

A10-2162

State of Minnesota
In Supreme Court

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.

APPELLANTS' REPLY 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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I. STATUTORY CONSTRUCTION SUPPORTS THE CONCLUSION THAT SCHOOL DISTRICTS AND SCHOOL BOARDS ARE NOT COMMITTEES UNDER THE CAMPAIGN FINANCE LAW.

A. The School District's Position Does Not Thwart The Plain Meaning of The Statute or Legislative Intent.

Respondents argue that the School District's position in the present case thwarts "the plain meaning of the statute's language and the legislative intent regarding who must report political campaign finance contributions and expenses." (Respondents' Brief at 11.) Nothing could be further from the truth.

Quite simply, the School District's position is supported by the language of Chapter 211A as a whole. In this respect, considering the chapter as a whole and giving meaning to all of its provisions, evinces the clear legislative intent to have the reporting requirement apply only to committees which are "*formed* to promote or defeat a ballot question." *See* Minn. Stat. § 211A.05 (2011) (emphasis added.) To hold otherwise would render the 1989 amendment to Minnesota Statutes Section 211A.05, subdivision 1 a nullity, which is contrary to the canons of statutory construction. *See* Minn. Stat. § 645.17 (the legislature intends the entire statute to be effective and certain).

Respondents, to some extent, attempt to get around this fact by referring to the dictionary definition of the word "form." (Respondents' Brief at 14.) While the definition of "form" is more consistent with the School District's argument that the committee must be "developed" or "organized," Respondents' analysis falls short as they fail to consider the remaining term "to" ("formed *to* promote or defeat"). The word "to" is defined as "for the purpose of." *Webster's New Twentieth Century Dictionary Unabridged*, 1916 (2d ed. 1977). Thus, utilizing the definition of "form" advanced by Respondents, coupled with the

definition of “to” set out above, leads to the conclusion that a “committee” under Minnesota Statutes Chapter 211A must be “developed” or “organized” “for the purpose of” promoting or defeating a ballot question.

As there can be little question that neither school districts nor school boards are developed or organized for the purpose of promoting or defeating a ballot question, they are not “committees” under Minnesota Statutes Chapter 211A. *See* Minn. Stat. § 123B.02, subd. 1 (a school board’s authority to govern, manage, and control the district, to carry out its duties and responsibilities, and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature); *see also* Minn. Stat. § 123B.09 (the care, management and control of independent school districts is vested in the school board).

Respondents also argue that “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.” (Respondents’ Brief at 15.) In fact the contrary is true. In this respect, it would not only be odd, but ludicrous, to require a school board to report disbursements of more than \$750 to promote a ballot question when school boards do not have the authority to expend even one dollar for such purposes. *See* Minn. Stat. § 123B.02, subd. 1; *see also* Minn. Atty. Gen. Op. 159a-3 (May 24, 1966) and *Abrahamson v. St. Louis County Sch. Dist.*, 802 N.W.2d 393, 406 (Minn. Ct. App. 2011). When considered in this context, it is understandable why the Minnesota Legislature would treat school districts and school boards different from private entities to whom such expenditure restrictions do not apply.

See Minn. Stat. § 645.17(1) (the legislature does not intend a result that is absurd, impossible of execution, or unreasonable).

The plain language of Section 211A.02 provides that a “committee” be formed for the purpose of promoting or defeating a ballot question and that only expenditures totaling more than \$750 be reported. Thus, the statutory language supports the conclusion that campaign finance reporting does not apply school districts and school boards.

B. School Districts Are Not Corporations for Purposes of Minnesota Statutes Chapters 211A.

Although the Legislature defined “committee” for purposes of Chapter 211A, the Legislature did not define the internal terms of “corporation,” “association,” or “persons acting together” for purposes of “committee.”¹ Respondents argue and the Court of Appeals concluded that school districts, as “public corporations,” are included within the term “corporation” in the definition of “committee.” (Respondents’ Brief at 21); *Abrahamson* at 398.

Respondents’ apparent argument that school districts are “corporations” for the purposes of Chapter 211A is two-fold. First, Respondents argue that the requirement that “committees,” which include “corporations,” be formed for the purpose of promoting or defeating a ballot question only applies to Minnesota Statutes Section 211A.05 and not to the entire chapter. And second, that since school districts are “public corporations” under

¹ This assumes, for the sake of argument that the definition of “corporation” contained in Minnesota Statutes Section 211B.15 does not apply to the definition of “committee” in Sections 211A.01 and 211B.01.

