

## **Opinion Withdrawn – Wisconsin Ethics Commission – 12/06/2016**

### **Summary:**

**School District Annual Meetings. The registration and reporting requirements of the campaign finance law do not apply to school district annual meetings. (Issued to Orvin R. Clark and Cindy Schultz, September 20, 1979)**

This opinion was reviewed by the Government Accountability Board pursuant to 2007 Wisconsin Act 1 and was reaffirmed on March 26, 2008.

### **Opinion:**

You ask whether the registration, reporting and disclaimer requirements of chapter 11 of the Wisconsin Statutes, entitled "Campaign Finance", apply to a school district annual meeting. You are primarily concerned with a situation which arose at the last school district annual meeting. One of the items to be submitted to the electorate of the school district for a vote was the proposed tax levy. Prior to the meeting, a committee took out an ad in the local paper which pointed out several statistics which would tend to influence a negative vote on the proposed tax levy and urged electors to get out and vote at the school district annual meeting. A flyer which was almost identical to the ad was posted in several store windows and delivered to approximately 2,700 homes in the school district. The handbill did not contain any disclaimer identifying the source of the publication, but the newspaper ad did contain a disclaimer.

The requirements of the campaign finance law, Chapter 11, Stats., apply to groups or individuals as defined in §11.01 (9), Stats., who make disbursements, receive contributions or incur obligations in excess of \$25 in the aggregate in a calendar year to expressly advocate a desired result on a referendum question. §11.23 (1), Stats. A referendum is defined as any advisory, validating or ratifying question to be submitted to the electorate. §11.01 (18), Stats.

If strictly construed, §11.01 (18), Stats., may include the questions considered by the electors at a school district annual meeting and the registration, reporting and disclaimer requirements of the campaign finance law would apply. The State Elections Board is of the opinion that this is not the legislative intent and the requirements of the campaign finance law should not be applied to a school district annual meeting.

Such meetings differ significantly from referendum ballots which are voted on at spring, general or special elections. The form of a referendum ballot for the spring, general or special election is clearly specified in the statutes. §§5.60 (7), 5.64 (2), Stats. The notice provisions for these referendum measures are also specified in the statutes. §10.01 (2)(c), Stats. The school district annual meeting is governed by an entirely different chapter in the statutes. Chapter 120, Stats. Specific sections in that chapter of the statutes deal with the powers of the school district annual meeting. Notice requirements and consideration of specific issues are considerably more flexible than the requirements which apply to a referendum question submitted to the people at a spring, general or special election. §§120.08, 120.09, 120.10, Stats.

In addition, the law governing school district finance makes special provisions in the case of a tax levy submitted to the electorate which indicates the legislative intent was not to treat such a question the same when presented at an annual meeting as when submitted to the electorate at a spring general or special election. Specifically, (1) if the electors at a school district annual meeting do not provide a sufficient amount when setting the tax levy, the school board may determine the amount necessary to run the school district for the coming year. §120.12, Stats.; (2) if the amount set by the electors or the school board exceeds specified cost controls, the budget must be submitted to the electorate as a referendum question at a special election. §121.93, Stats.

There are also distinctions between the manner of voting on a question at a school district annual meeting and a vote at a general, spring, or special election where the voter casts his or her ballot at the polls. The vote on an issue at a school district annual meeting is generally preceded by a presentation by school district officials, a motion is made concerning the question submitted and considerable debate such as that at a town meeting or a legislative session takes place over the issue submitted to the electorate. In theory, at a school district annual meeting, both sides of the issue are examined and debated before it is put to a vote. Supporters or opponents of a particular measure have a fairly good idea of who the advocates of the opposing side are and what arguments they are utilizing to bolster their position. By contrast, there is no electioneering at a regular election. The elector goes to the polling place and casts his or her ballot without being subjected to campaigning at the polling place.

School district annual meetings are meant to encourage participation by the electors in the discussion of the relative merits of a particular question before it is acted on by the electors attending the annual meeting. The United States Supreme Court has found that in some instances imposing extensive reporting requirements on individuals or political committees would have a chilling effect on the First Amendment rights of freedom of speech. *Buckley v. Valeo*, 424 U.S. 1 (1976).

Generally the issues voted on at a school district annual meeting do not generate a large amount of expenditures by groups in the district taking positions for or against an issue. Most groups or individuals are limited in activity to one issue at one meeting. The reporting requirements of chapter 11 would be confusing and burdensome to individuals and groups. Administration of the law would impose substantial burdens on school district clerks.

Application of chapter 11 to the school district annual meeting could have the undesirable effect of reducing citizen participation because of the added requirements. This appears contrary to the express policy of chapter 11 to provide the public with its right to have a full, complete and readily understandable accounting of activities intended to influence elections. However, a balancing of the benefits of disclosure obtained and applied to the school district annual meeting are heavily outweighed by the burdensome requirements of registration and reporting which could operate to limit the participation of electors in the discussion of issues and formulation of policies at the local school district level. This would be contrary to the legislature's intent to encourage maximum local control in the governing of school districts.

The Board is of the opinion that the registration and reporting requirements of the campaign finance law do not apply to a school district annual meeting. The public's right to know the extent and sources of financial support or opposition to questions submitted at a school district annual meeting

are better met by the "town meeting" atmosphere provided at the meeting than the registration and reporting requirements of the campaign finance law.