

CAMPAIGN FINANCE ACT – FREQUENTLY ASKED QUESTIONS

Section 57 of the Michigan Campaign Finance Act, Public Act 388 of 1976, MCL 169.257, governs the activities of public bodies (e.g., school districts, public school academies, and intermediate school districts), elected or appointed public officials, and individuals acting for or employed by public bodies by limiting the ways in which public funds or public resources may be used to support or oppose a candidate or ballot question. Below are common questions concerning Section 57 and Michigan Election Law.

The answers are of a general nature. This information is not intended to provide legal advice or an opinion about specific matters, facts, or situations. Future legal developments may affect these topics. The reader is encouraged to contact legal counsel to discuss specific matters or issues as they arise.

GENERAL OVERVIEW

The Michigan Secretary of State's ("SOS") Compliance and Rules Division is responsible for the interpretation, application, and enforcement of Section 57. Investigations usually occur after a complaint is filed. Penalties may include a warning letter, substantial fines imposed on individuals or the public body, and/or misdemeanor charges.

1. SCHOOL DISTRICT ACTIVITIES/EXPENDITURE OF PUBLIC FUNDS

1.1. Are school districts authorized to spend public funds or use public resources to advocate passage or defeat of a proposition?

No. Section 57 expressly prohibits a public body or individual acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources that constitute a "contribution" or "expenditure" as defined by Michigan law or to provide volunteer personal services to support or oppose a candidate or ballot question.

1.2. What is a "contribution" or "expenditure" under Michigan Election Law?

"Contribution" means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, *made for the purpose of influencing* the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.

"Expenditure" means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

1.3. What are some examples of expenditures?

- A contribution of anything of ascertainable monetary value *for purposes of influencing* the qualification, passage, or defeat of a ballot question.
- Voter registration or get-out-the-vote activities unless the activity is non-partisan voter registration or non-partisan get-out-the-vote activities made by a 501(c)(3) organization or by the SOS or other registration officials.

1.4. What is meant by "for the purposes of influencing" the passage or defeat of a ballot question? Aren't all activities influential in some way?

Relying on the U.S. Supreme Court's interpretation of federal campaign finance laws, the SOS defines the term "influencing" by using an "express advocacy" standard. When applying the "express advocacy" test to communications produced with public funds or public resources, the SOS reviews the communication within the four corners and, in certain circumstances, will look behind the creation or production of the communication to determine if there has been a violation. The SOS has concluded that the following terms violate the express advocacy test:

- “Vote For” or “Vote Against”
- “Elect” or “Defeat”
- “Support the Continuation of”
- “Support” or “Oppose”
- “Vote Yes” or “Vote No”

1.5. What types of activities are permitted under Section 57?

Section 57(1)(a)-(f) outline *exceptions* to the general rule prohibiting public funds or public resources from being used to influence a ballot question or candidate. The SOS has interpreted these permitted activities as being limited in nature. Below are those exceptions.

- (a) The expression of views by an elected or appointed public official who has policy-making responsibilities.
- (b) The production or dissemination of factual information concerning issues relevant to the function of the public body.
- (c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.
- (d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
- (e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fundraising event.
- (f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

Additional information pertaining to permitted activities can be found under “**School Employee Activities**” and “**School District’s Relationship with Advocacy Committees**” below.

1.6. May the board adopt a resolution expressing its support for a ballot proposition and encourage its voters to vote “yes”?

Yes. A governing body may adopt a resolution supporting a proposition under Section 57(1)(a) above. However, the SOS determined that the governing body may only publicize that board action through the ordinary means that it publicizes other board actions, such as recording the action in its meeting minutes, posting the minutes on its website, or publishing copies of the meeting minutes *in its customary fashion*. Using public resources to distribute or publicize the resolution beyond its customary fashion of disseminating the resolution would result in a violation.

1.7. What about the Superintendent? He or she is an appointed public official. Is the Superintendent authorized to express his or her viewpoint during the school day and/or use public resources to disseminate that viewpoint?

