

# **Ohio Auditor of State’s FAQs related to Section 9.03 of the Ohio Revised Code’s prohibition against using public funds to support the passage of a political subdivision’s levy or bond issues.**

## **Introduction**

The Auditor of State (AOS) has developed these Frequently Asked Questions (FAQs) and best practice recommendations to provide some guidance to Ohio school districts, school administrators and officials, and other political subdivisions<sup>1</sup> regarding what AOS considers to be permitted and not permitted under Ohio Revised Code [§9.03](#) relative to levy and bond issues and campaigns. These FAQs are purposefully crafted to lay out a conservative approach. Activity described as permissible, absent unique and unforeseen circumstances, is considered by AOS to be allowed under current legal standards<sup>2</sup>; whereas some activities are considered unacceptable and must be avoided – leaving a wide range of activity in between where caution is advised.

Of course, not every factual scenario can be contemplated by these FAQs, and unique circumstances or facts, or the applicability of other laws or legal standards, might alter the analysis of a particular situation. Additionally, these FAQs are not intended to be and should not be relied upon as legal advice regarding the matters herein addressed. AOS strongly encourages school districts, administrators and board of education members to obtain specific legal advice regarding levy activities and campaigns.

## **High-Level Overview**

Since 2013, Ohio law has prohibited the governing body of a political subdivision, including a school district and board of education, from using public funds to support or oppose the passage of any and all levy or bond issues or to compensate any employee for time spent on an activity intended to influence the outcome of a levy or bond issue. (*See generally* ORC [§9.03](#), ORC [§3315.07](#).) School districts and district personnel are permitted to provide factual information to the public regarding the district’s finances and the impact that the passage or failure of a levy or bond issue might have on the district. However, school districts and personnel are not allowed to use public funds to influence others to support or oppose a levy or bond issue. In short, tax dollars cannot be used to ask for more tax dollars or influence how taxpayers vote.

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<sup>1</sup> ORC 9.03 (A)(1) defines “political subdivision” to mean a body corporate and politic, unless such entity has adopted a charter under authority prescribed by the Ohio Constitution. The vast majority of challenges received by AOS deal directly with school levies; thus, these FAQs are tailored to those situations. However, the FAQs and best practices also apply to other political subdivisions and the general prohibition of using public funds or resources to support a levy or bond issue.

<sup>2</sup> The Auditor of State is not the final or only arbiter of a violation of ORC 9.03, but AOS is often the primary entity tasked with reviewing whether the actions of a political subdivision or individual using public funds are in violation of the statute.

District personnel, including the superintendent, treasurer, and members of the board of education, as private citizens, have the right to participate in the political process. But district personnel and members of the board who choose to engage in activities that support or oppose a levy accept the responsibility of ensuring it was during time they were not being compensated by the district and without using district funds. As the saying goes: *on your time and on your dime*. AOS acknowledges that it may be more difficult for district administrators and staff members compensated when working irregular hours to show that they did so on their own time and at their own expense.

Finally, in determining potential compliance issues, the AOS will examine the entire effort undertaken by the district and personnel toward the levy campaign when evaluating if any lines were crossed – in short, AOS considers a holistic review of the full “tone and totality” of actions taken when determining compliance.

## **Format of the FAQs**

The format of the FAQs will generally be: *Question, answer, best practice, example*.

The questions in these FAQs are presented in nine distinct categories. Please take time to review the entire set of FAQs, as there is natural crossover between questions and responses.

### **I. Use of District Website, Email, and Other Communications**

The following FAQs review the standards for school districts using the district website, district email, newsletters, and other social media resources to communicate about a levy.

#### **1. May districts send out reminders to vote via the district’s notification system(s)?**

**Answer:** Yes, the district may send out reminders to vote, but should not include information designed to influence voters to support or oppose the levy or bond issue.

**Best practice:** If the district decides to use public resources, such as their notification system, email, or newsletters, to remind families to vote on Election Day, a best practice would be to send out a similar reminder for every election, every year – not just when the school district has a levy on the ballot. To use district resources only for an election when a levy is on the ballot would call into question whether public resources were being used to influence support for the levy.

**Example:** A district encourages district residents to vote every Election Day, making a note on the district calendar as a reminder of each Election Day.

#### **2. May the district allow a levy committee to use the district’s bulk rate or provide postage if the district invoices the campaign committee?**

**Answer:** Caution is advised. U.S. Postal regulations prohibit a bulk permit holder from allowing others to use the permit, so school district cannot allow the levy committee to use the district’s bulk rate. However, the levy committee may use the district’s postal machine if the committee is invoiced for all costs associated with such use and other entities, including any anti-levy

committee, are permitted to use the postal machine in the same manner. (See [AG Opinion 91-064](#).)

### **3. May the district allow a levy committee to use other district premises or equipment?**

**Answer:** Yes, pursuant to district policy. The board of education of each school district is required under law to adopt a policy for the use of school premises and equipment by the general public, along with a fee schedule for such use. Pursuant to the board's policy, a levy committee may pay a fee and use district premises and equipment, such as: telephones, computers and other materials and property of the district when not in actual use for school purposes. All individuals and groups should be treated equally and be given the same access to district premises and equipment under such a policy. (See [AG Opinion 91-064](#).)

