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Libraries and TEL/TABOR: Frequently Asked Questions on Lobbying Restrictions for Public Employees

Q: I know that the Ohio Revised Code prohibits the use of library funds to support the library's tax levy. Does that same statute prohibit use of library funds to oppose the TEL/TABOR Amendment?

A: Surprisingly, the answer is “no.” Revised Code Section 9.03 prohibits the use of public funds to support or oppose the nomination or election of a candidate for public office, the investigation, prosecution or recall of a public official, or the passage of a levy or bond issue. The TEL/TABOR Amendment is none of those – it is an Initiative proposing an Amendment to the Ohio Constitution.

Q: So, does that mean a library board can decide to spend library money to oppose the TEL/TABOR Amendment?

A: Not necessarily. There are still two separate issues in play: (i) a library's ability to spend public funds for advocacy purposes and (ii) whether the use of public funds to oppose a citizen initiative violates the First Amendment of the United States Constitution.

Q: For what purposes can a library spend public funds?

A: Ohio Revised Code Section 3375.40(B) permits boards of public library trustees to expend public funds for “library purposes.” The general weight of authority, however, is that a public entity, absent a very specific grant of authority, is without authority to spend public monies to advocate the passage of a tax levy or bond issue put forward by the public entity. A general grant of authority to carry out public functions is not enough to authorize these types of expenditures. The Ohio Attorney General, in 2002 Op. Att’y Gen. No. 2002-001, has similarly questioned the ability of public entities to spend public monies to advocate for or against the passage of a proposed constitutional amendment.

Q: Are there First Amendment Issues as well?

A: There may be. Interestingly, a number of cases most directly on point originate in Colorado. In those cases, public entities were expending public funds to oppose an amendment to the state constitution. One court granted an injunction against such a use of public funds, holding that the expenditure of such funds to oppose a citizen initiated constitutional amendment proposal “violates a basic precept of this nation’s democratic process.” The OLC is continuing to review these, and other cases, and will provide an update when this review is completed.

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Q: If a library cannot spend public funds to oppose the TEL/TABOR Amendment, what can it do?

A: Although not directly applicable to prohibit the use of public funds, Revised Code Section 9.03 does provide guidance here. A library is not prohibited from using public funds to educate the public concerning the finances of the library, or the operations of the library. The Ohio Attorney General has also opined that it is permissible for a public entity to provide factual information about the consequences to the public entity if a tax or bond measure should pass or fail – while at the same time cautioning that the public entity cannot take a stand on whether or not the measure should in fact pass or fail. The Attorney General perhaps recognized the difficulty of deciding where to draw the line here by commenting “it may be necessary to consider questions involving specific facts on a case by case basis.”

Q: What can library staff do (i) on library time and (ii) on their own time?

A: (i) Revised Code Section 9.03 expressly permits a library employee, on library time, to attend a meeting to present information about the library’s finances, activities and actions, so long as the presentation is not designed to influence the outcome of an election – even if the election is discussed or debated at the meeting. And, of course, the library can devote staff time to the information materials permitted in the answer above.

(ii) There is no prohibition at all on what library employees do on their own time. That’s basic First Amendment law.

Q: If opponents of TEL/TABOR place materials in the library’s public information table, does the library have to permit the placement of materials supporting TEL/TABOR?

A: Yes. Normal rules apply here – a library cannot discriminate on the basis of the content of speech.