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July 15, 2014

Via Email Only

Marshall Helmberger
Publisher/Regional Editor
Timberjay Newspaper
414 Main Street
PO Box 636
Tower, MN 55790

Dear Mr. Helmberger:

I am in receipt of your email dated July 14, 2014 and a copy of your "story." This shall constitute my response, although I highly doubt that any part of my response will ultimately find its way into your "story."

In your "story," you take issue with legal fees incurred by the St. Louis County School District in three matters, which you characterize as "questionable." In doing so, you resort, in many instances, to fabricated facts and half-truths, and then compound the problem by putting your spin on those fabricated facts and half-truths.

The first matter to which you refer was a construction arbitration between The Jamar Company and the School District arising out of the installation of the roof at the School District's new South Ridge School. You claim that The Jamar Company made "an initial payment demand of $149,308." However, as you have undoubtedly reviewed the arbitrator's initial decision in that matter, you know that your claim is not entirely accurate in that the arbitrator found that "Jamar originally priced the changed work at $183,000.00 in August of 2011". It was only after the School District refused to pay what it considered to be an exorbitant price that Jamar reduced its demand to $149,308 in its Demand for Arbitration/Mediation. This matter proceeded to mediation, during which the School District participated in good faith in an attempt to resolve the case. Ultimately, the School District settled approximately $81,000 of additional claims brought by Jamar but was unable to reach agreement with respect to the roofing claim.

Subsequently, approximately one year after its initial demand of $183,000 and approximately five months after its $149,308 demand for arbitration, Jamar conceded, for the

first time, that its two previous demands were unwarranted and claimed that it was owed approximately $87,000, plus interest, fees and costs, on its roofing claim.

After a three-day arbitration hearing, the arbitrator awarded Jamar a total of $42,069.96 in damages and interest. The arbitrator also found that under the facts and circumstances of the case, the School District was the prevailing party, and awarded the School District approximately $120,000 in fees and costs. This fact was conveniently omitted from your "story."

Jamar then brought a motion in district court seeking to vacate that portion of the arbitrator's award which found the School District to be the prevailing party. Judge Florey granted Jamar's motion. You claim that Judge Florey, "in his ruling, made note that the district appeared to have made no effort to settle the case out of court." This claim is, at best, a half-truth given the fact that Judge Florey merely found that "during the arbitration there was no evidence presented regarding previous settlement offers or settlement discussions between the parties." The absence of such evidence is not surprising in light of the fact that such evidence is generally not admissible. Judge Florey's decision is currently on appeal to the Minnesota Court of Appeals.

The second matter to which you refer was a construction arbitration between Wagner Construction and the School District arising out of the excavation contract for the new South Ridge School. You claim that Wagner "originally sought $334,826," implying that was the extent of Wagner's claim. This is yet another example of you misstating the "facts," as Wagner's total claim was for $401,760, plus interest, fees and costs. Ultimately, Wagner was awarded a total of $103,694, which is only 26 percent of its demand.

You totally ignore this fact by mischaracterizing the arbitrator's decision and downplaying the School District's ultimate success as a "break for the district." In this respect, nowhere in the arbitrator's decision does the arbitrator state or imply that "[d]ue to an engineering error by the district's project team, the district provided contractors incorrect elevation data in their original bid materials, and that forced Wagner to haul many thousands of extra yards of fill material to meet the terms of their contract," as you suggest. In fact, the arbitrator's decision is quite to the contrary. Again, you are merely trying to manufacture "facts" to support your not so hidden agenda.

Thus, in both the Jamar and Wagner cases, the School District was exposed to more than $551,000 in total damages. The School District had no choice but to defend itself from such exorbitant claims. Settlement with the assistance of a mediator was attempted but ultimately unsuccessful not solely because of the School District's position. In the end, the two contractors were awarded a total of approximately $146,000, which is only about 26 percent of what they were seeking. The amount of legal fees expended by the School District through the two arbitrations, while not insignificant, was considerably less than the approximately $405,000 that it saved in the process.

