STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1629 By: Jones

COMMITTEE SUBSTITUTE

An Act relating to schools; amending 70 O.S. 2001, Section 5-117, as last amended by Section 1, Chapter 71, O.S.L. 2004 (70 O.S. Supp. 2004, Section 5-117), which relates to powers and duties of school district boards of education; modifying power relating to school district elections; modifying power relating to expenditure of money for informational purposes; prohibiting the use of school district personnel and resources to influence an election; prohibiting a school district employee from providing materials to students to influence legislation; establishing certain rights; listing certain permitted activities; listing certain prohibited activities; directing the Attorney General to publish a guideline for school districts; authorizing the Attorney General and district attorneys to initiate compliance suits; providing penalties for violations; providing for repayment of misused funds; directing payment of certain penalties; providing definitions; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 2001, Section 5-117, as last amended by Section 1, Chapter 71, O.S.L. 2004 (70 O.S. Supp. 2004, Section 5-117), is amended to read as follows:

Section 5-117. A. The board of education of each school district shall have power to:

1. Elect its own officers; provided that the chair of the board authorized in Section 5-107B of this title shall be elected by the electors of the school district;

2. Make rules, not inconsistent with the law or rules of the State Board of Education, governing the board and the school system of the district;

3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district;

4. Designate the schools to be attended by the children of the district;

5. Provide and operate, when deemed advisable, cafeterias or other eating accommodations, thrift banks or other facilities for the teaching and practice of thrift and economy, bookstores, print shops, and vocational and other shops;

6. Provide informational material concerning school district elections, school bond elections and millage elections, including but not limited to all pertinent financial information relative to the bond issue, a statement of revenue sources necessary to retire proposed bonds, a statement of current bonded indebtedness of the school district, and a statement of proposed use of funds to be generated by the proposed bond issue. The informational material shall not contain the words "vote yes" or "vote no" or any similar words or statement any place on such informational material or be distributed for the purpose of influencing the outcome of a school district election;

7. Purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment therefor;

8. Have school district property insured;

9. Acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes. School district funds may be used to erect buildings on leased land on which other buildings have been erected prior to April 3, 1969, or on land which is leased from a governmental entity;

10. Lease real or personal property to the state or any political subdivision thereof or a not-for-profit entity operating pursuant to Section 868 of Title 18 of the Oklahoma Statutes for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;

11. Dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise. Real property shall be conveyed pursuant to a public sale, public bid, or private sale; provided however, unless otherwise prohibited by law, the board of education of a consolidated or annexed school district may convey real property to a local political subdivision without consideration. Prior to the sale of any real property, the board of education shall have the real property appraised. The appraisal shall be confidential until the real property is sold. When the real property is sold, the board of education shall make the appraisal available for public inspection. Prior to the conveyance of any real property by private sale, the board of education shall have offered the real property for sale by public sale or public bid. Any conveyance of real property by private sale to a nonprofit organization, association, or corporation to be used for public purposes, unless for exchange, shall contain a reversionary clause which returns the real property to the board of education upon the cessation of the use without profit or for public purposes by the purchaser or the assigns of the purchaser;

12. Purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

13. Incur all expenses, within the limitations provided for by law, necessary to perform all powers granted by the provisions of this section;

14. Contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, superintendents, principals, teachers, bus drivers, janitors, and other necessary employees of the district. The board of education shall establish a written policy for reimbursement of necessary travel expenses of employees and members of the board. The policy may include in-district travel from the site of employment assignment which is necessary in the performance of employment duties. The written policy shall specify procedures, contain documentation requirements, and may include payment of meal expenses during authorized travel on a per diem allowance basis rather than itemized documentation. Per diem meal reimbursement may not exceed the amounts authorized for state employees in Section 500.8 of Title 74 of the Oklahoma Statutes, but such reimbursement shall be available for necessary travel that does not require overnight stays. The board shall designate the funds from which reimbursement is to be made. Reimbursement of meal expenses for an employee or a board member shall not be considered compensation;

15. Pay necessary travel expenses and other related expenses of prospective employees for sponsored visits to the school district pursuant to a written policy specifying procedures containing documentation requirements equal to or greater than the requirements specified by law for state employees in the State Travel Reimbursement Act;

16. Provide for employees' leaves of absence without pay;

17. Exercise sole control over all the schools and property of the district, subject to other provisions of the Oklahoma School Code;

18. Allow district-owned school buses to be used for transportation of students from other districts or educational institutions while within the district on educational tours. This shall not restrict the authority of the board to authorize any other

use of such buses which may now be permitted by law or rule of the State Board of Education;

