



# Illinois Laws Affecting the School Finance Referendum

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*Revised: April 2010*

**ILLINOIS ASSOCIATION OF SCHOOL BOARDS**

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# Illinois Laws Affecting the School Finance Referendum

Statutes governing the school finance referendum in Illinois are located in both The Election Code (10 ILCS 5/1-1 et seq.) and The School Code (105 ILCS 5/1-1 et seq.). School officials need to be particularly aware of provisions found in five areas of the statutes:

- Article 28 of The Election Code represents the general election laws governing all public policy referenda;
- Article 9 of the Election Code deals with campaign expenditures.
- Article 9 of The School Code covers the notice of election for tax rate increases and the number of propositions that may be combined on one ballot;
- Various sections of The School Code authorize school board actions only with the approval of voters, including increases in tax rates (Article 17), issuance of building bonds (Article 19) and working cash fund bonds (Article 20).
- The State Officials and Employees Ethics Act limits the use of public funds in communications regarding public policy referenda.

All of these pertinent areas of the statutes must be read together to find the laws bearing on the school finance election. Because improper procedures can result in voiding election results or delays in the issuance of bonds or extension of taxes, school boards and their attorneys must take particular care that all areas of the law are consulted.

It is assumed that the school board will employ legal counsel to insure that the election is conducted properly. This summary is not intended to cover all the laws governing finance elections, but to deal with some procedures that have a special bearing on the school board's duties and the election campaign committee.

## Some General Provisions

A referendum may be held only on any of the four

scheduled election days in each two-year election cycle. These regular election dates are:

### *In even-numbered years:*

- Third Tuesday in March — General Primary
- First Tuesday after first Monday in November — General Election

### *In odd-numbered years:*

- Last Tuesday in February — Consolidated Primary
- First Tuesday in April — Consolidated Election, including the election of school board members

**Two exceptions:** (1) A school board may petition the circuit court for an emergency election “in order to maintain the operation or facilities of the unit of local government or school district and the need is due to circumstances beyond the control of the governing body.” (2) A proposition may not be placed on the ballot at any election where there is no contest for a public office on the ballot in at least one precinct within the school district. This provision effectively eliminates the Consolidated Primary (February of odd-numbered years) as an option in many school districts.

Not more than three propositions (other than propositions submitted to backdoor referendum by voter petition) may be submitted to the voters of a school district at the same election.

The County Clerk, Municipal Board of Election Commissioners or County Board of Election Commissioners is the Election Authority and is responsible for determining polling places, publishing notices, printing ballots, and other election mechanics.

## Local Election Duties

**Board of Education** — The school board may initiate a referendum by voting on a formal resolution at a public meeting. The resolution must be adopted not less than 65 days before the election date. The school board's resolution should be drawn up with the aid of an attorney. It must contain the exact wording of the ballot

proposition and other information specified in The School Code. If a tax rate proposition is involved, the notice of election and the ballot must contain information called for by paragraphs 9-11 and 17-3.4 of The School Code. Although publishing the notice and printing the ballot are responsibilities of the Election Authority, the school board must provide this information and should, therefore, incorporate wording for the election notice as well as for the ballot in its resolution. It is important to insure the legal sufficiency of the election notice as well as the ballot.

**School Board Secretary** — The school board secretary is the Local Election Official and is responsible for seeing that the referendum proposition is certified to the Election Authorities who have jurisdiction not less than 61 days before the election date. The certificate must provide the exact wording for the ballot question. The board secretary should cooperate in every way possible with the Election Authority to insure that the ballot and the election notice meet legal requirements.

These duties of the board secretary apply to the certification of a proposition for a referendum initiated by voter petition as well as one initiated by school board resolution.

## PUBLIC COMMUNICATIONS

Illinois school officials are confronted with two statutes governing referendum communications that appear to be somewhat inconsistent.

The Election Interference Prohibition Act<sup>1</sup> provides the following:

“No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purpose to any candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot . . . .”

The State Officials and Employees Ethics Act<sup>2</sup> also prohibits the use of public resources to support passage of a ballot proposition and provides a long list of “pro-

hibited political activities.” However, unlike the Election Interference law, the Ethics Act does not specifically permit a public body to use “public funds for dissemination of factual information . . . .”

Until the ethics law was enacted in 2003, the older statute provided the primary guidance for school officials in deciding what they could and could not do in communicating about a referendum. Thus, it was generally held by most school attorneys that the school board could use public resources to explain to voters its reasons for putting a finance proposition on the ballot so long as its communication was balanced and as fair to opponents as to proponents. Public resources should not be used to present a one-sided or distorted point of view.

Of course, that interpretation of the Election Interference Prohibition Act was sometimes questioned by critics regarding the school board’s selection of “facts” and its perception of impartiality. Some school leaders, therefore, have preferred to avoid the use of public funds in any communications related to a finance election and to rely instead on activities carried out and funded by private groups. This approach may now be mandated, depending upon how one interprets the new Ethics Act.