This is a tricky issue, and the answer depends upon the specific circumstances. When a Superintendent is on his or her free time and not serving in any official capacity, the Superintendent may express any viewpoint about the proposition, so long as he or she does not use public resources to do so. However, when acting in an official capacity, the standard in Section 57 depends upon whether the Superintendent has policy-making responsibilities. Whether the Superintendent has such responsibilities depends upon the Superintendent’s job description, relevant board policies and practices, and day-to-day functions. The Superintendent may always, however, communicate factual information about a ballot question that is relevant to the district. Relying upon the SOS’s Interpretative Statement referenced above, we believe it is highly likely that the SOS would conclude that public resources may not be used to broadly disseminate the Superintendent’s viewpoint

regardless of whether the Superintendent is a true policy maker. Accordingly, when in doubt, we recommend that the Superintendent, when acting in his or her official capacity, convey compelling factual information and allow the elected board members to advocate for the proposition.

1.8. Is the school district authorized to use its general fund monies or other public resources to disseminate flyers or other publications to its community about an upcoming proposition?

Yes, but with limitations. The school district is authorized to use its resources to produce and disseminate *factual information* concerning issues *relevant to the function of the public body*. School districts should avoid language that could be construed as opinion or not factual in nature and should steer clear of any language that could be interpreted as “express advocacy.” Although the SOS has not issued an interpretative statement on this distinction, Thrun Law Firm recommends that material contain only factual information to stay within the clear parameters of this exemption to avoid a potential complaint.

Of course, information can be both compelling *and* factual. Examples of permitted, compelling factual statements follow:

Example 1: “Alexander Elementary School’s roof was last replaced in 1990. According to the school district’s architect, the structural integrity of the roof is failing and failure to replace the roof will continue to cause significant deterioration of the interior walls, windows, and fascia. Unless the roof is replaced, the building’s integrity will eventually fail. The proposed roof system has a useful life of 20+ years and will also result in projected energy savings.”

Example 2: “The current entryways to all of our school buildings lack any type of security access points or systems that provide physical security for our buildings. The proposed security system will cover the three “D’s” of physical security: Discern, Delay and Disrupt. Discern means... .”

Example 3: “The Board of Education’s academic goal is to implement one-to-one technology in the school district by July 1, 2017. “One-to-one technology means... .” “Classroom and instructional technology will allow students to... .” “Current research regarding the types of future work skills necessary for today’s students require... .” “The technology in this bond issue will provide opportunities for students to develop those skills because... .”

1.9. May flyers and other information be sent home in students’ backpacks or distributed at school-sponsored events?

Yes, if the school district’s flyers contain only factual information. If the materials are from a third party other than the school district (i.e., “vote yes” committee or an individual), check board policy regarding distribution of literature at school or school-sponsored events to determine if a third party’s distribution of materials is compliant. If the policy is silent or ambiguous, contact legal counsel for advice.

1.10. We regularly publish a monthly newsletter to our community. May the newsletter include a column from the Superintendent or board president asking voters to support the proposition?

Again, this is a tricky issue which has not been addressed by the SOS in any recent Interpretative Statement. The exception in Section 57(1)(c) allows the production or dissemination of debates, interviews, commentary, or information by a periodical or publication in the regular course of broadcasting or publication. On its face, exception Section 57(1)(c) seems to apply; however, it is unclear how the SOS may rule if a complaint is filed given the SOS’s recent interpretation of Section 57(1)(a) prohibiting the use of public resources to widely disseminate a viewpoint. Until clear direction is given by the SOS, we recommend that a school district consider a column that does not expressly advocate support or contain a “vote yes” message but, instead, provides compelling factual information and encourages residents to vote.

1.11. Are there identification requirements for literature, brochures, or other materials that the school district produces and disseminates?

Yes, in certain circumstances. According to the SOS’s Ballot Question Manual, Appendix J, the phrase “paid for by” followed by the name, address and zip code must be included in certain materials listed below **if circulated within 60 days before a November even-year election or 30 days before a primary election in**

which the question appears on the ballot. Example: “Paid for by ABC Schools, 100 Learners Avenue, Small City, Michigan 50001.” The types of materials are:

- Radio, television, mass mailing (U.S. mail or facsimile of more than 500 pieces of identical or substantially similar communications within any 30-day period), or pre-recorded telephone messages
- Printed matter such as yard signs, brochures, billboards, posters, business cards, or stationery
- Paid advertisements – the advertisement must contain an identifier that is clear to the reader or listener and that includes this specific wording: “This advertisement was paid for by ABC Schools, 100 Learners Avenue, Small City, Michigan 50001”.

