

BEFORE THE DULY CONSTITUTED DUPAGE COUNTY OFFICERS' ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO PETITION FOR BINDING REFERENDUM

Joshua Martin,)	
)	
Petitioner-Objector,)	
)	2019 CE001
vs.)	
)	
Susan Cassa,)	
)	
Respondent-Principal Proponent.)	

ELECTORAL BOARD DECISION

The DuPage County Electoral Board, consisting of Cathy Terrill, Chairperson, and James Lowe and John Boske, Members; organized and existing pursuant to Sections 28-4 and 10-9 of the Illinois Election Code (the “Election Code”), hereby issues its Electoral Board Decision in the above referenced matter pursuant to Section 10-10 of the Election Code. 10 ILCS 5/10-10.

PREFATORY REMARKS

Within the time frame set forth by statute, the principal proponent, Susan Cassa, (the “Proponent”) filed a “Petition for Referendum to Decrease Extension for Educational Purposes” concerning the Lisle Community School District 202, in the County of DuPage, State of Illinois, (the “Petition for Referendum”) to be voted on at the April 2, 2019, General Consolidated Election with the DuPage County Election Commission (“Election Commission”) identified in the Record as Exhibit A. The Objector, Joshua Martin (the “Objector”) timely filed his “Objections to the Petition for Referendum to Decrease Extension for Educational Purposes” (the “Objector’s Petition”) with the Election Commission on October 9, 2018, identified in the Record as Exhibit B.

A Call Notice for Hearing and a copy of the proposed Rules was issued by Cathy Terrill, Chairperson of the Electoral Board, identified in the Record as Exhibit C. The Proponent and the Objector were served with the Call Notice and a copy of the proposed Rules by Registered Mail, as evidenced by the Receipt for said service, identified in the Record as Exhibit D. The Proponent and the Objector were personally served with the Call Notice and copy of the proposed Rules by the DuPage County Sheriff's Office, in accordance with Section 10-10 of the Election Code, as identified in the Record as Exhibit E. The Respondent filed a Motion to Strike and Dismiss identified in the Record as Exhibit F. Pursuant to the Election Code, on October 15, 2018, the DuPage County Electoral Board was duly constituted, convened for the hearing and passing upon the Objector's Petition. Upon convening this matter, the Electoral Board adopted Rules of Procedure identified in the Record as Exhibit J. An Appearance of the Objector and Objector's Counsel was filed and is identified in the Record as Exhibit K. An Appearance of the Respondent and Respondent's Counsel was filed and is identified in the Record as Exhibit L.

The Objector filed a Response to the Motion to Strike and Dismiss identified in the Record as Exhibit H. This matter was continued and rescheduled for a hearing on the merits to November 26, 2018 by notices identified in the Record as G and I. The Respondent requested that the Electoral Board take judicial notice of a number of public records, with no objection of the Objector identified in the Record as Exhibit M. On November 26, 2018, this matter proceeded to a hearing on the merits of the Objector's Petition. All Parties were present. At the hearing the Parties submitted stipulations identified in the Record as Exhibit N. At the hearing, the Electoral Board took judicial notice of the public levy records identified in the Record as Exhibit O.

PRELIMINARY MOTIONS

The Respondent has filed a Motion to Strike and Dismiss arguing that the objection in this matter is without merit, as a matter of law. In this regard, the Respondent's Motion is akin to a motion for judgment on the pleadings authorized under section 2-615(e) of the Illinois Code of Civil Procedure. It is well settled that "[i]n ruling on a motion for judgment on the pleadings, a court may consider only those facts appearing on the face of the pleadings, matters subject to judicial notice, and any judicial admissions in the record." *Hooker v. Illinois State Bd. of Elections*, 2016 IL 121077, ¶ 21, 63 N.E.3d 824, 833. Stipulations are judicial admissions. *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 45, 973 N.E.2d 408, 422.

There is only one legal objection raised in this matter, which is addressed in the Parties' briefing on the Respondent's Motion to Strike and Dismiss. The Objector contends that the form of the question in the "Petition for Referendum to Decrease Extension for Educational Purposes" concerning the Lisle Community School District 202 is improper. Specifically, the Objector argues that the form of the question is improper by stating "for the **2018** levy year" as opposed to the **2019** levy year. The Respondent contends that the form of the question is proper and that the Objector's position is legally erroneous. The statute authorizing the submission of this referendum to voters was enacted in 2017 and the legal question in this matter is one of first impression. 35 ILCS 200/18-206.

The Respondent requested, with no objection of the Objector, that the Electoral Board take judicial notice of several public records. The Electoral Board is authorized to take judicial notice of official public records. *See generally, Adams v. N. Illinois Gas Co.*, 211 Ill. 2d 32, 65, 809 N.E.2d 1248, 1269 (2004) *citing Nordine v. Illinois Power Co.*, 32 Ill.2d 421, 428, 206 N.E.2d 709 (1965) (observing that orders and decisions of the Illinois Commerce Commission are public records "and as such we take judicial notice of them").

