



# School levy limitations

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*Funds generated from school tax levies compose a significant part of financing for Ohio schools. This fact sheet is designed to address the most frequently asked questions about the regulations that govern school levy campaigns and other levy-related initiatives. This information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.*

## *How are school districts financed?*

School districts in Ohio are financed with a combination of federal, state and local funds. At the state level, school districts receive funding from the Ohio Department of Education's (ODE) general revenue funds and Ohio Lottery profits. At the local level, school districts receive funding from locally levied property taxes. School districts also can receive funding from income taxes approved by voters.

## *What is a school levy?*

A school levy is a tax on property that is collected to support schools in Ohio. There are two basic kinds of levies or issues: operating levies, which support the operation of a school district; and bond issues, which support construction and maintenance of a school district's real property.

## **Spending public money**

### *May a school board spend public money to support a levy or bond issue?*

No. Ohio Revised Code (RC) 3315.07 specifically prohibits boards of education from spending public money to support or oppose the passage of a levy or bond issue. The law also prohibits a board from compensating any school employee for time spent at an activity intended to influence the outcome of a levy or issue.

### *May a school board spend public money to provide information to the public?*

Yes. Pursuant to RC 3315.07(B) and 9.03(B), a school board may spend public funds to communicate information about the board's policies and actions, programs, administration, activities, finances and plans for the purpose of furthering public awareness of the board's educational program and operation.

This language allows boards to use public funds to publish and distribute information if the purpose behind the communication is to keep students, parents, employees and residents aware of the school district's operation.

### *What is the difference between "providing information" and "supporting the levy?"*

In some cases, the line between "providing information" and "supporting the levy" may be a fine one. In 1999, the Ohio attorney general's office (OAG) provided some guidance on RC 9.03 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 (1999 Ohio Atty.Gen.Ops. No. 99-030).

For example, if a levy will provide funds for the origination or continuation of a program, or if the defeat of the levy will result in an inability to fund an existing program, public officials may communicate those facts to the community. OAG found that such communications were informative statements

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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 as prohibited by law.

### **Levy committee meetings**

*May levy committees use school facilities to hold their meetings?*

It depends if the board of education allows community groups to use its facilities. Under RC 3313.77, a board of education may allow community groups to use school facilities for auxiliary, educational, recreational, cultural, civic, social, religious or other board-approved purposes that promote the welfare of the community. School levy committee meetings could be considered both educational and civic related. Accordingly, a levy committee may apply to use district facilities in the same manner that other groups apply for such use.

If the board allows such use, the statute requires the meetings to be nonexclusive and open to the general public.

*May the board charge the levy committee a fee to use the space?*

Yes. A board of education may charge the levy committee a fee and establish regulations and conditions that govern the use of the space. In fact, if the board requires other groups to pay a fee for the use of the space, it must charge the levy committee. Boards should review their board policies to determine the regulations that apply to the community's use of district property.

*If a board provides space to pro-levy groups, must it provide space to anti-levy groups as well?*

Yes. Under the First Amendment and the Equal Protection Clause of the 14th Amendment, a school district may not grant the use of its facilities to people whose views it finds acceptable but deny use to those wishing to express views that are less favored or more controversial. Once the school board allows space for one group, it may not prohibit others who meet its regulations and conditions from using the space.

*May board members attend a levy committee meeting?*

It depends. If a majority of the board members attend the levy committee meeting, the meeting may be subject to Ohio's Open Meetings Act. The law requires meetings of the board to be held in public and properly publicized.

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 Act. However, if the board members discuss the levy

or other matters involving the public business of the board among themselves at the meeting, it is likely subject to the Open Meetings Act.

### **Using school resources**

*May a board permit the levy committee to use school resources such as equipment and supplies?*

Yes, but the committee must pay for the use of the equipment and supplies. Just as a board may permit community groups to use its real property for meetings, it also may permit use of its personal property that is not in use for school purposes. Common examples include telephones, postage meters and copying machines under the board's control (1991 Ohio Atty.Gen.Ops. No. 91-064).

*May a levy committee use the school district's nonprofit bulk mail rate permit?*

No. A school board should not allow a levy committee or other community organization to use its nonprofit bulk rate permit. Not only does this arrangement have the potential to violate U.S. Postal Service guidelines for permit use, it also could be viewed as an unauthorized expenditure of public funds. By allowing the committee to use its reduced postage rates, 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.

*If a board provides school resources to pro-levy groups, must it provide them to anti-levy groups as well?*

Yes. Under the First Amendment and the Equal Protection Clause of the 14th Amendment, a school district may not grant the use of its resources to people whose views it finds acceptable but deny use to those wishing to express views that are less favored or more controversial. As with use of school district real property, if the school board allows use for one group, it may not prohibit others who meet its regulations and conditions from using the resources.

### **Posting signs**

*May a levy committee post levy signs on school district property?*

It depends. A board of education may allow community groups to use school property for any purpose that 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 committee to post signs on school property. The board may charge a fee and establish regulations and conditions that govern the posting of the signs, such as to size and/or color.

*Must a school board allow levy signs to be posted?*

No. The decision to allow community groups to use school property to post signs rests with the school board, which has great discretion in deciding whether to allow the signs at all.

*If a board allows a pro-levy group to post signs, must it allow an anti-levy group to post signs?*

Yes. It is for this reason that a number of districts have adopted a policy prohibiting the posting of any levy-related signs on their property.

### **Sending information home**

*May a school district send home school-sponsored levy-related communications?*

No. RC 3315.07, discussed earlier, prohibits a school district from spending public money to support or oppose the passage of a levy or bond issue. 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. However, the district can send home communications that are informational in nature.

*May a school district send home communications drafted by a levy committee?*

It depends. The distribution of material is likely governed by board policy. These 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, especially materials drafted by someone other than the board or district employees.

*If a district sends home communications on behalf of a pro-levy committee, must it also send home communications on behalf of an anti-levy committee?*

Yes. If the board's policy permits it, a board may send home information with students that is drafted by the pro-levy committee, but the board should be prepared to extend the same opportunity to any anti-levy committee that requests it.

### **Employee participation**

*Are school employees allowed to attend and speak at levy committee meetings during their regular working hours?*

Yes, provided the employee is attending the meeting 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).

However, employees cannot attend and speak at levy committee meetings during their regular working hours activities if they intend to influence the outcome of a school levy or bond issue election.

*May school employees engage in levy activities when they are not working?*

Yes. RC 3315.07 prohibits the board from *compensating* employees who engage in pro-levy activities. Therefore, it may be inferred that board members and employees may perform this activity when they are not receiving compensation. 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.

*The information in this fact sheet is designed to provide authoritative general information. It should not be relied upon as legal advice. OSBA recommends that questions of legal interpretation be directed to your board's legal counsel.*