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Advocacy and Distribution of Information Regarding State Ballot Measures

by Adam S. Breipohl

Now that the current election season is in full swing, school district administrators or board members may wish to distribute information to the public or engage in advocacy regarding items that will be on the ballot in November. However, they should be aware that venturing into the realm of state electoral politics carries considerable legal risk for districts and board members alike and exercise appropriate caution before doing so.

The most significant danger is created by a statute, OKLA. STAT. tit. 26, § 16-119, which forbids public officials from "directing or authorizing the expenditure of public funds to support or oppose" any ballot initiative or referendum election. It goes on to state that officials who violate this rule are guilty of a misdemeanor offense and their offices shall be deemed forfeited.

Under this statute, activities such as a board authorizing the printing and mailing out of materials to parents stating that the school

district endorses State Question 779 are clearly prohibited because they would involve spending public funds to support a ballot measure. The door may be theoretically open for districts to engage in advocacy that does not involve the expenditure of public funds or to distribute information without taking a side, but in practice it may be difficult to ensure compliance. For instance, the possibility exists that some amount of public funds could be inadvertently used for purposes that are related to the advocacy, e.g. making copies of materials, use of employees' time, etc. Similarly, the question of whether materials distributed by a school district are merely informational and do not support or oppose a ballot measure is subjective and not always clear: materials describing effects of State Question 779 using language that implies it would decrease class sizes could cross the line into supporting a ballot measure even if there is no explicit exhortation to "vote yes on 779."

Furthermore, the penalties for board members who violate the statute—criminal sanctions and forfeiture of their offices—are very severe. In light of the possible consequences, board members should carefully consider whether it is worthwhile to take the risk by attempting to artfully craft their political activities dealing with state questions to avoid this.

Additionally, it is not clear that school districts even have the power to engage in distribution of information or advocacy regarding state questions at all. The statute listing the powers of school district boards of education states that districts have the power to “[p]rovide informational material concerning school bond elections and millage elections,” but makes no mention of distributing information about other types of elections or of advocacy regarding any elections. OKLA. STAT. tit. 70, § 5-117(A) (emphasis added). This could indicate that the legislature intended that in the area of election-related communications, school districts would have the power only to distribute information, and only about bond and millage elections, creating more possible legal risk for districts that engage in such communications.

Overall, while no law explicitly forbids school districts or board members from distributing information or advocating for or against a ballot initiative or referendum election, doing so carries legal risk due to the possibility that activities could violate Section 16-119 or be challenged as an ultra vires act. Additionally, because the issues involved could be highly politically charged,

districts could face close scrutiny of their activities in this area. Before engaging in any distribution of information or advocacy regarding a state question, school districts should consider contacting their legal counsel to ensure that their planned activity will not create unnecessary legal risk for the district or board members.

School Districts Must Obtain Written Parental Consent Before Making Biometric Scans (Including Electronic Fingerprint Scans) of Minors

by Jerry A. Richardson

Today school districts have access to technology that allows them to automate procedures that once involved burdensome individual record keeping. For example, fingerprint scanners in cafeterias allow school districts to know which students have gone through the lunch line each day. The use of such a scanner is not only much faster than having a cafeteria worker punch each student’s lunch ticket or otherwise record the student’s meal purchases, it also greatly reduces the risk of the inadvertent disclosure of the identities of students who are receiving free or reduced price lunches. This type of technology could also allow school districts to dispense with the use of student library cards or even student identification cards.

Additionally, it is not clear that school districts even have the power to engage in distribution of information or advocacy regarding state questions at all.

Devices that use specific individual characteristics to identify people are referred to as “biometric” technology. Common biometric identifiers include fingerprints, palm

prints, and iris, retina, or voice scans. Although there are many advantages to this technology, the Oklahoma legislature has enacted legislation that requires school districts to obtain written parental consent before using such technology to identify minor children.

In 2014, the Oklahoma legislature enacted the "Parents' Bill of Rights," which can be found at OKLA. STAT. tit. 25, §§ 2001-2005. The legislature's purpose in enacting this law was to make clear that neither the state nor any other governmental entity may infringe on "the fundamental right of parents to direct the upbringing, education, health care and mental health of their children" unless it can demonstrate a compelling governmental interest that is narrowly tailored and is not served by other, less restrictive means.

One of the rights specifically reserved to parents by the Parents' Bill of Rights is "the right to consent in writing before a biometric scan of the minor child is made, shared, or stored." This means that if a school district is using technology that relies on a biometric identifier to verify a minor student's identity or record that student's participation in any activity, the school district must have written consent from that minor student's parent.

The Parents' Bill of Rights does not specify a penalty for violation of this requirement, but there is no reason to believe that the courts of this state would not allow a parent to bring suit against a school district to enforce the rights granted in the Parents' Bill of Rights. In order to ensure that your school district

complies with the Parents' Bill of Rights, the school district should have a signed consent from the parent or guardian of every minor student authorizing the school district to make and store biometric scans of students.

Contact your school attorney if you need assistance in complying with this statute.

