

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Steve Abrahamson and Tim Kotzian,

Complainants,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The St. Louis County School District,
Independent School District No. 2142,
Bob Larson, Tom Beaudry, Darrell
Bjerklie, Gary Rantala, Andrew Larson,
Chet Larson, and Zelda Bruns, in their
capacity as School Board Members,

Respondents.

The above-entitled matter came on for an evidentiary hearing on December 12 and 13, 2013, and January 24, 2014, before a panel of three Administrative Law Judges: Ann C. O'Reilly (Presiding Judge), Barbara L. Neilson, and Kirsten Tate (Panel). Post-hearing briefs were filed on April 30, 2014, and the hearing record closed on May 15, 2014, with the receipt of correspondence related to Exhibit 24.

Erick G. Kaardal and William H. Mohrman, Mohrman, Kaardal & Erickson, P.A., represent Steve Abrahamson and Tim Kotzian (Complainants).

Stephen M. Knutson and Michelle D. Kenney, Knutson, Flynn & Dean, P.A., represent the Respondents St. Louis County School District, Independent School District No. 2142 (School District); and Bob Larson, Tom Beaudry, Darrell Bjerklie, Gary Rantala, Andrew Larson, Chet Larson, and Zelda Bruns, who are all former or current members of the St. Louis County School District School Board (School Board), all collectively referred to herein as the School District or District).¹

¹ Although the Complaint names the School District and its individual School Board members separately, the Panel will refer to the School District and School Board members collectively as the "District" or "School District." As noted by the Minnesota Supreme Court, the School Board members were named in the Complaint only in their official capacities and, as such, they acted only through the Board and only on behalf of the School District in their official capacity. See, *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129, 133 (Minn. 2012) (citing Minn. Stat. §§ 123B.09, subd. 1, and 123B.85, subd.4).

STATEMENT OF ISSUES

1. Did the Respondent School District act as a “committee” to “promote” a December 2009 school bond ballot question?
2. If yes, did the Respondent School District make “disbursements,” as defined in Minn. Stat. § 211A.01, subd. 6, which were in excess of \$750 in a calendar year?
3. If yes to both questions above, did the Respondents violate Minn. Stat. §§ 211A.02, 211A.03, 211A.05, and 211A.06, by failing to file campaign financial reports for disbursements made in promotion of the ballot question?

SUMMARY OF CONCLUSIONS

The Panel concludes that the Complainants have established that the School District acted to “promote” the ballot question at issue and expended more than \$750 in disbursements, as defined by law. The Panel further concludes that the Complainants have established that the School District violated Minn. Stat. § 211A.02 by failing to file certain campaign finance reports, but that the Complainants failed to establish that the School District violated Minn. Stat. §§ 211A.03, 211A.05 or 211A.06.

Based upon the evidence in the record and the arguments of the parties, the Panel makes the following:

FINDINGS OF FACT

1. The St. Louis County School District (School District) serves numerous communities located in St. Louis County, Minnesota.² The District encompasses approximately 4,200 square miles, making it, geographically, the largest school district in Minnesota.³
2. Complainant Stephen Abrahamson is the Mayor of the city of Tower, which is located within the boundaries of the School District.⁴ Complainant Tim Kotzian is the Chair of the Coalition for Community Schools, an *ad hoc* citizens group formed in May 2010 to oppose the restructuring of the School District and the bond referendum, which is the subject of the Complaint in this case.⁵
3. In 2007, the School District operated seven K-12 schools.⁶ The schools were located in the cities of Orr, Cook, Tower-Soudan, Babbitt-Embarrass, Cherry, Cotton, and Saginaw (AlBrook).⁷

² Ex. R at 1.

³ Testimony (Test.) of Charles Rick at 519; Ex. R at 1.

⁴ Test. of Stephen Abrahamson at 41.

⁵ Complaint at 2.

⁶ Test. of C. Rick at 511-512; Ex. A at 3.

⁷ Ex. A at 3.

4. Since 1999, the School District has experienced declining enrollment.⁸ Between 1999 and 2008, the School District's K-12 enrollment declined 28 percent, dropping from 2,914 to 2,101 students.⁹ It was projected that the decline in enrollment would continue through the 2017-2018 school year.¹⁰

5. The School District has also experienced budget shortfalls since at least the 2007-2008 school year, which resulted in deficit spending.¹¹ On three occasions prior to 2009, the School Board placed levy questions on the ballot to increase the District's operating budget.¹² All three times, residents voted down the referenda.¹³

6. In late 2006, the School District contracted with Johnson Controls, Inc. (Johnson Controls), to assist the District with strategic and long range planning.¹⁴ Over the course of six months, a group of 24 individuals, including School District staff, School Board members, and community members, worked together to develop a five-year strategic plan for the School District.¹⁵ Johnson Controls staff facilitated the meetings for the group.¹⁶

7. On June 11, 2007, the School District adopted a five-year strategic plan (Strategic Plan).¹⁷ The Strategic Plan called for the School District to: expand and enhance its organizational, instructional, and curriculum design; engage community support; restructure facilities based on students' needs; and build and market the School District's identity.¹⁸

Adopted 2008-09 Budget

8. Kim Johnson, the District's Business Manager, is responsible for managing and overseeing the School District's accounts, payroll, and budget.¹⁹ The District operates on a fiscal year, roughly consistent with the school year.²⁰

9. In preparing the School District's budget for the next fiscal year, Johnson takes into account several variables, including the estimated student enrollment, staffing needs, and anticipated revenue.²¹ Typically, the School Board adopts the budget for

⁸ Ex. R at 1, 4, and 8; Test. of S. Abrahamson at 109-110; Test. of Marshall Helmberger at 455.

⁹ Ex. R at 1 and 8.

¹⁰ *Id.*

¹¹ Test. of S. Abrahamson at 110; Ex. D.

¹² Ex. 10 at 2; Test. of M. Helmberger at 316.

¹³ Ex. 10 at 2; Test. of S. Abrahamson at 110-111.

¹⁴ Ex. A; Test. of C. Rick at 509, and 521-522.

¹⁵ *Id.*

¹⁶ Test. of C. Rick at 509-511, and 522; Ex. A.

¹⁷ Test. of C. Rick at 515-516; Ex. A.

¹⁸ Test. of C. Rick at 513-515; Ex. A at 6-7.

¹⁹ Test. of Kim Johnson at 236.

²⁰ *Id.*

²¹ Test. of K. Johnson at 236-237.

the upcoming fiscal year by June 30th of the previous year.²² For example, the budget for the 2008-2009 school year was adopted by the School Board by June 30, 2008.²³

10. The School District's budget for fiscal year 2008-2009, which was adopted in June 2008, showed a projected deficit of \$1,973,309.²⁴ Accordingly, the School Board realized that drastic budget and spending changes would be necessary.²⁵

School District's Long Range Planning Process

11. Prior to the start of the 2008-2009 school year, the School Board began the process of developing long range plans for the School District.²⁶ As part of the planning process, the School Board considered whether the District could continue to maintain seven schools.²⁷ The School District decided to again enlist the assistance of Johnson Controls and other consultants to conduct financial analyses and develop a long range plan for the District.²⁸ Once again, the District held numerous meetings, facilitated by Johnson Controls, to obtain public input in the development of the District's long range plans.²⁹

12. On August 19, 2008, Johnson Controls and its contractor, Ehlers & Associates, Inc. (Ehlers), a financial planning and public finance firm, released a financial analysis and five-year budget projection for the School District.³⁰ The financial report noted the severe budget challenges facing the District due, in part, to declining enrollment and minimal increases in state funding.³¹ The report explained that the very large geographic area served by the District exacerbated its financial difficulties as District buses were required to travel many miles to small schools distributed throughout the area.³² The report projected that the District would be in deficit spending through the 2013-2014 school year.³³

13. Along with the financial analysis, Johnson Controls contracted with Architectural Resources, Inc. to prepare an evaluation of the School District's seven K-12 facilities.³⁴ The majority of the District's K-12 facilities at that time were built around 1930, with two schools being built in 1959.³⁵ Given the age of the facilities, the facilities report noted that there were many deferred maintenance issues that needed to be

²² *Id.*

²³ *Id.* at 237.

²⁴ Exs. B and 4; Test. of K. Johnson at 238.

²⁵ Test. of C. Rick at 516-520.

²⁶ *Id.* at 521-522.

²⁷ *Id.*

²⁸ Exs. D and E.

²⁹ Test. of K. Johnson at 299-300; Test. of Rick at 522-524; Exs. D, E, F, I, K and N.

³⁰ Ex. D; Ex. M at 3; Test. of C. Rick at 522.

³¹ Ex. D at 2.

³² *Id.*

³³ Ex. D.

³⁴ Ex. E; Test. of C. Rick at 522-523.

