FUNDAMENTALS OF THE TEACHER TENURE STATUTE

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Presented By:
Ransom A Ellis, III
Ellis, Ellis, Hammons & Johnson, P.C.
901 St. Louis Street
Suite 600
Springfield, Missouri 65806
(417) 866-5091
rellis3@eehjfirm.com
www.eehjfirm.com
Selected Portions Of The Missouri Teacher Tenure Act
(All School Districts Except Metropolitan)

168.104. Definitions

The following words and phrases when used in sections 168.102 to 168.130, except in those instances where the context indicates otherwise, mean:

(1) "Board of education" the school board or board of directors of a school district, except a metropolitan school district, having general control of the affairs of the district;

(2) "Demotion” any reduction in salary or transfer to a position carrying a lower salary, except on request of a teacher, other than any change in salary applicable to all teachers or all teachers in a classification;

(3) “Indefinite contract” every contract heretofore or hereafter entered into between a school district and a permanent teacher;

(4) “Permanent teacher”

(a) any teacher who has been employed or who is hereafter employed as a teacher in the same school district for five successive years and who has continued or who thereafter continues to be employed as a teacher by the school district; or,

(b) any supervisor of teachers who was employed as a teacher in the same school district for at least five successive years prior to becoming a supervisor of teachers and who continues thereafter to be employed as a certificated employee by the school district;

(c) except that, when a permanent teacher resigns or is permanently separated from employment by a school district, and is afterwards reemployed by the same school district, reemployment for the first school year does not constitute an indefinite contract but if he is employed for the succeeding year, the employment constitutes an indefinite contract; and.

(d) except that any teacher employed under a part-time contract by a school district shall accrue credit toward permanent status on a prorated basis.

(e) Any permanent teacher who is promoted with his consent to a supervisory position including principal or assistant principal, or is first employed by a district in a supervisory position including principal or assistant principal, shall not have permanent status in such position but shall retain tenure in the position previously held within the district, or, after serving two years as principal or assistant principal, shall have tenure as a permanent teacher of that system;

(5) “Probationary teacher” any teacher as herein defined who has been employed in the same school district for five successive years or less. In the case of any probationary teacher who has been employed in any other school system as a teacher for two or more years, the board of education shall waive one year of his probationary period;
(6) "School district" every school district in this state, except metropolitan school district as defined in section 162.571;

(7) "Teacher" any employee of a school district, except a metropolitan school district, regularly required to be certified under laws relating to the certification of teachers, except superintendents and assistant superintendents but including certified teachers who teach at the prekindergarten level in a nonmetropolitan public school within a prekindergarten program in which no fees are charged to parents or guardians.

168.112. Modification or termination, how

An indefinite contract between a permanent teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto. Any teacher who desires to terminate his contract at the end of a school term shall give written notice of his intention to do so and the reasons therefor not later than June first of the year in which the term ends.

168.114. Board may terminate, grounds for

1. An indefinite contract with a permanent teacher shall not be terminated by the board of education of a school district except for one or more of the following causes:

   (1) Physical or mental condition unfitting him to instruct or associate with children;

   (2) Immoral conduct;

   (3) Incompetency, inefficiency or insubordination in line of duty;

   (4) Willful or persistent violation of, or failure to obey, the school laws of the state or the published regulations of the board of education of the school district employing him;

   (5) Excessive or unreasonable absence from performance of duties; or

   (6) Conviction of a felony or a crime involving moral turpitude.

2. In determining the professional competency of or efficiency of a permanent teacher, consideration should be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the school board.
168.116. Termination by board—notice—charges

1. The indefinite contract of a permanent teacher may not be terminated by the board of education until after service upon the teacher of written charges specifying with particularity the grounds alleged to exist for termination of such contract, notice of a hearing on charges and a hearing by the board of education on charges if requested by the teacher.

2. At least thirty days before service of notice of charges of incompetency, inefficiency, or insubordination in line of duty, the teacher shall be given by the school board or the superintendent of schools warning in writing, stating specifically the causes which, if not removed, may result in charges. Thereafter, both the superintendent, or his designated representative, and the teacher shall meet and confer in an effort to resolve the matter.

3. Notice of a hearing upon charges, together with a copy of charges, shall be served on the permanent teacher at least twenty days prior to the date of the hearing. The notice and copy of the charges may be served upon the teacher by certified mail with personal delivery addressed to him at his last known address. If the teacher or his agent does not within ten days after receipt of the notice request a hearing on the charges, the board of education may, by a majority vote, order the contract of the teacher terminated. If a hearing is requested by either the teacher or the board of education, it shall take place not less than twenty nor more than thirty days after notice of a hearing has been furnished the permanent teacher.

4. On the filing of charges in accordance with this section, the board of education may suspend the teacher from active performance of duty until a decision is rendered by the board of education but the teacher's salary shall be continued during such suspension. If a decision to terminate a teacher's employment by the board of education is appealed, and the decision is reversed, the teacher shall be paid his salary lost during the pending of the appeal.

