

# Answers to FAQs Regarding Referendum Activities Conducted by School Officials

Revised August 2019

Published by a Committee of the Illinois Council of School Attorneys <sup>1</sup>

ICSA publishes this guidance as part of its continuing effort to provide assistance to school leaders. The responses to the FAQs represent the combined thinking of committee members. Potential conflict questions may arise that are not addressed in this guidance. **This guidance is published for informational purposes only, and is not a substitute for legal advice. For legal advice or a legal opinion on a specific question, you should consult a lawyer.**

**1. School officials and employees usually want to support a referendum question that has been proposed by the school board. How does State law limit their referendum-related activity?**

Three laws significantly limit the scope of referendum-related activity in which school officials and school employees may engage: the Election Code’s interference prohibition (10 ILCS 5/9-25.1), the State Officials and Employees Ethics Act (Ethics Act)(5 ILCS 430/), and the Local Governmental Employee Political Rights Act (Political Rights Act)(50 ILCS 135/).<sup>2</sup>

The Election Code’s interference prohibition bars the expenditure of public funds to advocate votes for or against a referendum, but permits use of public funds to disseminate factual data.<sup>3</sup> Questions 2 and 3 below address the Election Code’s interference prohibition.

The Ethics Act prohibits State employees and officials from engaging in certain political activities. It also requires local government units including school boards to adopt an ordinance or policy “no less restrictive” than the Act’s provisions. This means that the Ethics Act’s prohibitions apply to board members and employees, including its ban on engaging in political activity in certain situations. Questions 4 through 11 of this guidance address the Ethics Act. The Political Rights Act prohibits employees of school districts from engaging in political activities while at work or on duty and is discussed further in Questions 8, 10 and 11 below.

**2. May the district spend money to publicize a referendum?**

Yes, provided district funds are not used to advocate for or against a referendum. The Election Code’s interference prohibition states:

**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 purposes to any candidate or political organization. This Section shall not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot, or [inapplicable language omitted].**

This law allows school district resources to be used for brochures, web postings, and other communications that describe the proposition, but **not** to urge a *yes* or *no* vote. Communications using district resources should be factual and include relevant data, such as enrollment projections, comparisons with other districts,

the status of current facilities or programs, and the district's financial condition. These communications should avoid language which connotes or may be construed as advocacy, such as, *urge, save, shatter, ensure, break, and devastating.*

Violating this law is not a ground to invalidate or challenge the outcome of the vote on a referendum question.<sup>4</sup> A first-time violator is guilty of a Class B misdemeanor. Second and any subsequent violations are Class A misdemeanors.

### **3. Will district-funded communications to publicize a referendum constitute *electioneering communications*?**

No. Communications that do not ask voters to vote *for or against* the question are specifically exempt from the definition of *electioneering communications*.<sup>5</sup>

### **4. May an individual school board member or school employee support a referendum?**

The answer to this question depends on the facts and context of the particular activity involved. Many referendum-related activities are within the definition of political activities for purposes of the Ethics Act. Examples include:<sup>6</sup>

- Planning, conducting, or participating in a public opinion poll ... for or against any referendum question.
- Soliciting votes ... for or against any referendum question or helping in an effort to get voters to the polls.
- Initiating for circulation, preparing, circulating, reviewing, or filing a petition ... for or against any referendum question.
- Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material ... for or against any referendum question.
- Campaigning ... for or against any referendum question.
- Managing or working on a campaign ... for or against any referendum question.

The rest of this publication addresses this overarching question.

### **5. When are referendum-related activities prohibited?**

This depends on the identity of the actor (board member or school employee) and the context of the activity. The following list summarizes the ban on referendum-related political activities:

- a. Employees may not intentionally perform any political activity during any time they are being compensated by the employer school district;
- b. Board members and employees may not misappropriate or use any district property or resources in connection with the political activity;
- c. Board members and employees may not require other board members or employees to perform a political activity; and
- d. Board members and employees may not award employees additional compensation or benefits for participating in any political activity.

