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### Statement of Position Expenditure of Public Funds on Ballot Issue Advocacy

Local units of government may want to advocate for the passage of constitutional amendments, local ballot questions, or levy referenda. Until recently, the question of whether public funds could be used for such activity seemed settled: With rare exceptions, the answer was no. Recently, however, the Minnesota Supreme Court explicitly declined to answer the question of “whether public funds can be expended to advocate for only one side of a ballot question.”<sup>1</sup> Because the law is now less certain, local governments should seek legal advice before making a decision to use public funds for such advocacy.

In its 2012 *Abrahamsen* decision, the Minnesota Supreme Court determined that political subdivisions that engage in such advocacy are potentially subject to the Campaign Financial Reports requirements and the Fair Campaign Practices requirements of Minnesota Statutes.<sup>2</sup>

The Supreme Court remanded the case so it can be fully litigated; indicating that the Supreme Court believes ballot advocacy issues should be determined by an authoritative fact finder following a formal presentation of evidence, i.e., the Office of Administrative Hearings or the courts.<sup>3</sup> In the 2012 *Abrahamsen* decision, the Minnesota Supreme Court indicated that allegations that campaign material is “false” will be determined in these forums using a statutory standard. Complaints alleging a local government has advocated passage without proper reporting or has disseminated false campaign material are filed with the Office of Administrative Hearings.<sup>4</sup>

Based on Attorney General opinions, most local governments have traditionally understood they could not use public funds to advocate for one side of a ballot question, and that public funds should not be used to influence voters, but may be used to “fairly and impartially

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<sup>1</sup> *Abrahamsen v. St. Louis County School District 2142*, 819 N.W.2d 129 (Minn. 2012) (declaring the question to be one of first impression for the Court and one that need not be answered in the present case).

<sup>2</sup> If a local unit of government advocates for the passage of a constitutional amendment, local ballot questions, or levy referenda, state campaign finance laws can apply. See *Abrahamsen v. St. Louis County School District 2142*, 819 N.W.2d 129 (Minn. 2012).

<sup>3</sup> *Abrahamsen*, 819 N.W.2d at 136 (Minn. 2012) (“Whether, after the District answers the complaint and the case is fully litigated, the ALJ [administrative law judge] ultimately finds that these statements were promotional will depend on the evidence before it at that time.”).

<sup>4</sup> Minn. Stat. § 211B.32.

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This Statement of Position is not legal advice and is subject to revision.

educate the electorate.”<sup>5</sup> For example, in a [1966 opinion](#), the Minnesota Attorney General determined that a school district had no authority to spend money to promote one side of a bond referendum.<sup>6</sup> School boards could, however, expend a reasonable amount of funds to educate voters of facts pertinent to a ballot question or educational levy referendum.<sup>7</sup>

In addition, it has been generally recognized that elected officials may appear before citizens to orally advocate for a particular position as long as no expenditure of public funds is involved.<sup>8</sup>

In a [2006 letter](#), the Minnesota Attorney General acknowledged that circumstances may exist where a state action or proposal could have such a “direct and substantial effect” on the interests of a local government entity that the entity would have a legal right to promote and protect its interests. If such a legal right exists, the public entity could spend public funds to protect or promote its interests, even by financially supporting one side of a ballot issue. The Attorney General advised that previous Attorney General Opinions have concluded that public funds cannot be spent for advocacy where the proposed measures’ effect would be “only indirect and in common with the public at large.” Ultimately, however, the Attorney General failed to find such a legal right in the matter at hand in 2006, and advised that no public funds be used to advocate the public entity’s position.

In light of recent court decisions, the Office of the State Auditor recommends that local governments seek legal advice before spending public funds to advocate for passage of a ballot question.

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<sup>5</sup> See Attorney General opinions summarized in *Abrahamson v. St. Louis County School District 2142*, 802 N.W.2d 393, 401-02 (Minn. App. 2011), *aff’d in part, rev’d in part, and remanded*, 819 N.W.2d 129 (Minn. 2012).

<sup>6</sup> Op. Att’y Gen. (159a-3, May 24, 1966).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*