



Ennis Britton Co., L.P.A.
Attorneys at Law

Cincinnati • Cleveland • Columbus

September 5, 2018

School Levy Campaign Compliance

Presented by

C. Bronston McCord, cbmccord@ennisbritton.com

Erin Wessendorf-Wortman, ewwortman@ennisbritton.com



Agenda

- Use of school funds in a levy campaign
- Use of social media
- School employees and administrators
- Use of school facilities
- When to use school funds
- 501(c)(3) organizations and political action committees

Supporting Statutes – Use of School Funds

- **R.C. 3315.07(C)(1)**

- “[N]o 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.”

- **Exception: 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.”

Supporting Statutes – Political Subdivisions

- **R.C. 9.03(B)**

- “... 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.”

Political Subdivisions: Prohibited Use of Funds

- **R.C. 9.03(C)(1)(e)**

- Publishing, distributing, or otherwise communicating information that “Supports or opposes ... the passage of a levy or bond issue.”

- **R.C. 9.03(C)(2)**

- Compensating employees for time spent on any activity to influence the outcome of an election; but may compensate employees to attend a meeting to present information that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the levy or bond issue is discussed or debated at the meeting.

Use of School Funds in General

- **Prepare and distribute materials**
 - Newsletters, financial reports
 - Board policies, actions, procedures
 - State and federal requirements
- **Advance public awareness** of the district's programs
 - Safety and security programs
 - Mental health programs
 - School district operations
 - What will be provided if funds are obtained
 - What will not be provided if funds are not obtained



Use of Funds

- **Information v. Support**

- Primary limitation of school board's authority
- May not expend public funds or use public employees to *support or oppose the passage* of a school levy or bond issue
- Must be for *informational purposes* only
- Materials may contain information related to the district's financial picture, revenues, expenditures, etc.



Use of District Social Media

- **Prohibited**

- Posting material that supports or opposes the passage of a levy or bond

- **Permissible**

- Advancing public awareness of district programs
- Distributing online reports and materials
- Providing information on school district operations
 - What will or will not be provided if a levy passes or fails

Use of School Employees

- **Prohibited**

- Using school employees to support or oppose a levy
- Compensating employees to distribute privately financed materials that support or oppose the passage of a school levy

- **Permissible**

- Expending public funds to present information about school finances, which may include the *discussion* of a levy issue
- Assigning one or more employees the duty of preparing school publications and materials

Employee Participation in Levy Campaign

- **School employee participation** in pro-levy campaign
 - Must work on their own time
 - Must work without financial support of the board
- **Hourly employees**
 - Should keep a detailed record of time to demonstrate that participation in this activity took place outside of the employee's normal hourly requirements
- **Salaried employees**
 - May participate in activities during regular work hours but should keep a detailed log or schedule to demonstrate that employee still worked 40 hours each week

School Administrators – Time and Resources

Permissible

- Attending meetings, presenting information, and answering questions regarding district finances, safety, operations, etc.
- Participating in support activities during regular work hours but *should keep* a detailed log or schedule to demonstrate at least 40 hours each week devoted to non-levy-related work

Prohibited

- Advocating for the passage of a levy during meetings while presenting information or answering questions on district finances, safety, operations, etc.
- Participating in support activities during regular work hours *without keeping* a detailed log or schedule to demonstrate at least 40 hours each week devoted to non-levy-related work

School Administrators – Time and Resources

Permissible

- Using district computers, equipment, and social media to provide information about the district, finances, safety, and impact of levy
- Using personal computers, email, and social media accounts to send information related to passing a levy
- Reminding people to vote on election day

Prohibited

- Using district computers and equipment to promote the passage of a levy
- Using district email and social media accounts to send information related to passing a levy
- Telling people how to vote on election day

Use of School Facilities – Supporting Statute

- **R.C. 3313.77(B)**

- “The board of education of any ... local school district shall, upon request and the payment of a reasonable fee, subject to such regulation as is adopted by such board, permit the use of school premises, when not in actual use for school purposes, for any of the following purposes:
 - ... (2) Holding educational, ... civic, ... meetings and entertainments, and for such other purposes as to promote the welfare of the community; provided such meetings and entertainments shall be nonexclusive and open to the general public.”

