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Dr. John D. Barge, State School Superintendent
Georgia Department of Education
205 Jesse Hill Jr. Drive SE
Atlanta, GA 30334

RE: Use of public resources by local government entities to influence ballot questions

Dear Superintendent Barge:

I am writing at your request regarding the issue of local school boards or other local educational entities using public resources to advocate or oppose constitutional amendments.[1]

Local school boards do not have the legal authority to expend funds or other resources to advocate or oppose the ratification of a constitutional amendment by the voters. They may not do this directly or indirectly through associations to which they may belong.[2]

The Use of Public Funds to Influence Elections

Counties may not use their resources to persuade voters to support or oppose a ballot question. Such electoral advocacy to voters is not permitted as an exercise of the general power to administer county government or otherwise. The Georgia Supreme Court settled and explained this rule in *Harrison v. Rainey*, in which county commissioners were mailing brochures at county expense urging voters to approve a referendum changing constitutional provisions regarding county government. 227 Ga. 240 (1971). County employees promoted the referendum, and county funds paid attorneys to assist. *Id.* The Court acknowledged that "the chairman and the members of the Board of Commissioners have the right, in their individual capacities, to support the adoption of the Constitutional Amendment." *Id.* at 241. However, they had no constitutional "right of free speech" to speak "at county expense." *Id.* at 243. Instead, they were limited in their official activities to enumerated powers and purposes of taxation, none of which expressly permitted the county "to procure the adoption of a Constitutional amendment." *Id.* at 242.

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[1] This analysis focuses exclusively on local entities; although "local school boards" is used throughout the letter for convenience, the conclusion applies equally to any other local educational entity or person expending public resources.

[2] It is well-settled in Georgia law that government entities may not do indirectly what they may not do directly. *See, e.g., Richmond County v. McElmurray*, 223 Ga. 440, 443 (1967); 1974 Op. Att'y Gen. U74-41.

Responding to the commissioners' argument that their activities were authorized by implication or interpretation from their general power to pay the "expenses of administration of county government," the Court held that procuring legal work to draft legislation for a new form of government, issuing brochures, and conducting other referendum-related advocacy with employees were outside the power to administer government. *Id.* at 242-43. The Court has subsequently reiterated the principle that county resources cannot be expended to "procure or defeat" constitutional amendments. *See McKinney v. Brown*, 242 Ga. 456 (1978) (trial court erred by not enjoining "an advertising campaign to influence voter approval of a constitutional amendment").

The Supreme Court has since given an additional reason for its decisions in *Harrison v. Rainey* and *McKinney v. Brown*, reaffirming and strengthening them, while drawing a distinction between advocacy directed at legislators and advocacy directed at electors. In *Peacock v. Georgia Municipal Association*, 247 Ga. 740, 742 (1981), police officers and other citizens sued the Georgia Municipal Association and the Association County Commissioners of Georgia to enjoin their use of public funds from cities and counties to influence state legislators and to have the public funds returned, on the ground that the local governments had no authority to spend public funds for the purpose. The Court permitted the municipal defendants to use public money to lobby the legislature, but rejected plaintiffs' assertions that *Harrison v. Rainey* and *McKinney v. Brown* supported their claim. "The expenditure by a political subdivision of public money to influence the citizens and voters of the entity contains within it the possibility of the corrupt use of influence to perpetuate a local administrator's power."*Id.* However, the Court said that the impermissible electoral advocacy targeting voters is "far different from the expenditure of tax monies to inform and influence the General Assembly on behalf of these citizens and voters in regard to issues involving the respective political subdivision." *Id.*

These three decisions definitively establish that local government entities are prohibited from expending resources in supporting or opposing a ballot referendum unless they have specific constitutional or statutory authority to do so.

Powers of School Boards in Use of School Funds

Neither the Georgia Constitution nor any state statute includes any express or specific provision of law authorizing a local school board to engage in electoral advocacy. The Georgia Constitution creates a school district in each county and provides that "[e]ach school system shall be under the management and control of a board of education." Ga. Const., Art. VIII, § V, ¶ II.

In authorizing the school boards to certify for collection an ad valorem tax for local schools, the Constitution constrains its use. "School tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes." Ga. Const., art. VIII, § VI, ¶ I. The Supreme Court has held that although "this provision vests broad powers in

school districts to do those things properly determined to be necessary or incidental to public education, this power must and does have its limits." *Woodham v. City of Atlanta*, 283 Ga. 95, 97 (2008) (quotations omitted) (holding school funds could not be used for Beltline TAD).

Similarly, Georgia law provides:

> The school funds shall be used for educational purposes and may be used to pay the salaries of personnel and to pay for the utilization of school facilities, including school buses, for extracurricular and interscholastic activities, including literary events, music and athletic programs within individual schools and between schools in the same or in different school systems when such activities are sponsored by local boards of education as an integral part of the total school program, and for no other purpose.

O.C.G.A. § 20-2-411. This provision applies equally to state appropriations disbursed by the Department of Education and to local funds raised by local taxation. *Cf.* O.C.G.A. § 20-2-410. These provisions have been construed narrowly to ensure that school funds be used only for authorized educational purposes. *See, e.g.*, 1985 Op. Att'y Gen. 84-85 (school funds cannot be used to purchase billboard space by a local school system for the display of public relations advertisements); 1990 Op. Att'y Gen. U90-3 (school funds cannot be used to pay superintendent's dues in local chamber of commerce).[3] None of the funding authorities granted to local school boards may be lawfully extended to include electoral advocacy.

In short, Georgia law provides that local government entities, including county school boards and charter schools, may not expend local funds or resources on electoral advocacy.

You have also requested that I advise you regarding any duty that may exist to take enforcement action against local school boards that have violated this prohibition. I will provide that advice in a subsequent letter.

Sincerely,

Samuel S. Olens
Attorney General

Cc: Ms. Barbara Hampton, CPA
Chair, State Board of Education

[3] This prohibition applies with equal force to the use of public funds or resources to print, copy, distribute or otherwise disseminate advocacy materials on behalf of private parties or organizations.