

Do's and Don'ts for Ballot Issue Campaigns For School Districts

Ohio law prohibits any “political subdivision,” which includes a school district, library, park district, county, township or city, from using public funds to “[p]ublish, distribute, or otherwise communicate information that . . . supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue.” R.C. 9.03(C). R.C. 3315.07(C) similarly provides: “no board of education shall use public funds to support or oppose the passage of a school levy or bond issue or to compensate any school district employee for time spent on any activity intended to influence the outcome of a school levy or bond issue election.” A series of court cases and Ohio Attorney General Opinions sets forth a “firmly established background rule [that] a public entity is prohibited from expending public monies in the promotion of a ballot issue” without clear statutory authority to do so. 2008 Ohio Op. Atty Gen. No. 35, internal citations omitted.

Thus, School Districts cannot expend public funds in any manner to support or oppose a bond issue, levy, ballot issue or candidate campaign. For example, a political subdivision may not use public computers and personnel to send an email to all patrons asking them to vote for the levy. On the other hand, a District may distribute certain factual information about the impact of the levy or bond issue, so long as the information is unbiased and does not suggest or encourage support for the levy.

Unfortunately, there is little clear guidance on what constitutes permissible factual information as opposed to prohibited advocacy. A citizen complaint, media articles, or other criticisms about the District’s support of a levy could lead to a challenge in court or a complaint to the State Auditor. Any such review would be conducted on a case-by-case basis and the outcome may be difficult to predict. Criticisms about a District’s activity in support of a levy or ballot issue campaign are becoming increasingly more prevalent as anti-tax and other citizen groups become more organized.

Because of the increasing risk and uncertainty in this area, Districts that are involved in issue campaigns should take a very conservative approach. The District should carefully avoid any involvement with the levy committee and all campaign activity should be conducted outside public offices and without using public resources. School employees, administrators and board members have a First Amendment right to participate in the electoral process and in ballot issue campaigns. However, they must be very careful to keep all

campaign-related activity off school property and segregated from any school time or resources. Districts should adopt and consistently enforce clear and neutral policies that regulate campaign activity by the District, its Board, and its employees. Below, please find a short “Question and Answer” segment addressing some of the most common issues faced by Districts during a ballot issue campaign.

Questions and Answers

Can we allow employees to use District email to conduct levy activity on their own time?

No. Use of District resources, even the minimal amount of resources involved when sending or receiving an email, is prohibited. The law does not create a minimum threshold or provide a de minimis standard below which use of District resources is permitted.

Can we discuss the levy in a public newsletter or on the School District’s website?

Yes. The District may communicate factual, unbiased information about the political subdivision’s finances or the impact of the levy through any reasonable means available. All communications should be carefully reviewed to be certain that they do not influence a vote. Any statements that could be construed as supporting the levy should be issued by the ballot issue committee instead of the political subdivision.

Can the District website include a link to the levy committee website?

No. The District may not include a link to the levy campaign in its materials or use public funds in any manner to direct readers to the campaign website. 2002 Op. Att’y Gen. No. 2002-001.

Can the District use its newsletter to remind readers to vote on Election Day?

Yes. However, the message should be very carefully crafted to avoid any suggestion about voting for the levy. Preferably, the message would simply remind people to vote without mentioning the levy and will be sent every Election Day, not just when a school levy is on the ballot.

Can District employees, administrators or board members serve on the levy committee?

Yes. District employees and officers have a right to engage in political activity on their own free time. However, they should be especially careful not to use any District resources, including District time, for campaign activity. District administrator and board members should further be careful not to use their official titles in levy communications and should not use their official authority to benefit the campaign, secure a campaign contribution, or encourage a school employee to vote for, contribute to, or volunteer time to the levy effort. While it may be permissible for staff and administrators to work on or organize a levy campaign on their own time, including a lunch hour or a break, it is best to keep all levy campaign activity away from school property and paid district time.