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168.118. Termination hearing, procedure, costs

If a hearing is requested on the termination of an indefinite contract it shall be conducted by the board of education in accordance with the following provisions:

(1) The hearing shall be public;

(2) Both the teacher and the person filing charges may be represented by counsel who may cross-examine witnesses;

(3) Testimony at hearings shall be on oath or affirmation administered by the president of the board of education, who for the purpose of hearings held under sections 168.102 to 168.130 shall have the authority to administer oaths;

(4) The school board shall have the power to subpoena witnesses and documentary evidence as provided in section 536.077 and shall do so on its own motion or at the request of the teacher against whom charges have been made. The school board shall hear testimony of all witnesses named by the
teacher; however, the school board may limit the number of witnesses to be subpoenaed on behalf of the teacher to not more than ten;

(5) The board of education shall employ a stenographer who shall make a full record of the proceedings of the hearings and who shall, within ten days after the conclusion thereof, furnish the board of education and the teacher, at no cost to the teacher, with a copy of the transcript of the record, which shall be certified by the stenographer to be complete and correct. The transcript shall not be open to public inspection, unless the hearing on the termination of the contract was an open hearing or if an appeal from the decision of the board is taken by the teacher;

(6) All costs of the hearing shall be paid by the school board except the cost of counsel for the teacher;

(7) The decision of the board of education resulting in the demotion of a permanent teacher or the termination of an indefinite contract shall be by a majority vote of the members of the board of education and the decision shall be made within seven days after the transcript is furnished them. A written copy of the decision shall be furnished the teacher within three days thereafter.

168.120. Appeal by teacher, procedure

1. The teacher shall have the right to appeal from the decision of the board of education to the circuit court of the county where the employing school district is located. The appeal shall be taken within fifteen days after service of a copy of the decision of the board of education upon the teacher, and if an appeal is not taken within the time, then the decision of the board of education shall become final.

2. The appeal may be taken by filing notice of appeal with the board of education, whereupon the board of education, under its certificate, shall forward to the court all documents and papers on file in the matter, together with a transcript of the evidence, the findings and the decision of the board of education, which shall thereupon become the record of the cause. Such appeal shall be heard as provided in chapter 536.

3. Appeals from the circuit court shall be allowed in the same manner as in civil actions, except that the original transcript prepared and filed in the circuit court by the board of education, together with a transcript of the proceedings had in the circuit court, shall constitute the transcript on appeal in the appellate court. The board of education shall make available, to the parties, copies of any transcript prepared and filed by it in the circuit court and upon final determination of the cause in the appellate court the original record of the board of education filed as a part of the transcript on appeal shall be certified back to the board of education by the appellate court. In all appeals from the board of education or circuit court the costs thereof shall be assessed against the losing party as provided by law in civil cases. All appeals to the circuit court and appellate courts shall have precedence over all cases except election contests.

4. If the circuit court finds for the teacher, he shall be restored to permanent teacher status and shall receive compensation for the period during which he may have been suspended from work, and such other relief as may be granted by the court.
168.126. Probationary teachers, how terminated--notice, contents--reemployed, how

1. A board of education at a regular or special meeting may contract with and employ by a majority vote legally qualified probationary teachers for the school district. The contract shall be made by order of the board; shall specify the number of months school is to be taught and the wages per month to be paid; shall be signed by the probationary teacher and the president of the board, or a facsimile signature of the president may be affixed at his discretion; and the contract shall be attested by the secretary of the board by signature or facsimile. The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of the board member is necessary to the selection of the person.

2. If in the opinion of the board of education any probationary teacher has been doing unsatisfactory work, the board of education, through its authorized administrative representative, shall provide the teacher with a written statement definitely setting forth his alleged incompetency and specifying the nature thereof, in order to furnish the teacher an opportunity to correct his fault and overcome his incompetency. If improvement satisfactory to the board of education has not been made within ninety days of the receipt of the notification, the board of education may terminate the employment of the probationary teacher immediately or at the end of the school year. Any motion to terminate the employment of a probationary teacher shall include only one person and must be approved by a majority of the members of the board of education. A tie vote thereon constitutes termination. On or before the fifteenth day of April in each school year, the board of education shall notify in writing a probationary teacher who will not be retained by the school district of the termination of his employment. Upon request, the notice shall contain a concise statement of the reason or reasons the employment of the probationary teacher is being terminated. If the reason for the termination is due to a decrease in pupil enrollment, school district reorganization, or the financial condition of the school district, then the district shall in all cases issue notice to the teacher expressly declaring such as the reason for such termination. Nothing contained in this section shall give rise to a cause of action not currently cognizant at law by a probationary teacher for any reason given in said writing so long as the board issues the letter in good faith without malice, but an action for actual damages may be maintained by any person for the deprivation of a right conferred by this act.