19. Enter into contractual agreements with the board of trustees of a multicounty library system, as defined in Section 4-103 of Title 65 of the Oklahoma Statutes, a city-county library commission, as defined in Section 152 of Title 65 of the Oklahoma Statutes, or a rural single county library system, as defined in Section 1-104 of Title 65 of the Oklahoma Statutes, on such terms as may be mutually agreed, except no district board of education may enter into any agreement under which the library services for the school would be provided at any site other than the school site or which would result in library services that do not meet accreditation standards as required by law or rule;

20. Perform all functions necessary to the administration of a school district in Oklahoma as specified in the Oklahoma School Code, and in addition thereto, those powers necessarily implied but not delegated by law to any other agency or official;

21. Prepare and distribute at the expense of the school district any and all material which has the purpose of informing the public about district activities, instructional programs, and operation and maintenance of the schools of the district;

22. Solicit and accept any gift, grant, or donation of money or property for the use of the school district. Any gift, grant, or donation of money may be deposited in the general fund or building fund of the school district; and

23. Pay necessary meal and lodging expenses of school district students and sponsors involved in authorized school-sponsored cocurricular activities. The board of education shall establish a written policy for reimbursement of necessary meal and lodging expenses of school district students and sponsors. The written policy shall specify procedures, contain documentation requirements,

and designate the funds from which reimbursement may be made. Reimbursement may be made from the General Fund.

B. The board of education of any school district may rent, on a monthly basis, real and personal property, if such items are necessary for the operation of the school, and pay the rental charges for the usage during any fiscal year, or portion thereof, out of appropriations made and approved for current expense purposes during the fiscal year. Any such rental contract extending beyond June 30 of such fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of this subsection to authorize boards of education to enter into lease contracts but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which such lease contract is operative. Any lease or lease-purchase agreement entered into by any board of education shall state the purchase price of real or personal property so leased. The lease or lease-purchase shall not be extended so as to cause payment of more than the original purchase price of the real or personal property, plus interest not to exceed the legal rate. When the purchase price plus interest has been paid, the property shall belong to the lessee and the lessor shall deliver a deed or bill of sale to the property to the lessee. When any real or personal property has been leased or rented during any fiscal year pursuant to the provisions of any contract which permits continuance of such rental for the remainder of such fiscal year, the renting or leasing thereof must be continued for the remainder of the fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of the board of education that the continuance of such rental is unnecessary and contrary to the public interest.

C. The boards of education of two or more school districts may enter into cooperative agreements and maintain joint programs including but not limited to, courses of instruction for handicapped children, courses of instruction in music and other subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs including visual care by persons legally licensed for such purpose, without favoritism as to either profession. The revenues necessary to operate a joint program approved in cooperative agreements, whether from federal, state or local sources, including the individual contributions of participating school districts, shall be deposited into a fund separate from all other appropriated funds. The beginning fund balance each year, combined with all actual revenues, including collected and estimated revenues, must be appropriated before being expended. Purchase orders shall be issued against available appropriations and, once goods or services have been received, either payable or nonpayable warrants shall be issued in payment of all purchase orders. The fund shall be reported as a separate appropriated fund in all the financial reports of the school district which is chosen by the other school districts to keep the accounting records of the joint program.

D. The boards of education of two or more school districts may enter into a mutual contract or separate contracts with a superintendent, administrator, or teacher or with a person to provide support services, to serve as superintendent, administrator, or teacher, as appropriately qualified, or to provide support services, for each contracting district upon such terms and conditions as the parties may agree. Nothing in this act shall be construed to authorize or require annexation or consolidation of any school districts or the closing of any school site except pursuant to law as set forth in Section 7-101 et seq. of this title.

E. Any school district may operate or maintain a school or schools on any military reservation which is within the boundaries of the school district or which is adjacent to the school district, and provide the instruction in the school or schools to children of personnel on the military reservation and, in doing so, shall conform to all federal laws and requirements.

F. The board of education of each school district shall adopt and maintain on file in the office of the superintendent of schools appropriate personnel policy and sick leave guide. The guide shall be made available to the public.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-130.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. 1. Any person acting on behalf of a school district or a person who aids another person acting on behalf of a school district shall not use school district personnel, equipment, materials, buildings, or other resources for the purpose of influencing the outcome of elections. Notwithstanding this section, a school district may provide informational material pursuant to Section 5-117 of Title 70 of the Oklahoma Statutes. Nothing in this subsection shall preclude a school district from reporting on official actions of the board of education.

2. Any employee of a school district who is acting as an agent of or working in an official capacity for the school district shall not provide to students written materials that are intended to influence the outcome of an election or to advocate support for or opposition to pending or proposed legislation.

3. This subsection shall not be construed as denying the civil and political rights of any person as guaranteed by the United States or Oklahoma Constitutions.