Restrictions on School Districts Regarding Contracts for Consulting Services

by Staci L. Roberds

A school district may decide to enter into a contract with a person or entity for consulting services. Oklahoma law provides several limitations on school districts with regard to whom it may enter into the contractual relationship with and the terms that must be included within any agreement reached between the district and the consultant.

A school district cannot enter into a contract for consultant services with a retired administrator from any school district until two years after the date of administrator's retirement. A school district also may not enter into an employment contract with a person who will be employed during the same period when the person is also under contract with the school district for consulting services. This prohibition applies to a consulting contract directly with the person or with a business entity which employs the

One of the rights specifically reserved to parents by the Parents' Bill of Rights is "the right to consent in writing before a biometric scan"

person. However, a school district is not prohibited from employing a person who acts as a consultant for a business entity that does not do business with the employing school district. This limitation applies to all employees of a school district.

written description explaining the services performed under the contract at least one time each quarter of the year when the contract is in effect; and (vi) the identification of the specific people who are authorized to perform the obligations imposed by the contract on behalf of the person or entity providing the consulting services.

The requirements for what must be included in a consulting contract between a school district and a consultant are explicit.

The contract must contain the following information: (i) a listing of the specific duties to be performed by the consultant; (ii) a purpose for the contract and the identification of the need for the services to be performed; (iii) an estimated duration for the contract, including anticipated periods for renewal of the contract; (iv) a requirement that the consultant will provide the office space, supplies, personnel and other items of expense necessary to perform the contract; (v) a requirement that the consultant provide a

School district administrators may review the limitations and requirements for a contract for consultant services in the applicable statute, OKLA. STAT. tit. 70, § 6-101.2. If a school district has questions about entering into a contract for consultant services and the limitations of Oklahoma law on who may serve as a consultant for the school district and whether the contract for consultant services conforms to the specific requirements that must be included in the consulting agreement, it should contact its attorney for guidance with any issues.

Oklahoma law provides several limitations on school districts with regard to whom it may enter into the contractual relationship

RFR Hires N. Roxane Gebhart



Rosenstein, Fist & Ringold is pleased to announce N. Roxane Gebhart has joined the firm as an associate attorney. Roxane received a B.S. from Oklahoma State University in Animal Science with an emphasis in Business in 2010. In 2011, she received a certificate in Paralegal Studies from the University of Tulsa. She worked for the firm as a paralegal from 2011 to 2013, before entering law school. Roxane received her J.D., with highest honors, from the University of Tulsa in May 2016. Additionally, Roxane has been an enlisted member of the Oklahoma Air National Guard, 138th Force Support Squadron for ten years and is currently serving as a Technical Sergeant. Roxane aspires to retire from the Air National Guard and has plans to further her military career by becoming a JAG officer with the Air National Guard JAG Corps.

Alert—Upcoming Seminars!

2016 Fall Education Conference, Wednesday,
September 28, 2016 at Tulsa Technology Center's
Riverside Campus (9:00 a.m. to 12:30 p.m.)

21st Annual Golf Tournament and Fall School
Law Update, Wednesday, October 5, 2016 at
Bailey Golf Ranch in Owasso, Oklahoma

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Chalkboard is a Rosenstien, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published monthly through the school year and is sent without charge to all education clients of Rosenstien, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to: Rosenstien, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

Please use the form on www.rfrlaw.com (located on the Resources page) to add or change *Chalkboard* e-mail addresses.

2016 Fall Conference

PROGRAM AT A GLANCE

8:00 a.m. to 9:00 a.m.	Registration and Refreshments
9:00 a.m. to 9:45 a.m.	Fair Labor Standards Act (FLSA) — J. Douglas Mann
9:45 a.m. to 10:30 a.m.	Effective Evaluations — Eric D. Wade
10:30 a.m. to 10:45 a.m.	Break
10:45 a.m. to 11:00 a.m.	Policies and Forms — Michelle D. Siegfried
11:00 a.m. to 11:45 a.m.	Disability's Bermuda Triangle: ADA, Workers' Compensation & FMLA? — Karen L. Long
11:45 a.m. to 12:30 p.m.	Terminations and RIFs — Bryan K. Drummond

Date: Wednesday, September 28, 2016

Where: Tulsa Technology Center Riverside Campus, Tulsa

Cost: Free to all Administrators & Board Members of RFR Clients—Public School Districts and Career Technology Centers

For More Information or to Register, look under *In The News* on www.rfrlaw.com

2016 Fall School Law Update and Golf Tournament

Cost: Seminar Registration Fee – \$50 per person (first-come first-serve)

Where: Bailey Golf Ranch, 10105 Larkin Bailey Blvd, Owasso, OK 74055 (Location Change)

When: Wednesday, October 5, 2016

Seminar Format: 2 hour update on school law related issues and relevant topics designed to provide you with new insight and direction.

Golf Format: 4 person scramble – no charge for seminar attendees

All participants will receive a complimentary golf shirt (men's and women's sizes available)

Deadline to Register – Wednesday, September 28, 2016

SCHEDULE

8:30 a.m.	Registration
9:00 a.m. – 11:00 a.m.	School Law Update
11:00 a.m. – 12:00p.m.	Lunch (provided) and Practice Time
12:15p.m.	Golf – Shotgun Start
5:00 p.m.	Awards Presentation