat. § 211A; *Abrahamson v. St. Louis County School Dist.*, 802 N.W.2d 393 (Minn. App. 2011), review granted (Oct. 28, 2011); *Village of Blaine v. Independent School District No. 12, Anoka County*, 272 Minn. 343, 138 N.W.2d 32 (1965).

II.

A school board may expend a reasonable amount of public funds to educate the public about school district needs by disseminating facts and data related to ballot referendum issues. However, can a school district use public funds to promote the passage or the defeat of a ballot question by presenting one-sided information on a voter issue to sway the voter without violating Minnesota campaign finance laws?

Court of Appeals Decision: Public funds used to promote the passage of a ballot question by presenting one-sided information on voter issues were not authorized by law and therefore, subject to campaign-finance reporting under Minn. Stat. § 211A.02.

Apposite Statutes or Cases: Minn. Stat. § 211A; *Abrahamson v. St. Louis County School Dist.*, 802 N.W.2d 393 (Minn. App. 2011), review granted (Oct. 28, 2011);

¹ Abrahamson and Kotzian are dissatisfied with the Appellants statement of the issues and therefore, as provided under Minn. R. Civ. App. P. 128.02, subd. 2, present an alternative presentation of the issues.

Citizens to Protect Pub. Funds v. Bd. of Ed. Of Parispany-Troy Hills Twp., 13 N.M. 172, 98 A.2d 673 (1953); *Stanson v. Mott*, 17 Cal.3d 206, 130 Cal. Rptr. 697, 551 P.2d 1 (1976).

Summary of the Case

Reporting campaign expenses is the law in Minnesota. Whenever a school district decides to participate in a political-election campaign, the district must report the contributions or expenditures related to that campaign. Notably, the legislature does not preclude school districts from the statutory reporting mandates. The reporting requirements are neither over-burdensome nor extraordinary. They merely seek to capture and make public campaign expenditures and contributions made by candidates, individuals, groups, associations, committees and the like.

When school board members act together as a committee, as in the instant case, using taxpayer moneys to promote the passage of a ballot question, those actions are far from the board's legislative and political decision-making that placed the measure on the ballot in the first instance. The reporting of political campaign expenditures is a pragmatic tool of fairness and transparency in political campaign-election contests. Hence, the Court of Appeals decision now on appeal reflects the legislative intent of social efficiency of accountability through the pragmatic and practical notion of reporting when school district expenditures of public funds or contributions are used in political campaigns to promote or defeat a ballot question.² The Court of Appeals decision is consistent with this Court's guidance on statutory interpretation, and within the bounds of

² The Appellants agree with Abrahamson: "[I]t is clear that the purpose of campaign finance reports is to make the political process more transparent so that members of the public can see the contributions received and expenditures made" Pet. for Rev. of Dec. of Ct. of App. at 3 (Aug. 31, 2011).

the statute's social purpose regarding campaign reporting requirements. Therefore, the Court of Appeals decision should be affirmed.

STATEMENT OF FACTS³

I. The School Board and District acted in a manner that promoted the passage of a capital improvement ballot question requiring campaign finance reporting.

Respondents Abrahamson and Kotzian⁴ filed a complaint with the Office of Administrative Hearings against the St. Louis School District and the District School Board's seven members. The OAH complaint essentially argued two claims backed by several specific factual allegations. The two claims were violations of campaign reporting laws and disseminating false statements under Minnesota Campaign Financial Reporting and Fair Campaign Practices Acts; Minn. Stat. §§ 211A and 211B.

The School Board, for and by the District, authorized the approval of the district's budget and the approval of the expenditures and contributions that ultimately supported efforts to promote the passage of a ballot question on December 8, 2009.⁵ The ballot sought approval by the voters for the issuance of up to \$78.8 million dollars in general-obligation school-building bonds for capital improvements.⁶ The complaint further

³ Abrahamson is dissatisfied with the Appellants statement of facts and under Minn. R. Civ. P. 128.02, subd.2 offers this alternative.

⁴ Throughout this brief, references to "Abrahamson" in the singular is inclusive of both Respondents Steven Abrahamson and Tim Kotzian.

⁵ OAH Complt. (Nov. 4, 2009); A-1 – 233.

⁶ *Id.* Ex. C, Pptrs. A-39-47.

alleged, generally, that the public funds belonged equally to both the proponents and opponents of the ballot question, and that district's use of the funds to promote the passage of the ballot question was an unlawful expenditure.⁷

In addition, Abrahamson outlined, with specificity, the contractual relationship between the District and Johnson Controls, Inc.⁸ The contract provided, among other things, the development of district plans, reports, and studies.⁹ Abrahamson contended that Johnson acted as an agent of the District and assisted the District, through the use of public funds, to prepare materials to promote the passage of the December ballot question.¹⁰ The OAH Complaint concluded that the school district and the board knew of the statutory requirements under Minnesota's campaign financing laws yet failed to file any financial reports regarding political campaign activities, expenditures, contributions, or in-kind contributions on the ballot question.

Thus, Abrahamson alleged the District and the School Board members violated Minn. Stat. §§ 211A.02, .03, .05, and .06 (2010) for expending more than \$750 relating to the ballot question and knowingly failing to file campaign finance reports under Minn. Stat. § 211B.06 (2010), and for disseminating material that contained false statements;

⁷ OAH Compl., e.g., A- 4-5; A-14.

⁸ OAH Compl. 3, Pptrs. A-3.

⁹ *Id.*

¹⁰ *Id.*

and Minn. Stat. § 211B.15, subd. 9 for contributing to a media project under the school district's control to promote the passage of the ballot question.¹¹

The ALJ's decision reflected that Abrahamson's Complaint met the necessary *prima facie* standard to conclude that the School Board and District's political campaign activities were sufficient for further consideration as violating Minn. Stat. § 211A.¹² This statute requires the reporting of those expenditures and contributions once the aggregate amount of \$750 is achieved. The OAH Administrative Law Judge found Abrahamson alleged specific facts to support these claims:¹³

In this case, the [Abrahamson and Kotzian] have alleged specific facts to support that claim that the [School Board and District] disseminated publications and otherwise acted to promote passage of the December 2009 ballot question. For example, the School District disseminated and 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.¹⁴

However, the ALJ determined that the School District is not subject to campaign finance reporting requirements under Minn. Stat. § 211A. The ALJ found the School District had not acted as a "committee" and, as a political subdivision of government, it is

¹¹ OAH Compl. A-1-17.

¹² "Further consideration" reflects the next step — an administrative hearing under Minn. Stat. § 211B.35.

¹³ See, Minn. Stat. § 211B.33, subd. 2 (a): "If the administrative law judge determines that the complaint does not set forth a *prima facie* violation of chapter 211A or 211B, the administrative law judge must dismiss the complaint." As explained later, here, the ALJ dismissed the complaint on other grounds.