³⁵ Ex. E at 2.

addressed.³⁶ The facilities evaluation was part of the School District's long range planning process.³⁷

14. In March 2009, Kim Johnson prepared financial projections for use by the District and Johnson Controls in its long range planning process.³⁸ The financial projections were for three years (through the 2011-2012 fiscal year), and were based on the figures in the District's adopted 2008-2009 budget.³⁹ The projections were also dependent upon certain assumptions, the most significant being that: (1) the District would not implement *any* cost-saving changes (i.e., the District would maintain the status quo); (2) staffing would remain the same (i.e., no lay-offs would occur); (3) certain fixed expenses would continue to increase; and (4) State per-pupil aid would increase by only two percent for both the 2010-2011 and 2011-2012 school years.⁴⁰

15. Based on this "do nothing" or "status quo" scenario, Kim Johnson's financial projections predicted that the School District would see a deficit of \$2.76 million in fiscal year 2009-2010, and a deficit of \$4.1 million in fiscal year 2011-2012.⁴¹ The decision to base the District's long range financial projections on the 2008-2009 adopted budget with a "do nothing" or "status quo" scenario was made by Kim Johnson in consultation with the School District's consultants and administrators.⁴²

16. Beginning in January 2009, the School Board began holding public meetings called "study sessions" to consider various long range planning options to address the projected budget deficits.⁴³ Representatives from Johnson Controls presented projected cost analyses for the different options.⁴⁴

17. Most of the options that Johnson Controls presented at public meetings included closing several old schools, remodeling some schools, and building new schools in new locations.⁴⁵

18. At the June 8, 2009 School Board meeting, the Board considered long range facilities plan options.⁴⁶ After taking public comment, the Board adopted a "Resolution Approving a Long Range Facilities Plan and Authorizing Further Proceedings Toward Implementation of the Plan."⁴⁷

19. The "Long Range Facilities Plan" approved by the School Board consisted of:

³⁶ *Id.*

³⁷ Test. of C. Rick at 523-524.

³⁸ Ex. J; Test. of K. Johnson at 238-239, and 271-273.

³⁹ Exs. J and 4; Test. of K. Johnson at 238-239.

⁴⁰ Test. of K. Johnson at 238-239; Ex. J.

⁴¹ Ex. J; Test. of K. Johnson at 242 and 245; Test. of C. Rick at 525; Ex. J.

⁴² Test. of K. Johnson at 272-273.

⁴³ Test. of C. Rick at 522 and 539; Exs. 1, K, and M at 3.

⁴⁴ Exs. I and K; Test. of C. Rick at 522 and 539.

⁴⁵ Test. of M. Helmberger at 329, 334-335; Ex. P.

⁴⁶ Ex. M.

⁴⁷ *Id.*; Test. of C. Rick at 526-528.

- Closing the AlBrook and Cotton schools and constructing a new school near the center of an area that would serve the Albrook-Brookston-Cotton-Meadowlands attendance areas;
- Remodeling the Cherry School to serve the Cherry-North-Cotton-Makinen areas;
- Closing the Cook and Orr schools, and constructing a new school to serve both attendance areas;
- Remodeling the Babbitt and Tower schools with Babbitt remaining a Pre-K through 12 school, and Tower becoming a Pre-K through 6 school, with a potential charter secondary school at the site.⁴⁸

20. To finance the Long Range Facilities Plan, the District would need to obtain significant additional funding.⁴⁹ Accordingly, in the Resolution Adopting the Long Range Facilities Plan, the School Board agreed to authorize a bond referendum in the fall of 2009 in an amount of approximately \$78.8 million -- the amount necessary to build and remodel the schools identified in the Long Range Facilities Plan.⁵⁰

21. In addition to the Long Range Facilities Plan, the District also addressed its immediate budgetary crisis.⁵¹ To that end, the School Board decided to reduce staff.⁵² At the end of the 2008-2009 school year, the School District laid-off 16 full-time teachers and gave five teachers early retirement.⁵³ This measure resulted in a significant cost savings, which carried forward into the 2009-2010 school year and beyond.⁵⁴

22. At the next School Board meeting on June 22, 2009, Kim Johnson addressed the Board regarding the 2009-2010 budget.⁵⁵ Johnson reported that the School District's finances, while "still in the red," were "much better than previously projected" in her March 2009 financial analysis.⁵⁶ Johnson explained that the improved finances were due, in part, to the reduction of 21 teachers, and the absence of any major health, safety, or capital projects.⁵⁷

⁴⁸ Exs. M and R; Test of T. Watson at 213-214; Test. of K. Johnson at 245; Test. of M. Helmberger at 468-469; Test of C. Rick at 526-527, and 644.

⁴⁹ Ex. M at 4-5.

⁵⁰ Ex. M.

⁵¹ Ex. 5 at 3; Test. of C. Rick at 527.

⁵² Ex. N; Ex. 5 at 3.

⁵³ Ex. 5 at 3.

⁵⁴ Ex. 4; Test. of K. Johnson at 242.

⁵⁵ Ex. 5 at 3.

⁵⁶ *Id.*

⁵⁷ *Id.*

23. The School District's finances were also improved by better-than-expected revenues from tax-forfeited land sales and federal forestry funds.⁵⁸ The District typically receives revenue from tax-forfeited land sales in the first part of May.⁵⁹

24. The School Board voted on June 22, 2009, to adopt the 2009-2010 budget.⁶⁰ The 2009-2010 adopted budget showed a projected deficit of \$833,396 – significantly less than the \$1.9 million deficit projected in the 2008-2009 adopted budget.⁶¹

25. At that same June 22, 2009 meeting, the Board passed a Resolution authorizing the District to hire Johnson Controls to implement the Long Range Facilities Plan.⁶²

26. In July 2009, the School Board entered into a contract with Johnson Controls for “Phase III” of the Long Range Facilities Plan.⁶³ Phase III consisted of: (1) preparing a Review and Comment Document for the Department of Education outlining the proposed restructuring; (2) performing financial planning for the Long Range Facilities Plan; (3) developing an “educational approach” for modernizing the District; (4) creating a “transition plan”; (5) preparing a “communication plan”; and (6) conducting a site assessment.⁶⁴

27. During the July 20, 2009 School Board meeting, the Board noted that, with respect to the Long Range Facilities Plan, “[t]he financial plan and projections are in the process of being updated and should be available by the middle of August.”⁶⁵ Ultimately, Johnson Controls did not obtain or utilize new financial projections despite Kim Johnson's statement at the June 2009 School Board meeting that the District's actual finances were “much better” than projected in March 2009.⁶⁶ As a result, the Board continued to use Kim Johnson's March 2009 financial projections, which were based on the adopted budget for 2008-2009, in subsequent information it distributed about the District's financial condition.⁶⁷

⁵⁸ Test. of K. Johnson at 241.

⁵⁹ *Id.* at 241-242, 283; Ex. 23.

⁶⁰ Exs. 4 and 5.

⁶¹ Ex. 4.

⁶² Ex. 5.

⁶³ Ex. 24.

⁶⁴ *Id.* at 1-2. Notably, Exhibit 24 did not include the pages discussing what exactly Johnson Controls would do as part of the “Communications Plan,” the cost of which was \$58,000. See Exs. 22 and 24. If that “Communications Plan” included a marketing plan for the bond referendum, then that information would have been significant to Complainants' case.

⁶⁵ Ex. 24 at first page of July 20, 2009 School Board meeting. The minutes also state, “One of the district's challenges is communicating through marketing. There will be ads in the newspapers from now until November.” *Id.* It is unclear what this is referring to because the remaining pages of the minutes were not included in Exhibit 24. An important question left unanswered is what types of “advertisements” were being prepared by the District or Johnson Controls.

⁶⁶ Test. of C. Rick at 579-584; Ex. 5 at 3.

⁶⁷ Ex. J; Ex. 10 at 2.

28. As required in Minnesota for the proposed construction of new public school facilities, Johnson Controls prepared, and the School District submitted, the Long Range Facilities Plan for Review and Comment to the Minnesota Department of Education (Department) on September 2, 2009.⁶⁸ The Department issued a favorable review and comment to the School District on September 29, 2009.⁶⁹

29. On September 9, 2009, the School Board met in a study session to consider the various consequences and options for the School District should voters not approve the bond referendum.⁷⁰ The study session was open to the public and its purpose was to respond to the public's questions as to what would happen in the event the ballot question did not pass.⁷¹ At the study session, the Board discussed possible programming cuts, teacher layoffs, and school closures that would result if the referendum failed.⁷² Again, the discussions were based on the March 2009 financial analysis that projected a \$4.1 million deficit for the 2011-2012 school year, as opposed to the adopted 2008-2009 budget, which projected a significantly smaller deficit.⁷³

Approval of Ballot Question Regarding the Referendum

30. On September 14, 2009, the School Board adopted a Resolution approving for placement on the ballot a referendum seeking authorization to issue general obligation school building bonds in an amount not to exceed \$78.8 million.⁷⁴ The special election on the ballot question was scheduled to occur on December 8, 2009.⁷⁵

31. The Resolution also included a sample ballot.⁷⁶ The ballot question was as follows:

⁶⁸ Ex. 6. Minnesota Statutes section 123B.71 requires a review and comment statement be submitted to the Department on the educational and economic advisability of all proposed public school construction projects.