Minnesota Statutes Section 123A.55, they constitute a “corporation” for purposes of Chapter 211A.

A “corporation” within the definition of “committee” for purposes of Chapter 211A, must be formed for the purpose of promoting or defeating a ballot question. There is no dispute that the 1989 amendment to Section 211A.05, which defines the penalty for “committees” who fail to file the required reports, required that a “committee” must be “formed to promote or defeat a ballot question. . . .” Minn. Stat. § 211A.05 (2011). There is equally no dispute that Section 211A.05 is completely void of any express language limiting the application of such language to that section alone. Therefore, considering the statute as a whole and giving effect to all of its provisions evinces clear legislative intent to limit the application of Chapter 211A to corporations formed to promote or defeat a ballot question. *See* Minn. Stat. § 645.16 (2011).

Respondents, however, disagree stating that “when the legislature purposely 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.” (Respondents’ Brief at 17.) Respondents’ argument in this regard is internally inconsistent. In this respect, Respondents’ argue that by including the language, “for purposes of this section,” in Minnesota Statutes Section 211B.15, subdivision 1, the Legislature intended to limit the definition of “corporation” to only Section 211B.15. *See* Minn. Stat. § 211B.15 (2011). Assuming, for the sake of argument, that Respondents’ argument has any merit, then the contrary must also be true, namely

that the absence of such restrictive language renders a section applicable to the entire chapter. Thus, taking Respondents' argument at face value leads to the unmistakable conclusion that in light of the absence of any restrictive language in Section 211A.05, in order for a "committee" to be subject to the reporting requirement of Chapter 211A, it must be "formed to promote or defeat a ballot question." Quite simply, Respondents cannot have it both ways.

The Court of Appeals attempted to get around this conclusion by effectively creating two types of corporations. In this regard, the Court of Appeals found, without any real analysis, that the 1989 amendment to Section 211A.05 merely set forth the penalty for those committees formed to promote or defeat a ballot question, who failed to file the required reports. On the other hand, all other committees who failed to file the required reports would be subject to the general penalty provision set out in Section 211A.11. *See Abrahamson* at 399 (the School District's argument "is unconvincing because section 211A.11 includes penalties for violations of chapter 211A for which no other penalty is provided.") In light of the fact that the penalties provided for in Section 211A.05 and 211A.11 are identical (a misdemeanor), the Court of Appeals' finding would render the 1989 amendment to Section 211A.05 mere surplusage, which is contrary to the canons of statutory construction. *See Minn. Stat. § 645.17* (the legislature intends the entire statute to be effective and certain); *Gale v. Commissioner of Taxation*, 228 Minn. 345, 37 N.W.2d 711, 715 (1949). In addition, a review of Chapter 211A reveals that there are other statutory requirements or prohibitions for which no specific penalty is provided, which would fall under the general penalty provision set out in

Section 211A.11. *See* Minn. Stat. §§ 211A.07 (prohibiting the payment of a bill, charge, or claim that is not presented within 60 days after the material or service is provided); 211A.12 (contribution limits); 211A.13 (prohibiting certain transfers of funds); and 211A.14 (prohibiting solicitation or acceptance of contributions during a regular legislative session). Consequently, considering the lack of any language in Section 211A.05 limiting its application, coupled with the fact that effect must be given to all of the words in Section 211A.05, leads to the conclusion that a “corporation” must be “formed to promote or defeat a ballot question.”

Respondents also argue that because school districts are “public corporations” under Minnesota Statutes Section 123A.55, they are included within the term “corporation” for purposes of Minnesota Statutes Chapter 211A. In order for Respondents’ argument to have any merit, every reference to corporation within Minnesota law would include “school districts” or “public corporations.” A review of Minnesota Statutes as a whole, however, demonstrates a clear legislative intent to exclude school districts from the general term “corporation.” In fact, Respondents have not pointed to a single statute where school districts have been included within the general term “corporation.”

Respondents attempt to discount the fact that the Legislature has routinely distinguished between school districts and the general term “corporation” by stating that examples of such distinctions are “not only inapposite but supports . . . [Respondents’] arguments that where the legislature intends to define ‘school district’ for a specific statutory purpose it knows how to and does so accordingly.” (Respondents’ Brief at 20.)

Respondents' argument in this regard completely misses the mark as there would be no need to include school districts in a definition which also included the general term "corporation" if, indeed, as Respondents suggest, school districts automatically and always fall within the general term "corporation." Further, Respondents' citation to statutes that include school districts within the definition of "government entity" or "political subdivision" is unavailing. The conclusion that school districts are corporations within the definition of "committee" in Chapters 211A and 211B is simply not supported by statutory interpretation and should be rejected.

