



Complying With Michigan Campaign Finance Act

Administrative & Municipal Practice Group

Foster Swift Municipal Law News

February 2008

PRACTICE AREAS

Election & Campaign Finance Law

Financial Institution Law

With a Presidential election occurring this year, many Townships are in the process of determining whether to ask voters to approve extra-voted millages or bond proposals. Once the decision has been made, Township officials will be eager to inform residents of the projects and the importance of funding police service, a new Township Hall or road improvements. However, Townships should proceed with caution because Michigan law severely restricts how public funds may be used in campaigns. With that said, we wanted to provide some general guidelines for Townships to follow in order to comply with the requirements of the Michigan Campaign Finance Act.

A. THE REGULATION OF TOWNSHIPS

The Michigan Campaign Finance Act regulates what public bodies may and may not do in connection with a millage election. Section 57 of the Campaign Finance Act ("Section 57") specifically regulates the public body's activity as follows:

Sec. 57. (1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). This subsection does not apply to any of the following:

- a. The expression of views by an elected or appointed public official who has policy making responsibilities.
- b. The production or dissemination of factual information concerning issues relevant to the function of the public body.
- c. The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

- d. The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
- e. The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.
- f. An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.
1. A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:
 - a. A fine of not more than \$20,000.00.
 - b. A fine equal to the amount of the improper contribution or expenditure.

MCL 169.257. Because a violation of the above provisions can result in a misdemeanor penalty of a \$1,000.00 fine and up to a year in jail, we recommend that the Board seek legal review of any proposed action that is questionable. However, please find below some general guidelines:

1. TOWNSHIP BOARD MEMBERS AND PUBLIC OFFICIALS WITH POLICY MAKING AUTHORITY.

Under Section 57 of the Campaign Finance Act, Township Board members and public officials with policy making authority are treated differently than other staff members. These officials are permitted to express their views on the ballot question as long as the activity complies with other provisions of the Michigan Campaign Finance Act. For example, Board members still may not use Township stationery, phones, computers or other public materials to disseminate their personal opinions.

2. TOWNSHIP STAFF WITHOUT POLICY MAKING AUTHORITY.

Township employees without policy making authority are prohibited from expressing views on behalf of the public body. Further, they are prohibited from expressing their own personal views and distributing information during working hours. As a result, Township employees and staff shall not use any of the Township's materials or promote the election while "on the clock" at the Township. For those employees without policy making authority who are salaried, they should refrain from promoting the millage election during hours when they are scheduled to work.

3. DISSEMINATION OF FACTUAL INFORMATION.

Many Townships ask if they can send out material informing the public about the millage or bond election. Public entities are specifically prohibited from using public funds to disseminate any information other than factual information. Determining what is "factual" information is often difficult. Even a statement such as "the millage will allow us to provide better police service" is generally prohibited because it is viewed more as a promotional message than a factual statement. As such, any material that is published with public funds should be carefully reviewed by legal counsel to ensure that no promotional or other "non-factual" information

is disseminated using public resources. Further, the Township may not post signs in the Township or produce information with public funds that even encourages the Township resident to "vote." Typically, materials permitted by the Township are limited to the millage language and basic facts regarding that language.

4. PROMOTION OF MILLAGE CAMPAIGNS.

Because Townships are prohibited from using public funds to promote any millage campaigns, any lawn signs, brochures, or buttons telling the public to "vote yes" or "vote for the Township Hall or Fire Department" may not be purchased with Township funds. Public funds include any money from any source received by the Township. Public funds are not limited to tax revenue. Even "gifts" or other "donations" made to the Township are still public funds and may not be used for the promotion of a millage campaign.

5. USE OF THE PUBLICLY OWNED FACILITY OR PUBLIC INFORMATION.

The Michigan Campaign Finance Act states that use of a public facility by a committee promoting the election may be permitted if any other candidate or committee has an equal opportunity to use the public facility. Put another way, the Township may allow a "Vote Yes" committee to use the Township Hall according to any meeting policies or any other policies applicable to all other groups. If the Township decides to allow the "Vote Yes" group to use the meeting rooms, the Township should be prepared to allow the "Vote No" committee to use the Township Hall in the same manner. Similarly, the Township should not give any information to a Ballot Question Committee promoting the "Vote Yes" campaign that it would not give to the "Vote No" committee or to any other person requesting that information. Thus, no special treatment should be given to a "Vote Yes" committee even if it involves public records. For example, if the Township normally requires a written request for information under the Freedom of Information Act before it releases public documents, the Ballot Question Committee should also be required to submit written requests before the Township provides it any information.

B. BALLOT QUESTION COMMITTEES

Because Townships are restricted with respect to their conduct during an election campaign, the alternative for promoting election would be for citizens to form a Ballot Question Committee. Any information that is subjective or arguably subjective may be disseminated and paid for by a Ballot Question Committee. In fact, the Ballot Question Committee may tell voters to "Vote Yes!" Ballot Question Committees are formed by members of the community who desire to promote the election and spend more than \$500.00 in any calendar year doing so. The requirements for such a committee are contained in the Michigan Campaign Finance Act, MCL 169.201 et seq. There is also detailed information available on the Internet on the Michigan Secretary of State's website. Although there are organizational and reporting requirements, the Ballot Question Committee is not limited by the requirements of Section 57 of the Campaign Finance Act above that apply to Townships. A Ballot Question Committee can freely explain the advantages of the millage and encourage voters to approve the millage.



Determining whether material prepared by the Township or actions of Township officials or employees violates the Campaign Finance Act is often difficult. If you need any additional information or assistance with Township Campaign issues, please feel free to contact any member of the Foster, Swift Municipal Services Team.