B. The following activities shall be permitted:

1. Board of education members, personnel or others acting on behalf of a school district may act as advocates, circulate petitions, and distribute election literature but only as private citizens, during nonduty time outside the classroom or other instructional settings, using their own or other private resources. Board members, personnel or others acting on behalf of a school district may engage in activities to influence the outcomes of elections at school-sponsored extracurricular activities, such as athletic events, only if they are not on duty or supervising or assisting with supervision or organization of the event. Such persons shall not represent that they are acting on behalf of the school district while engaged in activities to influence the outcomes of elections.

2. Board of education members, personnel and others acting on behalf of a school district, may express their opinions or preferences on elections outside the classroom or other instructional settings, or at school-sponsored extracurricular events, such as athletic events, if they are not on duty or supervising or assisting with supervision or organization of the event. They may wear buttons, place bumper stickers on their cars, wear clothing with political messages, distribute flyers or information, make contributions, talk with neighbors, friends and members of the community, put up or display signs, make speeches and speak to community or civic groups, or engage in any other political activity in noninstructional settings during nonduty time, as long as they are not using school district personnel, equipment, materials, buildings or other resources. Board members, personnel and others acting on behalf of a school district shall refrain from taking any action or making any statement that would suggest that they are acting on behalf of the school district.

3. Private vehicles with bumper stickers and other electioneering signs or materials relating to an election may be

parked on school district property by school district personnel, board or education members, parents, and visitors to the school for school-related activities or for voting when the school is used as a polling place. The school shall not permit the school parking lot to be used to permanently park a vehicle displaying signs for a candidate in the lot during an election cycle, when the owner of the vehicle is not visiting the school for school business or other permitted activities at the school. On election day, if the school is a polling place, a vehicle displaying electioneering messages shall not be parked within three hundred (300) feet of the ballot box as provided for in Section 7-108 of Title 26 of the Oklahoma Statutes.

4. A school district may prepare and disseminate reports on official actions of the board of education. Provided, that a board of education shall not adopt a resolution supporting or opposing an initiative or referendum and then under the guise of reporting on official actions, mail brochures to all residents.

5. A school district may permit election officials to use school buildings for election polling places as provided for in Section 3-123 of Title 26 of the Oklahoma Statutes.

6. If the school district permits private use of school district mailboxes, telephones, and e-mail accounts, school district personnel and board of education members shall not be in violation of state law by receiving information or literature advocating a position on an election matter through such school district resources.

7. A school district may conduct nonpartisan activities designed to encourage individuals to register to vote and make voter registration forms available on school district property if such activities are regularly allowed throughout the year.

8. A school district may make publicity pamphlets and other election materials published and distributed by government election officials available on school property.

9. A school district may host a nonpartisan forum for the purpose of educating voters about issues or candidates at which speakers and/or members of the public discuss the pros and cons of a ballot measure or candidates appear, so long as there is an equal opportunity to present all viewpoints or all candidates in a particular race are given an equal opportunity to make presentations.

10. School district resources may be used to prepare and provide informational reports in connection with a school district bond election pursuant to Section 5-117 of Title 70 of the Oklahoma Statutes.

11. School district resources may be used to respond to questions about ballot measures so long as the responses provide factual information in a neutral manner and do not present a clear and unmistakable plea to vote for or against the measures or encourage the person making the inquiry to take some other kind of action in support of or opposition to the measures.

12. If a school district permits outside groups to rent or lease school buildings or facilities, the district shall rent or lease its buildings and facilities to partisan and ballot measure groups on the same basis and conditions as other outside groups who are permitted to rent or lease school buildings or facilities.

13. A school district may use its resources to investigate the fiscal impact of a ballot measure on the district.

C. The following activities shall be prohibited:

1. No campaign signs, banners, stickers or any item that advocates for or against a candidate, initiative, referendum, bond election, or any ballot measure shall be placed in or on school district buildings or property.

2. Board of education members, personnel and others acting on behalf of a school district shall not wear political buttons, T-shirts, hats or other items displayed on their persons or apparel that are designed to influence the outcome of an election in a classroom, in any other instructional setting, or at a school-sponsored extracurricular event at which they are supervising or assisting with supervision or organization of the extracurricular event.

3. In permitting use of school buildings by outside groups for meetings, the school district shall not favor proponents of one side over another. If access is allowed to a political party, a candidate or proponents of a ballot measure, equal access under the same terms and conditions shall be allowed for all other political parties, candidates and opponents of ballot measures.

4. If a school district permits private use of school mailboxes, telephones or e-mail accounts for some personal use, school district employees and board of education members shall not use these resources to distribute a communication for the purpose of influencing the outcomes of elections. School telephone systems shall not be used as telephone banks for the purpose of influencing the outcomes of elections. E-mails to influence the outcomes of elections shall not be generated, distributed or forwarded via a school e-mail account.