The Ballot Question Manual also provides other points to consider:

- Electronic media such as web sites, Facebook, Twitter, etc., are not specifically exempt from the identifier requirements.
- An individual is not subject to the identification requirement provision as it relates to printed matter only if the individual is acting independently and not acting as an agent for the school district or a “vote yes” or “vote no” organization.
- The identification or disclaimer on printed material must be in a place and in a print clearly visible to and readable by an observer.

1.12. We have a home basketball game the weekend before the election date. Is the school district allowed to have a booth at the game with factual information about the proposition and run by parent volunteers?

Yes. If a “vote yes” or “vote no” group requests a similar booth, the school district must review its board policies regarding distribution of political literature at school-sponsored events. We recommend that you seek legal counsel if the policy is unclear or requires discretionary judgment by the Superintendent. Any decision may inadvertently impact the school district’s ability in the future to have a limited open forum or closed forum at school.

1.13. I am a high school Government teacher. May I have the students debate the merits of the proposition in class as an academic exercise?

Yes, provided both sides of the issue are represented and the intent is not to disseminate the debate for purposes of advocating support for or opposition to the proposition. Otherwise, teachers may not involve students in any campaign activities for or against a proposition during a regularly scheduled school day or use the school district’s resources for campaign activities with students.

1.14. Our school district owns a radio and public television station that broadcasts news content and commentary on a regular basis. Is the station permitted to broadcast a debate about the merits of the proposition?

Yes. In our opinion, this activity falls squarely within exemption 1(c) of Section 57 and would pass muster with the SOS provided that the activity is in the regular course of broadcasting.

2. SCHOOL EMPLOYEE ACTIVITIES

2.1. As a school employee, may I participate in political activities outside of the school day? I would like to volunteer for a “vote yes” committee on my own free time.

Yes. Section 57(1)(f) provides that elected or appointed public officials and school employees may be involved in campaign activities for or against propositions provided that they are not acting for the public body but are on their own personal time, expressing their own views, expending their own personal funds or providing their own personal volunteer services.¹ The SOS’s Ballot Question Manual, Appendix I states, in part:

¹ The Political Activities by Public Employees Act (Act 169 of 1976) also prohibits public employees from actively engaging in political activities on behalf of a candidate or issue in connection with partisan or nonpartisan elections during those hours when that person is being compensated for the performance of that person’s duties as a public employee.

The inclusion of Section 57 in the [Campaign Finance Act] does not restrict the constitutionally protected right to associate or to engage in political speech. It is intended to prevent those who control public resources from using those resources to influence the outcome of an election. It is up to the people and not public bodies to decide elections. This means that a public body is prohibited in participating in elections for State and Local Ballot Questions... . The prohibition includes, but is not limited to the use of personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies; provide volunteer personal services or other public resources... .

- A public body is prohibited from displaying political signs, brochures, pamphlets, etc., in any governmental building or government property.
- Public officeholders and other public bodies are prohibited from using their office email and phones for campaign purposes.

2.2. May I wear a button or t-shirt to school or a school-sponsored event (while on duty) that states “Vote Yes” or “Vote No”?

No. This would most likely be a violation of Section 57. However, you may wear a button or t-shirt that states “Vote on [insert Election Date here]”.

2.3. We have end-of-school-year activities scheduled next week. May I provide informational literature prepared by the school district to parents during the conferences and remind parents of the election date?

Yes, provided that the materials are factual information only and not advocating a particular position on the proposition.

2.4. May I help with the school district’s factual information campaign during the school day?

Yes, provided that it does not conflict with your other identified job duties or spill over into express advocacy activities.

3. SCHOOL DISTRICT’S RELATIONSHIP WITH ADVOCACY COMMITTEES

3.1. We have a group of enthusiastic parents who want to form a “Support our Cherished Children or Be Shunned” committee to advocate a “yes” vote on the proposition. Is the school district authorized to provide administrative support to the committee?