¹⁴ *Abrahamson v. The St. Louis School District*, 2010 OAH Or. and Memo., 4 (Minn. Off. Adm. Hrings. Nov. 9, 2010). Add. 4.

not required to report contributions or disbursements under § 211A.¹⁵ The ALJ further concluded the school district is not within the meaning of “committee” under Minn. Stat. § 211A.01, subd. 4, because it defined the school district as a municipality, as found under Minnesota’s municipal tort liability under Minn. Stat. § 466.01 and municipal contracting law under Minn. Stat. § 471.345.¹⁶

The ALJ’s decision further explained that even if the District was considered a “committee,” the expenditures at issue fell within the statutory exemption for election-related expenditures.¹⁷ Although not citing the particular statute allowing for an “exemption,” one statute does so: Minn. Stat. § 204B.32. The statute authorizes the school district to pay for specific election-related expenditures:

[T]he compensation prescribed for election judges and sergeants-at-arms, the cost of printing the school district ballots, providing ballot boxes, providing and equipping polling places and all necessary expenses of the school district clerks in connection with school district elections not held in conjunction with state elections....¹⁸

Abrahamson’s campaign expenditure allegations never referenced any of the above-specified statutory exemptions as violating the law.¹⁹ Instead, the allegations

¹⁵ *Id.*

¹⁶ *Id.* at 4. Add. 4

¹⁷ *Abrahamson*, OAH Or. and Memo. at Add. 5; Minn. Stat. § 211A.01, subd. 6 states that “[d]isbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.”

¹⁸ Minn. Stat. § 204B.32 (d) (West 2010).

¹⁹ OAH Compl. A1-17.

asserted improper expenditures of public moneys relating to the publication of “newsletters” and other similar publications to promote the ballot question.²⁰ Additionally, allegations asserted the use of the District’s bulk mailing postage permit as an expenditure of public moneys — through the approval of the Board acting as a committee in approving the District’s budget. All of this activity required reporting under Minnesota’s campaign finance laws.²¹

Despite the gulf between the alleged reportable campaign expenditures and statutory exemptions the ALJ referenced, the ALJ excused the District’s campaign reporting requirements. The ALJ determined the District met its public disclosure obligations through other statutory mechanisms.²² However, where those specific campaign expenditures or contributions in a \$26 million school budget would be found the OAH neither explained, nor factually supported.²³ But they are easily found through the Minn. Stat. § 211A reporting requirements.²⁴

II. The Court of Appeals agreed with Abrahamson’s legal positions, reversing the OAH decision to dismiss his complaint.

The Court of Appeals disagreed with the ALJ’s decision. The court concluded that the definition of “committee” is inclusive of school board members as “persons working

²⁰ *Id.* Exs. D-H. A-48-80.

²¹ *Id.*

²² *Abrahamson* Or. and Memo. at 5 n.17, A-5, *citing* Minn. Stat. § 123B.10, subd. 1, and §§ 123B.75-77. **Bookmark not defined.**

²³ *See, e.g.*, A-136-223 (Ex. M); *Abrahamson*, Or. and Memo. 1-11, Add. 1-11.

²⁴ *See, e.g.*, Resp. App. -----(Campaign Finance Report).

together to ... promote or defeat a ballot question” under the plain language of Minn. Stat. § 211A.01, subd. 4.²⁵ In addition, the appellate court found that a school district fell within the statutory categorization as a “public corporation:” “[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.”²⁶

The appellate decision further found that the expenditures related to the publication of materials promoting the passage of the ballot question were disbursements as defined under Minn. Stat. § 211A.01, subd. 6 (2010), falling under the reporting requirements under Minn. Stat. § 211A.02 accordingly.²⁷ Because the expenditures did not fall within any of identified categories found under Minn. Stat. § 204B.32, subd. 1(d), such as compensation to election judges and sergeant-at-arms, or the printing of ballots, providing and equipping polling places, and other necessary election expenses of the district clerks, the School District’s expenditures were not required by law, the appellate court considered if the expenditures were authorized by law.

The Court of Appeals concluded that while a school district may expend a reasonable amount of public funds for the purpose of educating and informing the public about facts and data on a ballot question through the dissemination of materials, a district could not expend funds “to promote the passage of a ballot question by presenting one-

²⁵ *Abrahamson v. The St. Louis School Dist.*, 802 N.W.2d 393, 399 (Minn. App. 2011).

²⁶ *Id.* at 398.

²⁷ *Id.* at 400.

sided information on a voter issue — these were not authorized by law.”²⁸ Therefore, the school district’s expenditures that were not required by law nor authorized by law are not exempt from the definition of “disbursement” under Minn. Stat. § 211A.02 and are subject to the reporting requirements.²⁹

Finally, the appellate court also reversed the ALJ’s decision that found Abrahamson’s OAH Complaint failed to provide sufficient *prima facie* facts to require a hearing on the preparation and dissemination of false campaign material under Minn. Stat. § 211B.06, subd. 1: “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 careless disregard of whether it is false.” On remand, during an OAH evidentiary hearing, Abrahamson would have the burden of proof that a violation of Minn. Stat. § 211B.06 occurred by a clear and convincing evidence standard.³⁰

On appeal of the ALJ’s decision, Abrahamson challenged only three of the statements the ALJ determined did not meet the *prima facie* threshold. The Court of Appeals found the ALJ erred on two of the three statements and remanded the matter for further disposition, that is, eventually an evidentiary hearing.³¹

²⁸ *Id.* at 403.

²⁹ *Id.*

³⁰ Minn. Stat. §§ 211B.32, subd. 4, .35 (2010).

³¹ *Abrahamson*, 802 N.W.2d at 403-06.

LEGAL ARGUMENT

I. The statutory definition of “committee” includes an “association of persons acting together” which of itself is inclusive of a designated group of people acting as a board to fall within the scope of campaign financing laws.

A. Statutory interpretation is a question of law and, therefore, review is de novo.

Generally, this Court will determine whether the agency, here, the OAH, violated the constitution, exceeded its authority, engaged in unlawful procedure, erred as a matter of law, issued a decision unsupported by substantial evidence, or acted arbitrarily or capriciously.³² Thus, the reviewing court defers to the agency's expertise in fact finding, and will affirm the agency's decision if it is lawful and reasonable.³³ When reviewing questions of law, however, this Court is not bound by the agency's decision and need not defer to the agency's expertise.³⁴ Where an agency does not make a reasonable interpretation of a statute, it is the role of the this Court to prevent it.³⁵

³² Minn. Stat. § 14.62 (2004).

³³ *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001); *Reserve Min. Co. v. Herbst*, 256 N.W.2d 808, 824-26 (Minn. 1977).

³⁴ *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39- 40 (Minn. 1989) *No Power Line, Inc. v. Minnesota Env'tl. Quality Council*, 262 N.W.2d 312, 320 (Minn. 1977).

³⁵ *See St. Paul Area Chamber of Commerce v. Minnesota Pub. Serv. Comm'n*, 312 Minn. 250, 262, 251 N.W.2d 350, 357 (1977).

Addressing this question is a matter of statutory construction. Interpreting a statute is a question of law that this court reviews de novo.³⁶ When interpreting a statute, a court must first determine whether the statute's language, on its face, is ambiguous.³⁷ “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Id.* Words and phrases are to be construed according to their plain and ordinary meaning.³⁸ Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning.³⁹ Likewise, the object of statutory interpretation is to effectuate and ascertain the intention of the legislature.⁴⁰ And, the court will interpret a statute, whenever possible, to give effect to all of its provisions, reading and construing a statute as a whole, and interpreting “each section in light of the surrounding sections to avoid conflicting interpretations.”⁴¹

³⁶ *Hibbing Educ. Ass'n v. Pub. Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn.1985).

