

In Brief

May 2010

2010 GENERAL ELECTION CALENDAR

TIME TO REVISIT REFERENDUM CAMPAIGNS: GENERAL ASSEMBLY AMENDS ELECTION CODE TO OVERTURN *CITIZENS ORGANIZED* CASE.

The Illinois Appellate Court's decision in *Citizens Organized to Save the Tax Cap v. State Bd. of Elections*, 392 Ill. App. 3 392, 910 N.E.2d 605 (1st Dist.), *appeal denied* 234 Ill. 2d 518 (2009) upset the common assumption that a district which publicized referendum information in a "factual" manner (consistent with the Election Interference Prohibition Act) did *not* have to organize and register as a political committee and file campaign finance disclosure reports under Article 9 of the Election Code. Now, in a welcome change to the Election Code, the General Assembly has amended Article 9 and in particular, the definition of "electioneering communications" (which can be reportable "contributions") to reinstate this understanding.

In *Citizens Organized*, Northfield Township High School District No. 225 had placed a proposed \$94 million building bond issue on the ballot for the November 7, 2006 general election. The district mailed several factual newsletters about the referendum to voters at a total cost of \$12,978.51.

The referendum passed despite opposition from *Citizens Organized to Save the Tax Cap* ("Petitioner"), which filed a complaint in May 2007 with the Illinois State Board of Elections ("SBOE") alleging that the school district's newsletters were electioneering communications under Section 9-1.14 of the Illinois Election Code ("Code"), and that the district's board members had no authority to spend public funds to "advocate" for the referendum. Petitioner also asserted that the district's publicity expenditures

exceeded the statutory \$3,000 threshold which triggers status as a "local political committee," such that the district was required to file campaign finance disclosure statements under the Code.

A SBOE hearing officer found that public funds did not count toward the Code's \$3,000 threshold for disclosure. The hearing officer also found that Section 9-25.1 of the Code permitted the school district to use public funds to inform taxpayers of the upcoming referendum, and that the district was exempt from the Code's disclosure requirements. The SBOE subsequently adopted these findings and dismissed the complaint. Petitioner appealed.

In reversing the SBOE's decision, the First District acknowledged that while Section 9-25.1 prohibits the expenditure of public funds to urge an elector to vote for or against any candidate or proposition, it permits use of public funds to disseminate facts to the public. However, Section 9-25.1 does not explicitly exempt governmental entities from the Code's separate campaign finance disclosure requirements. Thus, the question remained whether the school district's newsletters were electioneering communications that were subject to the Code's disclosure requirements.

The appellate court reasoned that under Section 9-1.14 of the Code (prior to the amendment), an electioneering communication is any communication that refers to a clearly identified question of public policy that will appear on the ballot. The court noted that specifically exempt from the definition were any communications made as part of a non-partisan activity designed to encourage individuals to vote or register to vote. In holding that the school district's newsletters were non-exempt electioneering

communications, the First District noted that the newsletters “clearly refer to the referendum in title and content, and thoroughly discuss it in detail.”

In accordance with the holding of this case, districts were advised to register as political committees if they planned to spend over \$3,000 in disseminating factual information about a referendum question.

General Assembly Comes to the Rescue

In response to *Citizens Organized*, the General Assembly enacted Public Act 96-832. The Act amended Section 9-1.14 of the Election Code to provide that a communication will not be deemed an “electioneering communication” unless the communication is targeted to the relevant electorate and is “susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified...question of public policy.”

Additionally, as a result of the passage of the Act, for a communication to be an “electioneering communication” it must be a broadcast, cable or satellite communication – including radio, television or internet communications.

Therefore, a communication that only disseminates facts about a referendum, even if the communication is not an activity designed to encourage individuals to vote or to register to vote, will not be deemed an “electioneering communication,” and will not trigger the requirement to register as a political committee.

LEGISLATIVE CHANGES TO CAMPAIGN FILING REQUIREMENTS AND MANNER OF DESIGNATING POLITICAL COMMITTEES

Public Act 96-832 has also changed the manner in which political committees are designated and certain requirements concerning campaign finance filings.

Prior to Public Act 96-832, a political committee formed to support or oppose public questions, and spending more than the statutorily specified minimum amount (\$3,000) had to register as either a “state political committee” or a “local political committee” depending on whether the referendum would be presented to voters in more than one county. Now, no later than January 1, 2011, every political committee must be designated as (1) a candidate political committee; (2) a political party

committee; (3) a political action committee; or (4) a ballot initiative committee.

Citizen committees formed to support or oppose public questions *after* July 1, 2010 will be required to organize as a “ballot initiative committee”, and to indicate whether the committee is in support of or in opposition to the referendum proposition. A citizen committee which forms to support or to oppose a referendum proposition *prior* to July 1, 2010, will need to designate itself as a ballot initiative committee by December 31, 2010. 10 ILCS 5/9-2(h). A ballot initiative committee’s name must include words describing the ballot question and whether the group supports or opposes the question. 10 ILCS 5/9-2(e). Groups organizing as a ballot initiative committee should designate a chair and treasurer; one person may serve in both roles. *No contribution may be accepted nor expenditure made when there is a vacancy in the office of chair or treasurer*, and no expenditure can be made on behalf of the committee without the authorization of its chair or treasurer, or their duly designated agents. 10 ILCS 5/9-2.