⁶⁹ Ex. T.

⁷⁰ Ex. 7 at 5; Ex. S at 1; Test. of S. Abrahamson at 131; Test. of K. Johnson at 300; Test. of C. Rick at 540 and 551; R. Larson at 678-679.

⁷¹ Test. of C. Rick at 540; Test. of Robert Larson at 678-679.

⁷² *Id.*

⁷³ Test of C. Rick at 588-589.; Ex. J.

⁷⁴ Ex. S at 3.

⁷⁵ *Id.*

⁷⁶ Ex. S at 6

To vote for a question, fill in the oval next to the word "YES" for that question.
To vote against a question, fill in the oval next to the word "NO" for that question.

**SCHOOL DISTRICT BALLOT QUESTION 1
APPROVAL OF SCHOOL DISTRICT BOND ISSUE**



YES



NO

Shall the school board of Independent School District No. 2142 (St. Louis County) be authorized to issue its general obligation school building bonds in an amount not to exceed \$78,800,000 to provide funds for the acquisition and betterment of school sites and facilities, including, the construction and equipping of a new school to serve the Alborn-Brookston-Cotton-Meadowlands attendance areas; the construction and equipping of a new school to serve the Cook and Orr attendance areas; and the remodeling and renovation of the Cherry, Babbitt and Tower Schools?

**BY VOTING "YES" ON THIS BALLOT QUESTION, YOU
ARE VOTING FOR A PROPERTY TAX INCREASE.**

School District Newsletters and Publications

32. Beginning in September 2009, the District began publishing pamphlets and newsletters addressing the Long Range Facilities Plan and ballot question.⁷⁷

33. Complainants assert that the District promoted the passage of the December 8 referendum through four specific publications prepared and distributed at the direction of the District and/or its Board.⁷⁸ The first publication is a six-page brochure prepared by Johnson Controls, dated September/October 2009 (hereafter referred to as the "September/October 2009 Publication").⁷⁹ The other three publications identified by Complainants are monthly newsletters that the District distributed.⁸⁰ The newsletters are identified herein as the "October 2009 Newsletter,"⁸¹ the "November 2009 Newsletter,"⁸² and the "December 2009 Newsletter."⁸³

34. For years, the School District has prepared and published newsletters that it distributes to District residents, updating them on the issues affecting the District and its schools.⁸⁴ In 2009, the School District issued the newsletters on a monthly basis.⁸⁵

35. To prepare and distribute the newsletters, the School District paid a local newspaper, the *Cook News Herald*, a fee for printing, based upon the number of pages

⁷⁷ Exs. 7-10.

⁷⁸ See Complaint.

⁷⁹ Ex. 7.

⁸⁰ Exs. 8-10.

⁸¹ Ex. 8.

⁸² Ex. 9.

⁸³ Ex. 10.

⁸⁴ Test. of K. Johnson at 262-264.

⁸⁵ Exs. 8-10.

in the newsletter, plus the cost of actual postage to mail the newsletter to each household in the District.⁸⁶

36. The School District included articles about the Long Range Facilities Plan and proposed bond referendum in each of the three District newsletters it distributed between October and December 2009.⁸⁷

37. At the hearing, the Complainants identified 17 specific statements contained in the September/October 2009 Publication and the October through December 2009 Newsletters, which they contend promoted the passage of the December 8, 2009 ballot question. Each of the statements are identified below.

September/October 2009 Publication

38. The first publication at issue in this case is a September/October 2009 Publication prepared by Johnson Controls.⁸⁸ The publication looked similar in format to the School District newsletters and prominently displayed the School District's logo on the first page.⁸⁹ The publication is six pages long, and is devoted entirely to discussion of the Long Range Facilities Plan⁹⁰ and the bond referendum.⁹¹ The record does not include evidence of the cost of this publication.⁹²

39. The title of the publication is "Enhancing Opportunities for Our Kids' Future."⁹³ The publication contains six "articles," the headlines of which read:

- How Realigning Schools Improves Education;
- Tax Implications of Voting Yes or No on December 8;
- 93% of Us Say It's Too Expensive to Keep 7 Schools;
- How Will Our New and Remodeled School Buildings be Better?;
- Realities of Why the District Needs to Change; and
- Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.⁹⁴

⁸⁶ Test. of K. Johnson at 263-264; Exs. 19-21. Note that the printing cost of the December 2009 Newsletter (a 12-page document) was \$1,975, whereas the printing cost for the October 2009 and November 2009 Newsletters (each eight pages) was \$1,350.

⁸⁷ Exs. 7-10.

⁸⁸ Ex. 7; Test. of K. Johnson at 267-270.

⁸⁹ Ex. 7.

⁹⁰ The Long Range Facilities Plan is referred to throughout the four newsletters distributed by the District as a "realignment" of the District or a "realignment plan." See Exs. 7-10.

⁹¹ Ex. 7.

⁹² Test. of K. Johnson at 268-269.

⁹³ Ex. 7.

⁹⁴ *Id.*

Statement No. 1

40. The article entitled, “How Realigning Schools Improves Education,” contains a statement that reads:

The plan now up for a December 8 public vote was developed to not only save millions of dollars and ensure the district’s continued operation, its implementation will provide many new opportunities for our young people’s education.⁹⁵

41. This statement is identified by Complainant as the first statement (Statement No. 1) which “promotes” the bond referendum.

42. This statement is followed by an extensive list of ways the Long Range Facilities Plan will enhance educational opportunities for students in the District.⁹⁶ Examples include: “Up-to-date textbooks and learning materials”; “Personalized learning in which each student has his/her own Individual Learning Plan guiding their education”; “Third Graders as Fluent Readers”; “Life/Career Exploration”; and “Languages including Spanish and Ojibwemowin.”⁹⁷

43. The publication contains several other statements that the Complainants contend promoted the ballot question.

Statement No. 2

44. In the article entitled, “Tax Implications of Voting Yes or No on December 8,” there contains a statement that reads:

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.⁹⁸

45. The “operating debt” of a school district is defined by statute as the net negative unreserved general fund balance calculated as of June 30 of each year.⁹⁹ Statutory Operating Debt (SOD) refers to when a school’s operating debt is more than 2½ percent of the most recent fiscal year’s expenditure amount.¹⁰⁰ If a school is determined to be in SOD, it is required to develop a three-year financial plan to exit

⁹⁵ *Id.* at 1.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Ex. 7 at 2.

⁹⁹ Minn. Stat. 123B.81, subd. 1.

¹⁰⁰ Test. of T. Watson at 195; See, Minn. Stat. § 123B.81, subd. 2.

SOD, and that plan must be approved by its board and the Commissioner of the Department of Education (Commissioner).¹⁰¹

46. To avoid entering into SOD, a school district could implement cost savings by eliminating staff, closing facilities, cutting programs, or initiating other cost saving measures.¹⁰² However, once a district enters SOD, it *must* immediately reduce deficit expenditures, as approved by the Department, or the district will be denied state aid.¹⁰³ SOD does not automatically result, however, in dissolution of a school district.¹⁰⁴ In lieu of dissolution, a school district may restructure and/or voluntarily consolidate with neighboring school districts.¹⁰⁵

47. Entering SOD does not require that a school district dissolve.¹⁰⁶ Every year, approximately 25 to 30 school districts are placed in SOD.¹⁰⁷ Given that school districts are provided three years to implement a financial plan to exit SOD, it is unlikely that a district will dissolve.¹⁰⁸ Between 1980 and 2012, only two school districts in Minnesota were dissolved pursuant to Minn. Stat. § 123A.46.¹⁰⁹ Indeed, in the last 20 years, no school district has dissolved in Minnesota.¹¹⁰ All other reorganizations have involved consolidation with other districts under Minn. Stat. § 123A.48, or cooperation and combinations under Minn. Stat. § 123A.35.¹¹¹

Statement No. 3

48. Also in the article entitled, “Tax Implications of Voting Yes or No on December 8,” the School District makes the following statement:

If a “no” vote passes, you’ll likely be paying taxes of the district shown here [referring to a chart] that’s nearest to your home. In addition, your ability to influence decisions in the new district would undoubtedly be reduced because the majority of voters would be located right in the neighboring city.¹¹²

49. The chart depicts the “total school taxes payable [in] 2009 on a home with a taxable market value of \$100,000.”¹¹³ It compares the then-current tax rate in

¹⁰¹ Test. of T. Watson at 195-196; See, Minn. Stat. §§ 123B.81 and 123B.83.

¹⁰² Test. of T. Watson at 190-194.

¹⁰³ Minn. Stat. § 123B.83, subd. 4.

¹⁰⁴ See *generally*, Minn. Stat. § 123B.83.

¹⁰⁵ Ex. 12.

¹⁰⁶ Test. of T. Watson at 190-194.

¹⁰⁷ *Id.* at 194.

¹⁰⁸ *Id.* at 195-196.

¹⁰⁹ See <http://education.state.mn.us/MDE/SchSup/SchFin/FinMgmt/DistOrg/> at School District Reorganization 1980-2012.