³⁷ *See Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn.1999).

³⁸ *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn.1980).

³⁹ *Ed Herman & Sons v. Russell*, 535 N.W.2d 803, 806 (Minn.1995); Minn. Stat. § 645.16 (2000).

⁴⁰ Minn. Stat. § 645.16 (2008).

⁴¹ *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) .

B. The School District’s position, like that of the ALJ, thwart the plain meaning of statute’s language and the legislative intent regarding who must report political campaign finance contributions and expenditures.

The Appellant School District maintains, as did the ALJ, that to trigger the reporting requirements under Minn. Stat. § 211A for political campaign activities, that a “committee” must be formed in the first instance to promote or defeat a ballot question,⁴² that is, as an “*ad hoc* citizens group formed for the specific purpose of promoting or defeating a ballot question.”⁴³ Thus, a school board cannot be considered a committee because they are “elected policy-makers for the district.”⁴⁴

Abrahamson contends that the School District undermines not only the basics of statutory interpretation, but also the legislature’s intent to capture campaign activities through reporting to promote public accountability. If the School District’s argument is accepted, only committees *formed*, that is, *created* with the specific intent to promote or defeat a ballot question and expend over \$750 meet Minn. Stat. § 211A requirements. Thus, the School District suggests that organizations, corporations, associations, or other groups already *formed — in existence* for other purposes but who may later decide to participate in a political campaign to promote or defeat a ballot question would be *exempted* from state law from reporting under Minn. Stat. § 211A.

⁴² Appellant’s Br. at 20.

⁴³ *Id.* at 28.

⁴⁴ *Id.*

Although it is recognized and accepted that school boards make school-district policy, it does not prevent board members from acting together as persons to fall within the definition of a “committee” to promote or defeat a ballot question under Minn. Stat. § 211A.01, subd. 4. It is one act — legislatively — to place a ballot question before the voters. It is a wholly different act to allow for public funds to be used, or contributions be accepted and then expended, to promote the passage of a ballot question.

C. The School Board members are “persons acting together” within the definition of “committee” under Minn. Stat. 211A.

A statute must be construed in accordance with the statutory definition of the included term.⁴⁵ Where the legislature has defined a term, the court “may not look at the term’s common or trade usage to determine its meaning within the statute.”⁴⁶ Under Minn. Stat. § 211A.01, subd. 4 governing campaign finance reporting, a committee is defined as a corporation or a group of people acting together to promote a ballot question:

“Committee” means a corporation or association or persons acting together ... to promote or defeat a ballot question....⁴⁷

Likewise, the definition of committee under Minn. Stat. § 211B.01, subd. 4, governing fair campaign practices is similar but is more precise regarding the number of actors that form a “committee,” here two persons:

⁴⁵ *St. George v. St. George*, 304 N.W.2d 640, 643 (Minn. 1981).

⁴⁶ *Cease and Desist Order Issued to D. Loyd*, 557 N.W.2d 209, 212 (Minn. App. 1996), citing Minn. Stat. § 645.08 (1) (“requiring that words defined in chapter be construed according to such definition”).

⁴⁷ Minn. Stat. § 211A.01, subd. 4.

“Committee” means two or more persons acting together or a corporation or association acting to ... promote or defeat a ballot question.

In other words, for this particular set of campaign finance laws, “committee” is *not* synonymous with “political committees.” When interpreting a statute, the court will first look to see whether the statute’s language on its face is clear or ambiguous.⁴⁸ “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.”⁴⁹ The basic canons of statutory construction instruct that courts should construe words and phrases according to their plain and ordinary meaning.⁵⁰ Further, a statute should be interpreted, whenever possible, to give effect to all of its provisions.⁵¹

Since the legislature defined “committee,” the Court is obligated to apply the definition accordingly. Under both Minn. Stat. §§ 211A.01, subd. 4, and 211B.01, subd. 4, the legislature used the disjunctive word “or” between “corporation” and “persons acting together” and “two or more persons acting together.” This reflects the legislature’s intent to show separate distinct circumstances of when a “committee” is formed to trigger Minnesota’s laws governing campaign reporting. Construing the provision in the context of the campaign finance reporting laws under Minn. Stat. §§ 211A and 211B will not

⁴⁸ See *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

⁴⁹ *Id.*

⁵⁰ See *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

⁵¹ *Amaral*, 598 N.W.2d at 384 (“no word, phrase, or sentence should be deemed superfluous, void, or insignificant”), citing *Owens v. Federated Mut. Implement & Hardware Ins.*, 328 N.W.2d 162, 164 (Minn. 1983).

result in an absurd result or unjust consequence,⁵² but effectuate the intent of the legislature.⁵³

Even the definition of “formed” does not save the Appellant School District, and the ALJ, from their respective position for purposes of the statute’s applicability that an “ad hoc citizens group” must be formed for the specific purpose of promoting or defeating a ballot question.⁵⁴ The definition of “form” means: “1 to give shape or form to; fashion; make, as in some particular way; 2 to mold or shape by training and discipline; ...3 to develop ...4 to think of; frame in mind; conceive; 5 to come together into; organize into ... 6 make up; act as”⁵⁵ Here, the School District suggests a separation from an existing entity as a prerequisite — the notion of an “*ad hoc* committee”. But none is required. The statute mandates merely “persons acting together” to formulate and come within the definition of a “committee.”

Had the legislature intended “committee” under Minn. Stat. §§ 211A and 211B to be defined differently or even consistent with Minnesota’s other election laws, it would have done so. But it purposely did not. It should be noted that the vast majority of “ballot questions” in the state originate through school districts. Cities and counties rarely initiate

⁵² *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961).

⁵³ *Amaral*, 598 N.W.2d at 385-86.

⁵⁴ See Appellants Br. at 28.

⁵⁵ Michael Agnes, ed., *Webster’s New World College Dictionary*, 555 (4th ed. Macmillan 1999).

referenda. Thus, since Minn. Stat. §§ 211A and 211B include “ballot questions,” it denotes the legislature’s intent that the law apply to school district referenda. Given this, it would seem that the legislature would have explicitly exempted school districts from this reporting requirement had it intended to do so.

More importantly, it would appear odd for the legislature to require private individuals, associations, or groups to report on their political activities regarding ballot questions, while publicly funded entities such as school boards would be exempt. Under the School District’s argument, existing organizations, associations, corporations, and other groups, in existence for other purposes (or even to promote education generally) would be exempt from the statute if they decide to promote a ballot question but do not form a separate committee to run the political effort. This undermines the intent of the legislature regarding public accountability regarding election-campaign activities. Contrary to the School District’s position, board members can act as “persons acting together” to cause the promotion or defeat of a ballot question as constituting a “committee” despite their other legislative duties to create educational district-wide policies.⁵⁶

What is certain under the instant facts, is that the St. Louis County School Board expressly advocated the promotion of the ballot questions through financial support, using public funds and in-kind contributions through district employees, to ensure a successful campaign. The definition of “committee” under Minn. Stat. § 211B.01, subd. 4

⁵⁶ Compare Appellant’s Br. at 29.

includes “two or more persons acting together.” In the instant case, as the ALJ’s decision reflects, Abrahamson provided specific facts to support the allegations of the St. Louis County School District’s partisan campaign promotion to pass a ballot question.⁵⁷ 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.⁵⁸ The School District’s electioneering brings it within the provisions of the law to report those expenditures of public funds (or contributions) for public accountability and scrutiny as other actors and participants in referenda elections must.

