

Library Millage Elections and Millage Campaigns

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DISCLAIMER

This outline is intended as general information only and may not be relied upon as legal advice. Libraries should always consult with their legal counsel regarding legal matters including, but not limited to, millage proposals and millage elections.

Topics

- Millage Proposals and Election Procedures
- Millage Campaigns – Public Funds and Resources

I. Millage Proposals and Election Procedures

A. Ballot Proposal Requirements

- Election Law
- A ballot proposal must not create prejudice for or against the proposal. A “Yes” vote must be in favor of the proposal and a “No” vote must be against the proposal. MCL 168.643a.

Section 24f

General Property Tax Act

- Section 24f of the General Property Tax Act (MCL 211.24f) requires millage ballot proposals to contain certain information as follows:
 - Millage rate to be authorized
 - Maximum number of mills authorized to be levied
 - 1 mill equals \$1.00 per \$1,000 of taxable value.

Section 24f, cont'd.

Estimated amount of revenue to be collected in the first year of the millage levy

- The ballot proposal must state in dollars the total revenue estimated to be collected in the first year of the levy. (Example: “If approved, the millage will provide estimated revenues of \$_____ in the first year of the levy”).
- The estimated amount is calculated based on the millage rate levied on taxable value for first year of levy.
- Review carefully. Don't hesitate to seek assistance from the county bureau of equalization. The calculation of estimated revenues should also take into account any Industrial Facility Taxes (IFTs).

Section 24f, cont'd.

Duration of the millage in years

- Identify the duration of the millage by stating the number of years as well as by stating the calendar years in which the millage may be levied. Example: “... for a period of ten (10) years (2014 through 2023, inclusive).”
- If the proposed millage is in perpetuity, the ballot proposal must so provide by including the phrase “in perpetuity” or a similar phrase. District library millages may be in perpetuity.
- **CAUTION:** Confer with legal counsel whether your millage may be perpetual. Generally, some extra-voted millages (such as county millages) are subject to a 20-year constitutional limit.

Section 24f, cont'd.

A clear statement of the purpose of the millage

- As a general rule, broad language should be employed to provide flexibility. Example: “... for all library purposes permitted by law.”
- If the purposes of the millage are limited by the ballot proposal, the local unit cannot expend the millage revenues for other purposes.

Section 24f, cont'd.

A clear statement indicating whether the proposed millage is a renewal of a previously authorized millage or the authorization of a new additional millage

- Renewal. If a local unit millage is expiring, the local unit may request renewal of the millage. However, a “renewal” is limited to the previously authorized millage rate as rolled back under the Headlee Amendment.

Section 24f, cont'd.

Example: If the original authorized millage was 1 mill for 20 years and the Headlee Amendment rollback reduced the millage to 0.78 mills, the “renewal” of the millage is limited to the 0.78 mill rate. If the local unit wishes to obtain voter approval of the original 1 mill, the ballot question must refer to 0.78 mills as a “renewal” and 0.22 mills as a “new additional” millage.

Section 24f, cont'd.

- Separate Questions / Renewal / New Additional. If a local unit is seeking both a renewal and a new additional millage and if the new additional millage is greater than 0.5 mills, the local unit must submit two separate questions to the voters.
- Example: If the original authorized millage was 1 mill, the millage has been rolled back by Headlee to 0.78 mills, and the local unit seeks voter approval of a new millage rate of 1.3 mills, the local unit must submit two ballot questions to the voters. The first ballot question would seek approval of the “renewal” of 0.78 mills and the second ballot question would seek approval of a “new additional” millage of 0.52 mills (1.3 mills - .78 mills). If both are approved, the new levy would amount to 1.3 mills.

Section 24f, cont'd.

New Additional Millage

- If the local unit is seeking a millage for the first time (or is seeking approval of a new additional millage above the local unit's current millage), the ballot proposal must refer to the millage as a “new additional” millage.

Section 24f, cont'd.

Disclosure of Disbursements (Tax Capture)

- The ballot question must fully disclose each “local unit of government to which the revenue from that millage will be disbursed.” The term “local unit” is defined to mean a “county, city, village, township, school district, intermediate school district, community college district, public library or local authority created under state law.” This requirement was added to MCL 211.24f by Act No. 244 of 2000.
- For a millage levied for support of a county, city, village, or township library, the millage proposal should state that the millage revenues will be disbursed to that library.