C. School Boards Are Not "Persons Acting Together" For Purposes Of Minnesota Statutes Chapter 211A.

Respondents' fallback argument is that even if the School District is not a "corporation," the School Board was "persons acting together" and, therefore, was a "committee" subject to the reporting requirements of Minnesota Statutes Section 211A.02.

For the same reasons that school districts are not "corporations" within the definition of "committee," school boards are not "persons acting together." A "committee," regardless of whether it is a "corporation" or "persons acting together," must be formed to promote or defeat a ballot question. *See* Minn. Stat. § 211A.05 (2011). School boards clearly are not formed to promote or defeat a ballot question. Therefore, they cannot be a "committee."

In addition, the Legislature also differentiates between "persons acting together" and school districts or boards in other areas of law which supports the conclusion that school boards were not intended to be included within "committee" in Section 211A.01,

subdivision 4. *See* Minn. Stat. § 211A.01, subd. 4 (2011). For example, Minnesota Statutes Section 176.011, governing workers' compensation law in Minnesota, defines "employer" as specifically including a "corporation," "group of persons" or a "school district" among others. Minn. Stat. § 176.011, subd. 10. Likewise, the definition of "employer" for purposes of parenting leave; bone marrow, organ and blood donation leave; and civil air patrol service leave in Chapter 181 provide that "employer" specifically includes "corporation," "group of persons" or a "school district" among others. *See* Minn. Stat. § 181.940, subd. 3 (2011), Minn. Stat. § 181.945, subd. 1(c) (2011) and Minn. Stat. § 181.946, subd. 1 (2011).

Consequently, school boards do not automatically fall within "persons acting together," nor are they formed to promote ballot questions. School boards have been distinguished from "persons acting together" as used in other statutes. Therefore, school boards do not constitute a "committee" for purposes of Chapter 211A.

II. SCHOOL DISTRICTS ARE NOT AUTHORIZED TO EXPEND FUNDS TO PROMOTE A BALLOT QUESTION.

Respondents argue that the School District "misinterpreted" the Court of Appeals' decision "to reach the incorrect conclusion that legal authority prohibits expenditure of public funds to promote a ballot question." (Respondents' Brief at 23.) In doing so, Respondents' claim the "[t]he Appellant School Board is mistaken when it continues to assert that this case, and others similarly cited by the Court of Appeals states [*sic*] that school districts are prohibited 'from spending any money on the promotion of the ballot

question.’” (Respondents’ Brief at 27-28.) Such a claim not only misinterprets the decision of the Court of Appeals, it also highlights the underlying flaws of that decision.²

School districts, as creatures of statute, have only those powers expressly granted to them by the legislature or such powers that are necessarily implied from an expressly granted power. Minn. Stat. § 123B.02, Subd. 1 (2011). The Court of Appeals, relying on the opinion of the Minnesota Attorney General, held that school districts do not have the authority or power to expend public funds to promote a ballot question. *See Abrahamson* at 401-403. Respondents, however, attempt to create a distinction where none exists by claiming that school districts *may* expend public funds to promote a ballot question provided that the information disseminated presents both sides of the story equally. What Respondents fail to realize is that doing so would no longer render the information “promotional” in nature, but rather “informational” in nature, which is clearly permissible.³ Thus, school districts can expend public funds to provide information about

² To support the proposition that the scope of the School Board’s authority to disseminate information at the taxpayers’ expense cannot be promotional, Respondents quote from *Stern v. Kramarsky*, 375 N.Y.S.2d 235 (N.Y. Sup. Ct. 1975) as follows: “[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” While the quote may at first glance appear contradictory, a review of the *Stern* decision as a whole reveals that it is not. In this regard the ability “to advocate or to promote voting on any issue” referred to the conduct of voting, and, thus, advocating or promoting the constituents to get out and vote on Election Day is an authorized expenditure of public funds. *See id.* at 240.