II. School Districts are quasi-public corporations, not subdivisions of government under Minn. Stat. §§ 211A and 211B.

A. Statutory interpretation requires a determination of ambiguity, and if not, the legislature’s intent can be discerned from its plain meaning.

When interpreting a statute, a court must first determine whether the statute’s language, on its face, is ambiguous.⁵⁹ The statute’s language is ambiguous only if it is subject to more than one reasonable interpretation⁶⁰ with the words and phrases construed according to their plain and ordinary meaning.⁶¹ Where the legislature’s intent is clearly

⁵⁷ 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....”)

⁵⁸ *Id.*

⁵⁹ *Amaral*, 598 N.W.2d at 384.

⁶⁰ *Id.*

⁶¹ *Frank’s Nursery Sales, Inc.*, 295 N.W.2d at 608.

discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning.⁶²

B. Although the Appellant admits “corporations” are “committees” for purposes of reporting campaign activities, it challenges the appellate court’s analysis as “side-stepping” statutory interpretive rules.

The Appellant School District contends that a corporation must be formed to promote a ballot question.⁶³ The School District argues the appellate court did not complete its analysis on this question and “attempted to sidestep this analysis.”⁶⁴ Abrahamson contends that Court of Appeals analysis is complete because of the construction of the statute as a whole, and the legislative knowledge of the effect of definitions. Therefore, when the legislature purposefully requires inclusivity of corporations, including public corporations such as school districts for purposes of campaign finance reporting, it does not contradict itself or cause ambiguity when specifically limiting a definition of “corporation” for a specific statutory purpose within the same chapter.

C. For purposes of Minnesota laws governing campaign reporting of expenditures or contributions, a school district is a public corporation subject to those election campaign laws.

Under Minnesota statutory law (unless otherwise specifically declared) and under Minnesota common law, school districts are public corporations:

⁶² *Ed Herman & Sons*, 535 N.W.2d at 806; Minn. Stat. § 645.16 (2011).

⁶³ Appellants Br. at 18.

⁶⁴ Appellants Br. at 20.

“[d]istricts shall be classified as common, independent, or special districts, each of which is a public corporation....”⁶⁵

This Court has described the school district as a public corporation clothed with governmental power for education with limited powers as dictated through the legislature:

The legislature has provided by law for school districts, which it has constituted public corporations clothed with governmental power to perform the public duty of providing public schools...The legislature is vested with discretionary power to prescribe the manner of the government of public corporations.⁶⁶

And the exercise of that power is limited:

By statute, certain duties are delegated to school boards to be exercised by them in their corporate capacity as such.⁶⁷

This Court has continually affirmed the description of school districts as public corporations. In a 1965, in *Village of Blaine v. Independent School District No. 12, Anoka*

⁶⁵ Minn. Stat. § 123A.55 (2008); *In re Consolidation of School Districts in Freeborn County*, 246 Minn. 96, 74 N.W.2d 410 (1956) (School districts, although not municipal corporations, are at least public corporations); *Bank v. Brainerd School Dist*, 49 Minn. 106, 51 N.W. 814 (1892) (school districts are corporations with limited powers, organized for public purposes, and the duties of the trustees or boards of education, entrusted with the management and care of the property of those districts, are public and administratively only); Op. Atty. Gen., 622-I-8, July 21, 1953 (a school district when organized becomes a public corporation).

⁶⁶ *Muehrign v. School Dist. No. 31 of Stearns County*, 224 Minn. 432, 435, 28 N.W.2d 655, 657 (1947) (citations omitted).

⁶⁷ *Id.* at 224 Minn. 436, 28 N.W.2d 658.

County, this Court found school districts as “at least public corporations”⁶⁸ and further stated that they are “quasi-public corporations, governmental agencies with limited powers. They are arms of the state and are given corporate powers solely for the exercise of public functions for educational purposes.”⁶⁹

Likewise, under Minn. Stat. § 211B.01, the definition of a school district is subject to the applicability of the definition used in Chapter 200.⁷⁰ Minn. Stat. § 200.02, subd. 19 defines a school district as “an independent, special, or county school district.” Minn. Stat. § 200.02 is consistent with Minn. Stat. § 123A.55 defining a “school district” as a public corporation. This statute contradicts what the Appellant School District suggests.⁷¹

The Appellant School District’s brief misconstrues the definition under Minn. Stat. § 200.02, subd. 19 which describes the *types* of school districts — independent, special, or county — and does not *define* a school district.

⁶⁸ *Village of Blaine v. Independent School District No. 12, Anoka County*, 272 Minn. 343, 350, 138 N.W.2d 32, 38 (1965).

⁶⁹ *Id.*, 272 Minn. 351, 138 N.W.2d 38 (citation omitted). *See also, State v. Minnesota Transfer Ry. Co.*, 80 Minn. 108, 114, 83 N.W. 32, 34 (1900) (defining a railroad as a quasi public corporation, the Minnesota Supreme Court outlined a similar, and cogent explanation of a quasi public corporate role, “[t]he general rule is that ‘a railroad company is a quasi public corporation, and all its rights and powers are conferred upon it, not merely for the benefit of the corporation itself, but also in trust for the benefit of the public....’”

⁷⁰ Minn. Stat. § 211B.01, subd. 1 (2006).

⁷¹ Appellant Br. at 23.

Likewise, the School District’s reliance on “employer” statutory definitions citing and quoting from Minn. Stat. §§ 181.940, subd. 3, 181.945, subd. 1(c), and 181.60, subd. 2,⁷² is not only inapposite but supports Abrahamson’ arguments that when the legislature intends to define “school district” for a specific statutory purpose, it knows how to and does so accordingly. In other words, within the general context of Minnesota campaign finance and reporting laws under Minn. Stat. §§ 211A and 211B and within the specific context of the definition of “committee” when the Minnesota legislature intends to exclude school districts as “public” or “quasi-public corporations,” it will define them as a “political subdivision” but only for specific statutory purposes.

For instance, for purposes of depositing and investing local public funds under Chapter 118A, a school district is identified as a “government entity.”⁷³ For purposes of Minnesota’s Government Data Practices Act, a school district is defined as a “political subdivision.”⁷⁴ For matters directly related to the State Auditor, the definition of a “political subdivision” also includes school districts.⁷⁵ And, as a last example, under Chapter 1 governing enemy attacks and temporary relocation of seats of government, a “political subdivision” definition includes school districts.⁷⁶

⁷² Appellant Br. at 22.

⁷³ Minn. Stat. § 118A.01, subd. 2 (2005).

⁷⁴ Minn. Stat. § 13.02, subd.11 (2005).