3. Any probationary teacher who is not notified of the termination of his employment shall be deemed to have been appointed for the next school year, under the terms of the contract for the preceding year. A probationary teacher who is informed of reemployment by written notice shall be tendered a contract on or before the fifteenth day of May, and shall within fifteen days thereafter present to the employing board of education a written acceptance or rejection of the employment tendered, and failure of such teachers to present the acceptance within such time constitutes a rejection of the board's offer. A contract between a probationary teacher and a board of education may be terminated or modified at any time by the mutual consent of the parties thereto.
Selected Portions Of The Missouri Teacher Tenure Act  
(Metropolitan School Districts Only)


168.221.1

• The first five years of employment of all teachers entering the employment of the metropolitan school district shall be deemed a period of probation during which period all appointments of teachers shall expire at the end of each school year. . . .

• The superintendent of schools on or before the fifteenth day of April in each year shall notify probationary teachers who will not be retained by the school district of the termination of their services. Any probationary teacher who is not so notified shall be deemed to have been appointed for the next school year.

• Any principal who prior to becoming a principal had attained permanent employee status as a teacher shall upon ceasing to be a principal have a right to resume his or her permanent teacher position with the time served as a principal being treated as if such time had been served as a teacher for the purpose of calculating seniority and pay scale. The rights and duties and remuneration of a teacher who was formerly a principal shall be the same as any other teacher with the same level of qualifications and time of service.

168.221.3

• A permanent teacher may be terminated for any of the following reasons: immorality, incompetency or inefficiency in the line of duty, violation of the published regulations of the school district, violation of the laws of Missouri governing the public schools of the state or physical or mental condition which incapacitates him for instructing or associating with children.

• Requires written charges presented by the superintendent to be heard by the Board of Education after 30 days’ notice “with a copy of the charges served upon the person against whom they are preferred, who shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense thereto.”

• Hearing constitutes a “contested case” under the Missouri Administrative Procedures Act.
Be it resolved by the people of the state of Missouri that the Constitution be amended:

Article IX is amended by adopting six new sections to be known as Article IX, Sections 3(d), 3(e), 3(f), 3(g), 3(h), and 3(i), to read as follows:

Section 3(d). All certificated staff shall be at will employees unless a contract is entered into between a school district and certificated staff (1) prior to the effective date of this section; or (2) pursuant to the provisions of section 3(e), 3(f), and 3(h) of this article. "Certificated staff," as used in this article, shall mean employees of a school district who hold a valid certificate to teach in the State of Missouri.

Section 3(e). No school district receiving any state funding or local tax revenue funding shall enter into new contracts having a term or duration in excess of three years with certificated staff.

Section 3(f). Effective beginning July 1, 2015, and notwithstanding any provisions of this constitution, any school district receiving any state funding or local tax revenue shall develop and implement a standards based performance evaluation system approved by the Missouri Department of Elementary and Secondary Education. The majority of such evaluation system shall be based upon quantifiable student performance data as measured by objective criteria and such evaluation system shall be used in (1) retaining, promoting, demoting, dismissing, removing, discharging and setting compensation for certificated staff; (2) modifying or terminating any contracts with certificated staff; and (3) placing on leave of absence any certificated staff because of a decrease in pupil enrollment, school district reorganization or the financial condition of the school district.

Section 3(g). Nothing in section 3(f) shall prevent a school district from demoting, removing, discharging, or terminating a contract with certificated staff for one or more of the following causes: (1) physical or mental condition unfitting him to instruct or associate with children; (2) immoral conduct; (3) incompetency, inefficiency or insubordination in line of duty; (4) willful or persistent violation of, or failure to obey, state laws or regulations; (5) excessive or unreasonable absence from performance of duties; or (6) conviction of a felony or a crime involving moral turpitude.

Section 3(h). In any suit to challenge a school district's decision regarding retention, promotion, demotion, dismissal, removal, discharge, modification or termination of contracts, or setting compensation of certificated staff, except for decisions made for any of the causes listed in Section 3(g) of this Article, the person bringing such suit must establish that the school district failed to properly utilize the standards based performance evaluation system as referenced in Section 3(f) of this Article.

Section 3(i). Certificated staff shall retain the right to organize and to bargain collectively as provided in article 1, section 29 of this Constitution, except with respect to the design and implementation of the performance based evaluation system established in this article, and as otherwise referenced in this article.
Could Tenure Go Away?

Voters in Missouri will soon determine whether teachers may continue to become tenured in Missouri. On the November ballot is an amendment to the Missouri Constitution that, if passed, will do the following:

- Make all certificated staff at-will employees unless they are tenured or otherwise under contract as of the effective date of the amendment. After that date districts may enter into contracts with certificated staff, but the contracts cannot exceed three years in length. This means that teachers who are not tenured as of the effective date December 4, 2014, will not be able to obtain tenure.