Section 24f, cont'd.

- Section 24f is commonly understood to mean also that disclosure of “capture” of millage revenues by tax increment authorities must be specifically included in the ballot proposal. The entities that may capture local millages include Downtown Development Authorities (DDAs), various “authorities” such as Tax Increment Financing Authorities (TIFAs), Local Development Finance Authorities (LDFAs), Brownfield Redevelopment Authorities (BRAs), Corridor Improvement Authorities (CIAs), and others. (Additional authorities may be added by the Legislature.)
 - The list of tax capturing authorities is growing longer in many communities.
 - Review this issue carefully with legal counsel.

Section 24f, cont'd.

Requirements for bond issues

- In addition to other legal requirements, a proposal authorizing the issuance of bonds must state:
 - The principal amount to be borrowed.
 - The maximum number of years the bonds may be outstanding, exclusive of any refunding.
 - A clear statement of the purpose for which the proceeds of the bonds will be used.

Section 24f, cont'd.

- For bonds other than bonds intended to be repaid from a separate revenue source or from taxes levied in less than the entire taxing unit, the estimated millage that will be levied in the first year that the levy is authorized and the estimated simple average annual millage rate that will be required to retire the debt.

Section 24f, cont'd.

- For bonds intended to be paid from a separate revenue source or from taxes levied in less than the entire taxing unit, the primary source of the revenue that is intended to be used to retire the bonds.

B. Number of Millage Proposals Per Year

- Number of Elections

- The General Property Tax Act provides that a taxing unit shall not hold more than 2 millage elections in a calendar year. MCL 211.24f(4).
- The District Library Financing Act provides that a district library may not submit to voters more than one (1) proposal to issue bonds during a calendar year. MCL 397.290.
- Pending Legislation: HB 4887 would limit millage elections (new, additional and renewal millages) to the November general elections (i.e., the November election in even years).
- Pending Legislation: HB 5584 would eliminate February elections.

C. Timing of Elections

- Election Consolidation
 - Four election dates for regular and special elections: February (fourth Tuesday), May (first Tuesday after first Monday), August (first Tuesday after first Monday), and November (first Tuesday after first Monday).
- Regular Elections - Generally
 - Cities – August or September primary and November regular election in odd years.
 - Townships – August primary and November regular election in Presidential election years.
 - Counties – August primary and November regular election in even years.
 - School Districts – Effective January 1, 2012, school districts are required by PA 233 of 2011 to hold their regular elections of school board members at the even year November election.

Timing of Elections, cont'd.

- Special Elections: Local units may hold a special millage election on any of the four regular election dates under election consolidation.
- Pending Legislation: HB 4887 would limit millage elections (new, additional, and millage renewal elections) to the general November election only.
- Pending Legislation: HB 5584 would eliminate February elections.

Timing of Elections, cont'd.

Other Timing Considerations

- Headlee Rollback: A millage approved by voters before April 30 (i.e., at a February election) is subject to the Headlee rollback for that year. A millage approved after May 1 (i.e., at the May, August, or November elections) is not subject to the Headlee rollback for that first year. MCL 211.34d(11).

Timing of Elections, cont'd.

- Levy Certification: The general rule is that a millage levy must be certified to the county and local clerks by September 30 for a levy on the following December 1. MCL 211.36.
- The General Property Tax Act provides, however, that millages approved at a November election shall be levied on the following December 1 but this requires the county board to amend its apportionment of taxes adopted at its annual meeting in October. MCL 211.36(4),(5). As a practical matter, this requires the cooperation of the county and local units. A local unit should review this with the county and legal counsel before proceeding with a November election. MCL 211.36(5).

Timing of Elections, cont'd.

Deadlines/Certification of Millage Proposal

- The millage proposal must be approved and certified by the resolution of the governing body of the taxing unit.
- Following adoption of the resolution, the ballot proposal is certified to the county clerk. However, for district libraries with a school district as a participating municipality, the ballot proposal is certified to the school district election coordinator.

Timing of Elections, cont'd.

- The Michigan Election Law now requires all local ballot proposals to be certified to the county clerk (or school district election coordinator for district libraries with a school district as a participating municipality) at least 84 days before any regular election date or special election.
MCL 168.646a(2).
- PA 253, effective April 26, 2014, increased the certification deadline from 70 days to 84 days before the election. This new deadline may be problematic when a millage vote fails as there will be little time to place the millage proposal on the ballot for the next election. It may also create some potential timing issues related to millage renewals and Headlee rollbacks.

