



## Do You Have a Referendum on the Spring Ballot?

### *Board Members Can and Should Be Advocates*

**S**chool board members not only can be advocates when finance referendums are on the ballot – they should.

Yet school board members need to think carefully about their statements and activities, which will be judged – fairly or unfairly – in the “court of public opinion” and also have specific legal implications.

“Board members do not lose their First Amendment rights by virtue of holding office,” says Jeff Peelen, an attorney with Quarles & Brady law firm. “They may speak freely and take a position in favor, or against, a referendum.”

Peelen has been repeating that message to school board members around the state for the past several months to discuss with them the advocacy role they can play in referendums.

With so much at stake for districts when referendum questions are on the ballot, board members want to be certain they are not crossing any legal lines.

Peelen spoke recently to the Menomonee Falls Board of

Education as that district prepared to take a \$19.34 million referendum to the voters. Board members and administrators invited Peelen to speak at a workshop after the district was criticized last year for advocating in favor of a referendum. He has also addressed the Greendale, Germantown and Elmbrook school boards.

Peelen said there are gray areas in the law when it comes to advocacy by district administrators and employees, and those gray areas are making individual school board members nervous.

In a nutshell, Peelen said, “Administrators should not engage in promotional activities during normal working hours, but may be a source of information. After hours, however, administrators have the same wide latitude as board members or any other individual to promote a referendum and engage in referendum-related activities.”

Greendale School District Superintendent Bill Hughes said the issue needs to be high on the radar screen of any administrator, especially

because the working hours of superintendents can be anywhere from 7 a.m. to 8 p.m. most days.

“While board members can speak in favor or against a referendum, or participate in committees, administrators must be certain they are in compliance with the state elections laws,” Hughes said. At the same time, however, “superintendents do not give up their free speech rights during their off hours.”

Board members, however, are not district employees and are, therefore, not bound by the same tight restrictions, Peelen said.

“Board members may participate in citizen committees or other activities to promote a referendum so long as they follow campaign finance and election laws,” Peelen said.

Anne Weiland, a member of the Menomonee Falls Board of Education, believes advocacy on behalf of her district is part of her role as an elected official.

“School board members and school administrators hold the most knowledge about the issues

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presented in a referendum. Because campaign finance laws place restrictions on the ability of school administrators to advocate, school board members are the best, perhaps only, community leaders who can effectively inform the public without being worried about stepping over the thin gray line that separates education from advocacy," Weiland said. "In my opinion, if you believe that passage of a referendum is in the best interest of your community, then education and advocacy are part of your role as an elected official."

In order to advocate for their districts, however, board members must be armed with information from the district. This is where the waters get a little murky.

According to a "Legal Comment" column, published in the August 2003 issue of *Wisconsin School News*, "School board members are

clearly prohibited from using *public funds* for certain types of election activities," emphasis added.

The information districts spend money to prepare, publish and/or disseminate regarding a referendum must be factual and cannot contain any language that could be interpreted as "pro" referendum. And the interpretation of what is "pro" referendum has proved to be quite ambiguous, officials have found.

In a 1979 opinion, the Wisconsin attorney general concluded that words of advocacy include "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat" and "reject." A school district may not use words of this character in any official communication related to the referendum issue.

Since that ruling, district attorneys have gone further, criticizing districts for telling residents what action the district will have to take if a referendum is not passed as well


as for trying to predict what passage of the referendum will cost taxpayers over the length of the loan.

To help school board members and administrators navigate their way through these murky waters, Peelen has offered a clear set of guidelines for materials produced by district employees and paid for by the district:

- **Neutral fact sheets are permissible.** They may not contain words such as "vote for" or "support."
- **Materials should avoid hyperbole, puffery or aggrandizements.** However, true statements about bad consequences, fairly presented, that can flow from a failure to pass a referendum are allowed. For example, if it is true that a school district will have to cut programs for lack of funds, it may say so in its materials. But Peelen warned districts to be careful about the wording of such statements, as some district attorneys have labeled such statements "puffery."
- **Web sites:** If a school district uses public funds to maintain a Web site, the same rules apply. In addition, a school district site should not contain links to Web sites of any advocacy groups, pro or con.

Probably the best thing districts can do to avoid crossing over a line that seems to keep moving is to submit materials to an attorney for review before releasing them to the public. ■

*Holly is the director of public information and community relations for the School District of Menomonee Falls. This column was provided by the Wisconsin School Public Relations Association (WSPRA). WSPRA, specializing in school-community relations, provides visionary leadership and service to Wisconsin schools by equipping its members with effective communication skills.*



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