



JULY 2022

The Levy and Bond Campaign Landscape Requires Careful Attention by Public Officials and Employees

Since 2013, laws have been in place governing the activities of a political subdivision and its officials and employees related to levy and bond campaigns. While the laws have not materially changed in nearly a decade, what has changed is that in November 2021, a superintendent and four school board members of the Bellbrook-Sugarcreek Local School District were criminally charged for levy-related activities. An initial complaint was filed with the Auditor of State (AOS) by a disgruntled community member. For the first time in history, the AOS elected to pursue criminal prosecution (in lieu of the more commonly exercised remedy of a finding for recovery) of these public officials and employee. This case is still pending.

While campaign guidance was expected from the AOS in the early part of the year, public entities are actively placing issues on the ballot for the November 2022 general election, while operating in a very gray area. Public officials and employees need to pay careful attention to their activities now to avoid facing similar consequences, including potential criminal prosecution.

There are four primary areas that require immediate and careful attention of public officials and employees when a levy or bond issue is placed on the ballot.

Newsletters and other mediums of communication

Ohio law, specifically O.R.C. 9.03(B), allows a public entity to “use public funds to publish and distribute newsletters, or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public.” However, O.R.C. 9.03(C), prohibits any “political subdivision” from using public funds to “[p]ublish, distribute or otherwise communicate information that...**supports or opposes**...the passage of a levy or bond issue.” (Emphasis added.) Ohio law is silent on what it means to “support or oppose” or to “influence” a levy or bond issue. As a result, there is no objective standard by which such conduct is measured, leaving public officials and employees to be judged on a subjective basis.

With no clear direction as to expectations and standards, public officials and employees are operating in a gray area and must be extremely cautious that the message conveyed in a newsletter, in a presentation, on social media, or through other means, cannot be construed as supporting or opposing or otherwise influencing a levy or bond issue. Wording must be sharply scrutinized before newsletters and other written or electronic materials are published. A public entity and its employees must limit its messages to those containing verifiable, factual information, stripped of any effort to influence voters.

Use of communications, public relations and other firms

While it is entirely permissible for a public entity to engage a communications, public relations or other firm to help with messaging, careful attention must be given to the role of the firm in both the contract and in practice when it comes to a levy or bond campaign. The firm’s engagement with a public entity must be limited to assisting the public entity in the preparation of communications that contain

verifiable, factual information. A levy committee may choose to engage a communications or PR firm to produce more persuasive communications, however, that role must be separate and distinct from the relationship with the public entity.

Use of research firms and surveys

Similarly, it is entirely permissible for a public entity to engage a research firm or to conduct surveys of the community. However, the AOS has scrutinized surveys that appear, either by use of specific wording, overall tone or, importantly, timing, to influence the outcome of a levy or bond campaign. A research firm engaged by a public entity cannot gauge a community on levy or bond issue support, or encourage support, either directly or indirectly.

Use of a public official's or employee's "own time"

A public official or employee is permitted, on a "person's **own time** to speak in support of or in opposition to any candidate, recall, referendum, levy, or bond issue." O.R.C. 9.03(E). (Emphasis added.) However, for a busy school superintendent or city administrator, there is a real question as to what it means to be on one's "own time." Careful consideration must be given to contracts, job descriptions and other expectations related to employment, while also recognizing an individual's First Amendment right to have an opinion on political issues.

Given the very real risk of criminal prosecution, public officials and employees must carefully navigate these challenging issues, and seek guidance as appropriate.

For questions, please contact any of the following attorneys.



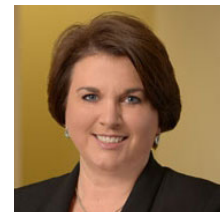
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