The School Board’s Role in Ballot Issues

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When citizens are elected to the school board, they individually retain their First Amendment rights to freedom of speech and association. Collectively, however, it is a different matter. As the school board, they represent the public and are entrusted with protecting the public interest. As a result, the role of the board and the role of the school district in presenting ballot issues to the voters is limited. This Special Report examines the role and the rights of the board in taking positions on ballot issues.

Prior to 1991, Iowa law did not specifically address the role of the board or a school district in presenting ballot issues to the public. A law adopted in 1991, states:

> The state and the governing body of a county, city or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue. This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation. *Iowa Code* § 68A.505.

Before this law, a board’s action of passing a board resolution expressing the board’s opinion on a pending bond or reorganization ballot issue was challenged as a misuse of public funds. The legislation was adopted in response to the challenge and clarified the role of the board. While boards can take a position on a ballot issue, boards cannot use public funds to promote the passage or defeat of a ballot issue. Public funds are entrusted to the board to be spent in the public interest. At the time of a ballot issue, the public interest is composed of proponents and opponents of the issue.

The Iowa Ethics and Campaign Disclosure Board, the state agency with jurisdiction over *Iowa Code* § 68A, issued an advisory opinion defining when an issue becomes a ballot issue. The Board has determined an issue does not become a ballot issue until "it has been approved to be on the ballot or is required by law to be on the ballot." 2000 Formal Adv. Opn. 11. This definition should assist boards who have advisory committees looking into potential ballot issues such as a bond election. The law does not get invoked until the issue is actually presented to the voters. Therefore, expenses for planning for a bond election, such as architect’s fees, can be paid from school district funds without violating the law. Once the issue becomes a formal ballot issue, all costs other than those associated with informing the school district voters of the upcoming election, should be borne by the citizens’ committee supporting or opposing the ballot issue.
Role of the School Board

Iowa law grants certain express authority that allows school boards to present items to the voters (e.g., reorganization, bond issues, levies). As the governing body of the school district, the school board has the ultimate authority for the planning and control of the school district. As a result, the school board has the authority and responsibility to take positions on issues that affect the school district. The law clarifies the board’s authority to not only authorize the ballot issue but also take a position on it. The law also protects a board’s right to take a position on a ballot issue presented by citizens. If a citizens’ committee gets an item on the ballot without board support, it is legal for the board to take a position against the ballot issue and educate its citizens about the issue.

Expenditure of Public Funds for Presentation of a Ballot Issue

School district funds cannot be spent for the promotion or defeat of a ballot issue, but may be used to provide information to the public on the ballot issue. In providing information, a school district must be extremely careful not to take an advocacy position. School districts should avoid using language that assumes the funds will be raised and spent. They should not use language that gives citizens the impression it is a foregone conclusion the ballot issue will be adopted. Unless the language is totally neutral, the school district should delegate providing information to the public to a privately funded citizens’ committee formed for this purpose.

When the school district has an item on the ballot, the board should turn over the role of advocacy, either for or against, to a citizens’ committee. When doing so, the board or administration should discuss with the committee this law and any campaign finance laws to prevent the committee from engaging in illegal activities. Rarely are violations of this law intentional, but they are still violations. And, even though it’s technically the committee that will be in violation of the law, the school district itself will receive bad publicity.

Frequently Asked Questions

Can we use school district equipment, such as a postage meter or copy machine, to promote a ballot issue?

In general, it is recommended that school districts prohibit the use of its equipment to groups supporting a ballot issue. However, if a school district regularly allows outside groups, both political and nonpolitical, to use school district equipment, and there is a written policy or a practice well-publicized throughout the district, groups promoting or opposing ballot issues may be allowed to use equipment provided they reimburse the district.

Can the school board take a position on a reorganization petition presented to the board by a citizen group before it is presented to the voters?

Yes. The law specifically allows a board to take a position on a ballot issue. As a result, the board can take a vote during a regular board meeting.
Can the board take a position on a ballot issue that is not a specific school district ballot issue?

Yes. The law allows boards to take a position on ballot issues without qualifying the type of ballot issue. For example, the board can take a position on a ballot issue sponsored by the city to bond for a new sewer system. In 1999, many boards took a position against the so-called Taxpayer’s Rights Amendment, a statewide ballot initiative, that would have limited boards’ abilities to raise taxes.

Can the school board present and distribute printed material supporting their position on a ballot issue?

A very qualified "yes." School boards cannot randomly distribute material supporting their position on a ballot issue to citizens of the school district. However, because the board took action on a ballot issue, the recorded minutes of this action and any separate resolution document are public records in accordance with the Iowa public records law. Also, if the board makes copies of board documents available to the public attending the meeting, then it is appropriate to also make the printed material available in the same manner. It is treated like other public records of the board.

Can the school board use its school newsletter or a letter to citizens to advocate a position on a ballot issue?