⁷⁵ Minn. Stat. § 6.465, subd. 2 (2009).

⁷⁶ Minn. Stat. § 1.26, subd. 1 (2009).

Thus, if the legislature intended to define a school district as an entity other than a public corporation under Minn. Stat. § 123A.55, for a specific applicable law, it would have done so as the previous examples reflect. But, under governing campaign finance and reporting laws, the legislature did not. Nowhere in the governing campaign reporting statutes are school districts specifically precluded from obligations associated with the expenditure of campaign funds as a “public corporation.”

Consistent with legislative enactments to use definitions for specific purposes to distinguish a school district as a “public corporation” or as a “political subdivision,” in only one section under the campaign finance laws is there a definition for “corporations.” And, that definition is specifically limited to the applicability of corporate contributions:

Definitions. 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.⁷⁷

Because the language of this subdivision limits the applicability — “for purposes of this section” — to a specific type of corporation — for profit, nonprofit, and limited liability— to one section of the law, it does not mean this definition is to be used throughout the entire statute as a definitive meaning when the word “corporation” is found in the definition of “committee.” If the legislature sought to limit the definition of

⁷⁷ Minn. Stat. § 211B.15, subd.1 (2010) (Original bold; emphasis added).

corporation as used within the definition of “committee,” it would have done so as it did under Minn. Stat. § 211B.15, subd. 1.

Instead, to ensure compliance with Minnesota’s campaign laws of all persons and entities regarding disclosure of campaign activities, the definition of “committee” is not limited. In other words, if the legislature wanted to exclude a school district as a public corporation from reporting under Minn. Stat. §§ 211A and 211B, it would have said so. The Court of Appeals reached the same conclusion consistent with this Court’s precedent, and legislative intent expressed through the plain meaning of the governing statute.⁷⁸ Therefore, the definition of “committee” under Minn. Stat. §§ 211A.01, subd. 4 and 211B.01, subd. 4, includes a school district as a “public corporation” and therefore a school district is are subject to the requirements of Minnesota’s campaign finance and reporting laws.

III. The Appellant School District cannot expend funds to promote the passage of a ballot question by presenting one-sided information on the voter issue; and, if expenditures are not required or authorized by law, they must be reported under Minn. Stat. § 211A.

A. The standard of review is de novo regarding statutory interpretation; and when the legislative intent is discernible, the Court will apply the statute’s plain meaning.

Interpreting a statute is a question of law that this Court reviews de novo.⁷⁹ When interpreting a statute, a court must first determine whether the statute’s language, on its

⁷⁸ *Abrahamson*, 802 N.W.2d at 398.

⁷⁹ *Hibbing Educ. Ass’n*, 369 N.W.2d at 529 (Minn.1985).

face, is ambiguous.⁸⁰ The statute's language is ambiguous only if it is subject to more than one reasonable interpretation⁸¹ with the words and phrases construed according to their plain and ordinary meaning.⁸² Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning.⁸³

B. The Appellant School Board misinterpreted the appellate court's decision to reach the incorrect conclusion that legal authority prohibits expenditure of public funds to promote a ballot question.

The Appellant School Board asserts that Court of Appeals found that school districts can “only expend funds to provide factual information, and as such is contrary to the appellate court's legal conclusion that school districts are corporations, thus, under Minn. Stat. § 211A can expend funds to promote a ballot question.”⁸⁴ The School Board's analysis wholly misses the legal conclusion of the Court of Appeals regarding the expenditure of public funds.

Specifically, the appellate court concluded that public funds could not be used to promote a ballot question when the information is one-sided. As such those expenditures are not authorized by law and since they are not election-related (for election judges or

⁸⁰ *Amaral*, 598 N.W.2d at 384.

⁸¹ *Id.*

⁸² *Frank's Nursery Sales, Inc.*, 295 N.W.2d at 608.

⁸³ *Ed Herman & Sons*, 535 N.W.2d at 806; Minn. Stat. § 645.16 (2011).

⁸⁴ Appellants Br. at 24.

publishing ballots, for instance under Minn. Stat. § 204B.32, subd. 1(d) (2010)) the expenditures are not required by law and therefore reportable under Minn. Stat. § 211A:

[A]lthough a school district may expend a reasonable amount of funds for the purpose of educating the public about school-district needs and disseminating facts and data, a school district *may not expend funds to promote the passage of a ballot question by presenting one-sided information* on a voter issue. In this case, the school board's expenditures—public funds used to promote the passage of the ballot question by presenting one-sided information on a voter issue—were not authorized by law. We therefore conclude that the expenditures by the school district are election-related expenditures not required or authorized by law and not exempt from the definition of “disbursement” under chapter 211A.⁸⁵

Abrahamson contends that the Appellant School Board, during its campaign failed to invite, encourage, or publish the dissenters' opposition, but instead used public funds for its exclusive purpose to promote the ballot question's passage. As such, the activities of the School District in using taxpayer moneys is reportable under Minn. Stat. § 211A.

The District's expenditures for the December 2009 ballot election reflected a position that it may freely spend taxpayer moneys to conduct an election campaign, to influence voters, provide one-sided arguments during an election campaign, and otherwise use its prestige, authority, and resources to convince voters to pass the bond referendum. The government's use of public resources to manufacture citizen support for a partisan viewpoint on political issues raises serious questions concerning the integrity of the democratic process. It is a truism that, if a governing structure based upon widespread genuine citizen opinions is to survive as a viable democracy, it must place

⁸⁵ *Abrahamson*, 802 N.W.2d at 403 (emphasis added).

legal restraints on the government's ability to manipulate the formulation and expression of that opinion:

Although more subtle than censorship, official partisanship thorough [sic] the affirmative act of disseminating propaganda in support of a partisan viewpoint may pose as great or greater danger to political rights of free expression.⁸⁶

There are instances, therefore, in which government funds are used lawfully to express views on matters of importance, where taxpayers may disagree with those views. With respect to structured political questions such as ballot questions, however, the law must draw a line between publicly-financed government communications informing the public of the internal workings of government, such as studies, hearings, debates, rules, and decisions, and publicly financed government campaigns which interfere with the external political process by attempting to affect the outcome of citizen opinion and elections.⁸⁷

There is no binding State Supreme Court authority on point. However, the Court of Appeals did cite and Abrahamson agrees, with cases from other state courts as persuasive authority, including a 1966 Attorney General opinion letter that predicted the eventual appellate outcome. In short, if expenditures or contributions of public moneys occur to promote or defeat a ballot question it must be reported in accordance with Minn. Stat. § 211A; or, alternatively, if illegally expended, the practice must cease. Further, the

⁸⁶ Edward H. Ziegler, Jr., *Government Speech and the Constitution: The Limits of Official Partisanship*, 21 B.C.L.Rev. 578, 580 (1980).

⁸⁷ Id. at 585.

only statute providing for the authority of election-related expenditures is found under Minn. Stat. § 204B.32, but the authority is specific and narrowly limited to the expenses *for* the electoral process, *not* to exhort from the voters a favorable vote to pass the ballot question. In other words, monetary disbursements for holding an election ballot contest are in no sense analogous to the expenditure of money to influence voters prior to that election.

