

March 19, 2007 Legislative Report

IN THIS ISSUE: Important information about the front-end ballot question

SUMMARY: Over the last few months, we've fielded several questions about the form that the front-end question on the May 15 ballot must take. Specifically, several members asked if the components of the question could be reversed. In other words, rather than asking voters if they approve an increase in taxes to provide property tax relief of an estimated dollar value, could school boards submit a question that says the school district would be able to offer property tax relief of an estimated dollar value using revenues from an increase in the income tax of ____%. In response to this question, a number of solicitors expressed the opinion that districts could make changes to the ballot question while acknowledging the risks of a court ruling to the contrary.

Section 331.2(e)(1) of the act describes the various components that must be included in the question, namely, the rate of the proposed income tax to be levied, the reason for the tax, the estimated per-homestead tax reduction and the current rate of earned income and net profits tax levied by the school district. The act goes on to say that the question must be clear and in language that is readily understandable by a layperson. The key phrase says that the question "shall be framed" in one of the following forms. The language of the act goes on to list three questions, depending on the type of tax chosen. The issue at hand is how the phrase "shall be framed" should be interpreted.

Although PSBA believes those words allow for some flexibility, the Pennsylvania Department of State is interpreting that phrase as mandating that the question be asked in the manner that they are listed in Section 331.2(e)(1)(i), (ii) and (iii) of the act. The question asking whether voters favor imposing or converting the tax must come first, followed by a statement on the use of the revenues generated and the estimated property tax relief, followed by a statement on the school district's current earned income tax rate.

In a memo to county election officials, the Department of State has advised that any question that does not comply with the form as stated in the act should be "revised" by the local board of elections and that notice of such revision should be given to the school district. The memo goes on to say that the departments of State and Education "are prepared to support the board of elections' authority and the actions taken by the board of elections to comply with the act."

ANALYSIS: Since it is impossible for school boards to make changes to their ballot questions at this point, we are not recommending that school boards take any action in response to the state department's memo. PSBA does not agree with the state department's opinion about the form of the ballot question. Additionally, PSBA is analyzing the legal question of whether a local election board has the authority to revise or reject a ballot question presented pursuant to Act 1.

The state department also concluded that PDE's model nonlegal interpretative statement complies with all of the requirements of Act 1 and the Election Code. PSBA expressed concerns early on about the failure of that statement to acknowledge the fact that school boards were required by Act 1 to place a question on the ballot. Our opinion on that matter has not changed.

Keep in mind that you are under no obligation to revise a referendum question that you have submitted. To the extent that local election officials want to change the question that you have submitted, allow them to take full responsibility for doing so. Please keep us informed of any cases where your proposed question has been rejected or revised. The same is true for any language you submit on the nonlegal interpretative statement.