

## EDUCATION LAW ALERT

10/26/15

### Misuse of Public Funds for Levy Campaigns

Auditor Dave Yost's Office announced results of a special audit on October 22, 2015, finding that a local school district in Delaware County engaged in the illegal use of public funds. The district will be issued a finding for recovery based upon its reported use of taxpayer money to promote a failed bond levy.

The district hired the architecture firm, Orchard Hiltz & McCliment, Inc., ("OHM") in 2014 to determine the costs of renovating three elementary schools. The agreement with OHM included a provision for Aimpoint Research, a subcontractor of OHM, to provide up to \$30,000 in "community engagement" services relevant to a proposed bond issuance that included polling residents to gauge sentiment for the issue. The audit found that the Board was unaware the architecture firm agreed to award Aimpoint a \$15,000 bonus if the levy passed. OHM invoiced the district for its services and no monies were paid directly to Aimpoint Research. When Aimpoint performed work as a subcontractor, invoices were submitted to OHM for payment. The Auditor's office explained that although it was not illegal for the district to contract with an architecture firm that also offers public relations services, they are not permitted to use public funds to pay for those types of services, even though the money was first passed through OHM.

School board members said they were unaware that money was being used to support community engagement services from Aimpoint Research. However, OHM and Aimpoint presented a joint proposal to the board's architectural committee that specified services to be provided by OHM and Aimpoint and included: 1) Development of a Campaign Platform and Message; 2) Development of the Campaign Strategy and Plan; and 3) Voter Turnout and Targeting Analysis. Auditors also found that Board members spoke publicly about being aware that Aimpoint had been engaged to pass the levy. One Board member was quoted as saying the district hired OHM and Aimpoint "to aid us in passing the bond issue." The Auditor's report concluded that Board members knew or should have known Aimpoint received public money to promote the levy campaign.

The Auditor's office said the agreement between the Board and OHM did not, "on its face," violate the Ohio Revised Code because no payments were being made to Aimpoint. However, because OHM passed the costs from Aimpoint on to the school district, the district was strictly liable for its spending decisions.

"The law is clear - public dollars may not be used to promote school levies," Auditor Yost said. "All of Ohio's school districts must be careful not to cross the line from educational to promotional - and not knowing about an illegal expenditure doesn't make it legal."

Please do not hesitate to contact any of the following Roetzel education law attorneys should you have questions regarding this or any other school law topic.

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