**Best practice:** Have a written policy that ensures the use of district resources, when not in actual use for school purposes, is applied consistently to all requesting groups and that reasonable fees are charged and collected for such uses.

**Example:** The "For our Kids" levy campaign committee requests use of the district's conference room space and certain AV equipment for meetings with and presentations to the public. The levy committee complies with the district's policies and procedures for requesting the use of such property. The district evaluates and approves the request, then prepares an invoice for any fees that are assessed pursuant to the district's policy and fee schedule. The levy committee remits full and timely payment to the district.

### **4. May a superintendent or district administrator provide details to the community about an upcoming levy via a letter, the district's regular newsletter, email distribution, or a post on the district's website?**

**Answer:** Yes. Communication providing factual information regarding the levy is allowed, but it should not be designed to influence support for or against a levy or bond issue.

**Best practice:** A district may use resources to communicate factual information with the community about a levy but must avoid designing the communication to influence the passage of the levy. Any district communication sent out when a levy is on the ballot must avoid encouraging voters how to cast their vote. Terms used in district communications regarding a current or existing levy proposal, like: "support our schools" or "keep your schools strong," could be construed as encouraging voters to support the levy, especially when the district uses the same slogan as the pro-levy campaign. Providing regular community updates regarding the district's finances rather than providing such information only when a levy is pending, helps fend off challenges that the communication was merely done to support or oppose the levy.

District personnel may provide information to the public regarding the district's finances, programs, activities, and governmental actions. This information may be pulled from a variety of sources, including but not limited to financial forecasts, committee reports, or comments during public meetings of the board. The board might consider adopting a statement of facts or talking points to be used by district personnel providing information to the public about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing. While not legally required, this best practice of adopting a statement of facts will guide district

personnel in consistently communicating factual information to the public about the levy and avoid statements designed to influence support or opposition to the levy.

**Example:** The district treasurer publishes an article and graphics in the district’s community newsletter, derived from district financial records, board minutes or reports, five-year forecast, or the board’s adopted statement of facts, providing factual information about the district’s finances without using terms or slogans meant to influence the passage of the levy.

## **5. May a district send levy committee communications home with students?**

**Answer:** No. Doing so would be considered an impermissible use of school resources in support of the levy because teachers and/or staff would use time when they are compensated by the district to distribute pro- or anti-levy materials.

**Best practice:** The district and board should not use public resources or direct district staff to engage in activity during time they are compensated by the district in support of a levy or campaign committee.

**Example:** The levy committee drafts, prints, and provides the district with a one-page communication flyer to be sent home with each student. The committee paid for the entire cost of the flyer, even clearly stating that “no District funds were used” in preparing the flyer and it was paid for by the levy committee. The district instructs teachers to insert the levy committee materials into each student’s take home folders, which is time during which the teacher is being compensated by the district. This activity is an impermissible use of public funds to support the levy or levy committee.

## **II. Information Sharing**

Districts may share information about the current state of the school district, district finances, and operations and the impact of passing or not passing a levy. But the line between using district resources to provide mere information and influencing a levy is where trouble may exist.

### **1. Is the district allowed to publish financial data during a levy campaign?**

**Answer:** Yes. District staff are allowed to prepare neutral, accurate, factual information for the community. Information shared with the public should not be designed to influence the outcome of a levy.

**Best practice:** A best practice would be for the district to provide regular updates to the community on district finances and operations and not limit the breadth or frequency of these communications to only during an active levy campaign.

**Example:** A district treasurer shares with the community the five-year forecast submitted to the Ohio Department of Education and approved by the board of education. The forecast is factual and demonstrates the condition of the district’s finances and current local levy support. This information is shared with the public every year.

## **2. May a district tell the public what cuts will be made ahead of time if the levy fails?**

**Answer:** Yes. The district is allowed to use district resources to inform the public of likely consequences the board of education expects to take following the passage or defeat of a tax levy. For example, the district may inform the public of the board of education’s anticipated use of levy funds to support a particular program, or if the defeat of a tax levy will result in the inability to fund a particular program. *See* AG Opinion 99-030 at footnote 5.

**Best practice:** A district may inform the public about which programs the board of education is most likely to cut or which facilities might be closed if the levy fails. But keep in mind, AOS receives a number of complaints from community members who allege that boards of education and districts use the consequences of a levy failure as a tool to threaten voters and influence the election. A best practice is for the board of education to adopt a statement at a board meeting, well in advance of the levy vote, detailing the likely cost-saving steps the district would take if the levy failed. The board would not necessarily be limited to sharing information in addition to what is stated in the statement of facts, as long as any additional information is factual. It is best for the board of education and district to avoid making emotional pleas and just state the facts.

**Example:** The district has proposed a levy for the public’s consideration that would generate \$X over the life of the levy. If passed those funds will be spent on program YY, if the levy fails the board of education will be forced to cut programs YY and ZZ.

### **III. Levy Committee**

Districts must keep proper distance from a levy committee or political action committee (“PAC”). These FAQs will address levy committee formation; board, administrators and staff participation with and representation on a levy committee; and district and staff communications with or on behalf of the levy committee.

