



BOND & LEVY CAMPAIGNS Practical Guidance for a Polarized Environment

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Prior Findings for Recovery

- *Streetsboro City School District Special Audit (November 1, 1996 through November 30, 2000)*
- *Morrow County Firefighters and Squadmen Association Special Audit (January 1, 2004 through March 31, 2008)*
- *Clark County Single Audit (Period ending December 31, 2013)*
- *Sylvania Area Community Improvement Corporation Basic Audit (Period ending December 31, 2014 and 2013)*
- *Buckeye Valley Local School District Single Audit (Period ending June 30, 2015)@Guernsey County Single Audit (Period Ending December 31, 2016)*
- *Cleveland Heights-University Heights City School District Single Audit (Period ending June 30, 2020)*

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Recent Developments

- **Heightened Scrutiny by AOS**
- **CRIMINAL Prosecutions of School Board Members & Administrators**

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Use of Public Funds – The Laws



- R.C. 3315.07 – Specific to school districts
- R.C. 3313.77 – Specific to school districts
- R.C. 9.03 – Pertains to all political subdivisions

More recently:

- R.C. 3599.40 – Criminal penalties for violations of R.C. 9.03
“Illegal Transaction of Public Funds”
- R.C. 2921.44(E) – Criminal penalties for violations of R.C. 9.03
“Dereliction of Duty”

Use of Public Funds – The Law R.C. 9.03(B)



“Except as otherwise provided in division (C) of this section, the governing body of a political subdivision may 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 within the political subdivision and to other persons who may be affected by the political subdivision.”

Use of Public Funds – The Law R.C. 9.03(C)(1)



No governing body of a political subdivision shall use public funds to do any of the following ... Support or oppose ... the passage of a levy or bond issue.

Use of Public Funds – The Law R.C. 9.03(C)(2)



No governing body of a political subdivision shall use public funds to ... Compensate any employee of the political subdivision for time spent on any activity to **influence** the outcome of an election ...

This section does not prohibit the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the political subdivision's finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the election, levy, or bond issue is discussed or debated at the meeting.

Use of Public Funds – The Law R.C. 9.03(D)



No person shall knowingly conduct a direct or indirect transaction of public funds to the benefit of ... a political action committee.

Use of Public Funds – The Law R.C. 9.03(G)



Whoever violates division (D) of this section shall be punished as provided in section [3599.40](#) of the Revised Code.

- criminal misdemeanor for each act constituting a violation of the law

Use of Public Funds – The Law R.C. 9.03(E)



This does not prohibit the utilization of **any person's own time** to speak in support of or in opposition to any candidate, recall, referendum, levy, or bond issue

Use of Public Funds – The Law R.C. 3315.07(C)(1)



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.

Use of Public Funds – The Law R.C. 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.

Hot topics in light of recent events



- The following slides will focus on some common questions that arise.
- Local government officials should exercise caution when engaging in any of these activities, even where an activity is listed as "permitted."
- Always consult with legal counsel on specific facts of proposed use of funds or resources.
- **When in doubt, anything potentially persuasive should be left to the levy committee.**

Hot Topic #1: Communications & Information



Examples:

- Newsletters
- Social Media
- In-Person Meetings

Likely Permitted:

- **Verifiable factual information regarding the local government's current finances.**
- **Information on the current condition of facilities, if funds will be used for construction projects.**

Caution should be taken with all communications to the public.

Hot Topic #1: Communications & Information



Examples:

- Newsletters
- Social Media
- In-Person Meetings

Prohibited/Likely Prohibited:

- **Encouraging "vote yes" or "support our municipality" language**
- **Analysis or editorial on finances.**
- **"Scare tactics" with proposed cuts.**
- **Link to levy committee on District website**

Caution should be taken with all communications to the public.

Hot Topic #1: Communications & Information



Examples:

- Newsletters
- Social Media
- In-Person Meetings

Caution should be taken with all communications to the public, wherever and however they occur. School officials should maintain a “business as usual” approach despite having a levy or bond on the ballot.

Hot Topic #2: Local Government Resources



Examples:

- Use of public facilities for meetings
- Use of public entity email
- Campaign signs stored on school district property

No minimum dollar threshold; *de minimis* is still violation.

Hot Topic #2: Local Government Resources



Examples:

- Use of public facilities for meetings
- Use of public entity email
- Campaign signs stored on school district property

Likely Permitted:

- Allowing levy committee to use facilities, where consistent with existing policy and all public groups (including anti-levy) are entitled to use space
- Use of public entity email for non-campaign uses (ordinary school business)

No minimum dollar threshold; *de minimis* is still violation.

Hot Topic #2: Local Government Resources



Examples:

- Use of public facilities for meetings
- Use of public entity email
- Campaign signs stored on school district property

Prohibited/Likely Prohibited:

- **Unequal treatment of pro-levy groups and anti-levy groups in use of facilities**
- **Using public entity email for campaign activities**
- **Storing campaign materials on public entity property**

No minimum dollar threshold; *de minimis* is still violation.

Hot Topic #3: Board/Council Members & Administrators



When may Board/Council Members and Administrators engage in pro-levy activity?

- Board members and administrators have a **personal** First Amendment right to engage in political speech . . . **BUT** . . .
 - **When are they using their “own time”?**

Hot Topic #3: Board/Council Members & Administrators



- **When are school officials using their “own time”?**
- Friendly reminders:
 - Don't be “the face” of the levy committee
 - Don't sign letters of support as an employee
 - Don't use school-associated social media to discuss levy issues
 - Don't wear levy pins, shirts, stickers during the school day or at school-related meetings and events
 - Do separate “work” from “play”
 - Do keep a calendar of levy-specific activities to show they are occurring outside the paid workday

Hot Topic #4: Outside Firms & Surveys



Restrictions equally apply to the conduct of outside firms hired by a school district (e.g., communications firms, design firms)

- Firms must avoid engaging in activity designed to promote the passage of the levy.
- These firms will often seek to obtain input from the community.
- AOS has recently viewed use of surveys with great scrutiny.

Contributions



School district employees **may** contribute to the levy committee.

BUT: "No person shall **coerce, intimidate, or cause harm to another person (or threaten to)**, because that person makes or does not make a contribution to a political action committee."

- Care must be taken in communicating with school district employees to ensure nothing may be construed as coercion.

Soliciting Donations



Two restrictions on soliciting donations:

- "No public employee shall solicit a contribution from any person while the public employee is performing the public employee's official duties or is in those areas of a public building where official business is transacted or conducted."
- "No person shall solicit a contribution from any public employee while the public employee is performing the public employee's official duties or is in those areas of a public building where official business is transacted or conducted."

Payroll Deductions



Local government employers **may** deduct monies from the wages and salaries of their employees for support of a ballot issue committee. However, it must be pursuant to **written authorization** from the employee.

- Employee may revoke that authorization **at any time**.
- A revocation of the authorization does **not** affect any deduction **already made**.
- Local government must maintain the authorization forms for a period of at least six years.
- See R.C. 3599.031

Questions?



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