¹¹⁰ Test. of T. Watson at 209-210; Test. of C. Rick at 615-616.

¹¹¹ See <http://education.state.mn.us/MDE/SchSup/SchFin/FinMgmt/DistOrg/> at School District Reorganization 1980-2012.

¹¹² Ex. 7 at 2.

¹¹³ *Id.*

St. Louis County School District (before the levy) with the then-current tax rate of other districts in the area.¹¹⁴

Statement No. 4

50. In an article on page three of the September/October 2009 Publication, the School District summarized the results of a “scientific survey” conducted in August 2009 to gauge how adults within the District feel about how the District operates and possible restructuring plans.¹¹⁵ The headline of the article reads, “93% of us say it’s too expensive to keep 7 schools.”¹¹⁶ Complainants identified the headline, itself, as promoting the ballot question.

Statement No. 5

51. The article on page four of the September/October 2009 Publication is entitled, “Realities of Why the District Needs Change.”¹¹⁷ The article was written by Superintendent Charles Rick (Rick) about the Long Range Facilities Plan.¹¹⁸ A block quote from Rick states, “The plan might not be perfect, but it provides the modern education our young people deserve.”¹¹⁹ Complainants assert that the quote was promotional.

52. The last three statements identified as promotional in the September/October 2009 Publication are contained in an article entitled, “Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.”¹²⁰ Each of these three statements involves quotes from Superintendent Rick, Board Chair Robert Larson, and Board Member Gary Rantala.¹²¹

Statement No. 6

53. The first quote identified by the Complainants as promotional is attributed to Superintendent Rick and states:

The school board has developed an affordable plan for restructuring the district, which would provide students with expanded curriculum in modern learning environments, so hopefully voters will approve the plan and the options discussed at this study session will never have to be implemented.¹²²

Statement No. 7

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 3.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 5.

¹²¹ *Id.* at 5-6.

¹²² *Id.* at 5.

54. The second quote is from Board Chair Robert Larson and states:

Unlike the recommended plan where we are responsibly investing in a restructured district by closing some schools, these other options also close schools but don't solve any of our financial challenges. These other options are not good for young people and our entire region.¹²³

Statement No. 8

55. The third quote is from Board Member Gary Rantala, in which he states, "Bottom line is if we don't pass this bond referendum we'll be putting our schools in hospice."¹²⁴ It was Rantala's opinion that if the bond referendum did not pass, the School District would have a limited life span due to the decreasing student enrollment and bleak financial situation.¹²⁵

October 2009 Newsletter

56. In addition to the September/October 2009 Publication prepared by Johnson Controls, the District also addressed the Long Range Facilities Plan and bond referendum in its October, November, and December 2009 district-wide newsletters.¹²⁶

57. The October 2009 Newsletter reprinted all five of the articles from the September/October Publication prepared by Johnson Controls: "Enhancing Opportunities for Our Kids' Future,"¹²⁷ "Realities of Why the District Needs to Change," "Tax Implications of Voting Yes or No on December 8," "Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass," "93% of Us Say It's Too Expensive to Keep 7 Schools," and "How Will Our New and Remodeled School Buildings Be Better?"¹²⁸ Essentially, the October 2009 Newsletter was a reprint of the September/October Publication.

58. The School District spent \$2,406.94 to print and mail the eight-page October 2009 Newsletter to District residents.¹²⁹

59. The Complainants have identified two additional statements contained in the October 2009 Newsletter as promoting the bond referendum:

Statement No. 9

- The headline, "Enhancing Opportunities for Our Kids' Future."¹³⁰

¹²³ *Id.*

¹²⁴ *Id.* at 6.

¹²⁵ *Id.*; Test. of Gary Rantala at 723-724.

¹²⁶ Exs. 8, 9 and 10.

¹²⁷ Retitled from "How Realigning Schools Improves Education," which appeared in the September/October 2009 Publication.

¹²⁸ Ex. 8. *Compare*, Ex. 7.

¹²⁹ Ex. 19.

¹³⁰ Ex. 8 at 1.

Statement No. 10

- The title of Superintendent Rick’s article, “Realities of Why the District Needs to Change.”¹³¹

November 2009 Newsletter

60. In November 2009, the District published its November 2009 Newsletter, which was circulated to all households in the District.¹³² The November 2009 Newsletter contains three articles about the Long Range Facilities Plan and the December 8 bond referendum:

- Is Dissolution of Our School District Possible? Decide for Yourself;
- Department of Education says IDS 2142’s Realignment Plan is ‘Educationally and Economically Advisable’; and
- Here’s How Kids Benefit if the Bond Referendum Passes.¹³³

61. All other articles in the newsletter relate to other School District “news” or matters.¹³⁴

62. The School District spent \$2,388.69 to print and mail the eight-page November 2009 newsletter to District residents.¹³⁵

Statement No. 11

63. The front page of the November 2009 Newsletter includes an article entitled, “Is Dissolution of Our School District Possible? Decide for Yourself.”¹³⁶ The Complainants have identified the title of the article as promoting the ballot question.

64. The article, written by Superintendent Rick and School Board Chair Robert Larson, discusses the possibility of the District dissolving in the event the referendum failed.¹³⁷ Specifically, Rick and Larson note:

(1) There is no ‘magic plan.’ (2) Reorganization is inevitable, whether ISD 2142 continues in operation or if the district dissolves and students are transferred to other school districts. (3) Delaying a decision on a plan will only create deeper economic problems for a district facing a huge budget deficit in the next several years.¹³⁸

¹³¹ *Id.*

¹³² Ex. 9.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Ex. 20.

¹³⁶ Ex. 9 at 1.

¹³⁷ *Id.*

¹³⁸ *Id.*

65. Rick and Larson go on to state:

None of this will result in immediate dissolution of the school district. But, how much more do you think we can cut if we continue to have an operating deficit every year?¹³⁹

December 2009 Newsletter

66. On November 30, 2009, immediately before the December 8, 2009 special election, the School District published its last newsletter of 2009 -- the December 2009 Newsletter.¹⁴⁰ The December 2009 Newsletter contains seven articles about the Long Range Facilities Plan and the December 8 bond referendum.¹⁴¹ The articles are entitled:

- Vote on Tuesday, December 8th! Here's What You're Voting On;
- These are the Reasons for the Realignment Plan;
- Here's How Your Taxes will be Impacted *Approval Keeps Your Taxes Lower than the Regional Average*;¹⁴²
- Here's How Kids Benefit if the Bond Referendum Passes;
- Citizens Invited to Help Design the New Schools;
- Frequently Asked Questions About the Realignment Plan, Funding and More; and
- Results of School Board Study Session Regarding Consequences if the December 8 Referendum Does Not Pass.¹⁴³

67. The School District spent \$3,005 to print and mail the 12-page December 2009 newsletter to District residents.¹⁴⁴

Statement No. 12

68. The front page of the December 2009 Newsletter states in large, bold font: "Vote on Tuesday, December 8th!"¹⁴⁵ The article beneath the headline is entitled, "Here's What You're Voting On," and briefly summarizes the School District's Long

¹³⁹ *Id.*

¹⁴⁰ Exs. 10 and 21.

¹⁴¹ *Id.*

¹⁴² Emphasis supplied in original.

¹⁴³ Ex. 10. The last article is reprinted from the September/October 2009 Publication and the October 2009 Newsletter.

¹⁴⁴ Ex. 21.

¹⁴⁵ Ex. 10 at 1.

Range Facilities Plan.¹⁴⁶ The Complainants have identified the headline, “Vote on Tuesday, December 8th!” as promoting the ballot question.

Statement No. 13

69. In the article entitled, “These are the Reasons for the Realignment Plan,” the School District makes the following statement:

Without adoption of the proposed plan, the projected shortfall would be near \$4.1 million for budget year 2011-2012, which would place the district into statutory operating debt. In effect, without a solution[,] the district may have to go out of business. Our kids would then need to be split up and sent to schools in various neighboring districts.¹⁴⁷

70. The projected \$4.1 million budget shortfall referred to in the article was based on the School District’s March 2009 Long Range Facilities Plan financial projections which used the adopted budget for fiscal year 2008-2009 as its baseline, and assumed no cost reduction measures would be implemented.¹⁴⁸ As set forth above, the District’s adopted 2009-2010 budget recognized that the projected shortfall would be substantially less than originally anticipated in March 2009 because of the teacher reductions implemented at the end of the 2008-2009 school year and the receipt of additional revenue.¹⁴⁹

71. Nonetheless, the School District decided to use March 2009 financial projections based on the adopted budget for 2008-2009 to stress to voters that the District was in trouble financially and that “doing absolutely nothing” was not a feasible option.¹⁵⁰

Statement No. 14

72. The second page of the December 2009 Newsletter includes a chart showing the tax implications of the proposed bond referendum.¹⁵¹ The headline above the chart reads: “Here’s how your taxes will be impacted -*Approval keeps your taxes lower than the regional average.*”¹⁵² The Complainants have identified the headline and the chart as promoting the ballot question.