#### **1. May a district provide information about how to contact the levy committee?**

**Answer:** Perhaps, but caution is advised. The district may provide neutral factual information to members of the public regarding the formation of and how to contact a levy committee. But the district must also provide a similar neutral referral to members of the public regarding the formation of any group, committee or PAC opposing the levy – where applicable.

#### **2. May a district administrator or staff, or board of education member play a role in the formation of or participate on a levy committee?**

**Answer:** Yes. But activity related to the formation or support of a levy committee must clearly be outside times when district administrators, staff, or board members are compensated to be present or as a part of their district position or elected office. The roles of district administrators and staff, including the superintendent and treasurer, are different from the role of board members. Board of education members, being compensated only for attendance at the board’s public meetings, have more available personal time to engage in levy campaign activities. While elected board members have a right and responsibility to explain to the public why they voted yes or no placing a levy on the ballot, they need not participate on a levy committee to do so.

**Best practice:** A best practice is for community members to carry out levy committee activity, which is designed to influence the outcome of the levy vote.

**Example:** Board of education members are compensated with public funds for attending school board meetings. Superintendents and treasurers are compensated based on the performance of the job duties. It is much easier to differentiate when a board member is being paid with public resources, and not, compared to district administrators who are required to work irregular hours. Activity by district administrators and board members in active support of the levy committee must be done on their own time and on their own dime.

**3. May a superintendent or treasurer participate in levy committee activities? Does the answer change if the Superintendent or Treasurer is a resident of the district?**

**Answer:** Yes, but caution should be exercised. Providing factual information is acceptable, whereas advocating for a specific outcome of the levy vote may be improper. A superintendent, treasurer, or board member may attend a public meeting during regular working hours for the purpose of presenting factual information about school finances, activities and board actions, even if the purpose of the meeting is to discuss or debate the passage of a school levy or bond issue. (See ORC [§3315.07\(C\)\(2\)](#)). However, any acts by district administrators, staff, or board members advocating for an outcome of the levy vote must occur on their own time and at their own expense. Any activity related to the formation or support of a levy committee must clearly be outside the regular school day, not during board meetings or district sponsored events where the administration, board and employees are paid to be present or as a part of their district position.

This answer does not change regardless of whether the Superintendent or Treasurer is a resident of the district.

**Best practice:** It would be a best practice for any active role in the formation and organization of the levy committee to be carried out by community members and board of education members acting outside the time of actual board meetings.

**Example:** During a high school football game the head coach on the sidelines, who is being paid to be a district employee during the game, should not be wearing a pro-levy campaign button. However, the treasurer can wear a pro-levy button so long as the treasurer is at the game in the capacity of fan and/or parent and not being paid to be the district treasurer. The treasurer would not be allowed to wear a pro-levy button when at the district performing official duties as treasurer.

**4. May the district disperse information on behalf of the levy committee, even during non-working hours?**

**Answer:** No, this activity would violate ORC Section 9.03(C)(1)(e).

**5. Should the superintendent or treasurer approve payments for levy committee mailers, signs, or communication materials?**

Answer: No. Only the levy committee should review and approve the expense of funds for communications used by the PAC to promote the levy. Neither the superintendent nor the treasurer should be approving any levy committee funds or activities.

#### **IV. District Resources**

##### **1. May a district pay a lawyer to draft the resolutions necessary to put a levy on the ballot?**

Answer: Yes.

##### **2. Can the district provide information about the condition of its facilities it receives from the Ohio Facilities Construction Commission?**

Answer: Yes. The district may provide to the public factual information received from the Ohio Facilities Construction Commission regarding the condition of the district's facilities.

##### **3. May a district administrator or staff member answer questions of the public or press related to a levy during time they are being compensated by the district?**

Answer: Yes, but caution should be exercised. A district administrator or staff member, when being compensated by the district, may provide factual information and should not advocate for or attempt to influence the passage of the levy. Information provided should be neutral, accurate, and supported by facts.

**Best practice:** A best practice for districts to consider would be to designate an employee responsible for providing information regarding the levy to members of the public or press, so the message is factual, consistent, and does not cross the line into advocacy. The district should consider requiring any district administrator or staff member presenting to or communicating with the public or press to provide a disclaimer stating that: *the information being provided is merely factual, district personnel are not allowed to advocate for or against the passage of the levy or bond issue during times they are being compensated by the district.*

The district cannot compensate staff for time spent supporting a levy campaign - and invoicing the committee after the fact does not make this activity permissible. However, an exception to the prohibition that 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, is found at ORC 3315.07 (C)(2): *A board of education may permit any of its employees to attend a public meeting during the employee's regular working hours for the purpose of presenting information about school finances and activities and board actions, even if the purpose of the meeting is to discuss or debate the passage of a school levy or bond issue.* As noted throughout these FAQs, district administrators may provide factual information regarding the district's finances and board actions related to the levy.

District personnel may provide information to the public regarding the district's finances, activities and governmental actions. This information may be pulled from a variety of sources, including but not limited to: district financial forecasts, board of education committee reports, Ohio Facilities Construction Commission information, or conversations during public meetings of the board. The district or board might consider adopting a statement of facts or talking points to be used by district administrators and staff to provide information to the public and press about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing. While not required, this statement of facts could help district personnel consistently communicate factual information about the levy and avoid statements designed to influence support or opposition to the levy. A disclaimer provided by the district administrator, staff or member of the board of education that they may provide factual information but must refrain from advocating for the levy will also assist in setting expectations regarding the communication.

