

The dos and don'ts of school board campaigning

The filing papers are in and school board campaigns are in full swing. KSBA has received several calls inquiring about what candidates and district employees can and can't do during a board candidate's campaign. This guide is designed to help both candidates and district employees navigate these waters.

1. What can a board candidate ask or allow that district's employees to do for the candidate's campaign?

Not a lot. District employees can, of course, exercise their First Amendment free speech rights, outside their employment, and can vote in a board member election.

2. What can't a board candidate ask or accept from that district's employees for the candidate's campaign?

Money or services. Kentucky Revised Statute [161.164](#) prohibits a board candidate running for election or re-election from soliciting or accepting any "political assessment, subscription, contribution, or services" from that district's employees. A 1992 Attorney General's opinion, OAG 92-145, provides specific examples:

Money – A school board candidate may not solicit or accept any money, goods or property from a school district employee.

Services – In determining what conduct constitutes a prohibited service the opinion defined services as work performed for another or a group; assistance given to someone; and goods or utilities that benefit the public. The school board candidate may not solicit or accept the following services from a school district employee:

1. Distributing campaign material, literature, or signs.
2. Working for the campaign by canvassing voters, stuffing campaign envelopes, working at a campaign phone bank, or driving the candidate.
3. Performing any fundraising services or contributing money, goods or property.
4. Being involved with the management of a school board campaign.

The opinion also said that candidates, their campaign manager, campaign staff or anyone else acting on behalf of the candidate cannot solicit or accept contributions and services from school district employees.

3. What can a board candidate accept or allow a district employee union to do for the candidate?

That district's employee union can endorse a board candidate. From OAG 92-145:

1. May a board candidate accept the endorsement of a local education association or similar employee union?

A school board candidate need not either accept or decline an endorsement of a local education association or similar employee union. KRS 161.164(2) only prohibits a school board candidate from accepting "political assessment, subscription, contribution, or services of any employee of the school district." An endorsement of a political candidate is merely an opinion giving approval of or offering a statement in support of a candidate. Endorsing a school board candidate is not the same as contributing or providing a service to the campaign. Voluntary endorsement of a candidate is the same as an expression of personal opinion and therefore not prohibited by KRS 161.164.

We believe the right of a local education association or similar employee union to express their preference of a school board candidate by a statement of endorsement is a constitutionally protected First Amendment right. *State Board of Elementary and Secondary Education v. Howard, supra*.

KRS 161.164(2) should not be read broadly to prohibit a local education association or similar employee union from endorsing a school board candidate. Since KRS 161.164(2) does not mention the term endorsement or opinions, we do not believe that the General Assembly intended to stretch the realm of prohibited conduct to forbid school board candidates from accepting the voluntary endorsement of a local education association or employee union.

Though OAG 92-145 concluded a board candidate cannot accept money or services from a district employee union political action committee (PAC) and a district employee union cannot contribute goods or services for the campaign even independent of the board candidate, these legal conclusions were issued prior to the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310. For guidance on the limits of a district employee union and a board candidate's campaign, board candidates should seek legal advice from their own private counsel and union members should seek legal advice from the union's legal counsel.

4. What is the consequence for a board candidate violating this statute?

Under state law, any person who violates any provisions of KRS 161.164 is guilty of a Class A misdemeanor. The law also states, "any school board candidate or school board member who willfully violates any provision of KRS 161.164 shall also be disqualified from holding the office of school board member." That means a violation by a board candidate would prevent the person from ever being a school board member anywhere in Kentucky.

5. Can the board attorney pursue litigation for a current board member, as a candidate running for re-election, against an opposing board candidate?

No. The Kentucky Attorney General issued an opinion in 1978, OAG 78-648, stating that school district funds could not be spent on an individual board member's personal litigation/defense, such as an election contest. Violating this would violate the Kentucky Constitution's "educational purposes" restriction on school funds.

6. What can a *current* board member do for another board candidate's campaign?

While there are no legal restrictions on a current board member working for a board candidate's campaign for another seat on that school board, the practical outcome may be a very tense and difficult working relationship between the current board member and the successful candidate, if the board member supported the successful candidate's opponent.