- Beginning July 1, 2015, districts must develop a standards based performance evaluation system, the majority of which “shall be based upon quantifiable student performance data.” The evaluation system must be used in making employment decisions such as retention, modifying or terminating contracts, and placing staff on leave. The Department of Elementary and secondary Education currently only requires student growth to be a “significant contributing factor” in the evaluation process.

- Performance evaluations must be used to make all major employment decisions including setting compensation and putting employees on leave in a reduction in force situation, putting into question whether salary schedules and the current RIF statute are legal.

- Certificated employees may be terminated or demoted for the same reasons a tenured teacher may currently be terminated or demoted, with one notable exception. Failure to obey Board policy has been removed.

- If a certificated staff member files suit to challenge a district’s employment decision, the employee must establish that the district failed to properly utilize the mandated performance evaluation.
- Certificated staff cannot negotiate the design and implementation of the performance evaluation system through collective bargaining.

While it is not clear whether the amendment will pass, the entities supporting this amendment are well funded and will no doubt advertise the “benefits” of this provision widely. MSBA does not support the amendment primarily because it is being made to the Missouri Constitution, and the language cannot be subsequently changed or clarified without another state-wide vote.
Teacher's groups are, understandably, quite distressed at the loss of tenure. In addition, other provisions of the Teacher Tenure Act will be legally questioned. Make sure you vote!
Using School District Resources to Support or Oppose a Ballot Issue

In November, 2014, an amendment to the Missouri Constitution impacting school district employment relationships with teachers and other district staff will appear on the statewide ballot. This amendment is of great interest to the school community and Board members and employees will want to share opinions and communicate concerns regarding this issue not only to each other but also to the public in general. However, Board members and district employees must be careful not to violate state law.

Whether it is a referendum, bond or levy issue, or a school board or presidential election, state law restricts the use of district resources to support or oppose a ballot issue or a candidate for public office:

§115.646. No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

Unfortunately, there are no regulations and few court cases available to interpret this statute, so it is difficult to determine definitively how this language will be applied if a complaint is filed against the school district or the school board. This article was written after a review of court cases, opinions and resolved complaints of the Missouri Ethics Commission, Attorney General’s Opinions, and informal conversations with the staff of the Missouri Ethics Commission (MEC) and attorneys practicing education law. MSBA hopes this guidance will help districts, school board members and district employees avoid violating the law or at least understand when to consult an attorney.

“Officer, Employee or Agent”

The prohibition on the use of public funds applies to school board members, district employees and other persons acting on behalf of the school district. For the remainder of this article MSBA will use the term “the district” to refer to Board members, employees and agents of the district.

“A Ballot Measure or Candidate for Public Office”

The district is prohibited from using public funds to oppose or support “any ballot measure or candidate for public office.” The statutory restrictions are limited to issues that the public will vote on at a local or statewide election.
Please note that the district may spend funds to communicate opinions regarding bills before the state or federal legislature that are not related to a ballot measure, issues before a state or federal agency such as the Department of Elementary and Secondary Education, or cases before a court. District funds may also be used to advocate for health, literacy or a variety of other school-related issues to cities, counties, other governmental agencies and the community without violating the law. In fact, some would argue that it is the responsibility of board members and district employees to represent the district and district students in these forums and district funds may legally be used to do so as long as such use is authorized by the Board and does not violate the district’s policies.

“Advocate, Support or Oppose”

In general, district funds cannot be used to “advocate, support or oppose” a ballot measure or candidate for office, which means that district funds and resources cannot be used to voice an opinion or encourage others to vote a particular way on these topics. District resources may take many forms such as newsletters, e-mail addresses, and employee time, as discussed in great detail below.

District funds can be used to provide neutral, factual information about a ballot measure. A neutral description of an issue does not make arguments for or against a ballot measure or color the district’s position as the best or only solution, but only provides the facts. For example, when a school board puts a bond or levy issue on the ballot, the Board has an obligation to communicate to the patrons of the community the reasons for doing so. Many districts do so by providing information about how the funds will be spent, what will happen if the issue does not pass, and the economic impact on district households in the district’s newsletters or on the district’s website.

Many districts also use district resources such as e-mails, texting services, or district signs to remind patrons when an election will occur, notify them that there is a bond or levy issue on the ballot, or to encourage them to vote. Using district resources to communicate these messages is legal as long as the messages do not encourage the public to vote a specific way on any of the issues on the ballot.

Unfortunately, it is easy for a member of the public to interpret an article or communication that was intended to be purely factual as a plea for a vote. It is also extremely difficult for persons who feel passionately about a topic to communicate neutrally on the subject. Because the MEC
routinely receives complaints on this issue, MSBA recommends that districts have an attorney review any materials the district produces with district funds to ensure neutrality.

That said, Board members have a duty to advocate for issues impacting the school district, including ballot issues. As discussed below, there are many legal methods for Board members and employees to do so without violating the law.

“Public Appearances” – Allowed!

