



e-BLACKBOARD

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SCARIANO, HIMES & PETRARCA

SCHOOL DISTRICT ELECTIONEERING DURING REFERENDUMS

In light of a recent decision of the Illinois Appellate Court involving the distribution of factual information by a school district regarding a pending ballot question, Illinois school districts pursuing referendums must ensure that their communications with taxpayers do not run afoul of Illinois' *Election Code*.

In 2006, an Illinois school district asked its community to approve a \$100 million referendum to provide funds to finance school improvements. Prior to the referendum vote, the school district mailed out, at district expense, newsletters explaining the purpose of the referendum. The school district spent more than \$3,000 for the printing and mailing of the newsletters.

A local taxpayer filed a complaint with the Illinois State Board of Elections ("BOE") alleging that the School Board, by sending out the newsletters, qualified as a "local political committee" that was required to follow reporting requirements pursuant to the *Election Code*. Specifically, the taxpayer argued that the School Board should be considered a "local political committee" within the meaning of the *Election Code* because the School Board spent more than \$3,000 for "electioneering communications." A local political committee is defined as an organization that "makes expenditures during any 12-month period ... exceeding \$3,000 for electioneering communications relating to ... any question of public policy " "Electioneering communications" are those communications that refer to a clearly identified question of public policy that will appear on a ballot." The taxpayer argued that because the School Board should be considered a "local political committee," it violated the *Election Code* for failing to comply with reporting requirements imposed upon local political committees.

The BOE dismissed the complaint finding that the newsletters encouraged individuals to vote and communicated only factual information. The decision was appealed and on May 22, 2009, the Appellate Court issued a decision reversing the BOE.

The Appellate Court held that although Illinois law allows a public body to disseminate facts to the public, the public body could still violate the law if the method of dissemination is an "electioneering communication." The Appellate Court determined that the newsletters at issue were "electioneering communications" because they were communications that refer to a "clearly identified question of public policy that will appear on the ballot." The Appellate Court further found that the newsletters were not designed simply to encourage individuals to vote.

Although the case was remanded back to the BOE for further proceedings, absent a reversal from the Illinois Supreme Court, we expect the decision to have significant impact on any school district considering a referendum. If a district sends out written communications providing factual information about a pending referendum or other matter of public policy, and the cost of preparing and sending those communications will exceed \$3,000 over a 12- month period, the district would be well advised to register as a local political committee and comply with the political and financial reporting requirements of the *Election Code*.

We will keep you informed of any future developments in this area. If you have any questions regarding conducting a referendum or compliance with the *Election Code*, please do not hesitate to call Scariano, Himes and Petrarca.

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Scariano, Himes and Petrarca, Chtd., represents more than 100 school districts, special education cooperatives and vocational education cooperatives. Our attorneys have expertise in all areas of education law and practice in three locations to more readily serve our clients:

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