A state appellate court in 2009 went even further in regulating the use of public funds in election communications.<sup>3</sup> The court held that any communication that “refers to a clearly identified question of public policy that will appear on the ballot” must be treated as an electioneering communication. And if a school board expends more than \$3,000 in any 12-month period for such communication, the board must register as a local political committee and abide by requirements of Article 9 of the Election Code.

The court did not appear to make any exception for a board communication that calls attention to a specific election question in a neutral manner.

Where a school district would expect to spend more than \$3,000 for lawful communications alerting voters to a public policy election, a board might be well-advised to delegate even such impartial of communication to a citizens committee. Even a board that is willing to register as a political committee would be faced

<sup>1</sup> 10 ILCS 5/9-25.1 et seq.

<sup>2</sup> 5 ILCS 430/1-1 et seq. (Public Act: 93-0615, effective November 19, 2003, and Public Act: 93-0617, effective December 9, 2003)

<sup>3</sup> *Citizens Organized to Save the Tax Cap v. State Board of Elections, et al.*, 392 Ill. App. 3d 392, 910 N.E. 2d 605, 331 Ill. Dec. 196 (1st Dist. 2009)

with tracking costs associated with printing and mailing, including staff time.

The safe, conservative approach, therefore, is to rely on a citizens' committee to support the referendum and provide all communications designed to generate interest and support.<sup>4</sup> Members of the school board are free to support and serve on such committees so long as (a) no public resources are used and (b) a majority of a board quorum does not violate the Open Meetings Act by taking part in an illegal meeting.

Like members of the board, school district employees enjoy the common rights of citizenship on their own time. They, too, can perform referendum work so long as they are not on compensated time or using district equipment or supplies. School employees should not engage in activities designed to support the referendum during their work day (or during "compensated time").

The Ethics Act specifically defines participation in a political event or support of a candidate or referendum as a "prohibited political event" during the "compensated time" for a governmental employee. Determining when the superintendent or other administrator is on "compensated time" will be problematic, as will distinguishing between support for a referendum and simply compiling and communicating facts regarding the referendum.

The Illinois Council of School Attorneys has advised that school district staff members (1) limit their comments about the referendum to the facts when on compensated time and (2) express support for a referendum only when off school grounds and not at a school function. And when expressing support, staff should note that they are not speaking as part of their official duties and are not on compensated time.

A school board that is in doubt as to what it can and

cannot do with respect to public communications should obtain legal counsel.

## Laws Affecting Campaign Committees

If the school board and superintendent have consistently kept the community informed of the district's financial condition, then key people in the community should be aware of the needs giving rise to a finance referendum. That means there should be little difficulty in finding citizens eager to work for passage of the ballot proposition. A citizens committee will make the campaign a community effort and give large numbers of people a feeling of ownership in the outcome.

A campaign committee can use private funds to communicate the need and undertake electioneering functions that cannot be addressed with public resources — such as building enthusiasm to reinforce the opinions of proponents, house-to-house canvassing to identify "yes" voters, and getting out the "yes" vote on election day.

A campaign committee also can promote or organize voter registration drives — but be careful. Voter registration must be impartial and cannot be combined with electioneering activities.

Note, however, that in their official capacities, school board members and employees must show equal deference to opponents and proponents. Administrators, for example, cannot lawfully use school time or school premises to organize the work of a campaign committee.

**The Campaign Committee** — Any individual or organization which accepts or expends \$3,000 or more in supporting or opposing a school referendum is considered a "Political Committee." (See Article 9 of The Election Code.) Such a committee must file a statement of organization and must report contributions and expenditures. Forms are obtained from and filed with the County Clerk and the State Board of Elections. For assistance, see The Campaign Disclosure section of the State Board of Elections website at [www.elections.state.il.us/](http://www.elections.state.il.us/).

**Political Literature** — The Illinois Supreme Court has ruled it unconstitutional for the state to require that any person or group that publishes and distributes literature related to a referendum be identified on that literature. However, IASB recommends that the source

<sup>4</sup> Guidelines for a referendum campaign that appear to comply with requirements of the ethics law in most respects are set forth in a small booklet entitled *Illinois School District Referenda*. However, the booklet was written before enactment of the 2003 Ethics Act, and there appear to be some suggestions in possible conflict with the Act. The booklet is authored by Hank Boer, who is retired as superintendent of Streator Township High School District 40 and now teaches school administration at Aurora University. The booklet is available at no charge from the Illinois Institute for Rural Affairs or may be downloaded as an Adobe Acrobat document from: [http://www.iira.org/pubsnew/publications/IIRA\\_Reports\\_115.pdf](http://www.iira.org/pubsnew/publications/IIRA_Reports_115.pdf)

and purpose of all literature be identified. When a school board uses public funds to publish information about the election, the board should be identified as the source. The source of “political literature” published by a citizens committee with private funds should also be identified in order to make it clear that no public funds were used to influence voters. Also, anonymous literature probably lacks credibility.

## VOTER REGISTRATION

Voter registration is one of the first steps in a successful referendum campaign because:

1) To vote in a school election, an individual must be registered. Voter registration is closed for 29 days immediately prior to an election (28 days for the election in November of even-numbered years).