The law clearly allows public officials (presumably school board members and district employees) to make public appearances in support of ballot issues. That means that the superintendent, board members and other district employees may meet with groups to encourage community members to vote for a ballot measure or otherwise advocate in favor of or against ballot measures in public speeches or statements. Employees may attend rallies and wear T-shirts and buttons advocating a particular position on their personal time.

“Press Releases” – Allowed!

The law allows public officials to issue press releases regarding a ballot measure. MSBA interprets the law as allowing districts to advocate for or against a ballot measure using the press release exception, even if district resources are used in generating and advertising the press release.

So, for example, school boards may publicly advocate the school board’s position on a bond issue by approving a resolution in a school board meeting and issuing press releases including that position. Boards may meet using district facilities to discuss resolutions and press releases, and the Board may distribute the press release using district resources as well. Districts should clearly label any advocating statement as a “Press Release” to avoid confusion and must provide the press release to the media to qualify for this exception.

This said, the MEC has not yet issued an opinion on whether districts can use district funds or resources to issue press releases advocating for or against a ballot measure, as opposed to just providing neutral information. Districts that use the press release exception need to be aware that the MEC may not ultimately agree with MSBA’s interpretation of the law.
“Contribution or Expenditure of Public Funds”

Unless a communication falls under the personal appearance or press release exceptions listed above, Board members, employees and others cannot use district funds to advocate for or against a ballot measure. The MEC has interpreted the law very broadly to prohibit not only the direct expenditure of dollars in advocacy efforts but also the use of resources paid for by district funds. MSBA has the following advice for districts regarding the use of the following resources:

**District Publications, Mailings, and E-mailed Communications**

This is one of the few areas that is clear. The district cannot include messages in district-funded publications or mailings, electronic or otherwise, that support or oppose a ballot issue or a candidate. Only factual and neutral messages may be shared unless the communication falls under the press release exception.

**District Website, Social Media and Links**

The district cannot post messages on the district-sponsored website or social media pages that support or oppose a ballot issue. Teachers that create social media pages or websites for classroom purposes or to communicate with parents need to be aware that those sites are considered district communications and are not to be used to advocate for or against a ballot measure.

However, it is not illegal for the district websites or social media pages to communicate official district communications such as district press releases. In addition, district websites or social media sites may link to websites of affiliated associations or other groups if there is a good business reason to do so other than for the purpose of advocating for a ballot issue. As always, neutral messages about ballot issues are allowed.

**District Messaging Services**

The district may use texting or messaging services to remind parents and students of the date of the election, when polling stations are open, and the fact that there is an item such as a bond issue on the ballot. However, the district cannot use this resource to encourage any person to vote a particular way unless the district is communicating information contained in a district press release.

**District-Provided Computers, Fax Machines, and Internet Access**

Even if the district allows employees or school board members to use district computers, fax machines, and the district’s Internet services for reasonable personal purposes, employees and Board members cannot use these resources to advocate for or against a ballot measure or candidate unless the use fits into the press release exception.

This means, for example, the superintendent cannot use the district’s computer to create a PowerPoint presentation advocating for passage of a bond issue or an employee cannot use the district’s Internet access to create a Facebook page to oppose a ballot measure.

**District-Provided E-mail Addresses**

The law is not violated if a message advocating a ballot issue is sent to a board member or employee’s district-provided e-mail address. This really cannot be prevented as those addresses are created to allow the public to communicate with district officials. However, employees and Board members cannot use district resources to forward these messages to other persons.

For example, if an educational association such as MSBA sends a message regarding a ballot measure to an employee or Board member using the district-provided e-mail address, merely receiving that would not violate the law. However, if the employee or board member used the district-provided e-mail, Internet or computer resources to forward the message on to any other person it would potentially violate the law.

When employees or Board members receive advocacy messages and would like to forward these messages to others, MSBA recommends that the employee or Board member instead forward the message to his or her own personal e-mail account, if one exists. The employee or Board member may then forward the message on to others by using his or her own computer and Internet access to do so. Employees forwarding messages for advocacy purposes must do so on their own time, not while at work.
District-Provided Cell Phones or Cell Phone Stipends

Some districts provide administrators and other staff members a cellular phone and pay for the service for that phone. While most districts allow those phones to be used for personal purposes as well as business purposes and many employees view these devices as their own, this is district property and is paid for by district funds. Employees should not use these devices for advocacy purposes, including texting or e-mailing messages encouraging the support or opposition to a ballot measure. While the First Amendment will likely provide some protection for employees that express personal opinions in some conversations, it is unclear where the boundaries of those protections are and it is difficult to predict how the MEC or a court will rule. Employees should use their own resources to communicate advocacy messages.

Some districts do not provide employees cell phones but instead expect the administrator to purchase cell phone service and pay the employee an extra amount to defray the cost of the service because it will be partially used for district business. In this situation employees may use the phone to advocate for or against a ballot issue as long as such advocacy occurs on the employee’s personal time.