73. The chart shows that the regional average for school property taxes was \$321/year per \$100,000 home.¹⁵³ The chart also depicts that the school property taxes in the District were \$55/year per \$100,000 home *prior to* the 2009 proposed levy.¹⁵⁴

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*; Test. of K. Johnson at 245.

¹⁴⁹ Ex. 5 at 3; Test. of K. Johnson at 241.

¹⁵⁰ Test. of K. Johnson at 298.

¹⁵¹ Ex. 10 at 2.

¹⁵² *Id.* (Emphasis in original).

¹⁵³ *Id.*; Test. of S. Abrahamson at 474-475.

¹⁵⁴ Ex. 10 at 2 (emphasis supplied in original).

While the chart notes that after the levy, the school taxes would increase by \$164/year per \$100,000 home, the chart does not use that figure in the graph.¹⁵⁵ Instead, the graph compares the District's taxes prior to the 2009 proposed levy with the current taxes for neighboring districts.¹⁵⁶ This is contrary to the title of the graph ("Here's how your taxes will be impacted"), which represents, in emphasized italics, that approval of the referendum will keep "taxes lower than the regional average."¹⁵⁷ To be clear and accurate, the chart should have compared the after-levy taxes (\$219/year per \$100,000 home) with the neighboring districts, to show the true effect of the referendum.

Statement No. 15

74. The third page of the December 2009 Newsletter reprints an article re-titled, "Here's How Kids Benefit if the Bond Referendum Passes," which appeared in all prior publications.¹⁵⁸ In it, the School District lists the "many positives for our children if the referendum does pass."¹⁵⁹ This article is nearly identical to the article entitled, "How Realignment Schools Improves Education," printed in the September/October 2009 Publication; the article entitled, "Enhancing Opportunities for Our Kids' Future," appearing in the October 2009 Newsletter; and the article entitled, "Here's How Kids Benefit if the Bond Referendum Passes," published in the November 2009 Newsletter.¹⁶⁰

75. Included among the "benefits" identified if the referendum passes are such things as:

- Up-to-date textbooks and learning materials
- Personalized learning in which each student has his/her own Individual Learning Plan guiding their education
- Enrichment and remedial programs and support to all students geared to their Individual Learning Plan
- Provision of advanced mathematics and science offerings
- Third-graders as fluent readers
- Character Education
- Languages including Spanish and Ojibwemowin¹⁶¹

76. The article concludes that:

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 3.

¹⁵⁹ *Id.*

¹⁶⁰ Exs. 7, 8, and 9.

¹⁶¹ Ex. 10 at 3.

With greater resources available for programming, the district will be able to greatly expand its offerings to include dozens of modern courses. From forensic science to economics, from computer programming to graphic arts, the children of our district will have unprecedented opportunities in language arts, social studies, mathematics, and science.¹⁶²

77. Complainants contend that the article was promotional because the bond referendum was not a general obligations levy.¹⁶³ The bond was specifically earmarked for the construction of new school facilities and the renovation of older school facilities, not the implementation of programming, staff salaries, or other such operating expenses.¹⁶⁴

Statement No. 16

78. The December 2009 Newsletter also included an article entitled, "Frequently Asked Questions About the Realignment Plan, Funding and More."¹⁶⁵ The article includes the following question and answer:

Does going into SOD mean a district will dissolve?

No. Some districts enter SOD each year in Minnesota and, in the short term, they work their way out of it. The issue for any district emerging from SOD is what were the cuts and changes that had to be made to balance the budget and rebuild financial reserve? Were these cuts all 'fat' or did they remove some bone? As the result of the budget cuts is the district providing quality educational opportunities for its students? Is the district still competitive with its neighboring districts?¹⁶⁶

Statement No. 17

79. The article continues with the following question and answer:

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

Answer: The logic is unfortunately fairly straightforward and it goes like this:

First, the district will be effectively unable to raise revenues – three straight operating levies have failed, and, if the bonding referendum fails, it is improbable that a fourth levy would be passed.

¹⁶² Ex. 7 at 1; Ex. 8 at 1; Ex. 9 at 7; and Ex. 10 at 3.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Ex. 10 at 4-6.

¹⁶⁶ *Id.*

Second, to balance the budget at the level that needs attention, the district will be forced to close 2-4 schools AND make cuts to programming and other expense.

Third, the district already loses 20 percent of its student pool to adjoining districts through open enrollment. The closure of schools, cutting of programming, and no investment into new or remodeled facilities means that students will occupy crowded, outmoded buildings with diminished programming. The probability of more students leaving the district through open enrollment is very high.

Fourth, each student leaving the district takes with him/her roughly \$9,000 in state aid, which further reduces revenues which requires additional cuts which exacerbate the problems which will cause more students to leave.

This downward spiral will gain momentum of its own, spinning faster and quicker than we can image. Much sooner than later, ISD 2142 will be a shell of a district. Dissolution and consolidation with adjoining districts will be the sensible option. The sooner that happens, the sooner the district's children are in sustainable settings for gaining the education they deserve.¹⁶⁷

80. Complainants cite this question and answer section as promoting the ballot question.

Audit and Unanticipated Funding

81. An audit of the School District's finances was conducted in October and November 2009.¹⁶⁸

82. On December 22, 2009, the School District received the audited financial statements for fiscal year 2008-2009.¹⁶⁹ Instead of the \$1.9 million deficit projected in the adopted budget for fiscal year 2008-2009, the audit showed that the District had a deficit of approximately \$803,000 as of June 30, 2009.¹⁷⁰ The audit also revealed that the School District had a reserve of \$4.4 million.¹⁷¹

83. Factors that contributed to the School District's improved financial situation were the receipt of unexpected revenue from the sale of tax forfeited land and federal forest reserves, as well as additional state funding.¹⁷²

¹⁶⁷ *Id.*

¹⁶⁸ Test. of K. Johnson at 237-238; Ex. 23.

¹⁶⁹ Exs. 2 and 23. *Compare*, Exs. J and 4.

¹⁷⁰ Ex. 23 at 18 (APP. 138); Test. of K. Johnson at 241-242.

¹⁷¹ Ex. 23 at 18 (APP. 138).

¹⁷² Test. of K. Johnson at 241-242.

84. The audit confirmed Johnson's statements at the June 22, 2009 School Board meeting in which she advised the Board that the District's finances were "much better than previously projected" in her March 2009 analysis.¹⁷³

Passage of the Referendum

85. On December 8, 2009, the voters approved the bond referendum.

86. The District has not filed any campaign finance reports related to the December 8, 2009 election.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Complainants bear the burden of proving the allegations in their Complaint by a preponderance of the evidence.¹⁷⁴

3. A "preponderance of the evidence" means greater weight of the evidence. It means that all of the evidence, regardless of which party may have produced it, must lead the Panel to believe that the fact at issue is more likely true than not true.¹⁷⁵

Requirement to File Reports

4. Under Minn. Stat. § 211A.02, subd. 1, a committee or candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750; and shall continue to make the reports required under Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed under Section 211A.03.

5. Minnesota Statutes section 211A.01, subdivision 4, defines "committee" as "a corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate *or to promote or defeat a ballot question.*"¹⁷⁶

¹⁷³ Ex. 5.

¹⁷⁴ Minn. Stat. § 211B.32, subd. 4.

¹⁷⁵ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn.1980); *Benson v. Northland Transp. Co.*, 200 Minn. 445, 450-51, 274 N.W. 532, 534-35 (Minn. 1937).

¹⁷⁶ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

6. The Minnesota Supreme Court has previously held in this case that a school district is a public corporation and can, therefore, be subject to Minn. Stat. § 211A.02 if the district acts to promote or defeat a ballot question.¹⁷⁷

7. According to the Minnesota Supreme Court, “promote” means to “urge the adoption of” or “advocate.”¹⁷⁸

8. The Complainants have established by a preponderance of the evidence that the Respondents promoted passage of the bonding referendum ballot question in articles published in the School District’s September/October 2009 Publication, the October 2009 Newsletter, the November 2009 Newsletter, and the December 2009 Newsletter. When read in totality, these publications served to advocate for, and urge the passage of, the December 2009 ballot question.

9. “Disbursement” is defined by statutes as “money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent.”¹⁷⁹ “Disbursement” does not include payment by a county, municipality, school district, or other political subdivision for election-related expenditures required or authorized by law.¹⁸⁰

10. Election-related expenses authorized by law include such expenses as compensation for election judges and sergeants-at-arms, and the cost of printing ballots, providing ballot boxes, and equipping polling places.¹⁸¹

11. The costs associated with preparing and disseminating the publications at issue in this matter were not election-related expenditures required or authorized by law. They are, therefore, considered disbursements under Minn. Stat. § 211A.01, subd. 6.

12. The School District made disbursements of over \$750 while acting to promote the December 2009 ballot question, and it was, therefore, required to file campaign finance reports pursuant to Minn. Stat. § 211A.02.

Required Reports

13. Minnesota Statutes section 211A.02, subdivision 1, provides that:

- (a) A committee or candidate who receives contributions or makes disbursements of more than \$750 in a calendar year shall submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750 and

¹⁷⁷ *Abrahamson v. St. Louis County School District*, 819 N.W.2d 129, 134 (Minn. 2012).