If the committee will advocate support for the proposition, no school resources, personnel, or other administrative assistance may be given to the committee whatsoever. However, school employees (including administrators and board members) may volunteer on the committee outside of the school day when not serving in their official capacity, donate personal funds to the committee, or provide personal services to the committee. It is important to clearly delineate when employees are serving in their official capacity or when they are serving in their personal capacity. The committee should have no more access to public facilities than any other community group. These separate committees may also have reporting and other obligations under Michigan law.

3.2. Am I limited in my communications with members of a ballot question advocacy committee during the school day?

Campaign strategy and volunteer work for an advocacy committee may not occur while the individual is on duty during a normal work day. For example, a school employee should not communicate with a ballot question committee about campaign strategy, identify “yes” (or “no”) voters, draft advocacy committee literature, use the school district’s laptops, tablets, phone systems, or other public resources owned or purchased by the school district in support of, or opposition to, a ballot question. These types of activities should occur outside of the school day using one’s own property and communication devices.

3.3. As a Superintendent, I am responsible for responding to questions from the community. If a member of a “vote yes” committee contacts me seeking information about the bond issue, may I respond to the question?

Yes. The Superintendent may respond to questions from the community regarding information pertaining to a proposition regardless of the source of the question.

3.4. May a “vote yes” or “vote no” committee use our facilities to meet for campaign strategy purposes?

Yes. Section 57(1)(d) allows any candidate or committee to use a public facility owned or leased by a public body provided that any committee has an equal opportunity to use the public facility. Thrun Law Firm recommends that the school district comply with its “Facility Use” board policy and apply any policy requirements equally to a committee regardless of its position on the proposition. The committee, however, is not allowed to use the facility’s resources (phones, copy machine, bulk postage meter, etc.) while meeting.

3.5. The “vote yes” committee would like to use our photocopier machine to copy its literature and offered to reimburse us for the expense. Is this permitted?

The SOS has indicated in its Interpretative Statements that reimbursing for a “contribution” does not cure the initial violation. Therefore, Thrun Law Firm discourages these arrangements given the potential for a violation.

3.6. Our community relations director developed the school district’s factual information literature that the “vote yes” committee would like to use for its advocacy literature. May we share it?

In our opinion, the SOS may conclude that this is an unlawful contribution to the committee given that public resources (the paid community relations director) were used in the development of the literature. We discourage sharing resources of this nature. Of course, the community relations director is authorized to volunteer on the “vote yes” committee on his or her own personal time.

3.7. The “vote no” and “vote yes” committees both submitted a request under the Freedom of Information Act (FOIA) to receive copies of our student/parent building directories to identify potential voters. Are we required to release the building directories under FOIA or does the Family Educational Rights and Privacy Act (FERPA) apply?

The student/parent building directories should not automatically be released when a school district receives a FOIA request. FERPA applies in this situation. The school must examine its FERPA policy and annual notifications to determine if this information is defined as “directory information.” If it is not so defined, or if parents have opted out of the disclosure of directory information, the requests should be denied. Importantly, a district should treat FOIA requests from both “vote yes” and “vote no” committees similarly.

The decision to release the student/parent building directory must also be reviewed in the context of Section 13(2) of FOIA which requires a local or intermediate school district or a public school academy to exempt from disclosure directory information, as defined by FERPA, if requested for the purpose of surveys, marketing, or solicitation, unless that public body determines that the use is consistent with the educational mission of the public body and beneficial to the affected students. Before disclosing the directory information, a local or intermediate school district or a public school academy may require the requester to execute an affidavit stating that directory information provided under this subsection shall not be used, rented, or sold for the purpose of surveys, marketing, or solicitation.

3.8. We have an upcoming town hall meeting sponsored by the school district to provide information about the proposition and to answer questions. May the “vote yes” committee set up a table to distribute its literature advocating for the proposition?

The answer depends entirely upon the board of education’s policy regarding the dissemination of political literature during school sponsored events. Before permission is given to any candidates, advocacy committees or other political action groups to hand out literature at school sponsored events, the school district must analyze the request under its existing board policies and seek legal counsel, if necessary, to interpret and apply the policies in accordance with state and federal laws. Equal treatment is mandatory. It is essential that requests from both a “vote yes” and a “vote no” committee be handled similarly.