The 1966 Minnesota Attorney General’s Office opined, referenced above, on the topic of district expenditures of public moneys for ballot question elections is similar to the instant case.⁸⁸ The proposed bonds referred to in the opinion letter were for the construction and modification of school buildings.⁸⁹ Specifically, two questions on this topic were related to whether or not a school district could pay for the printing and the mailing of literature to voters in the name of the school board urging the passage of the bond question, as long as the expenses were reasonable.⁹⁰ The Attorney General answered “no” to both questions.

The Attorney General relied on a 1953 New Jersey decision in *Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Tp.*,⁹¹ written by then William J. Brennan, Jr. before his accession to the United States Supreme Court, that while not of our jurisdiction, is and remains persuasive. There, a district published a booklet in New

⁸⁸ Minn. Atty. Gen. Op. 159a-3 (May 24, 1966), Pttrs. App. 250-54.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Citizens to Protect Pub. Funds v. Bd. of Educ. of Parsippany-Troy Hills Tp.*, 98 A.2d 673 (N.J. 1953).

Jersey exhorted “Vote Yes” on several pages and warned of consequences “if you don’t Vote Yes.” While the court upheld the right of the school board to present the facts to the voters, it admonished the use of funds that advocated *only one side of the issue without affording the dissenters an opportunity to present their side:*

In that manner the board made use of public funds to advocate one side only of the controversial question without affording the dissenters the opportunity by means of that financed medium to present their side, and thus imperiled the propriety of the entire expenditure. The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure is then not within the implied power and is not lawful in the absence of express authority from the Legislature.⁹²

We agree with this interpretation. The scope of the District’s school board authority to disseminate information, at the taxpayer’s expense, cannot be patently designed to exhort the electorate to cast their ballots in favor of a bond referendum as advocated by the board. In other words, “[t]o educate, to inform, to advocate or to promote voting on any issue may be undertaken, provided it is not to persuade nor to convey favoritism”⁹³

The Appellant School Board is mistaken when it continues to assert that this case, and others similarly cited by the Court of Appeals states that school districts are

⁹² *Id.* at 677.

⁹³ *Phillips v. Maurer*, 67 N.Y.2d 672, 490 N.E.2d 542, 543 (N.Y. 1986) (citing *Stern v. Kramarsky*, 84 Misc.2d 447, 452, 375 N.Y.S.2d 235 (N.Y. 1975); *See, also, e.g., Schulz v. State*, 86 N.Y.2d 225, 654 N.E.2d 1226 (N.Y. 1995).

prohibited “from spending any money on the promotion of a ballot question.”⁹⁴

The Court of Appeals cited other similar cases such as *Stanson v. Mott*, in which the California Supreme Court held that “in the absence of clear and explicit legislative authorization, a public agency may not expend funds to promote a partisan position in an election campaign.”⁹⁵ Likewise, the Supreme Court of Mississippi, in *Smith v. Dorsey*,⁹⁶ addressed the issue of the expenditure of public funds. In that case, taxpayers brought a lawsuit against school board members for spending time, money, and resources to promote passage of a bond referendum. The Supreme Court upheld, in relevant part, the lower court's ruling that the authority of a public entity are only those statutorily given:

Nothing in our statutory or common law authorizes in a public entity's use of public funds to actively campaign for a favored position on a bond issue. A school board, or any public entity, has only those powers expressly provided by statute and those which are vested by necessary implication.⁹⁷

Even if the District and School Board members contended that such a campaign was necessary in response to “distortions in the community generated by [others] concerning the impact of a bond referendum” the argument should fail as the *Dorsey* court held: the school district may not expend taxpayer funds to influence the voters.⁹⁸

⁹⁴ Appellant Br. at 25.

⁹⁵ *Stanson v. Mott*, 17 Cal.3d 206, 130 Cal. Rptr. 697, 551 P.2d 1, 3 (1976).

⁹⁶ *Smith v. Dorsey*, 599 So.2d 529 (Miss. 1992).

⁹⁷ *Id.* at 535.

⁹⁸ *Id.* at 540.

Although not controlling, other courts such as in Colorado, North Carolina, Florida, and District of Columbia have opined that government entities may not use public funds to engage in partisan political campaigns.⁹⁹

The Appellant School Board's argument is not only wrong, but fundamentally dangerous. It is not the fact that the School District wants to see the bond measure pass, or even that it declares that it would like to see the bond measure pass. Rather, it is the actions of initiating and operating a partisan political campaign using public funds and resources to support (or oppose) a referendum election that should be left to the free election of the voters:

Official partisanship by public agencies in connection with these political processes can only demean, distort and eventually destroy, if not the democratic process itself, at least public confidence in the process.... If a republican form of government allows its democratic

⁹⁹ See, e.g., *Coffman v. Colo. Common Cause*, 102 P.3d 999, 1013 (Colo. 2004) (holding that when public funds are used to inform the public about ballot questions, information must present both sides of the issued); *Dollar v. Town of Cary*, 569 S.E.2d 731, 733 (N.C. App. 2002) . (“Local government advertising on particular issues is allowed where the advertising is of an informational nature...Where the advertising, however, is designed to promote a viewpoint on an issue in order to influence an election, it is impermissible.” The determination of whether advertising is informational or promotional is a factual question, and factors such as the style, tenor, and timing of the publication should be considered.); *Palm Beach County v. Hudspeth*, 540 So.2d 147, 153 (Fla.App. 1989). (To the extent that a proposed expenditure of public funds infringes upon or tends to infringe upon the political power reserved to the people, that expenditure will be deemed constitutionally impermissible.); In *District of Columbia Common Cause v. District of Columbia*, 858 F.2d 1 (D.C.Cir.1988) (expenditures made by the city government in a campaign to defeat a ballot proposal were illegal: “We hold that the individual appellees have standing as municipal taxpayers to challenge expenditures by the District of Columbia government to *influence* the outcome of an initiative. On the merits, we conclude that the expenditures were illegal.”) *Id.* at 11.

processes to be undermined by official partisanship it will fast lose the purpose of its power in the fact of its power.¹⁰⁰

Allowing for official partisanship of the District with taxpayer moneys will undermine the public confidence in the democratic process and as a matter of law should not be allowed. Regardless, at a minimum, the very use of public moneys should be reported under Minn. Stat. § 211A, a statutory requirement that is not burdensome,¹⁰¹ but encourages transparency in ballot election contests of all participants in the contest, to allow the public to see how and from whom those disbursements or contributions are made. It is nothing more than a part of the experiment of democratic government that any school district should welcome.

Finally, the Appellant School Board relies on a section of Minn. Stat. § 211A.01 regarding disclaimers on campaign material. Its argument that “it would be absurd to suggest that the disclaimer provision applied to school districts.”¹⁰² The argument has no merit. This statutory provision was found unconstitutional under the Court of Appeals decision in *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006).

¹⁰⁰ H. Ziegler, Jr., at 618-19 (1980).

¹⁰¹ See, Campaign Financial Report, Office of the Minnesota Secretary of State <http://www.sos.state.mn.us/index.aspx?page=138#Campaign, Resp. App. ----->.

¹⁰² Appellants Br. at 25.

