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NH Supreme Court Rules on Epping School Board Case

On October 6, 2006, the New Hampshire Supreme Court issued an order in Epping Residents for Principled Government, Inc. v. Epping School Board. The issue was whether the Epping School Board used “unwarranted advocacy” in support of certain ballot issues and warrant articles, in violation of the Constitutional rights of certain taxpayers who held opposing viewpoints.

The New Hampshire Supreme Court upheld the School Board’s actions. However, the order was not a clear-cut victory for New Hampshire school boards, as the order raises more questions than it resolved and does not provide definitive guidance for the difference between appropriate and inappropriate advocacy.

The Court’s decision was based largely on procedural grounds, as opposed to being decided on the merits of the law. The Court ruled that the taxpayers did not properly preserve certain of their arguments for the Court to review. The Court may have been looking for a better case upon which to make some significant rulings.

It appears that some statements by a School Board are clearly acceptable, such as "we urge you to support the budget because we need it to fund our program" and "we need a new high school and ask you for your support". These kinds of “advocacy” appear to be tolerable, especially if they appear in the School District Annual Report. However, some Epping School Board practices were, in the Court’s words, “troubling.” Specifically, the Court had reservations about the Board’s direct attacks upon opponents of the budget or new school and using students as "mules" or couriers to send "political" messages home.

Because the decision was unclear, the legality of some board practices is still unsettled, such as using public money for mass mailings advocating a particular position. There probably would not be anything wrong with a mass mailing that conveys information on important issues, provided that it is consistent with the acceptable language. Also, it appears to be unlikely that the Board would be required to give dissenting viewpoints equal space and time in the School District Annual Report, or pay for an opposing mass mailing.

Until the law is further clarified, NHSBA urges school boards to proceed with caution when “advocating” for particular political ballot issues and warrant articles. NHSBA Policy KDCA recommends that school districts do not use student as couriers for information that advocates a particular position on bond issues, political matters, labor relations issues or District budgets. NHSBA also recommends that any mass mailings contain purely “neutral” information related to the issue at hand, as opposed to including potentially coercive statements from the school board.