



New Law Silences Local Governments During 60 Days Before Elections

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Governor Rick Snyder signed a bill into law on January 6, 2016, that prohibits public entities from using mass communication to distribute information about local ballot proposals during the 60 days before an election.

Senate Bill 571, now Public Act 269 of 2016, amends section 57 of the Campaign Finance Act to add new subsection (3), providing that "a public body, or a person acting for a public body, shall not, during the period 60 days before an election in which a local ballot question appears on a ballot, use public funds or resources for a communication by means of radio, television, mass mailing, or prerecorded telephone message if that communication references a local ballot question and is targeted to the relevant electorate where the local ballot question appears on the ballot." MCL 169.257(3). This prohibition does not apply to "an election official in the performance of his or her duties under the Michigan election law."

Section 57 already prohibited public bodies from using public resources to contribute to a political campaign, but this amendment expands the restrictions on local governments and their officials and employees. Any person who knowingly violates the statute is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both. If an entity (rather than an individual) violates the statute, then the fine could be as high as \$20,000.

This amendment will especially impact municipalities who address local ballot proposals in their newsletters or bulletins. Under the new law, local ballot questions cannot be referenced in any "mass mailing" during the 60 days before the election.

Senate Bill 571 was publicly opposed by the Michigan Townships Association, Michigan Municipal League, Michigan Library Association, and many municipalities and school districts across the state, who unsuccessfully urged Governor Snyder to veto the bill. In approving the

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bill over those objections, Governor Snyder issued a "signing letter," which states that the new language "only applies when local governmental entities use taxpayer resources to distribute mass communications concerning ballot questions." The Governor interprets this to mean that "it is intended to prohibit communications that are plain attempts to influence voters without using words like 'vote for' or 'support.'" The signing letter encourages more actions by the Legislature:

"I am calling on the Legislature to enact new legislation to address [local governments' and schools'] concerns, and clarify that the new language does not impact the expression of personal views by a public official, the use of resources or facilities in the ordinary course of business, and that it is intended only to prohibit the use of targeted, advertisement style mass communications that are reasonably interpreted as an attempt to influence the electorate using taxpayer dollars."

The MTA issued a statement on January 6, stating that "[t]he Michigan Townships Association hopes that lawmakers reflect on the imperative of an informed citizenry for local democracy to work and immediately amend this over-reaction to a very limited number of abuses."

Although future changes are possible, the law took effect immediately, so municipalities must ensure that they do not communicate about upcoming ballot measures using radio, TV, mass mailing, or recorded messages. If you have questions about compliance with the new law, please call the municipal attorneys at Foster Swift.

UPDATE: On January 20, 2016, a bill was introduced in the House to repeal this new controversial language. We will continue to monitor this pending legislation and alert our clients and friends if the repeal is successful.