¹⁷⁸ *Id.* at 136, citing *American Heritage Dictionary* 1410 (5th ed. 2011).

¹⁷⁹ Minn. Stat. § 211A.01, subd. 6.

¹⁸⁰ *Id.*

¹⁸¹ Minn. Stat. § 204B.32, subd. 1(c).

shall continue to make the reports listed in paragraph (b) until a final report is filed.

- (b) The committee or candidate must file a report by January 31 of each year following the year when the initial report was filed and in a year when the candidate's name or ballot question appears on the ballot, the candidate or committee shall file a report:

(1) ten days before the primary or special election;

(2) ten days before the general or special election; and

(3) 30 days after a general or special election.

14. The Complainant established by a preponderance of the evidence that the School District failed to file campaign financial reports in violation of Minn. Stat. § 211A.02.

15. Pursuant to Minn. Stat. § 211A.03, a committee may file a final report when it has settled all debts and disposed of all assets in excess of \$100 in the aggregate.

16. Because there is no evidence regarding when the School District settled all debts and disposed of all assets in excess of \$100, the Complainants have failed to establish that the School District violated Minn. Stat. § 211A.03. Accordingly, this alleged violation is dismissed.

17. Minnesota Statutes section 211A.05, subdivision 1 provides, in part, as follows:

The treasurer of a committee formed to promote or defeat a ballot question who intentionally fails to file a report required by section 211A.02 or a certification required by this section is guilty of a misdemeanor. Each candidate or treasurer of a committee formed to promote or defeat a ballot question shall certify to the filing officer that all reports required by section 211A.02 have been submitted to the filing officer or that the candidate or committee has not received contribution or made disbursements exceeding \$750 in the calendar year. The certification shall be submitted to the filing officer no later than seven days after the general or special election....

18. The Complainants have failed to demonstrate that the School District intentionally failed to file a report required under Minn. Stat. § 211A.02, or a certification required by Minn. Stat. § 211A.05, subd. 1. Therefore, this alleged violation is dismissed.

19. Pursuant to Minn. Stat. § 211A.06, a treasurer or other individual who fails to keep a correct account of money received for a committee and who does this “with the intent to conceal receipts or disbursements, or the purpose of receipts or disbursements” is guilty of a misdemeanor.

20. The Complainants have failed to demonstrate that the School District failed to file financial reports with the intent to conceal disbursements in violation of Minn. Stat. § 211A.06. Therefore, this alleged violation is dismissed.

Based upon the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The School District is reprimanded for violating the campaign finance reporting requirements of Minn. Stat. § 211A.02.

2. By **August 30, 2014**, the School District shall file the required campaign financial reports with the appropriate filing officer and the Office of Administrative Hearings.

Dated: May 30, 2014

s/Ann C. O'Reilly

ANN C. O'REILLY
Presiding Administrative Law Judge

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

s/Kirsten Tate

KIRSTEN TATE
Administrative Law Judge

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

This matter is before the Panel on remand from the Minnesota Supreme Court for further evidentiary proceedings on the Complainants' allegations of campaign finance violations by the School District in connection with a 2009 school bond referendum.¹⁸² An evidentiary hearing was held over the course of three days, and the parties submitted post-hearing briefs.

The central issue before the Panel is whether the School District is a "committee" within the meaning of Minn. Stat. ch. 211A, thereby subjecting it to campaign finance reporting requirements under Minnesota law.

Minnesota Statutes section 211A.02 requires that a "committee" or a candidate who receives contributions or makes "disbursements" of more than \$750 in a calendar year submit an initial finance report within 14 days after the receipt or disbursement of more than \$750, and that the candidate or committee continue to make reports until a final report is filed.

A "committee" is defined under chapter 211A as:

[A] corporation or association or persons acting together to influence the nomination, election, or defeat of a candidate or to *promote or defeat a ballot question*. Promoting or defeating a ballot question includes efforts to qualify or prevent a proposition from qualifying for placement on the ballot.¹⁸³

The Minnesota Supreme Court has ruled that a school district is a public "corporation" within the meaning of Minn. Stat. § 211A.02, and may be considered a "committee" for campaign financial reporting requirements if it "acts to promote or defeat a ballot question."¹⁸⁴ Thus, the threshold question before the Panel is whether the School District acted to "promote" the ballot question.

Arguments of the Parties

The Complainants argue that the School District promoted passage of the ballot question through numerous statements in newsletters and other publications it disseminated between September and December 2009. The Complainants identified

¹⁸² *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129 (Minn. 2012).

¹⁸³ Minn. Stat. § 211A.01, subd. 4 (emphasis added).

¹⁸⁴ *Abrahamson*, 819 N.W.2d at 134-35.

17 statements or passages in four District publications that they maintain promoted passage of the December 2009 ballot question. The Complainants further contend that the School District spent more than \$750 in “disbursements” on these promotional material and, thus, was obligated to file campaign finance reports under Minn. Stat. § 211A.02.

The Complainants assert that the School District overstated its financial difficulties to the public, and misrepresented that a failure to pass the referendum would cause the District to enter into Statutory Operating Debt, resulting in dissolution. In addition, the Complainants contend that the School District’s emphasis in its newsletters on the numerous ways the additional funding would benefit the educational opportunities of District students, without presenting any opposing viewpoints, arose to promotion of the ballot question.

The Complainants further argue that the School District’s failure to update the District’s budget projections in its newsletter articles, when it became aware -- as early as June of 2009 -- that the District’s financial situation had significantly improved, was a deliberate act of promotion. The Complainants contend that the District chose to continue to use outdated and inaccurate financial information to present its financial situation in the most negative light in order to urge voters to approve the bond referendum.

In response, the School District maintains that it was authorized and, indeed, required, to provide information about the ballot question to voters.¹⁸⁵ The District asserts that it provided a fair presentation of the facts in its newsletter articles about the referendum and the Long Range Facilities Plan. The District argues that it presented both the positive aspects of the referendum (such as enhanced educational opportunities), as well as the negative aspects of the Long Range Facilities Plan (such as teacher layoffs and school closings). The District contends that it never directly urged residents to “vote yes” on the ballot question.

According to the School District, there is no dispute that it was facing significant financial difficulties and that, if the bond referendum did not pass, it would be forced to take drastic steps to reduce expenses, such as eliminating programming, further reducing staff, and closing schools. Such reductions would, in turn, decrease opportunities for students and ultimately result in the loss of students through open enrollment to other districts and the loss of state aid. The School District asserts that its attempts to explain its plans and goals, and the possible negative outcomes that could result if the ballot question failed, were informational, not promotional.

In addition, the School District contends that, even if the articles are found to be promotional, it did not make “disbursements” of more than \$750. Therefore, it was not obligated to file campaign reports. The School District maintains that it was its practice to publish a monthly newsletter to inform District residents about matters concerning the School District. Because the newsletters would have been prepared and disseminated

¹⁸⁵ *Op. Minn. Atty. Gen.* No. 159a-3 (May 24, 1966).

at the same cost even if there was not referendum in December 2009, the District argues that the cost of the newsletters cannot be deemed reportable campaign “disbursements.”

Analysis

In Minnesota, school districts have a legal duty to furnish school facilities to every child of school age residing in their districts.¹⁸⁶ In furtherance of that duty, school districts are expressly authorized to issue school building bonds for the “acquisition or betterment of school facilities.”¹⁸⁷ Before such bonds may be issued, however, a school district is required to obtain approval from the voting public, as such bonds will likely result in tax increases to homeowners in the district.¹⁸⁸

Minnesota law also imposes upon school districts an obligation to inform the public of their financial conditions, of official proceedings, and of district business.¹⁸⁹ Inherent in the requirement to obtain voter approval of a bond initiative and the mandated transparency for school districts established in law, is the duty to inform the public about a bond referendum; the stated need for such action; and the impact and effects of the passage or non-passage of a ballot question.

Obviously, a school district that is proposing a bonding referendum is in favor of the passage of such ballot question. The call for a referendum is asking permission from the taxpayers to increase taxes to pay for expenses that the school board has deemed important and necessary. Therefore, a school district’s position on a bonding question is apparent: the district hopes the public will pass the measure and increase school funding.

There is nothing improper about a school district supporting the passage of a bonding question. Indeed, by passing a resolution to place a referendum on the ballot, a school board is acknowledging that its board seeks, and the board believes, that such additional taxpayer funding is necessary for the operation or benefit of the district. Accordingly, a school district’s bias in favor of its own referendum is clear.

Minnesota’s campaign finance and reporting laws do not prohibit a school district from promoting a ballot question or urging the adoption thereof. When read together, Minn. Stat. §§ 211A.01 and 211A.02 simply require that if a school district does promote a ballot question, it must report contributions or disbursements of more than \$750.

The central issue in this case is whether the publications disseminated by the School District were informational materials about the referendum, the District’s financial conditions, and the Long Range Plan; or whether they were promotional, advocating in

¹⁸⁶ Minn. Stat. § 123B.02, subd. 2.