District Copiers, Paper and Supplies

Board members, district employees and others cannot use district copiers, paper, envelopes, and other supplies to communicate a message advocating for or against a ballot issue or candidate. Some districts do provide copying services for a fee to the community. In those situations the district could use district resources to copy fliers or other materials to the same extent it provides copying services to the public as long as the district is fully compensated for the costs of the copies and supplies.

District Postage Meter or Tax-Exempt Letter

The district’s postage meter and tax-exempt letter are issued to the district exclusively to use for district business. The district cannot use these items to advocate for or against ballot measures, and the district cannot legally allow any other person or organization to use these resources, even for a fee.

District Facilities

In general, the school board, school board members or district employees cannot use district facilities for the specific purpose of opposing or supporting a ballot issue, nor may the district allow others to do so. However, if the district allows non-profit or other community groups to rent district facilities, the district may rent the facilities to an employee or other group if the requirements of the policy are met, even if the facilities will ultimately be used for advocacy purposes. The district should be careful not to waive any fee or other requirement of its community use of facilities policy or procedure. See Policy KG and Procedure KG-AP. If possible, the district should clearly indicate on district calendars or in other media when a facility is being rented as opposed to being used for district-sponsored activities to avoid complaints to the MEC.

If the district already allows employee associations to routinely use district facilities without charge for regular association meetings, the district may continue to do so even if a ballot issue or candidate is discussed at the meeting. However, the district needs to remind employees that they are subject to the law as well and that this privilege should not be abused. Any perception that the meeting is being held solely to advocate for or against a ballot issue or candidate could result in a complaint and fines against the individual employees involved. In those circumstances, employees and employee groups should seek to rent district facilities for the use.

Posting Information in the Teacher’s Workroom, or Use of Staff Mailboxes

Most districts strictly limit who can post information in an employee workroom or put information in a staff member’s district-provided mailbox. Some districts have a more open policy. See MSBA Policy KI. As long as the district allows for certain individuals or groups to use the mailboxes or post information, the district may allow these activities to continue even if the materials advocate for or against a ballot measure. However, district administrators must evenly enforce the district’s policies and cannot make exceptions for individuals or groups based on the content of the message.
Posting Signs In or Around District Facilities
Most districts have policies that in general prohibit advertising or solicitation on school property, which includes putting signs up on district bulletin boards or on district grounds. See MSBA Policy K.I. That said, if the district has a policy or practice of allowing any member of the public to post any type of message in a particular location (not recommended) the district probably cannot prohibit a person from posting advocacy messages on district property.

Paid Advertisement
Many districts routinely sell advertisement space in newspapers, yearbooks, or even on scoreboards or at athletic facilities. If this is true in your district, the district may sell advertisement space to groups opposing or supporting ballot issues as long as the fees are not waived and the advertisement otherwise conforms to district policies. MSBA’s current policy on this topic, Policy K.I, limits the content of paid advertisement in district publications or at district facilities. Districts should review their own policies to determine what messages are permitted.

Please keep in mind that if the district allows for a group to purchase advertisement opposing a measure the district cannot prohibit groups that support the measure from purchasing advertising as well. All advertisements regarding a ballot measure must identify who paid for the materials in accordance with state law. See §§130.031.8, RSMo. Federal law may also apply if broadcast media is involved.

Parent and Student Contact Information
Many persons running for election or advocating for or against a ballot issue would love to have access to parent and student contact information so that they may communicate directly with the school community. However, the contact information for parents and students is part of the student enrollment records and is considered confidential under the Family Educational Rights and Privacy Act (FERPA) and district policy. In general, this information can only be used by the district for legitimate educational purposes and cannot be used to advocate for or against a ballot issue, or provided to other persons or groups for any other reason, without written parental permission.

However, there is an exception to FERPA that allows districts to designate some information that is not generally considered private as “directory information.” By law, if the district notifies parents and students of directory information and the parents and students do not object in writing, the district may disclose this information to persons outside the district without parental permission. This is how districts publish student names and pictures in yearbooks or student grades in honor rolls without first obtaining written permission from the parents. In fact, under the Missouri Sunshine Law the district is required to disclose directory information to any person upon request. This means if the names, addresses, phone numbers, or e-mail addresses of parents and students are listed as directory information any person may have access to that information.

MSBA’s standard Policy J.0, Student Records, limits who has access to student and parent contact information, but not all districts have adopted that policy. Districts should examine their policies, student handbooks, and FERPA notices carefully before disclosing parent and student contact information to any person for any reason, particularly for advocacy purposes. Many persons do not want their contact information released for political purposes or used to advocate ballot issues and the district should only release this information if required by law to do so.

Employee Personal Contact Information
For most districts, employee addresses, phone numbers and home e-mail addresses are part of the district’s personnel files and are considered confidential under both the Missouri Sunshine Law and Board Policy GBL, Personnel Records. This information can only be used by the district for legitimate employment reasons.