### **6. What types of referendum-related activities are school employees prohibited from conducting?**

Employees may not engage in political activities concerning a referendum during any time they are being paid by the employer district (*compensated time*) or when they are otherwise at work or on duty. Determining *compensated time* for the superintendent, a principal, or any salaried employee can be difficult. High-ranking, salaried employees must carefully consider their actions on a case-by-case basis.

During *compensated time*, or when otherwise at work, on duty, or on district property, a school employee should not wear a button pro- or anti-referendum, distribute pro- or anti-referendum brochures, ask others how they plan to vote, distribute pencils or other favors with advocacy messages, or engage in any other activity in support of or opposition to the referendum.

**7. May a superintendent or other administrator publish an article in the district newsletter or website describing the referendum's rationale?**

Yes. The article discussing a proposed referendum's rationale must be carefully worded to avoid advocacy. Similarly, when an administrator is expressing his or her views on the referendum in an official capacity, such as when being interviewed by news media representatives, the responses should be as factual as possible rather than advocating a position.

**8. When may employees support their school district's referendum?**

Off the clock and away from district property, employees may freely engage in referendum-related activities provided they do not use district resources. For example, employees may post yard signs, wear advocacy buttons, distribute literature, urge *yes* votes, attend referendum committee meetings, and contribute to citizens' referendum committees. Indeed, the Political Rights Act provides that no school district "may make or enforce any rule or ordinance that in any way inhibits or prohibits any of its employees from exercising the employee's political rights." Under the Political Rights Act, political rights include political activities such as petitioning, making public speeches, speaking out on questions of public policy, distributing political literature, and making campaign contributions. However, similar to the Ethics Act, the Political Rights Act also provides that public employees may not "engage in political activities while at work or on duty."<sup>7</sup>

**9. May a superintendent or other administrator support a referendum during meetings sponsored by non-district sponsored clubs or focus groups?**

Possibly. When articulating support for a referendum, a superintendent or other administrator should make it clear that he or she is providing a personal opinion. At a minimum, an administrator should not participate while on school grounds, during work hours, or at a school function. In addition, the administrator should expressly state that he or she is not speaking as part of his or her official duties, and is not speaking on compensated time. Each administrator should evaluate the anticipated community response before accepting invitations to appear before non-district clubs and groups.

**10. When and how may board members support a referendum?**

All of the limitations on the use of district resources also apply to board members: they may not misappropriate or use any district property or resources to support a referendum. For example, they may not use the district website, letterhead, computers or office equipment for referendum-related activities. When they are on school district property and during school board meetings, board members should adhere to a factual approach in discussing a referendum.

Since board members are not compensated or employed by the school district they serve, the Ethics Act rules concerning *compensated time*, as well as the Political Rights Act rules concerning employees do not apply to them. This gives board members more latitude to advocate for a referendum. Away from district property, board members may individually engage in referendum-related activities. For example, they may post yard signs, wear advocacy buttons, distribute literature, urge *yes* votes, and attend and contribute to citizens' referendum committees. **Important:** If a majority of a quorum of district board members are present (3 members on a 7-member board) during a referendum-related activity, the Open Meetings Act may apply and, even if they are acting as private citizens, there may be an appearance that the Act applies.

When speaking, writing letters to the editor, or taking other actions in public, however, they are urged to do so as individuals and not to use an official title, such as *member of the Board of Education* or *Board President*. When writing letters to the editor it is a good idea to check the practice of your local newspaper. Some publications routinely add the letter writer's title after his or her name whenever the writer is a public official, such that it appears the letter was written in an official capacity, instead of inserting an editorial comment which notes the title of the writer.

**11. Is a citizens' referendum committee bound by the restrictions in the Ethics Act, Election Code, or Local Governmental Employees Political Rights Act?**

No, provided its members who are school employees or board members abide by the applicable requirements under these laws.

## 12. What are the requirements for a citizens' referendum committee?

A citizens' referendum committee may provide an excellent means for advocating in favor of a referendum. All the limitations on individual school officials and employees, as discussed above, also apply to them as members of a citizens' referendum committee. To avoid even the appearance of impropriety it is recommended that the chairperson of such a committee not be a board member, the superintendent, or even an employee of the district. Nor (as another example) should a school secretary help organize meetings or enlist members of a committee during paid time and on school grounds.