No. If the school board routinely uses these means to communicate board action on ordinary board business, the newsletter or letter may be used to report to citizens the board’s action, including the board’s position, on the issue in question; however, it cannot advocate that position. A newsletter or letter may also objectively show how funds may be used in an objective manner without advocating the board’s position. Objective information may include how funds will be raised and how proceeds may be spent. A newsletter or letter is a good place to inform the public of the date of the election and the voter registration deadline. A board may want to consider issuing a news release that includes the board’s resolution on the ballot issue rather than using the school newsletter.

Can an individual board member advocate a position on a ballot issue?

Yes, an individual board member may advocate a position, including making campaign contributions to a ballot issue political action committee (PAC) or having a campaign sign in the board member’s yard. The board member may issue a statement advocating a position if it is done on the board member’s time and at the board member’s personal expense, including writing a letter to the editor or an op ed piece. In doing so, it is appropriate for the board member to note that he or she is a board member. A board member may also expressly advocate his or her personal position on a ballot issue during a school board meeting. 2000 Formal Adv. Opn. 15. Board members may also individually solicit votes encouraging the passage or rejection of a ballot issue. In taking a personal position on a ballot issue, board members are reminded of the Iowa Association of School Board’s Code of Ethics for School Board Members, number 13, adopted as board policy by most Iowa school boards, which states that as a board member, the member will abide by...
majority positions of the board. IASB encourages boards to have in-depth discussions on issues presented to the board, including ballot issues. However, once the vote is completed, IASB recommends that all board members support the majority vote of the board.

**Can school district employees advocate a position on a ballot issue?**

Yes, provided they do it on their own time and don’t use any school district resources (e.g., phones, tablets, computers, copiers or email systems). School district employees, including administrators, cannot advocate a position during their normal working hours or when representing the school district in an official capacity. If an employee is representing the school district in an official capacity, the employee may only provide information and cannot advocate a position. The employee may explain his or her own personal position on the issue when that employee is not officially representing the school district.

**Can a board member or a school employee be a member of a citizen’s committee advocating a position on a ballot issue?**

Yes. School board members and school employees do not lose their individual free speech rights when they are elected to the board or are hired. However, board members should realize that if a majority of board members attend the committee meeting, the open meetings law may be implicated.

**Can an employees’ union advocate a position on a ballot issue?**

Yes. An employees’ union may adopt and advocate a position on a ballot issue. However, the employees’ union must comply with campaign finance laws dealing with the promotion of a ballot issue. School officials should not encourage or permit the union special access to school resources for the purposes of advocating the ballot issue.

**Can an employees’ union issue flyers advocating a position on a ballot issue to students?**

A qualified "yes." Employees’ unions, like all other organizations, must comply with school board policy on the distribution of literature on school grounds. School districts cannot prohibit the distribution of political literature unless it prohibits distribution of all nonschool sponsored publications, but they may make reasonable rules to limit the distribution to outside the building and outside of school time.

**Can literature advocating a position on a ballot issue be distributed on school district grounds or at school district events?**

The school board’s policy on the distribution of literature should not be content-based (e.g., based on the substance of the message) and should cover all types of distribution ranging from distribution of religious literature to campaign literature. Literature advocating a position on a ballot issue should not be treated any differently. As long as the material was not created with public funds, including developed by school employees on official time or distributed by school employees on official time, the distribution does not violate the law. 2000 Formal Adv. Opn. 17.
It is also appropriate for ballot issue committees or candidate’s committees to have tables set up at school district events, including open houses, as long as board policy allows it and all viewpoints have the opportunity to also have a table set up. Boards needing a sample Distribution of Materials policy can contact IASB.

**What about classrooms – can teachers advocate for a position or a candidate and can teachers invite candidates to speak to their classes?**

Teachers cannot expressly advocate for or against a ballot issue or a candidate while on duty. Therefore, teachers cannot prefer one position or candidate over another in their classrooms. If teachers post material about an upcoming election, all major sides of the issue should be addressed and all major candidates should be represented. 2000 Formal Adv. Opn. 24. It is also appropriate for candidates to speak to classes or assemblies as long as the candidate does not expressly advocate the election or defeat of an identified candidate. 2000 Formal Adv. Opn. 23.

**Conclusion**

Determining whether a school newsletter or actions taken by board members are advocating the passage or defeat of a ballot issue is not easy. The board and board members must be aware that a misuse or misstatement may subject the board to a complaint before the Iowa Ethics and Campaign Finance Disclosure Board for improper use of public funds. It is important for school districts to review all ballot issue materials they publish or present to ensure they do not advocate a particular position. The school attorney can review materials and answer questions regarding a ballot issue. The Iowa Ethics and Campaign Finance Disclosure Board, which can be reached at (515) 281-4028, is also helpful in answering questions about proper use of public funds. More information can be obtained by accessing the Iowa Ethics and Campaign Finance Disclosure Board’s website at [http://www.iowa.gov/ethics/](http://www.iowa.gov/ethics/).

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