However, some districts produce staff directories that are made available to employee associations, Parent-Teacher Organizations, insurance providers and others. If your district does routinely disclose
personal employee contact information to some members of the public, it is going to be difficult for the district to claim this information is confidential and the district may have to provide this information upon request under the Missouri Sunshine Law. Many persons do not want their contact information released for political purposes or used to advocate ballot issues and the district should only release this information if required by law to do so.

Employee Time
The district cannot allow or require district employees while they are at work or representing the school district to further advocacy efforts. For example, if a campaign committee is formed to support a bond issue for the school district, a secretary should not be asked to stuff envelopes or type letters for the committee while being paid by district funds. Likewise, employees that feel strongly about a ballot issue should not advocate for or against the issue while “on the clock” or acting in his or her capacity as an employee because it could be perceived that the district is paying for the testimonial.

A secretary or non-certified staff member is considered working any hour in which they are paid. Because of the nature of the job, a teacher is considered “on the clock” during the regular school day unless he or she takes a leave day. Because the superintendent’s job requires odd hours, late nights, early morning, and even weekend work, a superintendent may take time out of a day to go speak to a group in favor of a bond or levy issue without being considered “on the clock.”

This said, an employee has a First Amendment right to speak on election issues and participate in campaigns if they choose, as long as the employee is not clearly working for the district. Employees should never be pressured to volunteer for a campaign or stigmatized for not participating.

Employee T-Shirts and Buttons
MSBA does not recommend that district employees wear T-shirts, buttons or other campaign materials at school or when clearly acting as and being paid as an employee for the district. It could be perceived that the district is actually paying the employee to advocate for a particular position in violation of the law.

MSBA encourages the district and its employees to keep political advocacy out of the regular school day – even if it supports a district goal. Because most students cannot vote, it is questionable whether such advertisement is useful anyway and this type of speech can become controversial. For example, if the district allows (or encourages) staff to wear buttons in support of a ballot issue, it cannot legally prohibit staff from wearing buttons opposing the issue or supporting other political issues such as school board candidates. Once the political door is open, the district might find the school flooded with political messages – particularly in a presidential election year.

Student Journalism
It is not unusual for student journalists to want to cover district ballot measures, school board member elections or even presidential elections in district-sponsored and student-produced publications such as a student newspaper, or in other media such as student broadcast news programs. These publications or media are funded by the district and the district employs the supervising staff members to assist students in developing articles. That means public funds are involved and there is a real risk that the district will be considered in violation of the law if any article or program produced by students advocates for or against a ballot measure or a particular candidate.

While most student journalists no doubt attempt to produce “fair and balanced” news articles, this is a difficult standard to meet, particularly for amateur journalists. If the district decides to allow students to report on these issues, the district should take measures to make sure the articles or programs produced are neutral. MSBA does not recommend that district publish or broadcast editorials on these issues until the MEC has ruled otherwise.
First Amendment

While teachers and other staff members retain certain First Amendment rights during employment, those rights are not unlimited. In Garcetti v. Ceballos, the U.S. Supreme Court found that a public employer could discipline an employee for statements made pursuant to their official duties. The authority to discipline for speech implies the authority to set limits on speech. Therefore the district is within its authority to establish rules against employees speaking for or against any ballot issue during the course of their duties as long as those rules are applied evenly. In fact, the district is obligated to establish such rules to avoid violation or perceived violation of state law.

That said, district employees, as private persons, have a First Amendment right to speak out on political issues, including ballot measures. Districts should always consult an attorney before disciplining an employee for the content of their speech or advocacy efforts. It is sometimes difficult to identify whether the employee is speaking in their capacity as an employee or as a private person.

Consequences

⚠️ District employees, board members or agents may be disciplined, terminated or censured for misusing district resources. In addition, if a complaint is filed with the MEC, the MEC can issue a letter of concern, issue fines up to $1,000 or double the amount involved in the violation, seek a cease and desist order against a person, or obtain civil penalties or a court order for the violator to pay restitution. If a crime is involved, the MEC will refer the violation to the local prosecutor. In addition, at least one court has found that misuse of public funds is an election irregularity that could result in a completely new election.

Alternative Methods of Advocacy

⚠️ With all the legal restrictions it is easy for school board members and district employees to simply give up trying to communicate to the public, but they should not. It is essential for Board members and district employees to exercise their First Amendment rights and speak out on behalf of the district and district students. In fact, one of the primary purposes of a local school board is to be the voice for the district in the community. The key is to find methods of communication that do not involve public funds or that are explicitly allowed by law.

As stated above, Board members and employees are clearly allowed to make public appearances. School boards are allowed to use district funds to issue press releases expressing the Board’s opinion on ballot measures.
MSBA strongly encourages districts to use both of these forms of communication as much as possible, but there are other communication options as well. Effective campaigns combine forces with education groups such as the PTA, PTO, booster clubs or teacher organizations. These groups have funds that are not “public” and may use them freely to advocate for or against ballot measures. So, for example, the booster club can generate signs to be handed out throughout the community, the PTA can purchase newspaper space to explain an issue to the patrons, and teacher’s groups can print fliers that can be handed out to the community.