IV. The Court of Appeals properly reversed the decision of the ALJ regarding the statements meeting the necessary *prima facie* standard for an evidentiary hearing, but for one which the court upheld.

A. The Court of Appeals found sufficient substantial evidence in the record to reverse the ALJ's decision that Abrahamson failed to meet the required *prima facie* standard.

Generally, this Court must exercise judicial restraint, lest it substitutes the Court's judgment for that of the agency.¹⁰³ The reviewing court will not disturb an agency's decision as long as the agency's determination has adequate support in the record as required by the substantial evidence test.¹⁰⁴ The substantial evidence test is satisfied when there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."¹⁰⁵ Nevertheless, this Court retains the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.¹⁰⁶

B. Abrahamson presented to the OAH a complaint for a favorable *prima facie* ruling resulting in the appellate court's reversal in part for purposes of an evidentiary hearing.

The Court of Appeals reversed in part the ALJ's dismissal of Abrahamson's OAH

¹⁰³ *In re Excess Surplus Status of Blue Cross and Blue Shield of Minnesota*, 624 N.W.2d 264, 277 (Minn.2001) (citation omitted).

¹⁰⁴ *See City of Moorhead*, 343 N.W.2d at 847.

¹⁰⁵ *Matter of Request of Interstate Power Co. for Authority to Change its Rates for Gas Service in Minnesota*, 574 N.W.2d 408, 415 (Minn.1998) (citation omitted).

¹⁰⁶ *In re Denial of Eller Media Co., 's Applications for Outdoor Advert. Device Permits in City of Mounds View*, 664 N.W.2d 1, 7 (Minn. 2003), citing *St. Otto's Home v. Minn. Dept. of Human Services*, 437 N.W.2d 35, 39-40 (Minn.1989).

Complaint regarding allegations of the School District's dissemination of false statements during the 2009 ballot question political campaign. Two of three statements on appeal survived for future evidentiary proceedings. The Appellant School Board believed the court exceeded its authority because no substantive evidence in the record, as presented, supports a *prima facie* showing necessary in the OAH Complaint.

C. The ALJ's opinion that the School District's statements failed to meet the *prima facie* requirements to avoid dismissal of Abrahamson's OAH Complaint is contrary to the law.

The Court of Appeals recently concluded in *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, that for a person to sustain an OAH complaint under Minn. Stat. § 211B.06 under a *prima facie* standard the complainant must, if the facts are "accepted as true, would be sufficient to prove a violation of chapter ...211B."¹⁰⁷ The statute prohibits the preparation and dissemination of false campaign material. The prohibition has two elements: (1) a person must intentionally participate in the preparation or dissemination of false campaign material; (2) the person developing or disseminating the material must know that the item is false, or act with reckless disregard as to whether it is false.

The first element of the statute, the test is objective.¹⁰⁸ The second element of the statute is subjective.¹⁰⁹

¹⁰⁷ *Barry v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. App. 2010).

¹⁰⁸ See *Hawley v. Wallace*, 137 Minn. 183, 186, 16 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.)' review denied (Minn. 2006).

¹⁰⁹ *Riley*, 713 N.W.2d at 398.

Thus, Abrahamson, in his verified OAH Complaint, must prove that the District and School Board members “entertained serious doubts” as to the truth of the publication or acted “with a high degree of awareness” “of its probable falsity.”¹¹⁰ Because the complainants make the allegations under oath, the OAH Complaint acts much like affidavits that are used to prove or disprove the asserted claims: “Verified pleadings may be considered as affidavits tending to prove or disprove the claims of the respective parties.”¹¹¹ Here, similar to civil litigation, “the verified complaint has the drawback of committing the plaintiff to a version of the facts before discovery has even begun. The verified complaint thus provides the defense attorney with a potential means by which to impeach the plaintiff.”¹¹²

While an OAH Complaint alleging a violation of Minn. Stat. § 211B for civil prosecution is not a defamation action, this Court has determined that “the plain language [of the statute] includes the definition of actual malice set forth in [*Chafoulias v. Peterson*], and we see no reason why actual malice should be analyzed differently here than in a defamation action.”¹¹³ In short, “reckless disregard does not mean reckless in the ordinary sense of extreme negligence. Instead, reckless disregard requires that the

¹¹⁰ *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64,74 (1964). *See also*, *Riley*, 713 N.W. 2d at 398.

¹¹¹ *Behrens v. City of Minneapolis*, 271 N.W. 814, 816 (Minn. 1937).

¹¹² *See*, e.g., Stephen S. Ashely, *Bad Faith Actions Liability & Damages* § 10:26 (West Group 1997).

¹¹³ *Riley*, 713 N.W.2d at 399, *citing Chafoulias v. Peterson*, 668 N.W.2d 642, 654-55 (Minn. 2003).

defendant make a statement while subjectively believing that the statement is probably false.”¹¹⁴

Thus, for the complainants to meet the *prima facie* standard, they must acknowledge under oath they know the *subjective* intent of each respondent at the time of filing. The acknowledgement must affirm that the complainants know that each respondent knew the statements made and disseminated were false or were probably false at the time they were made.

The OAH dismissed Abrahamson’s first allegation regarding the District’s statement “if the plan [the ballot question] 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,”¹¹⁵ that is, “statutory operating debt.”¹¹⁶ The Court of Appeals reversed the ALJ’s decision. The ALJ had concluded that “[w]hether 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.”¹¹⁷ But, that is not the statement the District made.

The statement reflects a definitive state of occurrence of “statutory operating debt” — by June 2011 (the end of the District’s budgetary year) — if the voters fail to approve

¹¹⁴ *Id.* 713 N.W. 2d at 398-99.

¹¹⁵ OAH Compl. 7. A-7.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

the plan. Likewise, the District stated that once this point is reached, it “would need to dissolve.” The word “would” is the past tense of “will.”¹¹⁸ Thus, contrary to the ALJ’s opinion, which the appellate court agreed, the statement reflects far more than an “inference” or a “pessimistic possibility.”¹¹⁹ In fact, the record reflected that the School District did not “state [it] will dissolve or will be required to dissolve if it enters into statutory operating debt,”¹²⁰ it is *exactly* what the School District declared by using the past tense of “will” with “would.” And, as Abrahamson asserted, a district entering into statutory operating debt does not lead to dissolution and then lead to district children going to neighboring school districts.¹²¹ The fact the statements were made objectively shows the intent of stating them as fact. Therefore, Abrahamson, as the Court of Appeals found, met the necessary objective standard to move the matter to an evidentiary hearing (“the claimant has the burden at the hearing to prove by clear and convincing evidence that the respondent either published the statements knowing the statements were false.”¹²²)

In a similar context, Abrahamson alleged the District’s statement of a “[p]rojected

¹¹⁸ Henry Bosley Woolf, *Webster’s New Collegiate Dictionary*, 1331 (G.& C. Merriam Co. 1981).

¹¹⁹ OAH Compl. 7. A-7.

¹²⁰ *Id.*

¹²¹ *Id.* “Children in the school district would then go to the neighboring school districts.” Once again, the District used the past tense of “will” with “would.”

