

## New Law Limits Ability of Local Governments and School Districts to Communicate Regarding Ballot Questions

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January 8, 2016

On January 6, 2016, Governor Rick Snyder signed into law Public Act 269 of 2015 ("Act 269"), which amends the Michigan Campaign Finance Act, Act 388, Public Acts of Michigan, 1976, as amended ("Act 388").

Among other changes, Act 269, which was given immediate effect by the Legislature, makes it a misdemeanor during the period 60 days before an election on any local ballot question for a local government or any person acting for the local government to use public funds or resources to disseminate information referencing the ballot question to electors by means of radio, television, mass mailing or prerecorded telephone message.

"Mass mailing" is defined to be a "mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period." Thus, it appears that public funds may be used to produce or disseminate factual information concerning a local ballot question by means of door hangers, live telephone calls, emails, websites, social media, and live meetings and town halls as long as they are not broadcast.

The new prohibitions create a host of unanswered questions regarding the extent to which public officials may discuss a local ballot question in the ordinary course of performing their duties, such as board or council meetings which are cable-broadcast, press releases and press interviews. For example, may a member of a governing body respond to a public comment about a local ballot question asked during a meeting that is televised? May a school superintendent discuss a local ballot question if he or she is being interviewed during work hours by a local media outlet? According to Governor Snyder, he has asked the Legislature to enact additional legislation to clarify Act 269.

Act 269 does not prohibit a campaign committee from disseminating information to the electors of a local government regarding a local ballot question, nor does Act 269 limit a public body from:

- disseminating factual information concerning a local ballot question more than 60 days before the election;
- discussing a local ballot question in any manner and at any time that does not involve the expenditure of public funds or the use of public resources;
- distributing fewer than 500 pieces of mail matter of an identical or substantially similar nature in each of the 30 day periods during the 60 day prohibition period; and
- producing and disseminating information that generally discusses issues relevant to the local unit of government that does not reference a local ballot question.

If you have any questions about Act 269, please contact your Miller Canfield attorney or any of the people listed on this e-alert.

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