#### **4. May a district employee answer public questions about the levy during the school day?**

**Answer:** Yes. Factual information regarding the district's finances, operations and need for a levy may be shared with the public. The information provided should be neutral, accurate, and supported by facts, without advocating for or against the passage of the levy.

**Best practice:** Provide the facts and avoid using the pro-levy campaign slogan (i.e., don't forget on Election Day to "Keep our Schools Strong"). District personnel may provide information to the public regarding the district's finances, activities and governmental actions. This information may be pulled from a variety of sources, including but not limited to: district financial forecasts, board of education committee reports, Ohio Facilities Construction Commission information, or conversations during public meetings of the board. The district or board might consider adopting a statement of facts or talking points to be used by district administrators and staff to provide information to the public and press about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing. While not required, this statement of facts could help district personnel consistently communicate factual information about the levy and avoid statements designed to influence support or opposition to the levy.

#### **5. May a district pay a consultant to analyze the district's financial situation to ascertain how much money to ask for in a levy?**

**Answer:** Yes. This would be an appropriate use of public funds assuming the board of education took formal action in a public hearing to hire such consultant and the consultant was not instructed to provide a specific finding either for or against a levy.

**Best practice:** The district should not expect or require the consultant to contribute to or fund the pro-levy committee as an explicit or implicit condition of being awarded the contract. A best practice would be for the district to be transparent and publicly share the consultant's findings.

#### **6. Can the district hire an outside consulting or communication firm to assist with activities intended to influence the outcome of a levy?**



**Answer:** No. This activity should only be orchestrated and paid for by a levy committee. However, the district could hire an outside consulting or communication firm to develop a statement of facts or talking points that might be used by district personnel and members of the board of education to provide information to the public about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing.

**Best practice:** The district should not expect or require a consultant or contractor to contribute to or fund the pro-levy committee as an explicit or implicit condition of being awarded the contract.

**7. Can the architectural firm hired by the district to design and/or build new facilities be required or expected to assist in directing or funding the levy campaign?**

**Answer:** No. The district may not award a contract to an architectural firm because the firm agreed or offered to support or fund the levy campaign.

**Best practice:** The AOS takes no position on a private actor's or company's right to support a levy or levy committee. However, individuals, organizations or companies seeking to do business with the district should not promise to provide funding or support for the levy as an inducement to the district to award them the contract. There cannot be an "understanding" that the individual or company will provide financial support to the pro-levy campaign if the district awards them the contract. Where such activity occurs, it falls well outside these FAQs and will require further scrutiny from AOS.

**Example:** It would be prohibited for a district to award a contract to a design/architectural firm that indicates that their proposal includes any amount of money to be paid by the firm in support of or to help run the pro-levy campaign.

**8. Can the district allow the levy committee to use district logos on pro-levy campaign materials?**

**Answer:** Yes, but only pursuant to the district's content neutral fair use policy of allowing the use of district logos by any organization other than the district (i.e., PTOs, athletic booster clubs, community partner organizations, etc.). The district would also need to permit any group or organization that is opposed to the levy or bond issue to also make use of the district's logo.

**Best practice:** Pursuant to the district's content neutral fair use policy, the district approves the request of the pro-levy committee to use the district's logos on their campaign materials and website. Similarly, if a request is received, then the district would need to grant the anti-levy committee's request to use the district's logos on their campaign material and website.

**9. May districts use public funds thanking the community for passing a recent levy?**

**Answer:** Yes, but caution is advised. Depending on the timing of such communications, they could be construed as an expression of support for an upcoming levy or bond issue.

**Best practice:** Districts may thank the community for its past support of tax levies or bond issuances and the financing of district operations. A best practice would be for the levy committee to pay for and send out a “thank you” to the community for supporting the passage of the levy.

## **V. Roles**

One of the biggest points of confusion is when and how district leaders (superintendents, treasurers, building principals, board members) and faculty or staff members can take part in advocating for a school levy outside their workday or times they are being compensated for performing duties on behalf of the district. ORC 9.03 prohibits the district from using public funds to support or oppose a levy or bond issue – payroll and compensation of staff are clearly use of “public funds” under this prohibition.

### **1. May district administrators or the board use public funds, including compensable time for personnel, to attend training designed to provide best practices covering what is allowed and prohibited district activity when a levy or bond issue is on the ballot?**

**Answer:** Yes, district administrators or the board may use public funds to attend training to review what type of activity and use of public resources is and is not appropriate related to levy and ballot issues. This includes district staff attending such training or seminar during their normal workday.

**Best practice:** Members of the community are allowed to advocate for a levy and participate on a levy committee. District personnel and board members have some restrictions and should attend training to better understand what is and is not allowed.

### **2. May district administrators or staff be compensated by the district to prepare informational materials for the public regarding a levy or bond issue?**

**Answer:** Yes. Superintendents, treasurers and district personnel may be compensated to compile, analyze and create reports on factual information related to the district’s finances and need for a levy.

