



BOARD ELECTIONS – PRESENTING VS. PROMOTING THE BUDGET

Presented by:

Stephanie Roebuck
& Emily J. Lucas



THE BUDGET PROCESS

- Board required to adopt budget
- Budget must be made available to voters for review 14 days prior to budget vote
 - Budget must be in plain language and consistent with the Commissioner's Regulations
 - Budget must be presented in three components:
 - a program component;
 - a capital component; and
 - an administrative component

THE BUDGET PROCESS CONTINUED

- Budget must include appendices:
 - statement on administrative salaries
 - New York State report card
 - property tax report card
 - tax exemption report
- Board conducts public hearing on budget
 - Hearing held at least 7 days prior to but no more than 14 days before vote
- Board submits “Budget Notice” to all qualified voters no later than 6 days prior to meeting where school budget vote will occur

PERMISSIBLE COMMUNICATIONS CONCERNING THE BUDGET

“....To educate, to inform, to advocate or to promote voting on any issue may be undertaken, provided it is not to persuade nor to convey favoritism, partisanship, partiality, approval or disapproval Of any issue, worthy as it may be....”

Stern v. Kramarsky, 84 Misc. 2d 447 (1975)

- Boards must be vigilant in ensuring that district resources are not used, directly or indirectly to disseminate partisan information.

Appeal of Richard R. Cass, Jr., 46 Educ. Dept. Rep. 321, Decision No. 15,521 (2007)

PERMISSIBLE COMMUNICATIONS CONCERNING THE BUDGET

- The Board is permitted to present informational material to the voters in addition to the budget notice required by law
- The informational material must contain only objective, factual information
- Holding fundraiser at time of election does not constitute electioneering. These activities are permissible as long as the district gives notice to all residents in the same manner, not just those residents the Board believes will support the budget.

Appeal of Diane Eckel, 46 Educ. Dept. Rep. 279, Decision No. 15,507 (2006).

- Individual Board members are permitted to comment on the budget/election in their individual capacities

CAUTION: The Board member must **CLEARLY** distinguish personal views from those of the Board.

- See, *Appeal of Glen W. Johnson*, 45 Educ. Dept. Rep. 469, Decision No. 15,384 (2006).

IMPERMISSIBLE COMMUNICATIONS CONCERNING THE ELECTION

While a board of education may disseminate information “reasonably necessary” to educate and inform voters, its use of district resources to distribute materials designed “to exhort the electorate to cast their ballots in support of a particular position advocated by the board” violates the constitutional prohibition against using public funds to promote a partisan position.

Phillips v. Maurer, 67 N.Y.2d 672 (1986)

EXAMPLES OF IMPERMISSIBLE COMMUNICATIONS

- Publishing information stating
 - “Vote Yes” on the budget
 - **Opinions** concerning the budget
- Targeting specific groups or individuals with information about the budget (e.g. use of automated telephone system to provide information to only parents of students)
 - The determination of whether school district officials have engaged in improper targeting of information to selective district voters for the purpose of affecting the result of a district election is a question of fact dependent upon the circumstances of each case.
- Attendance of district administrators, in their official capacities and during hours of employment with the district, at privately sponsored coffees that are closed to the general public for the purpose of providing information on a district presents the “appearance of partisan activity.”

Appeal of Goldin, 39 Educ. Dept. Rep. 323, Decision No. 14,250 (1999)

- Permitting the use of school property or resources for the purpose of advocating for the budget
 - Permitting the distribution of materials advocating for the budget in the back packs of students
 - Providing mailing labels to PTA for use in distributing materials

Appeal of Hoey and Kosowski, 45 Educ. Dept. Rep. 501, Decision No. 15,394 (2006))

EXAMPLES OF STATEMENTS FOUND TO BE IMPERMISSIBLE

APPEAL OF DAVIS

- District newsletter that stated: “....A ‘no’ vote would impact the whole community, because solid property values are linked to good schools. Potential homebuyers would be discouraged by overcrowded classrooms and a lack of educational and extracurricular opportunities.” The Commissioner found this statement clearly intended to persuade the public to vote “yes” by raising fears about the negative consequences of a “no” vote and not setting forth objective facts designed to educate or inform the public.