Those interested in advocating or supporting a bond or levy issue may also form a separate campaign committee to collect donations and advocate for or against a ballot measure. The superintendent, board members, leaders in the community, members of the PTA and others may serve on these committees and decide how funds will be spent. Unlike the district, the whole purpose of this committee is to raise and spend money to advocate for or against a ballot measure.

All groups spending funds on the campaign should contact the MEC to make sure the organization complies with expenditure reporting requirements when applicable and appropriately identifies who paid for advocacy materials.

_for quick reference, see a list of DOs and DO NOTs on the next page._
<table>
<thead>
<tr>
<th><strong>DO</strong></th>
<th><strong>DO NOT</strong></th>
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<tbody>
<tr>
<td>Make public appearances on personal time to speak in favor or against a ballot issue.</td>
<td>Advocate for or against a ballot measure when you should be teaching or otherwise performing other district duties.</td>
</tr>
<tr>
<td>Use the district webpage, newsletters and other resources to issue and communicate press releases regarding resolutions adopted by the Board, clearly stating the Board’s opinion on ballot measures when given permission to do so by your supervisor.</td>
<td>Use the district webpage, newsletters and other resources to advocate for or against a ballot measure outside of a Press Release.</td>
</tr>
<tr>
<td>Work with the PTO, PTA, booster clubs and other education groups to communicate your opinions regarding ballot measures to parents and others in the school community and encourage them to use their organizational funds for advocacy purposes.</td>
<td>Use district funds to support or oppose a ballot measure.</td>
</tr>
<tr>
<td>Help form a campaign committee with the MEC to collect donations that may be used for advocacy purposes.</td>
<td>Use district funds or resources paid by the district to support or oppose a ballot measure.</td>
</tr>
<tr>
<td>Include neutral messages about upcoming ballot measures in district publications such as newsletters, web articles and other electronic communications.</td>
<td>Include messages that encourage the public to vote one way or another on ballot measures in these communications.</td>
</tr>
<tr>
<td>Use your own personal computer and Internet access to create websites or social media pages to advocate about upcoming ballot measures on your own time.</td>
<td>Use district websites, social media pages or district resources to create websites or social media pages to advocate regarding ballot measures.</td>
</tr>
<tr>
<td>Use your personal e-mail address to communicate your opinion on ballot measures on your own time.</td>
<td>Use your district-provided e-mail address to communicate opinions regarding ballot measures.</td>
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<tr>
<td>Use your own personal telephone to text advocacy messages on your own time.</td>
<td>Use the district-provided cell phone to text advocacy messages.</td>
</tr>
<tr>
<td>Copy fliers or other advocacy materials regarding a ballot measure using your own copier on your own time, or pay for those copies to be made.</td>
<td>Use the district’s copier, paper and supplies to reproduce advocacy materials regarding a ballot measure.</td>
</tr>
<tr>
<td>Rent district facilities to hold meetings advocating for a ballot measure or otherwise obtain permission to use the facilities by following district policy.</td>
<td>Use the district’s facilities free of charge or allow others to do so to hold advocacy meeting or make exceptions to district policies to communicate messages you or others in the district agree with.</td>
</tr>
<tr>
<td>Put bumper stickers on your car or post signs on your personal property expressing your views on a ballot issue.</td>
<td>Post signs in district facilities or on district property advocating for or against a ballot issue unless you obtain permission and such messages are evenly allowed according to district policy.</td>
</tr>
<tr>
<td>Contact your friends and relatives and encourage them to oppose or support a ballot issue.</td>
<td>Use parent, student, or employee contact information you obtained from district records to communicate an advocacy message.</td>
</tr>
<tr>
<td>Follow district policy and ask permission before posting advocacy messages in the teacher’s workroom or putting such messages in staff mailboxes.</td>
<td>Post advocacy messages in district facilities without permission and in violation of district policies.</td>
</tr>
<tr>
<td>Feel free to attend rallies or volunteer your personal time to support or oppose a ballot measure.</td>
<td>Use time for which you are being paid by the district to advocate for or against a ballot measure.</td>
</tr>
<tr>
<td>Wear buttons and T-shirts supporting your position on your own personal time.</td>
<td>Wear buttons and T-shirts to work or at a district activity for which you are being paid.</td>
</tr>
<tr>
<td>Teach journalism students how to write neutral news articles on issues of general concern such as ballot issues.</td>
<td>Encourage students to report on issues because you feel strongly about them or allow district funds to be used to promote those issues.</td>
</tr>
<tr>
<td>Always feel free to ask questions if you are concerned you might be violating the law.</td>
<td>Act first and think later. You are responsible for following state law!</td>
</tr>
</tbody>
</table>