State law provides that a ballot initiative committee is “created” on the date that the committee exceeds the \$3,000 threshold in either receipts (contributions) or expenditures in support of or in opposition to a referendum question. The \$3,000 threshold applies to any contributions or expenditures received or made with the purpose of securing a place on the ballot for the referendum question, advocating defeat or passage of the question, or engaging in electioneering communication about the proposition. A committee that has not reached the \$3,000 threshold should track the money it has put into its bank account, and any money it has spent on advocacy or electioneering communications to determine if and when it crosses the threshold. Tracking is done in the aggregate and will not necessarily match the daily amount contained in a committee’s bank account. Within 10 days of the date of creation of the ballot initiative committee, or two days if within 30 days of an election, the committee must file a D-1 Statement of Organization with the SBOE. If within 30 days of an election, the Statement of Organization must be filed in person, by fax or by e-mail. 10 ILCS 5/9-2, 9-3.

In the campaign finance context, a “contribution” is defined as “anything of value knowingly received in connection with ... any question of public policy.” 10 ILCS 5/9-1.4. The term also includes anything of value

constituting an “electioneering communication.” *Id.* and 10 ILCS 5/9-1.14. A ballot initiative committee may accept contributions in any amount from any source, as long as it makes the appropriate disclosure in its Statement of Organization and other filings.

The term “expenditure” means a payment, loan or gift of money or anything of value provided “in connection with a question of public policy.” 10 ILCS 5/9-1.5. *Anything of value* includes all things, services, or goods, regardless of whether they may be valued in monetary terms according to ascertainable market value. Anything of value which does not have an ascertainable market value must be reported by describing the thing, services, or goods contributed and by determining the contributor’s certified market value. 10 ILCS 5/9-1.12 and 9-6.

The treasurer must keep a detailed and exact account of the total contributions and total expenditures (with proof of payment), names and addresses of all parties making a contribution, date the contribution was received, and name and address of the person collecting or accepting the contribution for the committee. The treasurer must preserve all such records and accounts for two years. 10 ILCS 5/9-7.

The treasurer of the ballot initiative committee must file, with the State Board of Elections, quarterly reports of contributions and expenditures. Prior to Public Act 96-832, the reporting requirement (the D-2 Form) was on a semi-annual basis.

The quarterly reports shall cover the period January 1 through March 31, April 1 through June 30, July 1

through September 30, and October 1 through December 31 of each year. The reports shall be filed no later than the 15th day of the month following each period, and shall be filed regardless of whether contributions or expenditures have been made or received during the time period. To be safe and to ensure that there will be no fines or penalties, the report should be mailed and postmarked at least 72 hours prior to the filing deadline.

KEY DATES ON THE 2010 GENERAL ELECTION CALENDAR

While every effort has been made to verify the information in this bulletin, you should consult with legal counsel regarding your particular circumstances. For instance, some deadlines can “float” depending upon the date on which a particular prior act occurred. If any dates shown below change due to legislative or administrative action, we will issue a supplemental bulletin describing the changes.

Also, certain dates fall on Saturdays, Sundays or legal holidays. The applicable deadline may be moved forward or backward, or remain the same depending on the law for that deadline and whether the pertinent government office is open. Action on referendum questions should be taken early to ensure that no challenge can be made to the timeliness of that action.

Complete information and forms are available on the State Board of Elections’ web site, www.elections.state.il.us. Chapter, Act and Section references are to the Illinois Compiled Statutes.