¹⁸⁷ Minn. Stat. § 475.52, subd. 5.

¹⁸⁸ Minn. Stat. § 475.58.

¹⁸⁹ See e.g., Minn. Stat. § 123B.10 (requiring a school board to annually notify the public of its revenue, expenditures, fund balances, and “other relevant budget information”); Minn. Stat. § 123B.09, subds. 10 and 11 (requiring school districts to “adequately inform the public” of meetings and official proceedings); and Minn. Stat. § 13D.01 (mandating that all meetings of a school board be open to the public).

favor of the passage of the referendum. To that end, the Minnesota Supreme Court has established guidance for this Panel.

The Court has defined the term “promote,” for purposes of Minn. Stat. ch. 211A, as meaning “to urge the adoption of” or “advocate.”¹⁹⁰ This is substantially more than merely informing the public about the financial condition of the district or the determined need for the issuance of bonds.

The line between informational and promotional communication is often a fine one. For example, urging voters to vote in a special election and informing them of the date of the election is not advocating for one side or the other. Nor is explaining the school board’s rationale for seeking additional bond financing, including explaining the district’s financial condition and the consequences if a bond initiative is not passed.

When a district’s communications or statements, however, are so one-sided that they cannot reasonably be read to mean anything but urging the passage of the referendum, then such communications have crossed the line from informational to promotional. In such case, the district is subject to the Section 211A campaign finance reporting requirements.

Here, Complainants have identified 17 statements or passages which they contend are promotional. These separate statements must necessarily be read in context and in the totality of the newsletter campaign initiated by the District, in consultation with Johnson Controls, from September through December 2009. The Panel concludes that when reading the four publications together, they cannot be interpreted as anything but urging the adoption of the bonding referendum. Therefore, they are, indeed, promotional.

In the first September/October 2009 Publication, prepared by Johnson Controls, and then reprinted by the District in its October 2009 Newsletter, the District lists the various collateral benefits that would befall students in the schools if the bond initiative passed and the Long Range Facilities Plan was fully adopted.¹⁹¹ These benefits included such things as “Third graders as fluent readers,” “Character education,” “advanced mathematics and science offerings,” and “Personalized learning.”¹⁹² While these benefits may be logical outgrowths of increased funding for public schools, they are not necessarily directly related to the construction bond which was the subject of the referendum. The bond financing was earmarked expressly for the construction and remodeling of school facilities. It was not a general obligations levy.

While the September/October 2009 Publication and October 2009 Newsletter briefly acknowledge that a “yes” vote in the election will increase taxes, they go on to state:

¹⁹⁰ *Abrahamson*, 819 N.W.2d at 136, quoting *American Heritage Dictionary* 1410 (5th ed. 2011).

¹⁹¹ Exs. 7 and 8.

¹⁹² *Id.* at 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...and *would* need to dissolve. Children in this school district *would* then go to neighboring school districts.¹⁹³

Such passage represented to the public that the School District *will* – not simply might – enter SOD without the bonding measure, and *would* – not simply could – be forced to dissolve if the referendum failed.

The articles bluntly conclude: “In effect, the voters’ decision could determine if the school district remains in operation or dissolves.”

The statements are then underscored by another article in the same publications in which School Board member Gary Rantala is quoted as saying, “Bottom line is[,] if we don’t pass this bond referendum, we’ll be putting our schools in hospice.”

These passages, when read in the context of the District’s 2009 updated financials (which were known by the School Board well before the time of publication), and the extreme rarity of school district dissolution in Minnesota, did not present a fair and balanced representation to the public about the effects of a “no” vote. Instead, they painted a dire picture in which rejection of the referendum would almost certainly result in the dissolution of the entire school district, and would then result in children being forced to attend neighboring school districts with higher property taxes.

In reality, entering into SOD does not necessarily result in dissolution of a school district. Rather, it only requires that a district limit its expenditures and/or file a special operating plan with the Department of Education detailing how the district plans to reduce its deficit expenditures.¹⁹⁴ Dissolution is not an inevitable or unavoidable consequence of entering into SOD. In other words, dissolution is not a certain result. Therefore, representing to the public that the School District would dissolve and children would be forced to enroll in other school districts was an exaggeration intended to urge the adoption of the referendum.

Similarly, in the November 2009 and December 2009 Newsletters, the District emphasized the numerous benefits that would result if the ballot measure passed and the disastrous consequences that would befall residents if the ballot question failed.¹⁹⁵ In addition, the District unfairly represented its financial condition in an effort to garner support for the ballot initiative.

For example, the December 2009 Newsletter states:

This 2008-2009 adopted budget shortfall is projected to be \$1.5 million.
Without the adoption of the proposed plan, the projected [budget] shortfall

¹⁹³ Exs. 7 and 8 at 2 (emphasis added).

¹⁹⁴ See, Minn. Stat. § 123B.83.

¹⁹⁵ See, Ex. 9 at 1 and 7; Ex. 10 at 1-7.

would be near \$4.1 million for budget year 2011-2012, which would place the district into statutory operating debt. In effect, without a solution[,] the district may have to go out of business.¹⁹⁶

Notably, the December 2009 Newsletter was printed and distributed nearly six months after the School District was informed by Kim Johnson that the projected budget shortfall was significantly less than originally projected in March 2009. Indeed, the 2009-2010 adopted budget (adopted in June 2009) showed a \$833,396 deficit – nearly half of the deficit projected in the 2008-2009 adopted budget.¹⁹⁷ Yet the District refers to the 2008-2009 adopted budget in the December 2009 Newsletter in the present tense (“This 2008-2009 adopted budget shortfall **is** projected to be \$1.5 million.”¹⁹⁸), making it appear as if the 2008-2009 projections were still current and accurate. However, at the time the December 2009 Newsletter was published, the District was halfway into the 2009-2010 school year, and the 2009-2010 budget had already been adopted, which showed an improved financial situation.

In addition, the December 2009 Newsletter contained a graph comparing the School District’s then-current tax rate (\$55/year per \$100,000 home) against other school districts in the area.¹⁹⁹ The chart was used to communicate the point that approval of the referendum would still keep residents’ taxes lower than surrounding school districts. The title of the chart and article was:

Here’s how your taxes will be impacted
*Approval keeps your taxes lower than the regional average*²⁰⁰

The title of the article/chart would suggest that it is comparing the tax rate of the District with surrounding districts after the levy was passed. Instead, the chart compared the tax rate *before* the referendum, not *after* its passage. Therefore, it did not fairly demonstrate how approval of the referendum would still keep taxes lower than surrounding districts.

The tax rate after the referendum was \$219/year per \$100,000 home, not \$55/year per \$100,000 home, as the chart represented. To be accurate with the chart’s title and headline, the chart should have compared \$219/year to the surrounding districts, not the \$55/year figure. In this way, the chart unfairly presented the true cost of approving the referendum and was slanted in favor of approval of the referendum.

Finally, the December 2009 Newsletter contained a “question-answer” section discussing the Long Term Facilities Plan. While the District answers the question, “Does going into SOD mean a district will dissolve?” with a qualified “no” answer, it follows up the question with, “So why **will** ISD 2142 dissolve if it goes into SOD?”²⁰¹

¹⁹⁶ Ex. 10 at 2 (emphasis supplied in original).

¹⁹⁷ Ex. 4.

¹⁹⁸ Ex. 10 at 2 (emphasis added).

¹⁹⁹ *Id.*

²⁰⁰ Emphasis supplied in original.

²⁰¹ Ex. 10 at 6 (emphasis added).

The second question (Statement No. 17) essentially reverses the answer given in the first question (Statement No. 16), by representing that the District **will** dissolve.

Consistent with the District's prior statements, the carefully crafted questions and answers set forth in the December 2009 Newsletter represented to the public that going into SOD was inevitable and that without the passage of the referendum, the District would, in fact, dissolve. This is the same type of rhetoric that the District used in the September/October 2009 Publication and the October 2009 Newsletter.

In short, by stressing only exaggerated benefits of a "yes" vote and then describing only the most extreme negative possibilities of a "no" vote, the District was not providing balanced informational material to its readers; it was advocating for a specific result -- the passage of the ballot question. While overly gloomy assumptions and worst case scenarios may not be enough to form the basis of a false campaign claim under Minn. Stat. § 211B.06, they are sufficient to show that the statements are promotional and advocate for a particular result.

When taken as a whole, a reasonable reader must conclude that all four publications were urging the passage of the referendum, not presenting neutral information about both sides of the bonding issue. The Panel thus concludes that the School District acted to promote the ballot question. As such, the District was subject to the campaign finance reporting requirements set forth in Minn. Stat. ch. 211A, if it made disbursements in excess of \$750 in one year.

Calculation of the Amount of Disbursements

Because the Panel concludes that the School District acted as a "committee" to promote the ballot question when it disseminated the newsletters and publications identified above, the Panel must next decide whether the District received or made "disbursements" in excess of \$750 in one year. If the District made disbursement of more than \$750 in one year, then it was subject to the campaign reporting requirements of Minn. Stat. ch. 211A.