5. An employee of a school district who is acting as an agent of or working in an official capacity for the school district shall not give students written materials to influence an election or to advocate support for or opposition to pending or proposed legislation regardless of the fact that no school district personnel, equipment or resources were used to prepare the materials. This prohibition shall include distribution of flyers prepared by a private citizen group supporting a candidate or

passage of a ballot measure or materials urging citizens to call their legislators to support or oppose legislation.

6. Persons acting on behalf of a school district shall not use school district personnel, equipment, materials, buildings or other school resources to circulate ballot measure petitions or petitions to qualify a political party for ballot status recognition. This provision shall not prohibit individual employees from voluntarily exercising their rights to circulate petitions in their personal capacities on nonduty time, outside the classroom, outside any other instructional setting, or at a school-sponsored extracurricular event as long as they are not supervising or assisting with supervision or organization of the extracurricular event.

7. Persons acting on behalf of a school district shall not use school district personnel, equipment, materials, buildings or other school resources to solicit contributions to be used in support of or opposition to a candidate, ballot measure or political party or committee of a political party. This provision shall not prohibit individual employees from voluntarily exercising their rights to solicit contributions on nonduty time, outside the classroom or other instructional settings.

8. School district boards of education shall not adopt resolutions supporting or opposing ballot measures, endorsing candidates or taking official action on other positions to influence the outcomes of elections.

9. Persons acting on behalf of a school district shall not permit candidates, including but not limited to candidates for the school district board of education, and their representatives to announce their candidacy or advocate their election or the defeat of their opponents in school buildings or on school property, except when participating in public forums.

D. By January 1, 2006, the Attorney General of the state shall publish and distribute to school districts a detailed guideline

regarding activities prohibited under this section. The Attorney General may distribute the guidelines through a web site or electronically.

E. The Attorney General or the district attorney for the county in which an alleged violation of this section occurred, may initiate a suit in the district court in which the school district is located for the purpose of complying with this section.

F. For each violation of this section, the district court may impose a civil penalty not to exceed Five Hundred Dollars ($500.00) plus an amount equal to the amount of misused funds from the school district budget against a person who knowingly violates or a person who knowingly aids another person in violating this section. The person determined to be in violation of this section shall be responsible for the payment of all penalties and misused funds. School district funds or insurance payments shall not be used to pay the penalties or misused funds. All misused funds collected pursuant to this section shall be returned to the school district.

G. All penalties collected by a district court for a suit initiated by the Attorney General shall be paid to the Office of the Attorney General for use and reimbursement of costs of prosecution pursuant to this section. All penalties collected by the district court for a suit initiated by a district attorney shall be paid to the county treasurer of the county in which the court is held for the use of reimbursement of costs of prosecution pursuant to this section.

H. For the purposes of this section:

1. "Person acting on behalf of" or "aids a person acting on behalf of" a school district means that the person is acting with the express or implied consent or assent of the school district or is aiding such a person;

2. "Influencing the outcomes of" means using school resources to engage in any activity that is an attempt to persuade persons to

vote for or against a particular candidate, party, position or ballot measure. The test for determining whether activities using school resources are designed to influence the outcome of an election is whether the communication taken as a whole, unambiguously urges a person to vote in a particular manner. The communication shall clearly and unmistakably present a plea for action and identify the advocated action. It shall not be expressed advocacy if reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. The phrase shall also apply to activities leading up to qualifying ballot measures and candidates for the ballot, including fundraising and attempts to qualify a measure for the ballot and to circulation of petitions relating to candidates or ballot measures. The phrase covers engaging in any activity that is an attempt to persuade persons to sign, circulate or refrain from signing or circulating a petition or contributing to or refraining from contributing to any political committee;

3. "Election" means any election for any initiative, referendum or other ballot measure or a primary, general, special or runoff election for any elected office of political subdivisions of the state, the state or federal government. It includes any election for change of school district boundaries and change of number of board members;

4. "Personnel, equipment, materials, buildings or other resources" mean the following:

a. "personnel" means persons employed by the school district whether they are salaried employees or nonsalaried volunteers,

b. "equipment" includes, but is not limited to, copiers, bulletin boards, telephones, automatic dialing devices, facsimile machines, computers, mailboxes,

furniture, vehicles, postage meters, and Internet connections. The term shall also include any district communication networks, such as school newsletters, public announcement systems or devices, web pages and advertising space in student newspapers,

c. "materials" means supplies or tools, including but not limited to paper, labels, facsimile paper, pens, pencils, markers, paints, art supplies, food, cafeteria supplies, and postage,

d. "buildings" means buildings owned or leased by the school district. The term shall also include real or personal property owned or leased by a school district, including but not limited to playing fields, parking lots, walls and fencing, and

e. "resources" means school district credit, money or accounts; and

5. "Outcomes of elections" means the results of an election and includes activities leading up to placement of measures, issues or candidates on the ballot.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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