2010 GENERAL ELECTION CALENDAR – KEY DATES

Date	Days Before Election	Person Responsible	Event
Saturday, 7/17/10	108	Board Secretary (mandatory if applicable)	If Board passes resolution to take action subject to potential back door referendum (e.g., issuance of working cash fund bonds, cf. 105 ILCS 5/20-7), notice must be published no later than 108 days before election (78 days plus 30 days). Note: The election specified must be within 15 months of notice of publication. (10 ILCS 5/28-2.)
Monday, 8/16/10	78	Board Secretary or Municipal Clerk	Last day to file petitions for referenda for the submission of questions of public policy to the Board Secretary or Municipal Clerk. (EXCEPTIONS: propositions to create a political subdivision and referenda held under the provisions of Liquor Control Act Article IX and Property Tax Code Section 18-120.) (10 ILCS 5/28-2(a), 28-6, 28-7.)
Monday, 8/23/10	71	Objector	Last day to file objections to petitions to submit local public policy questions to referendum. (EXCEPTIONS: propositions to create a political subdivision and referenda held under provisions of Liquor Control Act Article IX and Property Tax Code Section 18-120.) Objections to petitions for local referenda are filed with same office that received the original petitions. (10 ILCS 5/10-8, 28-4.)
Monday, 8/30/10	65* (See note to right in "Event" column.)	Municipal or School Board	Last day for Board to adopt resolution or ordinance for referendum on binding public policy question (not less than 65 days before election). (10 ILCS 5/28-2(c), 28-5.) <i>*Note: Because the 65th day before the election falls on Sunday, August 29, 2010, the law permits adoption of a resolution through Monday, August 30, 2010. We recommend taking action no later than Friday, August 27, 2010.</i>
Monday, 8/30/10	65* (See note to right in "Event" column.)	Municipal or Township Board	Last day for Municipal or Township Boards to place advisory referenda on the ballot by resolution. (55 ILCS 5/5-1005.5; 60 ILCS 1/80-80; 65 ILCS 5/3.1-40-60; 70 ILCS 1205/8-30.) School and college boards may not initiate advisory referenda by their own action. <i>*Note: Because the 65th day before the election falls on Sunday, August 29, 2010, the law permits adoption of a resolution through Monday, August 30, 2010. We recommend taking action no later than Friday, August 27, 2010.</i>
Thursday, 9/2/10	61	Board Secretary or Municipal or Township Clerk	Last day for local election official to certify all public questions to each election authority. (10 ILCS 5/28-5.)

Date	Days Before Election	Person Responsible	Event
Thursday, 9/23/10	40	Election Authority, Voter	First day for registered voters to apply for an absentee ballot. (10 ILCS 5/19-2.)
Monday, 10/4/10	29	Election Authority, Board Secretary, or Municipal or Township Clerk	<p>First day for election authority to publish Notice of General Election and Notice of Referenda. (10 ILCS 5/12-4 and 12-5.) The election authority shall post a copy of the notice at its principal office.</p> <p>First day for Board Secretary or Municipal or Township Clerk as local election official to post, at the principal office of the District, Municipality or Township, a copy of the notice of any referenda to be submitted to the voters of the political subdivision. (10 ILCS 5/12-5.)</p>
Tuesday, 10/5/10	28	Election Authority	<p>Last day for registration or transfer of registration in office of the election authority. Exception: grace period registrants. (10 ILCS 5/4-6, 4-16; 5-5, 5-23; 6-29, 6-50, 6-53, 6-54.)</p> <p>Last day for registration of voters by deputy registrars, including municipal, township and road district clerks and precinct committeemen. (10 ILCS 5/4-6.2, 5-16.2, 6-50.2.)</p>
Sunday, 10/10/10	23	Election Authority	Suggested last day for municipal, township and road district clerks to receive from the election authority absentee ballot materials for in-person absentee voting. (10 ILCS 5/19-2.1.)
Monday, 10/11/10	22	Municipal, Township, or Road District Clerk	<p>First day for local election officials who are authorized to do so by election authority, to conduct in-person absentee voting. (10 ILCS 5/19-2.1.)</p> <p>First day for early voting at the office of the election authority and locations designated by the election authority. (10 ILCS 5/19A-15.)</p>
Monday, 10/25/10	10* (See note at right in "Event" column.)	Election Authority, Board Secretary, or Municipal or Township Clerk	<p>Last day for election authority to publish Notice of General Election and Notice of Referenda. 10 ILCS 5/12-4 and 12-5. The election authority shall post a copy of the notice at its principal office.</p> <p>Last day for Board Secretary or Municipal or Township Clerk as local election official to post, at the principal office of the District, Municipality, or Township, a copy of the notice of any referendum to be submitted to the voters of the political subdivision. (10 ILCS 5/12-5.)</p> <p><i>*Note: Because the 10th day before the election falls on Saturday, October 23, 2010, the law permits publication of the notices through Monday, October 25, 2010.</i></p>

Date	Days After Election	Person Responsible	Event
Tuesday, 10/26/10	7	Election Authority, Voter	Last day of grace period registration in the office of the election authority or at a location designated by election authority. (10 ILCS 5/4-50; 5-50; 6-100). Last day of grace period voting at the election authority's office, or location designated by election authority, or by mail. (10 ILCS 5/4-50; 5-50; 6-100).
Thursday, 10/28/10	5	Election Authority, Voter	Last day for early voting at the office of the election authority and locations designated by the election authority. (10 ILCS 5/19A-15).
Tuesday, 11/2/10	0	Election Authority	GENERAL ELECTION NOTE: General Election returns are to be immediately delivered to the election authority from whom the General Primary Election ballots were obtained. (10 ILCS 5/17-21; 17-22).
Tuesday, 11/23/10	21	Election Authority	Last day for canvassing of election results, including referenda results, by local election authority (county clerk or election commission). (EXCEPTION: State Board of Elections as canvassing board.) (10 ILCS 5/7-56, 18A-15(a); 22-17)

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