Community Engagement 2.0…
When Traditional Methods Won’t Do

Legal Dos and Don’ts of School Budget Campaigns

NJSBA Winter School Public Relations Forum

Michael F. Kaelber, Esq.
Director, Legal, Policy and Labor Relations Services Department, NJSBA
A board of education may pay for, produce and distribute a publication in which it exhorts the public to “Vote Yes” on the upcoming school budget tax levy.

True

False
Citizens v. Parsippany-Troy Hills
13 N.J. 172 (1953)

• Board may make reasonable expenditures for voter education

• Board may not spend public funds to support one side
  – Overdramatization of consequences of referendum failure
  – “Vote Yes” – 3 times
LEGAL DOS AND DON’TS

Citizens v. Parsippany-Troy Hills
13 N.J. 172 (1953)

• Proper board expenditures – examples
• Use of outside group/civic associations
• Implicit expenditures
Schettino V. Ridgefield Bd. of Ed.

(1993)

Commissioner’s remedy-
- Rejects ALJ equal coverage - establishes board procedures
- Board review of election publications
- Consultation with board attorney
- Full board approval prior to distribution
**In re: Old Bridge Election (1994)**

- Cable television panel presentation
- 3 of 4 speakers urge public to vote yes
  
  “Give us your vote of support and vote ‘yes’ on April 20th.” “We appeal to you to please vote for the budget.”

- Public-funded advocacy
LEGAL DOS AND DON’TS

Functional exhortation to “vote yes”

“Approved referendum enables us to continue providing the quality education our children deserve.”

“Responsibly planning...is what the March 28 bond referendum is all about.”

Overdramatized ramifications of a defeated bond referendum

“Emotionally, a defeated referendum can split a community, tarnish the image of a school district, and over time, reduce property values.”
Commissioner Remedy

- Open session-Board review of bond referendum publications
- Assistance of counsel
- Must include findings that materials are educational and not for purpose of influencing opinion
LEGAL DOS AND DON’TS

Schoen v. Edison (1997)
(Board Wins!!!)

- Not unreasonable to hire consultant
- Board self-policed materials
- Board declined to distribute some materials, letters to the editor, phone bank script
Schoen v. Edison (1997)

... to spend public funds materials must be informative and balanced, rather than advocative.

...if there is no evidence that the information is deliberately incomplete, inaccurate, or selectively biased, the mere absence of opposing viewpoint(s) does not warrant a finding that the material contravenes Citizens...

- Bond referendum information did not unfairly advocate
- Omission of state aid not fatal
- 4 Fliers - Board intended to present facts and exhort voters to ask questions
In re Use of Abbott Funds
Elizabeth Bd. of Ed. - 2009

• Board spent $88,373 on color brochure, 4 TV spots to oppose Mayor’s proposed sale of land
• Use of public funds for advocacy – “political advertisement at heart of Citizens”
• Commissioner deducts $88,373 in state aid
The Executive County Superintendent must approve all publications distributed by the board of education to the community at large to ensure that public funds are being expended properly.

True
False
Accountability Regulations 2009

*N.J.A.C. 6A:23A-5.2 – Public Relations*

- Communications to community at large – 60/90 days before the election
- Promotional efforts to advance election positions prohibited
- Executive County Superintendent approval
Accountability Regulations 2009

*N.J.A.C. 6A:23A-9.3*

Efficiency Standards, Public Relations
Definition, Use of Consultant

*N.J.A.C. 6A:23A-22.6*

Charter Schools and Public Relations
Your board president is concerned about the upcoming school budget election, given the economic climate. She has developed a marketing proposal for the board which includes a series of bi-weekly community newsletters, starting on March 1, with placement on the school’s website and on the local cable access bulletin board.

- Literature may not be given to students that promotes, favors or opposes candidacy or public question
- Student may not be requested to engage in activity that promotes, favors or opposes candidacy or public question
- Board must adopt policy
LEGAL DOS AND DON’TS

Use of Student Record Information
N.J.A.C. 6A:32-7.1 et seq.

Limited Access; Student Directory Information

Campaign Literature
N.J.S.A. 19:44A-22.2

Name, residence, and “paid for by” language
Marketing Tactics

- Raffles – prohibited as inducement to vote, licensing - *N.J.S.A. 19:34-39,40*

- Scheduling of PTA meetings/Back to School night on Election Day - not prohibited, public goal to increase voter participation, caution
The superintendent has reviewed the board president’s marketing plan and has added a few suggestions:

- Give students election information to take home, including information on how to obtain an absentee ballot
- Use the Reverse 911/Honeywell phone system to communicate election information, encouraging people to vote
- Email or text all parents, advising them of the election date and time and encouraging them to vote
A board member, who does not agree with the proposed budget, has created his own personal website, on which he is encouraging people to “Vote No!” He has also been seen outside the local supermarket handing out literature opposing the budget and has asked for permission to hand out the same literature at the next board meeting.
School Officials can never get into ethical difficulty regarding school board candidate campaigning or promoting or opposing the school district budget.

True

False
School Official Ethical Considerations
SEC Advisory Opinion AO3-07 (April 2007)

- Identify yourself as a board member
- Indicate opinions are your own and not necessarily that of the board of education
- Information is accurate and not confidential
- No private action that could compromise the board
School Official Ethical Considerations

Case Law

- Board candidate fliers posted in school administration offices
- Campaign flier contained incomplete and inaccurate fiscal information
- Using district automated call system to remind voters to vote on Election Day
Questions?