The Illinois Election Code requires that a citizen committee formed to support or oppose a public question being put to voters be organized as a *ballot initiative committee*, if it accepts contributions or makes expenditures exceeding \$5,000 during any 12-month period.<sup>8</sup> The time that individuals volunteer to work for or in opposition to a referendum proposition is not a reportable contribution, unless their work constitutes donation of an in-kind service or is provided with a promise or expectation of compensation. Detailed treatment of the reporting requirements applicable to a ballot initiative committee is beyond the scope of this FAQ, and the committee should consult legal counsel. The Illinois State Board of Elections publishes extensive guidance material on its website at [www.elections.gov](http://www.elections.gov) addressing campaign contributions and disclosures, among other topics.

## 13. What are the rules for allowing outside groups to use school facilities to advocate for or against a referendum?

School districts must make their facilities available to such groups, regardless of the group's viewpoint, on the same basis that other outside organizations are granted access. This means the same availability rules and rental charge according to the applicable board policy. See the sample **PRESS** policy 8:20, *Community Use of School Facilities*. Districts must apply content-neutral policies that do not favor one political organization or viewpoint over another.<sup>9</sup> However, a district can easily become *indirectly* involved in referendum activity, such as by allowing the referendum committee to: (1) store advocacy signs on district property, (2) use the district copy machines even if the committee supplies its own paper and ink, or (3) use the administrative office after hours for a phone bank. The district should obtain an opinion from its attorney whether these indirect activities are permissible.

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1. The following attorneys are members of the 2019 committee: **Heather K. Brickman**, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP; **John M. Izzo**, Hauser, Izzo, Petrarca, Gleason & Stillman, LLC; **Heidi A. Katz**, Robbins Schwartz; **Alan M. Mullins**, Montana & Welch, LLC; **Kimberly A. Small**, Illinois Association of School Boards; **Debra H. Jacobson**, Illinois Association of School Boards, and **Peter K. Wilson, Jr.**, Mickey, Wilson, Weiler, Renzi, Lenert, & Julien, P.C. The 2019 ICSA Executive Committee provided peer review.
  2. Although school officials and employees often wish to support referendum questions initiated by their school boards, that may not be so in the case of voter-initiated propositions such as the "adequacy referendum" authorized under recently added Section 18-206 to the Property Tax Extension Limitation Law for the purpose of seeking a one-year decrease in the educational tax extension of a district which in the preceding school year exceeded 110% of its "adequacy" target as defined in 105 ILCS 5/18-8.15. It is important to note that the statutory limitations discussed in this FAQ guidance apply to referendum-related activities of school officials and employees whether their activities are in support of or in opposition to a ballot proposition.
  3. The Illinois Constitution (Art. 8, Sec. 1) reinforces this prohibition; it states that school districts may expend public funds only as authorized by law.
  4. Sherman v. Indian Trails Public Library District, 975 N.E.2d 1173 (Ill.App.1st, 2012).
  5. P.A. 96-832 amended the definition of "electioneering communication" such that it overturned Citizens Organized to Save Tax Cap v. State Bd. of Elections, 910 N.E.2d 605 (Ill.App.3d., 2009).

6. 5 ILCS 430/1-5 contains the following list of political activities that may become *prohibited* depending upon the context:
  1. Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
  2. Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
  3. Soliciting, planning the solicitation of, preparing any document or report regarding anything of value intended as a campaign contribution.
  4. Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
  5. Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
  6. Assisting at the polls on Election Day on behalf of any political organization or candidate for elective office or for or against any referendum question.
  7. Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
  8. Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
  9. Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
  10. Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes.
  11. Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
  12. Campaigning for any elective office or for or against any referendum question.
  13. Managing or working on a campaign for elective office or for or against any referendum question.
  14. Serving as a delegate, alternate, or proxy to a political party convention.
  15. Participating in any recount or challenge to the outcome of any election, except to the extent that under subsection (d) of Section 6 of Article IV of the Illinois Constitution each house of the General Assembly shall judge the elections, returns, and qualifications of its members.
7. 50 ILCS 135/10(a) and (b).
8. 10 ILCS 5/9-1.8(e).
9. Ill. Att’y Gen. Inf. Op. No. I-07-043.

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