

LEGAL MAILBAG – MAY 2, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag:

My school district recently held a referendum on the board of education budget. It was a squeaker, but the budget was approved by a narrow vote. I am proud to say that I did my part. I am the principal in an elementary school, and I worked hand-in-glove with a committed PTO leadership. They asked for permission to use the school office on a Saturday morning to run a phonebank to get out the vote, and the day before the vote, at the request of the PTO we sent home flyers with the students that encouraged their parents to vote YES for the board of education budget.

Now that the dust has settled, I am getting a little uneasy. I have heard that the people who opposed the board of education budget are saying that this is not over, and that they are going to go after the people who engaged in “illegal” activity to support the budget. Could that include me?

Signed,
Who’s Paranoid?

Dear Paranoid:

It could indeed.

Conn. Gen. Stat. § 9-369b prohibits public officials from authorizing the expenditure of public funds to advocate a referendum result when a referendum is pending, as was the case in the days before the budget vote in your district. This statute is enforced by the State Elections Enforcement Commission, which has interpreted “expenditure” broadly. In your case, the Commission would likely find that you violated the statute in two ways.

First, in your role as school principal, you authorized having students bring flyers home, and those flyers (“Vote YES”) clearly advocated a referendum result. You may wonder how that would constitute authorizing the expenditure of public funds. However, the Commission has ruled that using students as couriers to deliver an advocacy message regarding a pending referendum is the functional equivalent of postage or other delivery expense.

Second, Legal Mailbag notes that you permitted the PTO members to use district telephones to conduct a phonebank to get out the parent vote to support the budget. The Commission would certainly find that permitting the use of school facilities to advocate for approval of the budget through a referendum vote would constitute an “expenditure” in violation of the statutory provision. In fact, the list of potential expenditures of public funds in violation of Section 9-369b is long, and it even includes school websites. For example, it would violate the law if the PTO has a page on your school’s website that includes a message advocating passage of the board budget by referendum vote while the referendum is pending.

Compliance with this law is especially important because there is risk of personal liability for a fine that the Commission can impose for a violation, not to exceed \$1,000 or twice the amount of the expenditure, whichever is greater. Moreover, the statute expressly states that “no state or municipal officer or employee shall be indemnified or reimbursed by the state or a municipality for a civil penalty imposed under this [statute].” School officials are protected against personal liability for almost any claim made against them for actions they take in the course of their jobs, but penalties imposed by the State Elections Enforcement Commission must be paid personally. Keep your head down and hope that no claim is brought against you!

Even neutral messages sent by email reminding parents to vote in a referendum can be a problem under Section 9-369b. In 2015, the law was amended to provide that any electronic reminder of a referendum vote may only be sent out by the chief elected officer of a municipality to all residents. The concern behind this amendment was that it was perceived to be unfair to use public funds to send a reminder only to parents because they presumably have an interest in the school district budget. However, the statute goes on to provide that this “prohibition shall not apply to a regularly published newsletter or similar publication.”

Interestingly, this amendment refers only to reminders sent by “electronic mail, text, telephone or other electronic or automated means,” and sending a reminder home with students or otherwise communicating about a referendum question by other means remains legal as long

as the message does not advocate. In a 1999 case involving the Region 17 Board of Education, the Connecticut Supreme Court has adopted the Commission's guidance on what is "advocacy":

A communication advocates a position on a referendum when in part, or taken as a whole, it urges the listener or reader to vote in a particular manner. The style, tenor and timing of a communication are factors which are considered by the Commission when reviewing alleged improprieties of Section 9-369b.

Clearly, a "Vote Yes" message is advocacy, but Legal Mailbag cautions that advocacy can be found simply through inference that a message "urges the listener or reader to vote in a particular manner." Therefore, and with due regard for the risk of personal liability, school officials must take great care in considering any communication concerning a pending referendum for which public funds are expended.

There are other safe harbors in the statute, which are beyond the scope of this response, and public officials do retain their First Amendment rights. The key point here is that school officials must be very careful when a referendum is pending, whether it is to approve the school budget, to authorize a school building project, or for some other purpose. Legal Mailbag hopes that your future actions concerning pending referenda conforms to these legal requirements, and that your past actions do not haunt you.