³ The fact that the school district used public funds to disseminate a booklet that in part “advocated only one side of the issue without affording the dissenters an opportunity to present their side” was found to be problematic. *See Citizens to Protect Public Funds v. Bd. of Educ. of Parsippany-Troy Hills Township*, 13 N.J. 172, 98 A.2d 673 (N.J. 1953). While this language suggests that presenting both sides of the issue will remove the one-sidedness from the booklet, it does not suggest or require that public bodies allow for the presentation of both sides in their material in order to be considered informational.

a ballot question, but cannot expend public funds to promote a favorable vote on a ballot question. This conclusion is supported by all of the cases cited by Respondents.⁴

Moreover, the decision in *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004) cited by Respondents is not relevant to the present case. In Colorado, the legislature decided to control all information disseminated by a public body, whether it was neutral or promotional. When it adopted the state's Fair Campaign Practices Act, it provided for a "factual summary exemption" which, regardless of factual neutrality, required the inclusion of arguments both for and against an issue before the electorate. *See* Colo. Rev. Stat. § 1-45-117(1)(b)(I) (2011) (Reply Appendix ("RA-" RA-1). The court acknowledged that "jurisdictions that have addressed the issue so far agree almost uniformly that during an election, communication from the state may inform, but not attempt to sway the electorate. *Id.* at 1010. However, the *Coffman* Court noted that the legislature erased the distinction stating, "[a]lthough we emphasize that any expenditure of public funds to advocate for or against any measure pending before the electorate must be justified by the statute, the cases from other jurisdictions illuminate the harm sought to be avoided by the statutory mandate." *Id.* at 1011. Since the *Coffman* decision was grounded upon a specific statutory framework adopted by the Colorado legislature, the decision has little relevance to the present case.

⁴ All of the other cases cited by Respondents support the School District's position. *See Stanson v. Mott*, 17 Cal.3d 206, 220, 130 Cal.Rptr. 697, 551 P.2d 1 (1976) (no statutory authorization existed for the expenditure of public funds to campaign for the passage of a bond issue); *Phillips v. Maurer*, 67 N.Y.2d 672, 490 N.E.2d 542 (N.Y. 1986) (school boards were not authorized to disseminate information "patently designed to exhort the electorate to cast their ballots in support of a particular position advocated by the board."); *Stern* at 452 (a state agency supported by public funds cannot advocate their favored position on any issue or for any candidate.); *Matter of Schulz*, 86 N.Y.2d 225, 630 N.Y.S.2d 978 (N.Y. App. 1995) (court agreed with the guidelines in *Phillips v. Maurer*, drawing the line between the use of public funds to inform voters and their use to promote an outcome of an election.); *Smith v. Dorsey*, 599 So.2d 529 (Miss. 1992) ("[i]n a nutshell, the school board can inform, but not persuade."); *Dollar v. Town of Cary*, 569 S.E.2d 731 (N.C. Ct. App. 2002) (local government advertising on the issues allowed where advertising is informational in nature, but where the advertising is designed to promote a viewpoint on an issue in order to influence an election, it is impermissible); *Palm Beach County v. Hudspeth*, 540 So.2d 147, 155 (Fla. App. 1989) ("while the county not only may but should allocate tax dollars to educate the electorate on the purpose and essential ramifications of referendum items, it must do so fairly and impartially"); *Dist. of Columbia Common Cause v. Dist. of Columbia*, 858 F.2d 1 (D.C. Cir. 1988) (District of Columbia law provided the use of funds for publicity or propaganda and the printing of pamphlets, flyers, and posters in connection with an initiative campaign constituted publicity or propaganda).

Subsequently, Respondents agree that the aforementioned cases support the general proposition that school districts cannot use public moneys for a partisan campaign, stating “[a]llowing for official partisanship of the [School] District with taxpayer moneys will undermine the public confidence in the democratic process and as a matter of law should not be allowed.” (Respondents’ Brief at 30.) Apparently realizing that unless school districts expend funds to promote a favorable vote on a ballot question, they would fall outside of the reporting requirements of Section 211A.02, Respondents argue that a school district would be allowed to expend funds to promote a favorable vote so long as both sides are provided with an opportunity to present its side of the issue. What Respondents fail to realize in making this argument, however, is that when both sides are presented, the material ceases to be promotional and becomes informational.

Respondents want this Court to find that school districts cannot expend public funds to promote a ballot question, but if a school district provides for the presentation of both sides in its materials then the expenditures related thereto must be reported. Respondents can’t have it both ways. This conclusion also highlights a fundamental flaw in the Court of Appeals’ analysis, namely that school districts are subject to the reporting requirements of Section 211A that only applies to funds legally paid to promote or defeat a ballot question, which school districts have no authority to make.

