



COMMONWEALTH OF KENTUCKY OFFICE OF THE ATTORNEY GENERAL

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August 13, 2024

Attorney General Advisory

Two proposed constitutional amendments will appear on the state-wide ballot when Kentuckians go to the polls this November. Amendment 2, which would enable the General Assembly “to provide financial support for the education costs of students in kindergarten through 12th grade who are outside the system of common (public) schools,” has generated widespread interest from both educators and parents. In this context, the Office of the Attorney General has received numerous questions regarding the potential use of public school resources in connection with the public debate over Amendment 2. The Office issues this Advisory to remind those entrusted with the administration of tax dollars appropriated for public education that those resources must not be used to advocate for or against the Amendment.

Public resources may not be used to advocate for or against Amendment 2

The General Assembly has unequivocally declared that “**Local, state, and federal tax dollars shall not be used to advocate, in partial terms, for or against any public question that appears on the ballot.**” KRS 65.013, *see also* KRS 48.025 (same). This prohibition on the use of tax dollars to campaign on either side of a ballot question necessarily extends to the use of any public resources paid for by those tax dollars to campaign either in support of or in opposition to the question.

KRS 160.290(1) provides that each board of education, among other powers and responsibilities, is required to “have control and management of all school funds” and “may use such funds . . . to promote public education.” Accordingly, it has generally been understood that: “School funds are held to be trust funds for educational purposes which the courts will not permit to be diverted to other even though closely kindred uses, no matter how meritorious the project may appear to be in its practical, ethical or sentimental aspects.” *See* OAG 85-100 (quoting 68 Am.Jur.2d § 95, 440). Thus, this Office has previously held that the use of school resources to advance a political viewpoint—even one viewed by its proponents as pro-education—violates Kentucky law. *See* OAG 74-118.

In OAG 74-118, this Office stated that even the “nominal” “expenditure of resources and time” to promote a constitutional amendment improperly used taxpayers’ dollars and wrongfully interjected political activity into the operation of

public schools. This, the Office opined, violated “the legislative intent to divorce politics from the public schools.” *Id.*

While the First Amendment clearly protects the rights of public school officials, administrators, and educators to express their views on any public matter, they may not use school resources or school time to advance those personal views. In addition to violating Kentucky law, as discussed above, such activities violate the policies that have been adopted by school boards across the Commonwealth, as noted in a recent guidance document issued by the Kentucky School Boards Association.

*Per Policies 03.1324/03.2324: No District employee shall promote, organize, or engage in political activities while performing his/her duties or during the workday. **This includes the use of school property or materials to advance the support of a particular political position.***

Per the U.S. Supreme Court:

Connick v. Myers, 461 U.S. 138 (1983). A [district] employee must be speaking as a citizen on a matter of public concern in order for speech to enjoy protection under the First Amendment.

Garcetti v. Ceballos, 126 S.Ct. 1951 (2006). When a [district] employee is speaking as part of his or her official duties as an employee, s/he is not considered to be speaking on an issue of public concern and “the Constitution does not insulate their communications from employer discipline.”¹

The Office of the Attorney General is continuing to monitor reports from across the Commonwealth regarding this topic and is committed to ensuring that public officials observe the constitutional and statutory limitations prohibiting the use of public resources in connection with the pending ballot questions. The Office is prepared to take any necessary action within its authority to ensure these constitutional and statutory limitations are upheld.

Any questions regarding this advisory may be addressed to the Office at (502) 695-5300 or at www.ag.ky.gov/Contact-Us/.