District personnel may provide information to the public regarding the district’s finances, activities and governmental actions. This information may be pulled from a variety of sources, including but not limited to: district financial forecasts, board of education committee reports, Ohio Facilities Construction Commission information, or conversations during public meetings of the board. The district or board might consider adopting a statement of facts or talking points to be used by district administrators and staff to provide information to the public and press about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing. While not required, this statement of facts could help district personnel consistently communicate factual information about the levy and avoid statements designed to influence support or opposition to the levy.

**Example:** The superintendent and treasurer prepare a packet of information regarding district finances, and current and projected facility needs using financial forecasts that the board of education utilized in voting to place the levy on the ballot. That same factual information can be used to create, and the board of education can adopt, a statement of facts that can then be utilized by the superintendent and the treasurer to present to the public the reasons why the levy was placed on the ballot.

### **3. Can district administrators or staff advocate for the levy on their own time when not being paid by the district?**

**Answer:** Yes. District administrators, staff and board of education members have a First Amendment right to engage in such activity - but they must do so on their own time when not being compensated by the district. District leaders and staff who decide to step outside the role of providing merely factual information and into advocacy for passage of a levy or bond issue, may need to demonstrate the time spent in such activities was on their own time.

**Best practice:** District personnel should follow district policy on requesting paid time off and must not engage in activity to influence the passage of the levy during time when they are receiving regular compensation from the district (paid time off would not be considered regular compensation). When district personnel chose to influence or advocate for the passage of a levy or bond issue during typical working hours or times when the public might reasonably expect that the district personnel are being compensated by the district, such district personnel should submit for and have district approval to take paid time off (personal, vacation or compensatory leave) during that time or otherwise demonstrate they were not being compensated by the district during the time the elected to influence or advocate for or against the levy.

**Example:** The superintendent and/or treasurer attend a community event during normal working hours to provide factual information about the district's need for increased revenue through a tax levy. No problem. Later that afternoon, the same district administrator attends and actively participates (i.e., goes beyond providing only factual information) in a community rally organized by the levy committee to "Support the Kids – Pass the Levy." This activity is not allowed if attendance at the rally was during time that the district administrator was receiving regular compensation from the district. Advocacy for the levy must be done on the administrator or staff's own time.

The high school band director cannot wear a pro-levy button during a district organized concert, even though it takes place outside of normal school hours as this is an activity required for which the director is being compensated by the district.

### **4. Are levy campaign restrictions applicable for board of education members, district administrators, and district personnel?**

**Answer:** Levy campaign restrictions apply to all district administrators, staff and board of education members. District administrators, staff and board members have a First Amendment right to engage in campaign activity that supports or advocates for or against a levy; however,

these rights have limitations during time the public employee is receiving regular compensation from the district. Every district administrator, staff or board member who decides to step outside the role of merely providing factual information and into advocacy for passage of the levy or bond issue must do so on their own time and without using district funds or resources. Section 124.57 of the Ohio Revised Code also includes a bar against partisan political activity by classified employees.

**Best practice:** District personnel should follow district policy on requesting paid time off and must not engage in activity to influence the passage of the levy during time when they are receiving regular compensation from the district. When district personnel elect to engage in activity to influence or advocate for the passage of a levy or bond issue, such personnel must take time off (personal, vacation leave, etc.) during that time or otherwise demonstrate they were not being compensated by the district. AOS does not consider using paid time off as being “compensated by the district” for purposes of this analysis. District leadership and staff who elect to advocate for the levy must do so on their own time and at their own expense. Members of the board of education can advocate for the levy during times when they are not attending a board meeting.

**Example:** A teacher attends a community event during school hours to advocate for the passage of the levy through participation in a community rally to “Support the Kids – Pass the Levy.” The teacher properly submits a request for paid time off prior to participating in the rally.

#### **5. May the superintendent, treasurer or a board member meet with the levy committee during school hours to answer their questions?**

**Answer:** Yes. The superintendent, treasurer or a board member may meet with the levy committee during school hours to answer their questions and provide factual information. Again, the information provided must be neutral, accurate, and based on facts. The same opportunity should be afforded to any citizen group or committee that might oppose the levy if such a meeting is requested by that group or committee.

**Best practice:** District personnel may provide information to the public regarding the district’s finances, activities and governmental actions. This information may be pulled from a variety of sources, including but not limited to: district financial forecasts, board of education committee reports, Ohio Facilities Construction Commission information, or conversations during public meetings of the board. The district or board might consider adopting a statement of facts or talking points to be used by district administrators and staff to provide information to the public and press about why the levy is being placed on the ballot and the implications for the district of the levy passing or failing. While not required, this statement of facts could help district personnel consistently communicate factual information about the levy and avoid statements designed to influence support or opposition to the levy.

#### **6. May a member of the board of education participate in a levy campaign?**

**Answer:** Yes. Board of education members may participate in a levy campaign, but they must do so on their own time and without using district funds or resources. Generally, this means that

members of the board of education can advocate for the levy during times they are not attending a board meeting.

**Best practice:** Board of education members are typically compensated only for the actual time attending a board meeting.<sup>3</sup> Thus, board of education members are prohibited from participating in a levy campaign or advocating for the passage of a levy while being compensated to attend a board meeting. However, even during a board meeting, board members have the right and responsibility to explain and support their vote to place a levy or issue on the ballot.

