School boards may expend reasonable amount of school district funds to impartially place pertinent facts before voters, and members may orally espouse affirmative cause, but cannot use school district funds to promote an affirmative vote on the proposal.

May 24, 1966

159a-3

Messrs. Doherty, Rumble & Butler
Attorneys for Independent School District No. 197
1000 First National Bank Building
Saint Paul, Minnesota 55101

Attention: Mr. Eugene M. Warlich

Gentlemen:

In your letter to Attorney General Robert W. Mattson, you request an opinion.

FACTS

"Recently Independent School District No. 197 conducted an election for authority to issue bonds for improvement and construction of schools. Prior to and during the course of the election 'campaign' presentations were made by members of the Board to various citizens' groups.

"During the same period certain literature was published. A copy of a Fact Book is enclosed. This was published at the expense of the Board. In addition, another brochure was published entitled 'Why?' A copy of this also is enclosed. The cost of publication of this was borne by the organization engaged as financial consultant for the district. The mailing cost was paid for by the school district. You will note on the reverse side of this brochure the following: 'We urge you to vote Yes on Tuesday, February 3, 1966.' Under that are listed the names of the Board of Education."

QUESTIONS

"(1) In making oral presentations to citizens' groups concerning a forthcoming bond election may members of the School Board of an independent school

district advocate the passage of a bond issue for the construction, modification, etc. of schools?

"(2) During the 'campaign' involving the question of the issuance of bonds for the construction, modification, etc. of schools of an independent school district may school districts pay the mailing cost of literature printed at the expense of others, which literature urges in the name of the school board or otherwise the passage of the bond issue, so long as the expenses are reasonable?

"(3) During the campaign involving the question of the issuance of bonds for the construction, modification, etc. of schools may an independent school district pay for the cost of the literature, as well as the mailing cost of literature which urges in the name of the School Board or otherwise the passage of the bond issue, so long as the expenses are reasonable?"

OBSERVATIONS

"We have independently researched the above captioned matter and it appears that the Corrupt Practices Act does not apply to school district elections. Johnson v. DuBois, 208 Minn. 557. In addition, Chapter 211 does not by its terms appear to cover such elections nor is it suited thereto. In addition, we have examined Opinions of the Attorney General, 159b-11 dated September 17, 1957, and 159a-3 dated May 25, 1962 which, in our opinion, do not answer the questions herein asked. Finally, we know that many of the members of our Board have felt restricted by a concept, whether valid or not, that they were precluded from advocating the passage of such an issue either orally or by literature.

"While it is our view that so long as the expenses are reasonable there should be no such limitation either as to oral presentations or presentations by literature paid for by a school district, the answer is not clear. It would seem that as the Board has the authority to operate the schools, it should be allowed to advocate that which it promulgates subject to their being a specific restriction against it. It should be able to expend reasonable sums of the district to do so. It appears hypocritical to be unable to espouse a cause when it is the Board itself which has sponsored the cause."

OPINION

As stated in Ops. Atty. Gen. 159a-3, May 25, 1962 and 159b-11 September 17, 1957 (copies enclosed), a school board may expend a reasonable amount of school district funds to apprise the voters in the district of facts pertinent to the proposal. You ask whether the Board can go further than that and include in such factual submission a statement: "We urge you to vote Yes on Tuesday, February 9, 1966" and the names of the Board of Education listed thereunder.

It has been held that a municipal corporation lacks authority to incur indebtedness or appropriate funds for the conduct of a campaign to secure a favorable vote on a proposed bond issue. 64 C.J.S. "Municipal Corporations" § 1838, p. 343; 15 McQuillin, "Municipal Corporations" (3d Ed.) § 39.21. In Elsenau v. City of Chicago, 165 N.E. 129 (Ill.), the court stated:

> "The amended bill charges, and the demurrers admit, that the advertising of which complaint is made did not purport to be an impartial statement of facts for the information of the voters, but that it was an attempt, partisan in its nature, to induce the voters to act favorably upon the bond issues submitted at the election. The conduct of a campaign, before an election, for the purpose of exerting an influence upon the voters, is not the exercise of an authorized municipal function and hence is not a corporate purpose of the municipality. ***"

More particularly appropos is the case of Citizens to Protect Pub. Funds v. Board of Education, 98 Atl. (2d) 673 (N.J. – Op. by Judge Wm. J. Brennan, Jr., now Associate Justice of the U. S. Supreme Court), where the school board put out a factual sheet on a

school bond issue to be voted upon, and it placed on the cover and on two of the pages the words "Vote Yes" and "Vote Yes – December 2, 1952" and further it included an entire page of argument as to what will happen if the bond proposal fails.

The court upheld the right of the Board of Education to present the facts to the voters. It then stated (pages 677-678):

> "[5] But the defendant board was not content simply to present the facts. The exhortation 'Vote Yes' is repeated on three pages, and the dire consequences of the failure so to do are over-dramatized on the page reproduced above. In that manner the board made use of public funds to advocate one side only of the controversial question without affording the dissenters the opportunity by means of that financed medium to present their side, and thus imperilled the propriety of the entire expenditure. The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint. The expenditure is then not within the implied power and is not lawful in the absence of express authority from the Legislature. ***
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> "* * * * *
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> "We do not mean that the public body formulating the program is otherwise restrained from advocating and espousing its adoption by the voters. Indeed, as in the instant case, when the program represents the body's judgment of what is required in the effective discharge of its responsibility, it is not only the right but perhaps the duty of the body to endeavor to secure the assent of the voters thereto. The question we are considering is simply the extent to and manner in which the funds may with justice to the rights of dissenters be expended for espousal of the voters' approval of the body's judgment. Even this the body may do within fair limits. The reasonable expense, for example, of the conduct of a public forum at which all may appear and freely express their views pro and con would not be improper. The same may be said of reasonable expenses incurred for radio or television broadcasts taking the form of debates between proponents of the

> differing sides of the proposition. It is the expenditure of public funds in support of one side only in a manner which gives the dissenters no opportunity to present their side which is outside the pale."

We feel that if these questions were presented to our courts, their decision would be in harmony with the New Jersey opinion here cited, and we must therefore give you a negative answer to your questions (2) and (3).

With respect to the individual members of the board expressing their views orally, they, like other public officials, are free to appear before citizens' groups to support their decision and advocate approval of a bond issue. Accordingly, we answer your first question affirmatively.

Very truly yours

ROBERT W. MATTSON
Attorney General

LINUS J. HAMMOND
Assistant Attorney General

LJH:dk

Enc.