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## O P I N I O N S

**SCHOOL DISTRICTS: Authority to spend public funds to influence outcome of election.**

The board of education of a school district is without authority to spend public funds to advocate a favorable vote at an election on the question of increasing the tax limitation and the issuance of bonds.

No. 4291

January 4, 1965.

Dr. Lynn M. Bartlett  
Superintendent of Public Instruction  
Capitol Building  
Lansing, Michigan

You have informed me that a certain school district, through its board of education, expended public funds to influence the outcome of an election on the questions of increasing the tax limitation for operating purposes and issuing bonds to finance expansion of facilities. A booklet was published and mailed to voters, which in addition to containing relevant information, exhorted a yes vote and stated some unfavorable consequences of a failure of passage. You ask if a board has authority to make such expenditures.

School districts and school officers have only such powers as the legislature expressly or impliedly grants to them (*Jacox v. Board of Education*, 293 Mich. 126). An examination of the provisions of the School Code of 1955, being Act 269, P.A. 1955, as amended, C.L.S. 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., fails to reveal any express authority conferred upon the board of education of a school district to spend public moneys to influence a favorable vote at school related elections. There is likewise no provision in that act from which such authority may be implied.

Similar authority was found to be lacking by the Michigan Supreme Court in *Mosier v. Wayne County Board of Auditors*, 295 Mich. 27, where a county board of supervisors adopted a resolution to appropriate county funds to procure a survey for the object of obtaining reapportionment of representation in the state legislature. It was held that a suit to enjoin expenditures under the appropriation should not have been dismissed by the lower court since the appropriation was made without statutory or constitutional sanction. The Court indicated one of the important reasons for the absence of such statutory authority in the following statement:

“And further, such expenditure of county funds might be contrary to the desire and even subject to the disapproval of a large portion of the county taxpayers who were firmly of the conviction that refusal to reapportion representation in Michigan in accord with constitutional mandate is decidedly detrimental to our general governmental welfare. And we think it can safely be said that it was never contemplated under

the Constitution and statutes of this State that our boards of supervisors should function as propaganda bureaus." (p. 31)

In point is the opinion of the New Jersey Supreme Court in *Citizens To Protect Public Funds, et al. v. Board of Education of Parsippany-Troy Hills Twp.*, 13 N.J. 172, 98 A2d 673 (1953) where a school district used public funds to publish a booklet which exhorted a yes vote on a school bond proposition and emphasized that dire consequences would follow a failure of passage. The Court recognized that there is an implied power under the authority to furnish and maintain school facilities, to make reasonable expenditures to give voters relevant facts to aid them in reaching an informed judgment when voting upon a proposal. It clearly stated, however, that use of public funds to advocate only one side of a controversial question, without affording the dissenters the opportunity by means of that financed medium to present their side, was unlawful and went beyond the implied authority.

The Court relied upon *Mines v. DelValle*, 201 Cal. 273, 257 P. 530 (1927) where city officers spent public funds without express or implied authority to advocate one side of a proposition to be voted on. The Court sustained a judgment compelling the officials to repay such amounts into the city treasury.

From the foregoing, it must be concluded that in the absence of authority, public funds cannot be expended to influence the outcome of an election. Such authority being absent, it is the opinion of the Attorney General that a board of education of a school district is without power to spend public moneys to advocate a favorable vote at an election on the questions of increasing the tax limitation and issuing bonds.

FRANK J. KELLEY,  
Attorney General.

650112. |

**COLLEGES AND UNIVERSITIES:** Michigan State University – Authority to supervise university and to control university funds.  
**LEGISLATURE:** Authority over university functions.

A statute establishing a law enforcement academy at Michigan State University with a council to direct its activities and expenditure of funds would be unconstitutional as violative of Article VIII, Section 5 of the Michigan Constitution of 1963.

No. 4335

January 12, 1965.

Hon. Charles N. Youngblood, Jr.  
State Senator  
Lansing, Michigan

You have asked if the legislature could establish a law enforcement academy at Michigan State University, with a council to direct its activities and expenditure of funds, without the approval of the Board of Trustees.

Measures purporting to accomplish such an objective were introduced at the 1964 session of the legislature but failed to receive favorable considera-