Members of the board of education can advocate for the levy during times not attending a board meeting. A board of education member is prohibited at all times from using public funds or district resources to influence the outcome of a levy or bond issue.

**Example:** A board member, who does not otherwise work for the district, attends a community event during school hours to advocate for the passage of the levy through participation in a community rally to “Support the Kids – Pass the Levy.” The rally is not during or at all related to a district board meeting and the board member is not being compensated by the district for the time spent at the rally. The board member can attend and participate in the rally but may not use district resources to support the rally or campaign committee.

## **VI. Signs, Shirts, Facilities**

A levy campaign committee, or PAC often includes the development and distribution of promotional materials, yard signs, t-shirts, buttons, etc. Additionally, campaign committees or PACs often request the use of district facilities for community and informational meetings. The following FAQs address some common scenarios related to campaign materials and district facilities.

### **1. May levy campaign promotional items be placed on or around school grounds?**

**Answer:** Yes. 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. OAG 91-064.

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. If a board allows a pro-levy campaign committee to post signs on district property, it must also allow an anti-levy group to post signs on district property. OAG 91-064.

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<sup>3</sup> Some elected district board members are uncompensated and are therefore not time limited in when they might advocate for a levy. Similarly, most Ohio library board members are appointed and uncompensated, meaning they have a great deal of freedom to use their time advocating for a levy.

As it relates to levy campaign promotional items, levy committee signs should not be stored at the school, nor should district administrators and staff be involved in delivering levy committee signs while being paid by the district. Both activities would constitute an unlawful use of public funds in support of a levy.

**Best practice:** The district should have a policy regulating the placement of yard signs or other promotional materials from any campaign committee, PAC or advocacy group on district property. A best practice would be for district administrators and staff to: 1) avoid any involvement in delivering levy committee signs while being paid by the district, 2) ensure that levy committee signs are not stored at the school, and 3) confirm that signs are only placed on district property in full compliance with the district's policy and payments made pursuant to the fee schedule.

## **2. May the district allow a levy campaign committee to purchase advertisement space on district signs or scoreboards during an active levy or bond issue?**

**Answer:** Yes, if the district has a content-neutral policy of allowing outside entities to purchase advertising on school signs or scoreboards and the policy is implemented consistently for both pro-levy and anti-levy campaign committees. The advertisement or content placement would clearly need to show it was paid for by the campaign committee or PAC and that no public funds were expended.

## **3. May levy signs be stored at the school?**

**Answer:** No, this would clearly be a use of public resources in support or opposition to a levy.

## **4. May district administrators, board members or staff show support for the levy by wearing pins, stickers, shirts, etc., during the school day? What about outside the school day during their own time when they are not being compensated by district?**

**Answer:** No, not during the school day or time when the district administrator, staff or board member is being compensated by the district. Administrators, staff and board members should refrain during the school day or when being paid by the district from showing support for the levy – including wearing pins, stickers, shirts, etc., in support of the levy. This prohibition extends to time not during the school day, to include: board meetings, staff meetings, district sponsored events where the administration, board and employees are paid to be present.

District administrators and staff should follow district policy on requesting paid time off and must not engage in activity to influence the passage of the levy during time when they are receiving regular compensation from the district. Those district administrators or staff who elect to engage in advocacy for or against a levy may need to show such actions were done on their own time and not when they received regular compensation from the district.

**Best practice:** When district personnel elect to engage in activity to influence or advocate for the passage of a levy or bond issue, such personnel must take paid time off (personal or vacation leave) or otherwise demonstrate they were not being compensated by the district for normal

hours worked. District leadership and staff who elect to advocate for the levy must do so on their own time and at their own expense. Boards of education should not require or pressure administrators or staff to take paid time off to advocate for the levy.

**5. May the district allow the levy committee access to school facilities during the school day to collect background video?**

**Answer:** Yes. The district should have a content-neutral policy allowing outside organizations to request permission to utilize specific district facilities for particular activities. The district should also provide equal access to request the use of district facilities to all committees, PACs, or organizations either supporting or opposing the levy.

**Best practice:** District should have a content-neutral policy that manages the use of school facilities by outside groups. Equal access to those facilities must be provided to groups that support or oppose the levy.

**6. May the superintendent and treasurer use district facilities to host an informational meeting on upcoming levies?**

**Answer:** Yes. The district administration may use district facilities to host informational meetings regarding pending levy or bond issues. However, as repeatedly stated in these FAQs, those informational meetings must be factual in nature and not to influence the outcome of the impending vote.

**Best practice:** Any use of district facilities will be a use of public resources. Accordingly, any such presentation should be factual and not an attempt to influence the outcome of the levy or bond issue. Additionally, the district should treat both the pro-levy and anti-levy committee or groups consistently with regard to use of district facilities.

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

**Answer:** Yes. The district should follow its content-neutral policy for allowing outside organizations to rent or utilize public space within district buildings. *See 1991 Op. Atty General Opinion No. 91-064.*

**Best practice:** The district should have a content-neutral policy that regulates the use of district buildings and facilities by outside organizations. Such requests should be processed and granted in the normal course of business and without regard to the content or purpose of the meeting. An anti-levy committee must have equal access to request the use of district building or facilities.

