

Levy limitations

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Impending cuts to Ohio's budget will make the need for revenue enhancements inevitable for many school districts. Many boards already have made plans to place levies or other tax proposals on upcoming ballots. As school board members explore their options, they need to be aware of the regulations surrounding school levy campaigns and other levy-related initiatives. This article will highlight some of the regulations applicable to school boards in this area.

Spending public money

Boards of education are prohibited from spending public money to support or oppose the passage of a levy or bond issue (Ohio Revised Code (RC) 3315.07). However, school boards may spend public funds "to communicate information about the plans, policies and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision (RC 9.03)." This language allows boards to use public funds to publish and distribute communications, as long as the purpose behind the communication is to provide information about the school district and not to sway the recipient of the communication.

The line between "providing information" and "supporting the levy" may be a fine line in some cases. In 1999, the Ohio attorney general's office (OAG) provided some guidance by stating that public officials may issue communications designed to inform the public of the consequences that are expected to follow from the passage or defeat of a particular levy (OAG 99-030).

For example, if a levy will provide funds for a particular program, or if the defeat of the levy will result in an inability to fund a particular program,

public officials may communicate those facts to the community. OAG found that such communications were informative statements, and although they certainly had the potential to influence the outcome of the levy, they were not statements designed to support the passage of the levy that were prohibited under the law (OAG 99-030).

Levy committee meetings

When school facilities are not in use for school purposes, a board may permit community groups to use its facilities for auxiliary, educational, recreational, cultural, civic, social, religious or other board-approved purposes that promote the welfare of the community (RC 3313.77). School levy committee meetings could be considered both educational and civic purposes.

A board of education may charge the levy committee a fee and establish regulations and conditions that govern the use of the space. Boards should review their board policies to determine the regulations that apply to the community's use of district property. The statute requires such meetings to be nonexclusive and open to the general public. As a result, a school board is not authorized to permit levy committees or political action committees to hold closed meetings on school grounds. As discussed in more detail below, boards should be prepared to permit the use of its facilities by anti-levy groups once it provides space for pro-levy groups.

Regardless of where the meetings occur, it is important to remember that a board member's attendance at levy committee meetings may be subject to Ohio's Open Meetings Law, which

requires meetings of the board to be held in public and properly publicized. Whether a levy committee meeting becomes a meeting of the board

depends on the number of board members attending and the board members' action at that meeting.

If a majority of the board members are present only as observers and do not discuss board business, then there is no "meeting" under the Open Meetings Law. However, if the board members discuss among themselves the public business of the public body at the meeting, it is likely subject to the Open

Meetings Law. Board members should be fully aware of the parameters of their participation at levy committee meetings prior to attending. A conservative approach is to have fewer than a majority present at such meetings.

Using school resources

Just as a board may permit community groups to use its real property, such as buildings, for meetings, it also may permit use of its personal property. Common examples include telephones, postage meters and other equipment and supplies under the board's control. A board may allow school levy committees to use its personal property when it's not in actual use for school purposes, provided the committees request and pay for using equipment and supplies. As discussed in more detail below, boards should be prepared to permit the use of its resources by anti-levy groups once it provides use by pro-levy groups.

We occasionally receive questions about whether a committee may use the school district's nonprofit bulk mail rate permit. A school board should not allow



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a levy committee or other community organization to use its nonprofit bulk rate permit. Not only does this arrangement have the potential to violate the arrangement the district has with the post office, it also could be viewed as an unauthorized expenditure of public funds. Under such an arrangement, the board is essentially subsidizing the cost of the postage, which is then being used to support or oppose the passage of a levy or bond issue.

Posting signs

Levy committees may request schools to post pro-levy signs on school district property. As mentioned earlier, a board of education may allow community groups to use school property for any purpose that promotes the welfare of the community and the board has great discretion in determining whether a purpose “promotes the welfare of the community.” If a board determines that posting school levy signs on school property promotes the welfare of the community, the board is authorized to permit the political action committee or school levy committee to post school levy or bond issue signs on school property. The board may charge the committee a fee and establish regulations and conditions that govern the posting of signs, such as their size and/or color.

In this case, the same disclaimer applies. Boards should be prepared to post signs for anti-levy groups once they decide to allow pro-levy groups to use its property to post pro-levy signs.

Equal access

Throughout this article I’ve noted that a school district may not favor one viewpoint over another by only granting the use of the district’s property or resources to those groups that promote the board’s favored view. Whenever a school board allows one group to meet on school premises or use school resources, the board is creating a “limited public forum,” which is heavily regulated by the constitutional protections of the Equal Protection Clause and the First Amendment.

Under those protections, a school district may not grant the use of a forum to people whose views it finds

acceptable, but deny use to those wishing to express less favored or more controversial views. In *Policy Department of Chicago v. Moseley* (1972), 408 U.S. 92, the U.S. Supreme Court held that “there is an equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say.”

What does this mean for school districts? It means that a school board may not discriminate on the basis of the content of the political message of those seeking to use its space or resources. If, for example, a pro-levy campaign is permitted to put a yard sign on the district’s lawn, any anti-levy campaign must be permitted to do so as well.

Sending information home

At times, the school board, levy committee or other entity may seek to send information home with students. In determining whether to allow such distribution, the board should keep several things in mind.

First, the distribution of material on school property is likely governed by board policy. To preserve the integrity of the district’s educational objectives and responsibilities, many boards will pass board policy that regulates the distribution of materials. The policies may regulate the manner and mode of distribution and place limitations on the content of such communications. Boards should review these policies prior to distributing any materials.

Second, the same disclaimer regarding equal access applies to communications sent home with students. Boards may send home information with students that is drafted by the levy committee, but the board should be prepared to extend the same opportunity to anti-levy committees that request it.

Finally, if the board is interested in sending home school-sponsored levy-related communications, it should keep in mind the prohibition against spending public money to support or oppose the passage of a levy or bond issue. Again, this language would

prevent a board from sending home publicly financed communications that were designed to influence the outcome of a school levy or bond issue election, but would allow the district to send home communications that were informational in nature.

Employee participation

A school board may not compensate employees for time spent on any activity intended to influence the outcome of a school levy or bond issue election. However, boards may allow their employees to attend public meetings for the purpose of presenting information about school finances, activities or other board actions. This is allowed even if the meeting occurs during the employee’s regular working hours and even if the purpose of the meeting is to discuss or debate the passage of a school levy or bond issue (RC 3315.07).

Since the statute only prohibits the board from compensating employees who engage in pro-levy activities, it may be inferred that board members and employees may perform this activity when they are not receiving compensation. As a result, board members and employees of the board may, on their own time, distribute privately financed materials supporting or opposing the passage of a school levy.

Conclusion

Navigating the legal landscape of levies and levy campaigns can be tricky, especially in a district where the levy is, or will be, heavily contested. As a result, ensuring compliance with regulations governing school levy campaigns and other levy-related initiatives is extremely important. If you have general questions about school levies and levy campaigns, you may contact OSBA’s legal services division at (614) 540-4000. If you have specific questions about the particulars of your school district’s levy or levy campaign, please call your board counsel. □

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