¹²² OAH Or. and Memo. 6. Add 6.

annual deficit in 2011-12 [of] \$4.1 million” as false under Minn. Stat. § 211B.06.¹²³ The ALJ opined that “[t]he Fair Campaign Practices Act does not prohibit Respondents from disseminating campaign material that others regard as pessimistic or uncharitable.”¹²⁴ Abrahamson did not characterize the projection as “pessimistic” but outright false. He demonstrated that before the School District promoted the passage of the ballot question using a \$4.1 million deficit for 2011-12, the deficits were not growing, but decreasing.

The School Board approved a 2009-10 budget with an actual total deficit of \$833,000.¹²⁵ Abrahamson further concluded that from the documentation and promotional material that the District’s agent, Johnson Controls would also obtain a financial benefit from the ballot’s passage, thereby creating a taint upon the statements made.¹²⁶ Finally, the District’s Business Manager admitted that the budget projections were not realistic and had an alternative motive.¹²⁷

However, the ALJ opined that “[w]hether or not the [District’s] predictions are reliable are matters that are committed to the judgment... of the voters....”¹²⁸ Over dramatized statements that omit factual and available data in the hands of the entity holding the information from the public to promote the passage of a ballot question are

¹²³ OAH Compl. 9. A-9.

¹²⁴ *Abrahamson* Or. and Memo. 8. Add. 8.

¹²⁵ OAH Compl. 9. A-9.

¹²⁶ *Id.*

¹²⁷ *Id.* 10. A-10.

¹²⁸ *Abrahamson*, Or. and Memo. 8. Add. 8.

false statements. A person or entity such as the School District knowingly and willfully made false statements and through omission concealing material facts with intent to defraud the voter should not be allowed to avoid governing campaign laws against false statements.¹²⁹ Therefore, because Abrahamson met the objective *prima facie* test under Minn. Stat. § 211B.06, based upon the substantive record, the Court of Appeals reversed the ALJ's decision.

Finally, Abrahamson contended that the School District understood the December 2009 ballot question was for capital construction or improvement projects. The District also knew that state law prohibited the use of these funds for programming yet, the District falsely stated that passage of the bond referendum would result in new opportunities for education, unrelated to the actual moneys expended for school construction.¹³⁰ The opportunities included better learning materials (up-to-date textbooks and learning materials); learning centered on the individual student (through personalized learning and learning that is growth oriented and achievement based); focus on life skills (this includes life-career skills, work skills, social skills, healthy lifestyle choices, critical thinking); expanded elementary level programming (third-graders as fluent readers, character education, learning at student's pace); solid core programming (where students

¹²⁹ Compare, e.g., *Collins v. USAA Prop. and Cas. Ins. Co.*, 580 N.W.2d 55, 57 (Minn. App. 1998) citing *Astoria Quality Drugs, Inc. v. United Pacific Ins. Co. of New York*, 163 A.D.2d 82, 557 N.Y.S.2d 339, 340 (1990) (public policy prohibits insured from recovering for fraudulent conduct).

¹³⁰ OAH Compl. 10-12. A-10-12.

will be expected to achieve state standards); and enhanced potential for electives.¹³¹ Abrahamson contended that by the District's publication of these listings, it represented the alignment of unrelated school district obligations to its children (whether or not a ballot question election was pending) with the passage of the ballot question.

In other words, the School District attempted to assert that but for the ballot question, children would receive less than what is already expected. The ALJ opined that the District's "claims of educational improvements that will result from the passage of the ballot question may be unrealistic or speculative, but that does not make them factually false."¹³² But, if the allegations of Abrahamson are taken as true, then the statements are false since the District "can in no way assure" the promises made.¹³³ As Abrahamson noted, none of the moneys from the bond issuance can be used for textbooks, educational materials, teacher hiring, or new programming.¹³⁴ Therefore, the School District's statements used to promote the ballot's passage are false and meet the objective test under Minn. Stat. § 211B.06.

The Court of Appeals disagreed with Abrahamson and up held the ALJ's decision. However, the appellate court's decision here, should be reversed. Based on the allegations of the OAH Complaint and the submitted evidence, Abrahamson should have an opportunity to prove those facts since they are in dispute.

¹³¹ *Id.*

¹³² *Abrahamson*, Or. and Memo. 9-10. Add. 9-10.

¹³³ *Id.* 9. Add. 9.

¹³⁴ *Id.*

V. The Appellant School District raised a legal issue for the first time which was not addressed by the Court of Appeals; accordingly, it should be dismissed.

The Appellant School District raises an issue, not before considered, that school districts are not subject to Minn. Stat. § 211B.06. The issue was neither appealed by it nor addressed by the ALJ or the Court of Appeals. However, the School Board effectively is arguing subject matter jurisdiction.

A reviewing court must generally consider “only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.”¹³⁵ This Court applied this rule in a different context, holding plaintiffs who won their case at trial but later lost on appeal “were under an obligation to preserve their alternative theories for standing to sue.”¹³⁶ On the other hand, a challenge for lack of subject matter jurisdiction may be raised at any time, even for the first time on appeal.¹³⁷

Here, the challenge to subject matter jurisdiction is misplaced, since the Appellant School Board, as previously discussed above, misunderstood the Court of Appeals decision. The Court did not conclude that “school districts do not have the authority to expend funds to disseminate literature ‘for the purpose of influencing voting.’”¹³⁸ That

¹³⁵ *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), quoting *Thayer v. American Financial Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn.1982).

¹³⁶ *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 721 (Minn.1987).

¹³⁷ *Mangos v. Mangos*, 264 Minn. 198, 117 N.W.2d 916 (1962); *Norris Grain Co. v. Nordaas*, 232 Minn. 91, 46 N.W.2d 94 (1950).

¹³⁸ Appellants Br. at 39.

statement is only part of the appellate court's finding.

As previously noted, the Court of Appeals did find that public funds used to promote the passage of a ballot question by presenting one-sided information on the issue is not authorized by law. If it is not authorized by law it is reportable under Minn. Stat. § 211A.02.

More importantly, because the School Board was found by the appellate court as a "committee" either as two or more persons acting together or as a corporation, if it is found the district failed to file reports under Minn. Stat. § 211A.05 or that statements the district disseminated are false under Minn. Stat. § 211B, the school district through its treasurer,¹³⁹ is subject to the penalties under that statute. The St. Louis County School Board, as with other school boards, has a treasurer as a member of its board. Thus, the legislative intent of meeting requirements falls upon that individual as the plain language of the statute states.

Therefore, the OAH has subject matter jurisdiction to hear complaints under Minn. Stat. §§ 211A and 211B.

CONCLUSION

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, the School District has no qualms in defending where the outcome of elections should reflect the pure will of the people, the election outcome is

¹³⁹ Minn. Stat. § 211A.05, .06.

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 ALJ decision reflected and the Court of Appeals agreed, Abrahamson provided specific facts to support the allegations of the St. Louis County School District’s partisan campaign promotion to pass a ballot question using public funds to promote the ballot’s passage. This is beyond the School Board’s action through a resolution *to take* the ballot question to the people and beyond *education* on the ballot issue. 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 election campaign activities.

The decision of the Court of Appeals should be affirmed.

MOHRMAN & KAARDAL, P.A.

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