**8. Do anti-levy campaigns get equal access to the same facilities and materials as levy committees?**

**Answer:** Yes. See response to question 7 above.

## VII. Student and Staff Involvement

To what extent can district staff and students be involved in the work of supporting a levy?

### 1. Can students promote the levy by producing TV commercials or making signs in district owned facilities or with district owned equipment?

**Answer:** No. The district should not permit students to use public funds, resources or facilities to support or oppose a levy.

### 2. Are teachers and/or coaches permitted to send letters to their classrooms or teams if it is after hours and done using the staff members' personal funds?

**Answer:** Caution is advised. The AOS suggests district legal counsel provide specific guidance to district staff who may decide to engage in this type of activity. Teachers and coaches may elect to support or advocate for a levy on their own time and at their own expense. In addition, they might need to show that any such actions occurred during a period of time they were not compensated by the district. District provided bulletin boards, paper, printers, take home folders, email or other resources may not be used by teachers or coaches to show their support for a levy.

Teachers and coaches have the First Amendment right to engage in activity in support of or in opposition of a levy – but on their own time and own dime. Using the district email system, district created classroom or student lists to send out notes or letters advocating for passage of the levy will likely be viewed as an impermissible use of district resources. Teachers and coaches should not sign a letter or email under their official capacity as a coach or teacher when advocating for passage of a levy. If the district policy regarding the use of student or parent information for non-district purposes allows for the use of student or parent information by outside groups or organizations, then access to that information should be made to any group that properly applies to receive such information from the district.

**Example:** A teacher/coach writes a letter advocating for the tax levy from a personal computer. The coach mails the letter at her own expense to the local newspaper – signing the letter using just her name without reference to her affiliation with the district. The local newspaper publishes the letter. The coach appropriately advocated for the levy on her own time and expense.

### 3. Can staff be asked to contribute funds or volunteer their own time to support the levy committee fund?

**Answer:** No. School staff should not be asked or pressured to contribute to or otherwise support a levy campaign. Section 3517.092 of the Ohio Revised Code prohibits solicitations of political 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. A district employee has the right to financially support or oppose a levy campaign, but it must be their own choice to do so and done on their own time.



However, payroll deductions for political contributions are permitted under Section 3599.031 of the Ohio Revised Code, so long as the requirements of that statute are met.

**Best practice:** To be safe, it is advised that no solicitation for any kind of contributions be made during normal work hours or in public areas of the district. Perhaps more importantly, no employee should be coerced to make any contribution to the district or levy campaign. As such, a best practice is to prohibit district solicitations of political subdivision employees to support the levy campaign, leave any such activity solely to the levy committee.

## VIII. Surveys

Community surveys are an important tool for boards of education to gather information, gauge perceptions and gain public input. But caution must be used to ensure that surveys are not designed to gauge, in whole or part, community support of a levy or bond issue. Seeking guidance from district legal counsel is recommended before finalizing any survey. Many survey documents that AOS have reviewed contain some type or some level of survey questions gauging community support for a future levy or bond issue. It is a best practice for the district to leave levy survey questions up to the levy committees.

### **1. Can the board of education survey community members regarding different types of ballot issues and the likelihood of community support if a levy were placed on the ballot? Does it make a difference if this survey is distributed before or after the board's adoption of a resolution to put a levy on the ballot?**

**Answer:** No. The board of education cannot prepare or authorize a survey using public funds that is designed to gather, in whole or part, information on the community's support of a levy or specific amounts of increased tax burden. The district should not use public funds or resources to gauge voter support of a levy, whether the survey is before or after the board authorizes the levy to be placed on the ballot.

**Best practice:** The levy committee or PAC can pay for a survey to judge community support for and the amounts to be raised by a levy.

**Example:** See the attached Sample Survey Addendum for a sample of survey questions that AOS judges to be acceptable and a few that are not.

### **2. Can the board of education use public funds to hire a firm to conduct a community survey gauging community perceptions of school finances, quality of facilities and programs, and need for additional or the elimination of specific facilities or programs?**

**Answer:** Yes, the board may use public funds to hire a firm to conduct a survey of the community to gather information on school finances, quality of facilities and programs, and need for additional or the elimination of specific facilities or programs.

However, any such survey should not include questions designed to gauge community support for a levy or the acceptable amount of any tax increase.

**Best practice:** The district and consultants should not craft or administer community surveys or survey questions, using public funds, that attempt to gauge community support for a levy or bond issue. A best practice is to limit the survey questions to gauging community support for district programs and facilities.

**3. If the board of education has conducted a community survey for strategic planning purposes, can the results of those surveys later be used by a levy committee or in district communications that provide information about an upcoming levy?**

**Answer:** First, see answer to FAQ VIII 2 above regarding the limits on the district using public funds to survey the public about supporting a levy. Next, if the board conducts, or hires a firm to conduct a community survey for strategic planning purposes without crossing over into levy issues – those results can be used by the district to provide factual information to the public about an upcoming levy. Additionally, once the survey is complete and in the possession of the board or district, a levy campaign committee or other group may make a public records request for the survey results and make use of the information in the committee’s campaign.

**Best practice:** A district’s use of a survey as a tool to gauge community support should be transparent. A best practice would be for the district to publish the complete list of questions, all responses and the full set of background data used to compile the survey results.