7. What can that district's employees do for a board candidate's campaign?

State law prohibits a district employee from "taking part in the management or activities of any political campaign for school board." That being said, in 1992 the Kentucky Supreme Court struck down the "activities" language because it was unconstitutionally vague and overly broad: regular people couldn't accurately determine the legal boundaries on their activities and the enforcing authority would have too much discretion in interpreting and implementing consequences. For that reason, the Attorney General in OAG 92-145 created the following list of activities/conduct permitted for school employees under KRS 161.164(2):

1. Registration and voting.
2. Nominating petitions. School district employees may voluntarily sign a school board nominating petition.
3. Expression of opinion. School district employees may privately and publicly express their personal opinions regarding a school board candidate, either in person, by telephone or in writing.
4. Political pictures and signs. School district employees may voluntarily display school board campaign signs and other signs on their property.
5. Badges, buttons, and bumper stickers. School district employees may voluntarily wear school board campaign badges or buttons. However, no school board candidate badges or buttons may be worn by a school district employee while such employee is on official duty.
6. Campaign literature for [the individual's] personal use [and consumption]. School board candidates may provide on request campaign literature for the personal use of a school district employee.

8. What can't a district employee do for a board candidate's campaign?

District employees cannot participate in a board candidate's campaign "management". The Kentucky Supreme Court referred to the dictionary definition of this word and held:

“the definition provided by Webster is the act of participating in the managing; and the directing or supervising of something.... While there certainly may be some confusion over what constitutes a political activity, a person exercising ordinary common sense can discern the difference between a political activity, such as placing a sign in the yard, and managing or directing a school board candidate's campaign. *State Bd. for Elementary and Secondary Educ. v. Howard*, 834 S.W.2d 657 (Ky. 1992).”

District employees also cannot give a board candidate “any money, goods or property” and cannot give the candidate “services”. The prohibited services include:

1. Distributing campaign material, literature, or signs.
2. Working for the campaign by canvassing voters, stuffing campaign envelopes, working at a campaign phone bank or driving the candidate.
3. Performing any fundraising services or contributing money, goods or property.
4. Being involved with the management of a school board campaign.

The opinion also applies these prohibitions to that district’s employees doing any of these things for the candidate’s campaign at the request of the campaign staff or anyone else on behalf of the candidate:

9. What can that district’s employees do for any political cause or candidate?

Again, district employees retain their right to exercise their First Amendment rights (speech, association, religion, voting) when in their personal capacity. This is neither at school or school events, in the role of district employee, when interacting with students as a district employee, or with the use of school resources or materials. See the answer to Question 7.

10. What can’t that district’s employees do for any political cause or candidate?

Most district policies prohibit certified and classified district employees from promoting, organizing or engaging in political activities while performing work duties or during the work day. This includes but is not limited to:

1. Encouraging students to adopt or support a particular political position, party, or candidate; or
2. Using school property or materials to advance the support of a particular political position, party, or candidate.

A good rule of thumb is for district employees to reserve their political support or opposition for their personal lives and roles. See Policies 03.1324 and 03.2324.

11. What are the consequences for a district employee who violates these restrictions?

The law states “any teacher or employee of a district who willfully violates any provision of KRS 161.164 shall be ineligible for employment in the common schools for a period

of five (5) years.” This means a district employee who “willfully” violates these prohibitions cannot be employed in a school district anywhere in Kentucky for five years. “Willfully” in these kinds of Kentucky statutes is interpreted to mean “in bad faith” such as when a person knows the legal requirement and violates that requirement on purpose.

12. Why are district employees’ rights restricted?

As stated in OAG 92-145:

“Political service [for a candidate for office] may often invoke First Amendment principles yet also be the type of political involvement in our school system that the General Assembly seeks to prohibit. Thus, the specific service must be analyzed and the First Amendment right to voice one’s political opinion must be balanced against the state’s interest in ridding our schools of undue political influence. Sometimes a service to a school board candidate will be so intricately involved in the campaign that it is clearly prohibited by KRS 161.164(2). An example would be when a candidate solicits or accepts a school district employee distributing campaign material, working at a campaign phone bank or driving the candidate to political events. On the other hand, the state’s interest in neutral schools is outweighed by school district employees’ constitutional right to personally express their preference of a candidate, to read campaign literature, wear a campaign button, or place a sign on their property.”

This guidance does not include campaign finance law restrictions and requirements and only speaks to the prohibitions in KRS 161.164. For questions about campaign finance, consult private legal counsel and the [Kentucky Registry of Election Finance](#).