4. ELECTION ACTIVITIES

4.1. Are school districts allowed to register parents to vote or handle absentee ballot applications?

Caution should be exercised in these two areas as Michigan election law is very strict about who may register individuals to vote or handle *completed* absentee ballot applications. If the school district is interested in providing information to its residents about how to register to vote or obtain absentee ballot applications, we recommend that the school district work closely with its election coordinator (usually the county clerk, city clerk, or township clerk) to coordinate efforts and to confirm the accuracy of information shared in your community.

4.2. Our buildings are used as polling place locations on election day. Supporters and opponents of the proposition have asked to hand out literature in the parking lot during election day. Are they allowed to do this?

Michigan Election Law permits individuals to solicit votes and engage in campaigning *outside* of 100 feet of any doorway used by voters to enter the building in which a polling place location is located. Persons shall not post, display, or distribute in a polling place or within 100 feet of the entrance to the building in which a polling place is located any material that makes reference to an election, candidate, or ballot question.

School district literature pertaining to the ballot question must also be removed from the polling place location on the day of the election. However, the school marquee may remind voters to vote on the election date – provided the marquee is not within 100 feet of the doorway used by voters to enter the building.

4.3. On election day, may the Superintendent or other school officials visit the polling place and thank people for voting?

No. School officials and the Superintendent may only be in the polling place to vote or act as a poll watcher. During that time, they may not reference the proposition or thank people for voting. If this is important to the school district, the Superintendent or other school officials may stay outside of the polling place but must follow the 100-foot rule.

4.4. I want to be a poll watcher and/or challenger on election day. Is this permitted?

State law is specific about who can be a challenger and/or a poll watcher on election day. Information about how to become a challenger and/or poll watcher is available at: www.michigan.gov/sos. Click on “Elections in Michigan” and then “Publications and Forms”. The brochure is titled “The Appointment, Rights and Duties of Election Challengers and Poll Watchers”.

We recommend that if a school employee desires to work as a challenger or poll watcher, he or she use permitted time off (i.e., vacation day or personal time) to perform this function.

4.5. On the day of the election, may we provide free admission to the high school’s theater performance of Mr. Smith Goes to Washington if the person is wearing an “I Voted” sticker?

This is not advisable. Section 931 of the Michigan Election law, MCL 168.931, prohibits any person from providing, directly or indirectly, anything of valuable consideration to induce or influence the manner of voting by a person, as a reward for refraining to vote or as an inducement or an attempted inducement to vote. Providing anything of valuable consideration to reward or induce a person to vote may be a violation of Section 931 and could be a misdemeanor.

CAUTION

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**SUMMARY OF CAMPAIGN FINANCE LAW
PA 388 OF 1976**

Permissible	Impermissible
<ul style="list-style-type: none"> • Campaign committee for either side may meet on school premises (if permissible under district’s use of school facilities policy). • Expression of views by an elected or appointed public official who has policymaking responsibilities, but limited in the use of public resources to disseminate that view. See attached FAQ for limitations. • The production or dissemination of <i>factual</i> information concerning the ballot question (this may include PTA, school district or foundation newsletters). • Production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication. • An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services. 	<ul style="list-style-type: none"> • Tax dollars advocating “yes” or “no” vote or influencing passage or defeat of ballot question. • While on employee time or using public resources, working on passage or defeat of ballot question, assisting advocacy group with campaign strategy, identifying “yes” or “no” voters, planning a “vote yes” or “vote no” campaign. • Use of school district funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure to advocate passage or defeat of ballot question. • No expression of viewpoint by school district employees or officials during school hours except for elected or appointed public official who has policymaking responsibility. See attached FAQ for limitations. • Posting or disseminating information in school buildings advocating the passage or defeat of the ballot question by school district employees or officials.

A knowing violation of the Campaign Finance Law is a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both, or if the person is not an individual by (1) a fine of not more than \$20,000 or (2) a fine equal to the amount of the improper contribution or expenditure (whichever is greater). In addition, if the Secretary of State determines that a violation of the Act occurred, the Secretary of State may impose a civil fine equal to triple the amount of the contribution or expenditure.