**IX. Compensation agreements and employment contracts for district administrators.**

By and large, district administrators are employed subject to a written employment agreement or contract with the district detailing job expectations, compensation, benefits and paid time off. AOS recommends that district employment agreements avoid language requiring the superintendent or treasurer to pass levies or bond issuances as a condition or expectation of employment. Additionally, AOS recommends that district employment agreements for administrators refrain from linking any compensation or bonus payments to the passage of a levy or bond issuance.

**1. Can the board of education ask a prospective superintendent or treasurer candidate during the interview process about their prior success in passing levies?**

**Answer:** Yes. A board of education may consider a myriad of factors in selecting a superintendent. One of those factors might be an examination of the levy activity in the candidate’s prior districts, but not a sole focus on “success” in passing levies.

**Best practice:** The board of education should determine the competency of superintendent candidates regarding Ohio levy campaign laws and regulations. A best practice would be for the

district to look beyond a superintendent candidate's levy campaign record to examine if they understand how to administer and navigate the levy process in compliance with the Ohio law and that they have an appreciation for the consequences of non-compliance.

**2. Can the board of education require a clause in the superintendent's or treasurer's employment contract that makes passage of a levy a condition or expectation of employment?**

**Answer:** No. The board of education should not make a superintendent's or treasurer's employment or compensation conditioned on the passage of a levy. Compensating district administrators for passing a levy would be an impermissible use of public resources in support of the passage of a levy.

**3. Can the board of education require a clause in the superintendent's or treasurer's employment contract that links compensation or bonus payments to the passage of a levy or bond issue?**

**Answer:** No. The board of education should not make a superintendent's or treasurer's compensation or bonus conditioned on the passage of a levy. Compensating district administrators for passing a levy could be an impermissible use of public resources in support of a levy.

***Sample Survey begins on next page***

## Ohio Auditor of State Levy FAQs *Sample Survey Addendum*

### Survey Example 1:

**The district is working to determine the best course of action in proceeding with a large-scale school facilities project to renovate or rebuild and revitalize our district. Which of the following statements best describe your feelings about this issue?**

I agree the time has come to move forward with a school facilities project.

My support depends on the final facilities plan endorsed by the district.

I do not believe our school facilities need to be renovated or replaced.

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### Survey Example 2:

**Please choose the following statement that best reflects your opinion.**

I support a single K-12 building, with a separate wing for elementary and secondary students, at the site of the current middle school/high school.

I support two campuses, even if it means a higher initial cost and higher ongoing maintenance and operations costs.

I support two campuses, with a preschool at the elementary campus, even if it means a higher initial cost and higher ongoing maintenance and operations costs.

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### Survey Example 3:

**Without additional levy funding, we will be unable to fund programs and staff beyond the state-funded levels. Rank the following programs 1-5 (1 being most important and 5 being least important) to guide the district in prioritizing resources.**

Staffing and Student Learning

Health and Safety

Operations and Maintenance

Athletics and activities

Instructional support

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### Survey Example 4:

**Please rank the following potential district initiatives in order of importance:**

Building a new middle school at a cost of \$27 million

Re-building the elementary school at a cost of \$7 million

Providing additional health and safety improvements at all 11 schools in the district at a cost of \$2.6 million

\_\_\_\_\_ Replacing portable classrooms at the high school with 4 classrooms and rebuilding the athletic fields and track at the high school at a cost of \$2.3 million

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**Survey Example 5:** 

**Please rank the following potential district initiatives in order of importance:**

\_\_\_\_\_ Building a new middle school at a cost of \$27 million, of which the district would need to put an issue on the ballot to generate \$24 million.

\_\_\_\_\_ Re-building the elementary school at a cost of \$7 million, of which the district would need to put an issue on the ballot to generate \$4 million.

\_\_\_\_\_ Providing additional health and safety improvements at all 11 schools in the district at a cost of \$2.6 million. No ballot issue would be necessary.

\_\_\_\_\_ Replacing portable classrooms at the high school with 4 classrooms and rebuilding the athletic fields and track at the high school at a cost of \$2.3 million. No ballot issue would be necessary.

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**Survey Example 6:**



**In order to avoid another round of budget cuts in the 2023-24 school year, XYZ Local School District may ask voters to approve an operating levy to provide additional funding for the district. Approving an operating levy would increase local property taxes. Based on what you know now, would you favor or oppose such a proposal?**

- \_\_\_\_\_ Favor
  - \_\_\_\_\_ Oppose
  - \_\_\_\_\_ No opinion
- 

**Survey Example 7:**



**In lieu of renewing the District’s property tax levy set to expire in 2025, XYZ Local School District may ask voters to approve an income tax levy. Based on what you know now, would you favor or oppose such a proposal?**

- \_\_\_\_\_ Favor
- \_\_\_\_\_ Oppose
- \_\_\_\_\_ No opinion

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The Auditor of State views survey questions focused on facts and soliciting community input on programs and operations as appropriate, especially when the full survey results are shared with the public. Survey questions targeted and designed to gauge community support for a levy will be questioned and subject to examination by AOS. A best practice is for the levy committee to conduct and pay for a survey gauging community support for a levy.