Appeal of Davis, 40 Educ. Dept Rep. 459, Decision No. 14,527 (2000).

EXAMPLES OF STATEMENTS FOUND TO BE IMPERMISSIBLE

APPEAL OF ECKERT

- “The proposed project is absolutely critical in order to halt further decay in our facilities. But more than that, it represents a cost-effective opportunity to invest in the future of West Irondequoit. It makes financial sense and practical sense. It will enhance the value and quality of our community. Most of all, it will support our students and teachers in their pursuit of academic excellence. Our children deserve no less.”
- “The closer one looks, the more compelling and necessary this project becomes...”
- Superintendent speech where he utilizes the phrase “rally the team” in support of the passage of the proposition on which a vote will be held.

EXAMPLES OF STATEMENTS FOUND TO BE IMPERMISSIBLE

APPEAL OF HUBBARD

- Superintendent statement in videotape thanking the community for supporting the prior year's budget and stating: "For the long term future of Greece, for the benefit of business stability and economic development, and for the renewal of our young families moving into our town, I believe that we must continue to pass school budgets and continue the positive momentum we now are experiencing"
- "The major improvements we are asking you to support include..."
- "We are also seeking your support for two propositions."
- "Through your input and with your support we will make even more improvements in our instructional program, education services and buildings."
- "In the new budget, we're asking for the community to support upgrading all of our middle school technology labs."
- "If we pass this budget, which We do hope we do, we will have window replacement on the western side of the building, and we would be looking forward to that."
- "The budget will result in a tax increase of **only** 1.9 percent."

Commissioner found these statements were not reasonably necessary to inform and educate the public about the proposed budget and propositions but instead improperly exhorted district residents to vote in favor of the budget and propositions.

Appeal of Hubbard, 39 Educ. Dept. Rep. 363, Decision No. 14,259 (1999)

CHALLENGES ALLEGING IMPROPER ADVOCACY

- Challenges concerning improper advocacy of the budget/election are made to the Commissioner of Education
- Person challenging the improper advocacy has the burden of proof in an Appeal to the Commissioner
- The person making the challenge is required to show that the “.... irregularities affected the outcome of the election, were so pervasive as to vitiate the electoral process, or demonstrate a clear and convincing picture or informality to the point of laxity in adherence to Education Law.”
- In most instances, the issues which determine the outcome of the appeal are factual issues resulting in decisions on a case by case basis

ELECTIONEERING THE DAY OF THE VOTE

- Education Law Section 2031-a(2) – “no person shall do any electioneering within the polling place, or within one hundred feet therefrom...”
- Even if a petitioner can establish that improper electioneering occurred, there must also be a showing that the impropriety affected the outcome
 - Appeal of Toure – Commissioner found that a candidate did improperly address voters within the 100 feet of the polling place, but that the petitioner did not demonstrate that the statements influenced them to vote for her.

Appeal of Toure, 54 Educ. Dept. Rep. _____, Decision No. 16,660 (2014)

ELECTIONEERING ON THE DAY OF THE VOTE

- Candidates can speak to voters within the 100 foot zone around the polling place as long as they are not attempting to influence the vote
- A candidate admitted to speaking to voters within the 100-foot zone, but averred that he was not discussing the election or the budget vote. The Commissioner determined that there was no evidence of electioneering presented.

Appeal of Bentley, 51 Educ. Dept. Rep. ___, Decision No. 16,356 (2012)

SCHOOL EVENTS THE DAY OF THE ELECTION

- Scheduling a district event at the same time as the election is not improper if the District gives notice to all district residents and not just those residents who will likely vote in favor of the budget (i.e., parents)
- Concerts, sporting events, and fundraisers open to the general public are likely proper as long as they are advertised to all residents of the district
- Events where only parents can attend are likely to be deemed improper, as the event would likely be seen as targeting specific voters

Appeal of Sowinski, 34 Educ. Dept. Rep. ____, Decision No. 13,276