2) Many of the people most likely to support a school referendum are not registered to vote because:

- They recently reached voting age (18 years) and only a small percentage of 18-year-olds actually register and vote; or
- They recently moved into the community.

The Referendum Campaign Committee, early in its work, should make a concerted effort to identify groups most likely to support a referendum. These may include:

- 18-year-olds
- New residents (must reside in the district at least 30 days before the election)
- New parents
- School employees
- School volunteers
- Adult education students

To encourage registration, the Referendum Campaign Committee can take the following steps:

1) Identify official registrars and publicize their names and addresses and the hours and days they are available for registration.

2) Know when and where deputy registrars are available at special times and places throughout the school district. Promote special “registration days” when committee members provide transportation, call on people they believe are not registered and otherwise promote voter registration.

3) Publicize the final date for registration and the

various means by which people can register (including by mail and at drivers license facilities).

## Who Are Registrars?

Official registrars vary from county to county, depending upon which section of the Election Code has been adopted. The chief registration officer is the County Clerk in most counties.

Registration in DuPage County and in some municipalities elsewhere is the responsibility of a Board of Election Commissioners.

The office of the chief registrar is required to be open from 9 a.m. to 5 p.m. each weekday, except holidays, and from 9 a.m. to 12 noon on Saturday, or, if located in the courthouse, at hours set by the County Board. Offices are closed to registration for a period of 28 or 29 days prior to an election. These ‘closed’ dates must be taken into consideration when the Campaign Committee sets a timetable for its voter registration drive. In addition, branch registration offices are typically established throughout the election jurisdiction, and a wide variety of government and non-government officials may or must be designated as deputy registrars. The latter include township, municipal and road district clerks; school principals, college and university presidents, public librarians and the heads of labor organizations and corporations; employees of the Secretary of State at drivers license facilities, Departments of Public Aid and Department of Employment Security, and officials of bonafide state civic organizations. Further, the election authority “may appoint as many additional deputy registrars as he considers necessary.” Registration by mail also is permitted.

**School district problem:** Many school districts are served by two or more election authorities — sometimes a separate Municipal Election Commission for a city and a County Clerk serving unincorporated areas and small towns. Some school districts are located in portions of two or more counties. This may require the identification of two or more sets of registrars and their schedules of availability.

## Voter Registration Lists

The Precinct Voter Registration List is a key tool in identifying potential “yes” voters and seeing that they do vote in the election. The committee will find useful:

1) An early list of registered voters to help with block work (identifying potential “yes” votes).

2) A final, corrected list to help in getting “yes” voters to the polls on election day and to use in poll-watching and challenging ineligible voters.

The lists, which must be used by election judges to determine voter eligibility in all elections (Paragraph 4-11, The Election Code), must by law be compiled by the County Clerk or Board of Election Commissioners at least two weeks before each General Election and Consolidated Election, and enough lists must be on hand to meet reasonable requirements. However, an updated Precinct Voter Registration List is not routinely available prior to primary elections. Rather, a corrected version of the list is kept on file for public inspection and delivered to election judges before the polls open. You’ll need the cooperation of the County Clerk to get a corrected list prior to a primary election.

Obtaining preliminary lists that are reasonably current may be more difficult. They will be needed well in advance of the final day of registration, and currently corrected lists may or may not be available. It is likely that in many counties, correcting of registration lists will not begin until registration has closed. Therefore, preliminary lists may not be completely accurate. Ask registration authorities whether it is possible to generate an accurate list from current records.

Another problem is that election precincts — which are established by the election authority for all elections — may not coincide with school district boundaries. That is, a precinct may contain parts of two or more school districts. Voter registration records are coded to

show which school district the address falls in, but this code may or may not appear on the registration lists — practices vary from county to county. If the code is not on the list, the committee must check the list against the registration records, or in some other way, to delete addresses not in the district.

Best advice: Contact election authorities and attempt to obtain their cooperation in supplying the most up-to-date voter registration lists available at the time when the Referendum Committee needs them. Allow plenty of lead time so the lists can be obtained and revised in time to be useful.

## Poll Watchers

Poll watchers play an important role in checking off prospective “yes” voters as they visit the polls. This enables the campaign committee to identify those who have not voted and to contact them with reminders before the polls close. Section 17-23 of The Election Code (10 ILCS 5/17-23) provides the following:

“(5) Each organized group of proponents or opponents of a ballot proposition, which shall have registered the name and address of its organization or committee and the name and address of its chairman with the proper election authority at least 40 days before the election, shall be entitled to appoint one poll watcher per precinct. Such poll watcher must be registered to vote from a residence in the county in which the ballot proposition is being voted upon.”

This publication was produced by the staff of the Illinois Association of School Boards to provide information only and is not a substitute for legal advice from school district legal counsel.

For additional reference materials regarding school finance, communications and elections, visit the IASB website, including the Online Bookstore at [www.iasb.com/shop](http://www.iasb.com/shop).

Tools and information for Illinois school officials:

**[www.iasb.com](http://www.iasb.com)**