Timing of Elections, cont'd.

- Local units should work with the county clerk and local clerks to ensure that all election law requirements are satisfied. The county clerk and the Elections Division of the Secretary of State both can provide information on election procedures and deadlines.
- The local unit should develop an election schedule identifying the election requirements and deadlines. See the Michigan Secretary of State/Elections website for election calendars for all elections, including the deadline for certifying proposals to the county clerk (or the school district election coordinator for certain district libraries).

Timing of Elections, cont'd.

General Recommendations

- Plan early! It is never too soon to start planning for a successful millage election.
- Determine how much time you will need to prepare for a millage election including any capital campaign for a building project and the formation of a ballot question campaign committee independent of the local unit (if one is expected to form).

Timing of Elections, cont'd.

- Determine the time needed to prepare and approve the millage ballot proposal, call the election, and comply with all election procedures and requirements.
- With assistance of legal counsel, prepare and implement a schedule for your millage election.

II. Millage Campaigns: Public Funds and Resources

A. Historical General Rules Regarding Use of Public Funds Influencing Election

- Public funds cannot be expended to influence the outcome of an election. OAG 1987-88 No. 6423, p. 33 (February 24, 1987).

Factual Information

- It has been recognized, however, that public funds may be used to inform electors of the facts surrounding a millage proposal. OAG 1987-88 No. 6531, p. 367 (August 8, 1988).

B. Section 57/Campaign Finance Act

- After a number of Attorney General Opinions had addressed the use of public funds in relation to millage proposals, Section 57 was added to the Campaign Finance Act (MCL 169.257) in 1997 to provide as follows:

A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under Section 4(3)(a).

Section 57/Campaign Finance Act, cont'd.

- Section 57 of the Campaign Finance Act thus prohibits a public body, and any official, employee, or other person acting on behalf of a public body, from using funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to influence the outcome of an election.

Section 57/Campaign Finance Act, cont'd.

- The term “public body” is very broadly defined in MCL 169.211(6) and would include any public library or public library board.
- Section 57 does, however, establish six “safe harbors,” i.e., activities which do not violate the Campaign Finance Act.

Section 57/Campaign Finance Act, cont'd.

The six “safe harbors” are as follows:

- The expression of views by an elected or appointed public official who has policy making responsibilities.
- The production or dissemination of factual information concerning issues relevant to the function of the public body.
- An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

Section 57/Campaign Finance Act, cont'd.

- The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.
- The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.
- The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

Section 57/Campaign Finance Act, cont'd.

- Due to criminal penalties and civil fines for violation of Section 57, library board members and staff should use extreme caution when determining how a library's funds, facilities, and employees will be used to provide information about a proposed millage.

C. Application of General Rules/Campaign Finance Act

- Pamphlets/Written Materials
 - Under Section 57 of the Campaign Finance Act, a public body may expend funds for the “production or dissemination of factual information” regarding millage proposals. MCL 169.257(1)(b)).
 - The Secretary of State interprets this to mean that as long as the information is factual, the public body is not required to “balance” the information or to propound both sides of an issue.

Application of General Rules, cont'd.

Examples of Factual Information

- Rate and term of millage.
- The amount of additional taxes paid by a homeowner living in a house with a specified taxable value.
- The amount of additional revenue that will be generated for the library by the millage.
- Factual information on current library operations such as budget, hours of operation, staffing, etc.
- Other factual information.

Application of General Rules, cont'd.

Express Advocacy is Prohibited

- In contrast, a public body may not expend funds for the preparation, printing, and distribution of pamphlets or other materials which advocate a vote in favor of a millage proposal.
- In considering Section 57 of the Campaign Finance Act, the Secretary of State has adopted an “express advocacy” test in interpretive statements and declaratory rulings under the Act.

Application of General Rules, cont'd.

Examples of Advocacy

- Pamphlet urging “Vote Yes” on millage.
- Pamphlet otherwise advocating a vote in favor of the millage proposal. Avoid typical campaign slogans such as “Vote for Your Library,” “Support Your Library Millage”, “Your Library Needs Your Vote,” “Cast Your Vote for . . . “, etc.

Application of General Rules, cont'd.