The third matter is the Abrahamson complaint in which you again skew the facts to support your agenda. As you are well aware, the School District was only in the Court of Appeals because the complainants' appealed the Office of Administrative Hearings' decision. The only issue before the Court of Appeals was whether the Office of Administrative Hearings wrongly concluded that the complainants' failed to state a prima facie case with regard to the applicability of the Campaign Finance Act to the School District. Contrary to your claim, the Court of Appeals did not make a finding of fact that the School District expended funds to promote the ballot question. The Court of Appeals only found that the complainants' allegation that the School District expended public funds to promote the ballot question was sufficient "to state a prima facie violation of chapter 211A's reporting requirements." Consequently, the issue was remanded to the Office of Administrative Hearings for an evidentiary hearing for a determination of whether the newsletter information was in fact "promotional." Therefore, the Court of Appeals did not find that the School District's newsletters were promotional as you claim.

In addition, the School District was successful in affirming the Administrative Law Judge's decision that the statement related to educational opportunities flowing from the bond referendum was not false and did not violate section 211B.06.

The School District did not have an automatic right of appeal to the Supreme Court and was required to first petition the Supreme Court to accept review. In 2013 the Supreme Court only accepted review of about 12.5% of the approximately 900 petitions for review it received. Consequently, the issue was not as "cut and dry" as you consistently represent.

While you hold on to certain words of the Supreme Court in order to support your condemnation of the School District you also conveniently refuse to acknowledge the full breadth of the Court's conclusion. More specifically, the Supreme Court did not find that the School District's materials were promotional, but only that the complaint sufficiently alleged that the statements were promotional in order to advance the complaint to an evidentiary hearing. In making this determination the Court was required to accept the allegations as true and to view them in the light most favorable to the complainants. Notably on this issue, the Supreme Court stated that "[t]hus, our conclusion that the complaint states a prima facie claim that the District made promotional statements does not resolve whether Abrahamson and Kotzian will ultimately prevail on their claim." Therefore, to suggest that the School District should have effectively surrendered and filed campaign finance reports upon this conclusion is merely exalting form over substance.

The Supreme Court also reinstated the dismissal of the two remaining false claims allegations in favor of the School District. As a result, the complainants were left with only one remaining claim from their original complaint.

Although the three-judge administrative hearing panel did not agree with the School District's position that the materials it distributed prior to the hearing were informational and not promotional, the Panel did find that complainants did not establish "that the School

District *intentionally* failed to file campaign finance reports" and 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." Further, although the Panel had authority to impose a civil penalty of up to $5,000 and/or refer the complaint to the appropriate county attorney for criminal prosecution, it only issued a reprimand with the direction to file the required campaign finance reports.

In issuing the reprimand to the School District, the Panel noted that the School District had little guidance with respect to the reporting requirements in light of two previous cases where it was decided that school districts were not subject to the reporting requirements. Coincidentally, our office also represented the school districts in those two cases.

You also seek to expand the breadth of the Panel's reprimand to encompass not only the failure to report, but to the promotion of the referendum as well. Such an expansion is clearly contrary to the Panel's decision as the Panel found that "[t]here is nothing improper about a school district supporting the passage of a bonding question" and that "Minnesota's campaign finance and reporting laws do not prohibit a school district from promoting a ballot question or urging the adoption thereof." Thus, the School District's fight was not "quixotic" as you suggest.

Finally, your suggestion that the School District was not provided with appropriate legal advice relating to the three matters is nothing short of irresponsible. Further, your transparent attempt to elicit information that is protected by the attorney-client privilege is disingenuous at best. While I understand your desire to narrow your "story" to only the monetary aspects of the cases, the School District in fact obtained a number of nonmonetary victories that would not have occurred but for the involvement of the judicial or arbitral tribunal. Moreover, your solicitation of attorneys and others on matters in which they do not have all of the facts to support further Monday-morning quarterbacking of the School Board's decisions may sell papers but is far from reality.

Very truly yours,

Stephen M. Knutson

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SMK:df