Use of School Facilities

• Prohibited

- Denying a committee access to school facilities solely because it does not favor the board's position
 - May not grant access to school facilities for a pro-levy committee but deny access to another person or group that is opposed to the levy
 - Policy permitting or denying the use of school facilities or resources for political purposes must be content neutral
- Holding a closed organizational meeting on school grounds

• Permissible

- Permitting levy committees to use school facilities and supplies when they are not in use for school purposes if such committees request and pay for the use of equipment and supplies

Signage on School Facilities

- **Prohibited**

- Adopting a rule that prohibits the posting of signs solely because such signs communicate a view not favored by the board

- **Permissible**

- Adopting a *reasonable* rule to regulate the posting of signs concerning school levy issues on school property
- Permitting political action committees and school levy committees to post signs concerning a school levy or bond issue on school property pursuant to the board's adopted regulation and upon payment of a reasonable fee



Use of Students

- **Prohibited**

- Students participating in levy campaign activities during school hours
- Soliciting students during the school day to assist in levy campaign activities

- **Permissible**

- Students participating after school hours on levy campaign activities
- General involvement in voter registration

When to Use School Funds

• Screening Process

- Examine the nature and message of the information.
- Are public funds being used in any way used to advocate or oppose the levy?
- Would a reasonable and rational person perceive the material or information as advocating for or against the levy?

• Applications

- Reminding people to vote
- Sending information home with students
- Donation sites for levy campaigns
- Voter registration
- Student poll workers

501(c)(3) Organizations

- Tax-exempt organizations or foundations that are organized and operated exclusively for a number a specific purposes
 - Education, PTOs
- Subject to federal regulations governing political activities
 - Prohibited from conducting political campaign activities to intervene in elections to public office
- May take positions on public policy issues
 - Caution: Must be careful that such advocacy does not become an endorsement of any particular candidate for public office including school board members

Political Action Committees

- **Definition: R.C. 3517.01(C)(8)**

- “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a *campaign committee*, a political contributing entity, or a legislative campaign fund.”

501(c)(3) Organizations and PACs

- **Donations to PACs**

- 501(c)(3) entities may not make donations to PACs
 - Federal law prohibits political intervention

- **Donations to Levy Campaign Committees**

- 501(c)(3) organizations may make donations to levy campaign committees – so long as the actions of the levy campaign committee are not attached to any candidate for public office or in support of a particular political party



Questions?

C. Bronston McCord
cbmccord@ennisbritton.com

Erin Wessendorf-Wortman
ewwortman@ennisbritton.com



@cbmccord

@ErinWortman



Erin Wessendorf-Wortman

Cincinnati

1714 W. Galbraith Road
Cincinnati, OH 45239
P: 513.421.2540

Cleveland

6000 Lombardo Center
Suite 120
Cleveland, OH 44131
P: 216.487.6672

Columbus

300 Marconi Boulevard
Suite 205
Columbus, OH 43215
P: 614.705.1333

Mahoning Valley

7320 N. Palmyra Road
Canfield, OH 44406
P: 330.519.7071





Thank You!

The information in this handout and presentation was prepared by Ennis Britton Co., L.P.A. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, please consult an attorney.



@EnnisBritton



Ennis Britton Co., LPA

Cincinnati

1714 W. Galbraith Road
Cincinnati, OH 45239
P: 513.421.2540

Cleveland

6000 Lombardo Center
Suite 120
Cleveland, OH 44131
P: 216.487.6672

Columbus

300 Marconi Boulevard
Suite 205
Columbus, OH 43215
P: 614.705.1333

Mahoning Valley

7320 N. Palmyra Road
Canfield, OH 44406
P: 330.519.7071