Respondents also take issue with the School District’s argument based upon the disclaimer requirement set out in Minnesota Statutes Section 211B.04, claiming that such an argument “has no merit” as “[t]his statutory provision was found unconstitutional. . . .” (Respondents’ Brief at 30.) Respondents miss the point, however, by the School

District's reference to the statute. The School District's argument is that the application of the disclaimer requirement to a "committee" further demonstrates that the Legislature did not intend for school districts or school boards to be included within the term "committee." If, as Respondents' argue, school districts are "committees" then Section 211A.04 would effectively allow a school district to disseminate "campaign material" (for the purpose of influencing voting) so long as a disclaimer was provided on the material. *See* Minn. Stat. § 211B.04(b) (2011). This conclusion simply does not make sense because school districts are not authorized to expend any funds to promote a ballot question.

In addition, while the statute was found unconstitutional by the Court of Appeals in *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App. 2006), the Legislature subsequently amended the statute to address the unconstitutional language. Therefore, the revised Section 211B.04 should apply unless and until it is determined to be unconstitutional.

Finally, Respondents' sole reliance upon Section 211B.04 having been found unconstitutional in 2006 is really an argument against transparency. In this respect, if persons or associations may disseminate campaign material without having to identify themselves, they are allowed to conceal their identities. This conclusion runs directly counter to Respondents' argument in favor of transparency by requiring school districts to file campaign disclosure reports. Clearly then Respondents don't support complete transparency for all who take a position on an issue as they profess.

III. THE COURT OF APPEALS INCORRECTLY FOUND THAT RESPONDENTS STATED A *PRIMA FACIE* VIOLATION OF SECTION 211B.06 WITH REGARD TO STATEMENTS 1 AND 3.

A. The ALJ's Determinations Were Supported By Substantial Evidence In The Record and Should Not Have Been Disturbed.

Factual determinations by an agency are not reviewed *de novo* by the reviewing court, but rather receive a limited review. *See* Minn. Stat. § 14.69 (2011). 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). One basis for reversal or modification is whether the administrative finding, conclusion or decision is unsupported by substantial evidence in view of the entire record submitted. *See* Minn. Stat. § 14.69 (2011). 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. December 16, 1997).

1. Statement 1.

The Court of Appeals, without finding an abuse of discretion by the Administrative Law Judge ("ALJ") and, contrary to substantial evidence in the record, basically reviewed Statement 1⁵ *de novo*, when it concluded that use of the word "would"

⁵ 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 go to neighboring school districts. (Appellants' Appendix ("A-") A-7.)

was used for the past tense of “will” and stated a false fact.⁶ According to Respondents, “a district entering into statutory operating debt does not lead to dissolution and then lead to district children going to neighborhood school districts.” (Respondents’ Brief at 35.) The foundation of Respondents’ claim, however, crumbles when Minnesota Law is considered. There can be little question that a school district entering into statutory operating debt must take significant measures to reduce debt. *See* Minn. Stat. §§ 123B.81, subd. 4 and 123B.83 (2011). And, if a school district is unable to reduce debt and can no longer operate its schools, dissolution is a real possibility. *See* Minn. Stat. § 123A.60 and §§ 123A.64 to 123A.72 (2011). Thus, Statement 1 was not demonstrably false as found by the Court of Appeals. Further, reviewing the record as a whole reveals that substantial evidence supported the ALJ’s determination that Statement 1 was a “pessimistic possibility.” Therefore, the conclusion that a *prima facie* violation was established should be rejected.

2. Statement 3.

Respondents continue to argue that the School District made a false statement relating to an alleged “annual deficit in 2011-12 [of] \$4.1 million,” without providing any evidence to support that the statement was ever disseminated.⁷ The requirement for a party to demonstrate that the alleged false statement was actually made is explicitly

⁶ It is notable that Respondents failed to provide any argument in opposition to the School District’s position that the OAH has no jurisdiction over Statement 1 because the complaint was filed more than one year after the occurrence of the alleged act (September/October 2009). *See* Minn. Stat. § 211B.32, subd. 2 (2011). This alone requires reversal of the Court of Appeals decision regarding Statement 1.

⁷ Statement 3: Projected annual deficit in 2011-12: \$4.1 million. (A-9).

required to violate the prohibition against false campaign material. *See* Minn. Stat. 211B.06, subd. 1 and 211B.01, subd. 2 (requiring the dissemination or broadcast of campaign material which includes literature, publication or material with respect to a ballot question that is false). Without the existence of an actual statement attributable to the School District it would be clearly unreasonable, if not unconscionable, to penalize the School District.