Can we permit the levy committee to post signs in the building or on public grounds?

No. Any communications on political subdivision property about the levy should be strictly limited to factual information that is carefully crafted to avoid any suggestion that the reader vote one way or the other.

The Levy Committee has asked to use District meeting space to discuss the campaign. Can we permit this?

Yes. Presuming the request to use any public space complies with the District's policies, such requests should be processed and granted in the normal course of business and without regard to the content or purpose of the meeting. The Attorney General has ruled that meetings of political action committees and levy committees are both educational and civic in nature, thus permitted on public property pursuant to Ohio law. 1991 Op. Att'y Gen. No. 1991-064.

What about use of the District's phones and other resources?

Telephones, computers and other materials are also property of the District and may be used, when not needed by the District, upon payment of a reasonable fee and pursuant to political subdivision policy. In establishing such a policy, the District should consider the possibility that other types of groups, including levy opponents, might also ask to use those political subdivision resources. All organizations should be treated the same and given the same access to District resources under such a policy.

Can the Levy Committee use the political subdivision's bulk mail rate if they pay a reasonable fee to do so?

No. U.S. Postal rules prohibit a bulk permit holder from allowing others to use the permit. Other postal equipment may be used subject to the guidelines for use of property set out above.

What guidelines are there for requesting staff to make contributions to the levy campaign?

R.C. 3517.092 prohibits solicitations of contributions from a public employee while the public employee is performing official duties or in areas of a public building where official business is transacted or conducted. Arguably, this section only applies to candidate contributions. However, it has been raised by taxpayer groups, disgruntled employees and levy opponents in the context of ballot issue campaigns in the past. To be safe, we advise that no solicitation for any kind of contributions be made during work hours or in public areas of the political subdivision buildings. Perhaps more important, no employee should be coerced to make any contribution by their employer. A disgruntled employee could perceive or claim coercion no matter how diplomatically a request for contributions is made. As such, solicitations of political subdivision employees should be handled by the levy committee instead of the political subdivision.

Some teachers want to distribute campaign literature on their lunch hour? Can we allow this? By doing so, will the political subdivision or these staff members be required to spend their free time passing out literature from levy opponents?

Staff may distribute levy information on their free time provided they do so in accordance with any political subdivision policies regarding leaving political subdivision property or taking time off. Public employees who distribute privately-financed materials supporting the levy are not required to distribute materials which present the opposite position. OAG No. 91-064 (1991).

Can we send materials that are prepared by and paid for by the levy committee home in student mail for their parents?

No. Doing so would require teachers and other staff to spend district time to sort and process the materials for distribution to students.

Can the District provide its mailing lists or contact lists to the levy committee?

Technically, yes, but we recommend caution. The District may sell its property, including mailing lists, as outlined above so long as the information being provided is public information. However, once the District sells a list to one party, it should do so for anyone else who asks. Employees or vendors may be upset by what they perceive as a violation of their privacy in this manner.

Can a District prohibit employees from conveying their political views through discussion with students during work time?

Yes. This type of broad restriction on political speech or campaigning, not targeting a particularized message, is supported by case law that allows public employers to regulate a public employee's speech if it is made pursuant to his or her official duties, provided the restrictions are supported by an adequate justification such as a legitimate pedagogical concern or a desire to maintain neutrality on controversial issues. It is important that a District enforce any policy on this topic uniformly and consistently.

Conclusion

As outlined above, a School District may not use any public resources to support a ballot issue or levy. Providing factual information or allowing a levy committee to purchase political subdivision resources can be permitted if appropriately authorized. As a general rule, a District should distance itself as much as possible from all levy activities and allow the levy committee to handle all communications and fundraising efforts. Districts must remain mindful that all school employees and students have First Amendment Rights to express their opinions and engage in political activity.

This guideline is meant as a general reference and cannot address every legal question or issue that might arise. If you have any questions or need more information about a particular situation, please do not hesitate to call Maria Armstrong at 614-227-8821.