Employees/Officials/Board Members

- Staff/employees may not engage in campaign activities when the employee is being compensated for the performance of duties as a public employee. OAG 1987-88 No. 6423, p. 33 (February 24, 1987).
- Staff/employees may, however, be involved in the preparation of factual materials or meetings designed to disseminate factual information on the millage proposal.

Application of General Rules, cont'd.

Employee/Officials/Board Members

- On off-hours (i.e., when employees are not being compensated for performance of public duties), staff/employees may engage in political activities including support or opposition to a ballot proposition. MCLA 15.404.
- Section 57 of the Campaign Finance Act provides that elected officials, appointed officials, and staff/employees, when acting on their own personal time and not acting for a public body, may express their own personal views, expend their own personal funds, or provide their own personal volunteer services. MCL 169.257(1)(f).

Application of General Rules, cont'd.

Elected/Appointed Officials

- Elected or appointed public officials with policy-making responsibilities may express their personal views under Section 57.

Application of General Rules, cont'd.

Recommendations

- When speaking to community groups for the purpose of campaigning (rather than providing factual information), the official should make clear that they are expressing their personal views and they must not use any local library or governmental resources to prepare for or give the presentation (e.g., do not use library computers, equipment, paper, etc. and do not use employees on library time to assist with the preparation or making of the presentation).
- For example, Secretary of State has concluded that an elected or public official with policy-making responsibilities may express their own personal views but may not use a public body's resources to send a mass e-mail expressing those views on a ballot proposal.

Application of General Rules, cont'd.

Public Buildings/Facilities/Equipment

- Public facilities and equipment may be used in connection with the preparation and dissemination of factual information on a millage proposal.
- Do not allow board members, employees, or others to use any library or local government resources (computers, e-mail, printer, paper, pens, cell phones, or any other equipment) for express advocacy purposes.

Application of General Rules, cont'd.

Public Buildings/Facilities/Equipment, cont'd.

- The Secretary of State has concluded that a public body may not maintain links to websites that expressly support or oppose ballot questions if the public body does so for the purpose of influencing the outcome of an election, such as by linking only to sites advocating one side of a proposal.
- Section 57 of the Campaign Finance Act also now allows the use of a public facility if any candidate or committee has an equal opportunity to use the public facility.
MCL 169.257(1)(d).

D. Remedies For Unlawful Expenditures/Activities

- Civil
 - Taxpayers may bring a civil action to enjoin the unlawful expenditure of public funds for political purposes.
 - A public body may also commence an action against public officials to recover unlawfully expended funds.

Remedies For Unlawful Expenditures/Activities, cont'd.

- In addition to criminal penalties for violations of the Campaign Finance Act, the Act also allows for civil fines up to \$1,000 for each violation. MCL 169.215(8). Although there is no private right of action under the Act, any person may file a complaint with the Secretary of State who must then investigate the allegations. MCL 169.215(7); 169.215(5).
- The Secretary of State may refer the matter to the Attorney General for criminal prosecution or may pursue an action for a civil fine. The Secretary of State also uses conciliation agreements in connection with civil fines.

Remedies For Unlawful Expenditures/Activities, cont'd.

- Criminal

Campaign Finance Act

A violation of Section 57 of the Campaign Finance Act is a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment not more than one year, or both, for individuals. If the violator is not an individual, a violation is punishable by a fine of not more than \$20,000 or the amount of the improper contribution or expenditure, whichever is greater.

Remedies For Unlawful Expenditures/Activities, cont'd.

- Criminal

- If a public officer were to draw or issue any warrant, order, or certificate for the payment of public funds to private persons or organizations to influence the electorate to support a millage proposal, if done willfully or corruptly, the officer would violate MCL 750.490 which states:

Any officer who shall willfully or corruptly draw or issue any warrant, order or certificate for the payment of money in excess of the amount authorized by law, or for a purpose not authorized by law, shall be guilty of a misdemeanor, punishable as provided in this section.

- The violation, punishable as a misdemeanor, may be prosecuted by the county prosecutor.

Legal Considerations

Even if you believe that your use of public funds, employees, and facilities is permitted under the rules discussed above, questions and objections can be and often are raised by millage opponents, the media, or both. In light of the potential for civil fines or criminal penalties under the Campaign Finance Act, extreme caution is advised. We recommend that you consult with your attorney before undertaking any activity related to a millage vote to avoid a violation of the Campaign Finance Act.



QUESTIONS?