

# SCARIANO, HIMES AND PETRARCA

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December 14, 2009

## VIA U.S. MAIL & FACSIMILE 630-243-3005

Dr. Tim Ricker, Superintendent  
Lemont-Bromberek School District No. 113A  
16100 - 127<sup>th</sup> Street  
Lemont, Illinois 60439

### **Re: Restrictions On Board Members And Employees Referenda Activities**

Dear Dr. Ricker:

The District will conduct a tax rate referendum on February 2, 2010. You have inquired about what Board Members and employees can and cannot do in regards to the referendum.

First, no District funds can be used to support the referendum. District funds can be used to disseminate neutral factual information regarding the referendum. However, a recent Appellate Court decision held that when a public body spends over \$3,000 to disseminate information regarding the topic of a referendum, it acts as a political committee and must comply with the *Campaign Disclosure Act* requirements. If the District disseminates neutral factual information, it will not become a political committee under the Act, and will not have to comply with its report filing requirements, until it has spent \$3,000 in the aggregate on behalf of the referendum in a 12 month period. That limit includes expenditures made to get the referendum on the ballot. Once the District's expenditures surpass that amount the District will have to file various reports detailing its expenditures. Please advise us if the District will disseminate neutral factual information and we will advise you of the records the District must keep and file the necessary reports. (The Governor recently signed legislation that allows public bodies to spend money disseminating factual information regarding referenda without having to comply with the *Campaign Disclosure Act*. However, that change will not become effective until July 1, 2010.)

Particular activities regarding the referendum are regulated by the *Ethics Act*. The Act defines the following activities as prohibited political activities when performed during work hours:

- (1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.



- (2) Soliciting contributions, including but not limited to, the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.
- (4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes of for or against any referendum question.
- (6) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.
- (7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.
- (8) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.

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- (11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- (12) Campaigning for any elective office or for or against any referendum question.
- (13) Managing or working on a campaign for elective office or for or against any referendum question.

\* \* \*

- (15) Participating in any recount or challenge to the outcome of any election.



Board Members and employees are not prohibited from performing the activities described above in every instance. Rather, the *Ethics Act* prohibits these activities under the following circumstances:

- A. No *employee* shall intentionally perform any prohibited political activity *during any compensated time* other than vacation, personal or compensatory time.
- B. No *Board Member or employee* shall intentionally use any property or resources of the District in connection with any prohibited political activity.
- C. At no time shall any *Board Member or employee* intentionally require any employee to perform any prohibited activity: (a) as part of that employee's duties, (b) as a condition of employment or (c) during any compensated time off, i.e., holidays, vacation or personal time off.
- D. No *employee* shall be required at any time to participate in any prohibited political activity in consideration for that employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise.
- E. No *employee* shall be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

(Emphasis added.)

An employee may engage in activities that (1) are otherwise appropriate as part of his or her employment duties, or (2) are prohibited when done during work time and are undertaken by the individual on a voluntary basis on non-work time.

Note that paragraph A above prohibits only an employee from performing a prohibited activity and only during compensated time. That sentence does not mention Board Members. In addition, paragraph B above mentions Board Members, but does not prohibit Board Members from performing any of the prohibited political acts. Rather, it only prohibits Board Members from intentionally using any District property or resources in connection with any prohibited activity. Paragraphs C, D and E prohibit Board Members and employees from requiring an employee to perform a prohibited political act or from rewarding employees for doing so.

The prevailing opinion is that the prohibition in paragraph A, above, on performing any of the prohibited political activities does not apply to Board Members because the Act specifically names only employees and because the prohibition is limited to compensated time, and Board Members are not compensated. However, we recommend that Board Members not perform any of the prohibited political activities while functioning in any type of Board Member capacity. Rather, Board Members should perform those activities solely in their private,

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individual capacities. Performing the prohibited activities in a Board Member capacity may bring a Board Member close to violating the other prohibitions of the Act that do apply to Board Members. At the very least, it may give an impression that the Board Member is using his or her position for political purposes.

In summary, the District cannot use District funds to support the referendum. Although it can use District funds to disseminate neutral factual information regarding the referendum, once it exceeds \$3,000 in expenditures it will be subject to the reporting requirements of the *Campaign Disclosure Act*. The *Ethics Act* describes certain activities that employees cannot engage in during their compensated time. However, they are free to engage in those activities on their own time. In addition, the prohibited political activities listed in the *Ethics Act* do not apply to Board Members because they are not employees and are not compensated. However, we recommend that Board Members do not perform any of those activities in their Board Member capacities.

Please feel free to contact me if you have any other questions regarding the *Ethics Act*.

Very truly yours,

SCARIANO, HIMES AND PETRARCA, CHTD.

A handwritten signature in cursive script that reads "Alan M. Mullins".

ALAN M. MULLINS

AMM/ndz

cc: Justino D. Petrarca, Esq.  
Kevin B. Gordon, Esq.

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