

Answers to FAQs Regarding Referendums and the State Officials and Employee Ethics Act

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The ICSA provides this guidance as part of its continuing effort to provide assistance to school officials. The responses to the FAQs represent the combined thinking of committee members. The Act says little that applies by its terms directly to local public entities like school districts. For that reason, and because there are, as yet, no court decisions interpreting the Act, it is difficult to predict outcomes. In addition, the answers to the FAQs may be different depending on the policy that the local school board adopted. **For legal advice on specific questions which arise in your district, you should consult a lawyer.**

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

Two laws significantly limit their referendum-related activity: the Election Interference Prohibition Act and the State Officials and Employees Ethics Act (Ethics Act). The Election Interference Prohibition Act bars the expenditure of public funds to advocate votes for or against a referendum, but permits use of public funds to disseminate factual data.² This means that school district resources may be used for brochures, web-postings, and other communications describing the proposition, but **not** for urging 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 persuasive language, such as, *urge, save, shatter, ensure, break, devastating*, and similar persuasive words.

This FAQ, however, focuses on the second law limiting referendum-related activity – the Ethics Act. The Ethics Act prohibits State employees and officials from engaging in certain political activities and accepting certain gifts. It also requires all units of local government including school boards to adopt a 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 “prohibited political activity” in certain situations and in particular, during school employment hours.

2. Do “prohibited political activities” include referendum-related activities?

Yes. The Ethics Act's definition of “prohibited political activity” includes many referendum-related activities, such as:³

- 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.

3. When are referendum-related activities prohibited?

This will depend on the actor (board member or employee) as well as the context. In summary, the ban on referendum-related activities applies to: (1) employees during any time they are being compensated, (2) board members and employees to prohibit them from using any district property or resources in connection with any “prohibited political activity,” (3) board members and employees to prohibit them from requiring other board members or employees to perform any “prohibited political activity,” or (4) board members and employees to prohibit them awarding other board members or employees additional compensation or benefit for participating in any “prohibited political activity.” Note, however, this answer may be different depending on the policy adopted by the local school board.

4. What types of referendum-related activities are school employees prohibited from conducting?

Employees are prohibited from supporting a referendum during any time they are being compensated (“compensated time”). When an employee is being compensated is easy to determine for an hourly employee, but more difficult for a salaried employee. High-ranking, salaried employees must carefully consider their actions on a case-by-case basis.

During compensated time or on district property, a school employee should not wear a button pro- or anti-referendum, distribute pro-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.

5. 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 the appearance of 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.

6. 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 Local Governmental Employees 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 right.” It also provides that public employees may not “engage in political activities while at work or on duty.”⁴

7. 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 take steps to make clear that he or she is not on “compensated time.” 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 express that he or she is not speaking as part of his or her official duties and is not on compensated time. Each administrator should evaluate the anticipated community response before accepting invitations to appear before non-district clubs and groups.

8. When and how may board members support a referendum?

Board members are not compensated by the school district. Thus, depending on board policy, they may have more latitude to advocate for a referendum than do district employees. All of the limitations on the use of district resources also apply to board members - they may not use any district property or resources to support a referendum. They may not, for example, use the district website, letterhead, or duplicating machines for referendum-related activities. When they are on school district property and during school board meetings, board members should adhere to a factual approach.

Away from district property, board members may freely 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. 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 “board member” or “board president.” When writing letters to the editor it is a good idea to check the practice of your local newspaper, as some 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.

9. Is a citizens’ referendum committee bound by the restrictions in the Ethics Act?

No, provided its members who are school employees or board members abide by the requirements under the Ethics Act as well as the Election Interference Prohibition Act. (See the answer to question #1.)

10. 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. Of course, all the limitations on individual school officials and employees, as discussed above, still apply to them even as members of a citizens’ referendum committee. To avoid even the appearance of impropriety it is recommended that the chair person of such a committee not be a board member, the superintendent, or even an employee of the district. And, the school secretary, for example, should not help organize meetings or enlist members of a committee during paid time and on school grounds.

Several reporting laws may apply to citizens’ referendum committees. For example, a citizens’ referendum committee must disclose campaign contributions and expenditures if it accepts contributions or makes expenditures exceeding \$3,000 in a 12-month period.⁵ There are other potential reporting requirements, but the topic is beyond the scope of this FAQ and the committee should consult legal counsel. See also the Illinois State Board of Elections’ publication, “A Guide to Campaign Disclosure” at www.elections.state.il.us/campaigndisclosure/DisclosureGuide.aspx. Forms are available there for downloading.

11. 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.*"

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² The Election Code, 10 ILCS 5/9-25.1(b), 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 provision shall not prohibit the use of public funds for dissemination of factual information relative to any proposition appearing on an election ballot... ."

³ The complete definition of "prohibited political activity" in 5 ILCS 430/1-5 follows:

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 fund raiser, political meeting, or other political event.
3. Soliciting, planning the solicitation of, or preparing any document or report regarding any thing 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 an 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.

⁴ 50 ILCS 135/10(a) and (b).

⁵ 10 ILCS 5/9-1.7(b), 5/9-1.8(b).