Complainants assert that the entire costs of the newsletters and publication were "disbursements" reportable by the School District. Complainants established that the District spent between \$2,400 and \$3,000 on each of the publications prepared and disseminated in October, November and December of 2009.²⁰²

"Disbursements" are defined in Minn. Stat. § 211A.01, subd. 6, as:

[M]oney, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent. 'Disbursement' does not include payment by a...school district...for election-related expenditures required or authorized by law.

²⁰² Exs. 7-10, 18-21. Complainants did not submit documentation of the cost of the September/October 2009 Publication, which was prepared by Johnson Controls.

The District does not assert that the costs of the newsletters were “election-related expenditures required or authorized by law.” Instead, the School District states that in 2009, it was printing and disseminating a monthly newsletter to every household in the District. Therefore, the District argues that it would have printed and disseminated the October, November, and December 2009 Newsletters irrespective of whether the referendum was placed on the ballot. As a result, the District contends that the costs of the newsletter should not be deemed “disbursements” for purposes of campaign finance reporting requirements.

The Panel disagrees. While monthly newsletters would have been disseminated by the District regardless of the referendum, the School District used the newsletters as its medium to promote the ballot question. By using the newsletters to promote its election agenda, the costs of those newsletters – or at least a proportional share of those costs -- became “disbursements” reportable under Minn. Stat. ch. 211A, as described below.

Allocation of Costs as Disbursements

The entire September/October 2009 Publication was devoted to the ballot question and Long Range Facilities Plan. The Complainants identified eight specific statements or passages in the publication as being promotional, and the Panel concludes that the entire publication was promotional.²⁰³ Therefore, the School District was required to report as disbursements what it spent to have the entire September/October 2009 Publication prepared, printed, and mailed to District residents.²⁰⁴

In contrast, only a portion of the October, November and December Newsletters addressed the ballot question. Consequently, the School District should apportion the costs of those newsletters in relation to the number of pages that addressed the ballot question or Long Range Facilities Plan.

With respect to the October 2009 Newsletter, only four of the eight pages were devoted to the ballot question.²⁰⁵ The Complainants identified two statements on the four pages as promotional; and the Panel concludes that four of the eight pages of the newsletter were promotional. The School District spent \$2,406.94 in printing and mailing this newsletter.²⁰⁶ Therefore, the School District was required to report half of the total amount (or \$1,203.47) as a campaign disbursement, together with any other costs associated with preparing those four pages.

Only two of the November 2009 Newsletter’s eight pages were devoted to the ballot question.²⁰⁷ The School District spent \$2,388.69 printing and mailing the

²⁰³ Ex. 7.

²⁰⁴ The cost of this publication is unknown.

²⁰⁵ Ex. 8.

²⁰⁶ Ex. 19.

²⁰⁷ Ex. 9.

November 2009 Newsletter to District residents.²⁰⁸ Therefore, the School District was required to report one-fourth (or \$597.17) as a campaign disbursement, together with any other costs associated with preparing those pages.

Finally, six pages of the 12-page December 2009 Newsletter were devoted to the ballot question. The School District spent \$3,004.59 to print and mail the December 2009 Newsletter to District residents.²⁰⁹ Thus, the School District was required to report half of this cost (or \$1,502.30) as a campaign disbursement, together with any other costs associated with preparing these pages.

In sum, the total amounts spent on the preparation and dissemination of the printed materials, after apportionment, exceeded \$750. Accordingly, the School District was required to file the financial reports mandated by Minn. Stat. § 211A.

Section 211A.02: Financial Reports

Minnesota Statutes section 211A.02, subdivision 1(a) requires that a committee that receives or makes disbursements of more than \$750 in a calendar year submit an initial report to the filing officer within 14 days after the committee receives or makes disbursements of more than \$750.

Section 211A.02, subdivision 1(b) requires that a report be filed by January 31 of each year following the initial report and in the year when a ballot question appears on the ballot. The committee shall continue to submit such reports until a final report is filed.²¹⁰ In addition, a committee must file a report 10 days before the special election and 30 days after the special election.²¹¹

The Complainants have established that the School District acted as a committee to promote a ballot question. The Complainants have further established that the School District made disbursements in excess of \$750 in 2009. Therefore, the School District was required to file the reports mandated by Minn. Stat. § 211A.02. By failing to make the required reports, the School District is in violation of Minn. Stat. § 211A.02, subd. 1.

Section 211A.03: Final Reports

Minnesota Statutes section 211A.03 provides as follows:

A candidate or committee may file a final report when all debts have been settled and all assets in excess of \$100 in the aggregate are disposed of. The final report may be filed at any time and must include the kinds of information contained in the financial statements required by section

²⁰⁸ Ex. 20.

²⁰⁹ Ex. 21.

²¹⁰ Minn. Stat. § 211A.02, subd. 1(b).

²¹¹ *Id.*

211A.02 for the period from the last previous report to the date of the final report.

The filing of a final report may occur at any time. Therefore, the Complainants have failed to establish that the School District violated Minn. Stat. § 211A.03 by not filing a final report. Once the School District has filed the reports required under Minn. Stat. § 211A.02, it should file a final report.

Section 211A.05: Failure to File a Statement

Minnesota Statutes section 211A.05 governs the penalty and process for candidates and committees who fail to file financial reports required by Minn. Stat. § 211A.02. Minnesota Statutes section 211A.05, subdivision 1 provides, in part, as follows:

The treasurer of a committee formed to promote or defeat a ballot question who intentionally fails to file a report required by section 211A.02 or a certification required by this section is guilty of a misdemeanor. Each candidate or treasurer of a committee formed to promote or defeat a ballot question shall certify to the filing officer that all reports required by section 211A.02 have been submitted to the filing officer or that the candidate or committee has not received contribution or made disbursements exceeding \$750 in the calendar year. The certification shall be submitted to the filing officer no later than seven days after the general or special election....

While the Complainants have established that the School Board made disbursements of more than \$750, they have failed to establish by a preponderance of the evidence that the School District *intentionally* failed to file campaign finance reports or a certification that less than \$750 in disbursements were made. At the time that the Complaint was filed, this was a case of first impression. As a result, the School District reasonably believed and asserted a colorable legal argument that it was not a “committee” under the campaign finance and reporting laws. Moreover, Complainants have failed to show that the School District knew of its obligation to file reports under chapter 211A and that it intentionally refused to do so. Accordingly, the alleged violation of Minn. Stat. § 211A.05 is hereby dismissed.

Section 211A.06: Failure to Keep Accounts

Minnesota Statutes section 211A.06 provides that a treasurer or individual who fails to keep a correct account of money received for a committee “with the intent to conceal receipts or disbursements, [or] the purpose of receipts or disbursements” is guilty of a misdemeanor. The statute does not penalize merely inaccurate record-keeping. It penalizes the intentional concealment of receipts or disbursements.

The Complainants failed to establish that the School District or any individual affiliated with the School District failed to report campaign disbursements with the intent to conceal such actions from anyone. First, there is no evidence in the record that the

School District knew that it had an obligation to file reports. Prior to this case, no school district in Minnesota has previously been held to comply with the reporting requirements of Minn. Stat. § 211A.02. There is no evidence that the District had knowledge of its obligation to report and intentionally failed to do so. Accordingly, the alleged violation of Minn. Stat. § 211A.06 is hereby dismissed.

Penalty and Conclusion

Having found that the School District violated the reporting requirements of Minn. Stat. § 211A.02, the Panel may make one of several dispositions: (1) the Panel may issue a reprimand; (2) the Panel may impose a civil penalty of up to \$5,000; and/or (3) the Panel may refer the Complaint to the appropriate county attorney for criminal prosecution.²¹²

The Panel imposes only a reprimand as this is a matter of first impression. On at least two occasions prior to this case,²¹³ the Office of Administrative Hearings held that school districts were not committees within the meaning of chapter 211A and, therefore, were not subject to the reporting requirements. That holding was only recently reversed by the Minnesota Court of Appeals and ultimately the Minnesota Supreme Court.²¹⁴ Consequently, the School District had little guidance with respect to Section 211A reporting requirements. The Panel thus concludes that the imposition of a reprimand is all that is warranted.

The School District is hereby directed to file the required campaign financial reports with the appropriate filing officer and the Office of Administrative Hearings by August 30, 2014.

A.C.O., B.L.N., K.T.

²¹² Minn. Stat. § 211B.35, subd. 2.

²¹³ See, *Barry v. St. Anthony–New Brighton Indep. Sch. Dist. 282*, OAH Docket 3-6326-20564 (May 21, 2009), *aff'd on other grounds*, *Barry v. St. Anthony–New Brighton Indep. School District 282*, 781 N.W.2d 898 (Minn. Ct. App. 2010); *Wigley v. Orono Pub. Sch.*, OAH Docket 3-6326-19653 (May 1, 2008).

²¹⁴ *Abrahamson v. St. Louis County School Dist.*, 802 N.W.2d 393 (Minn. Ct. App. 2011); *Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129 (Minn. 2012).