Beyond the fact that Respondents have provided no evidence that the alleged false statement was ever actually made, Respondents do not address and completely ignore the School District's arguments regarding the only statement in the Respondents' referenced exhibit that refers to \$4.1 million dollars. Perhaps it is because Respondents have no response. In that statement, the School District only referred to "near" \$4.1 million dollars as "the projected shortfall" if the proposed plan was not adopted (which was based upon the projected shortfall of \$1.5 million in 2008-09.) (A-69.)

The School District should not be found in violation of Minnesota Statutes Section 211B.06 for a statement that was not made or disseminated. Further, the only statement made by the School District that even referred to \$4.1 million dollars described the "projected shortfall" as the result of the "projected \$1.5 million dollar shortfall for 2008-09" only if the School District did nothing. This statement was not demonstrably false. Therefore, the Court of Appeals' conclusion that Statement 3 stated a *prima facie* violation of Minnesota Statutes Section 211B.06 should be reversed.

B. Respondents Did Not Appeal The Court Of Appeals' Decision Affirming The Dismissal Of Statement 4 and, Therefore, Cannot Seek Reversal By This Court.

In their brief, Respondents address Statement 4 which was dismissed by the ALJ and affirmed by the Court of Appeals.⁸ *Abrahamson* at 406. With respect to Statement 4, Respondents argue that “the appellate court’s decision here, should be reversed.” (Respondents’ Brief at 38.) If Respondents believed that the Court of Appeals’ decision was incorrect, it was their responsibility to petition this Court for review of that issue. Significantly, however, Respondents did not appeal the Court of Appeals’ affirmation of the ALJ’s decision regarding Statement 4. Consequently, this Court does not have the authority or jurisdiction to consider Respondents’ claim. *See* Minn. R. Civ. App. Pro. 117, subd. 2 ([r]eview of any decision of the Court of Appeals is discretionary with the Supreme Court), *see also, Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 176 (Minn. 1988) (when party failed to raise issue in petition for review on first appeal, Court of Appeals’ first decision on that issue was law of the case and Supreme Court would not address issue on subsequent appeal.) Therefore, Statement 4 should not be addressed by this Court.

IV. THE OAH DID NOT HAVE SUBJECT MATTER JURISDICTION TO CONSIDER ALLEGED VIOLATIONS OF MINNESOTA STATUTES SECTION 211B.06.

Respondents acknowledge that an issue of subject matter jurisdiction may be raised at any time, but argue that the School District’s challenge to the Office of

⁸ Respondents’ alleged that in Statement 4 “[t]he [School] 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.” (A-10 to A-12).

Administrative Hearing's ("OAH") subject matter jurisdiction regarding alleged violations of Minnesota Statutes Section 211B.06 "is misplaced" because the Court of Appeals "did not conclude that 'school districts do not have the authority to expend funds to disseminate literature 'for the purpose of influencing voting.'" (Respondents' Brief at 39.) As discussed fully above, there is no question that a public body, including a school district is not authorized to expend funds to promote one side or influence voting on an issue. *See infra*, pp. 9-10. Consequently, if school districts do not have authority to expend funds for promotional literature, a school district cannot distribute campaign material and, therefore, cannot violate the statute.

Finally, Respondents appear to suggest that the penalty contained in Minnesota Statutes Section 211A.05 applies to a violation of Minnesota Statutes Section 211B.06, "if it is found . . . that statements the district disseminated are false under Minn. Stat. § 211B, the school district through its treasurer, is subject to the penalties under that statute." (Respondents' Brief at 40.) Clearly, the penalty provision of Section 211A.05 applies only where there is a failure to file a campaign finance statement under Section 211A.02. *See* Minn. Stat. § 211A.05. Therefore, the penalty provided for in Section 211A.05 cannot be imposed for even a proven violation of Section 211B.06.

CONCLUSION

When the law is considered as a whole and all words in a statute are given meaning, the rules of statutory construction support the conclusion that school districts are not "corporations" and school boards are not "persons acting together," and thus not "committees" under Chapters 211A and 211B. Consequently, neither the School District

nor School Board was required to file campaign finance disclosure reports under Minnesota Statutes Section 211A.02.

Additionally, substantial evidence in the record supported the ALJ's conclusion that Respondents failed to establish a *prima facie* violation of Minnesota Statutes Section 211B.06 through Statements 1 and 3. Moreover, Respondents failed to provide any support that their alleged Statement 3 was ever disseminated by the School District. Respondents did not seek review of Statement 4 and, therefore, that statement is not properly before this Court and should be disregarded.

For the above reasons, the School District and School Board respectfully request that this Court reverse the decision of the Court of Appeals.

Respectfully submitted,

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