As to the merits of Respondent’s Motion to Dismiss, the Electoral Board considers the applicable law, official public records judicially noticed and the Parties’ stipulations.

As to the applicable law, section 28-1 of the Election Code provides in pertinent part that:

Questions of public policy which have any legal effect shall be submitted to referendum only as authorized by a statute which so provides...

The method of initiating the submission of a public question shall be as provided by the statute authorizing such public question...

.....

Whenever a statute provides for the initiation of a public question by a petition of electors, the provisions of such statute shall govern with respect to the number of signatures required, the qualifications of persons entitled to sign the petition, the contents of the petition, the officer with whom the petition must be filed, and the form of the question to be submitted.

10 ILCS 5/28-1 (emphasis added). Section 18-206 of the Illinois Revenue Code (“Revenue Code”) specifically provides for the initiation of the referendum question by a petition of electors at issue in this matter and provides in pertinent part:

Notwithstanding any other provision of law, for those school districts whose adequacy targets, as defined in Section 18-8.15 of this Code, exceed 110% for the school year that begins during the calendar year immediately preceding the levy year for which the reduction under this Section is sought, the question of whether the school district shall reduce its extension for educational purposes *for the levy year in which the election is held* to an amount that is less than the extension for educational purposes for the immediately preceding levy year shall be submitted to the voters of the school district at the next consolidated election but only upon submission of a petition signed by not fewer than 10% of the registered voters in the school district. In no event shall the reduced extension be more than 10% lower than the amount extended for educational purposes in the previous levy year, and in no event shall the reduction cause the school district's adequacy target to fall below 110% for the levy year for which the reduction is sought.

35 ILCS 200/18-206. As to the form of the question to be submitted to voters, section 18-206 provides:

The proposition seeking to reduce the extension for educational purposes shall be in substantially the following form:

Shall the amount extended for educational purposes by (school district) be reduced from (*previous levy year's extension*) to (proposed extension) for (levy year), but in no event lower than the amount required to maintain an adequacy target of 110%?

Votes shall be recorded as “Yes” or “No”.

Id. (emphasis added).

The Petition for Referendum contains the following form of question:

Shall the amount extended for educational purposes by the Lisle Community Unit School District 202 be reduced from \$19,062,127.15 to \$17,155,915.00 *for the 2018 levy year*, but in no event lower than the amount required to maintain an adequacy target of 110%?

(emphasis added). The Objector contends that the form of the question is improper by stating “for the **2018** levy year” as opposed to the **2019** levy year. The Proponent contends that the form of the question is proper and that the Objector’s position is legally erroneous. The Objector has raised no other objections to the form of the question other than to the Proponent’s designation of levy year. For example, there is no objection to the monetary figures set forth in the question.

The Electoral Board takes notice of the Lisle Community Unit School District No. 202’s (the “School District”) “Board of Education Secretary’s Certificate of Tax Levy” executed on December 18, 2017 as well as the School District’s “2017 Real Estate Tax Levy Resolution” approved on the same day. *See* Exhibit O. For example, the 2017 Real Estate Tax Levy Resolution states:

WHEREAS the Board of Education of Lisle Community Unit School District No. 202 has determined that the following amounts are required to be levied *for the 2017 Tax Year*.

(emphasis added). The Board of Education Secretary’s Certificate of Tax Levy states:

That the attached Certificate of Tax Levy is an accurate and true copy *of the 2017 Tax Levy* as approved by the Board of Education at its meeting held on December 18, 2017.

(emphasis added).

There is no dispute that the School District has not signed such similar certificate or approved such similar resolution for the 2018 tax year, which is not required until December 26, 2018. 105 ILCS 5/17-11. Additionally, there is no dispute that the sum of \$19,062,127.15 was the amount extended for educational purposes for the School District pursuant to the School District's last 2017 tax levy filings. Objector makes no argument that the School District's last 2017 tax levy filings are improper under the School Code or the Revenue Code.

Accordingly, it is apparent from the School District's last tax levy filings that the School District's previous "levy year" is 2017 and that the School District will be in its 2018 levy year at the time the April 2, 2019 General Election is held. Accordingly, the School District's "previous levy year's extension", as contemplated under section 18-206 of the Revenue Code, must be the School District's last 2017 tax levy year extension for educational purposes. There is no dispute that the sum of \$19,062,127.15, to which Objector makes no objection, is the extension associated with the School District's last 2017 tax levy for educational purposes.

The Objector relies on section 1-155 of the Revenue Code to support his objection. However, the definition of "year" in section 1-155 of the Revenue Code as a calendar year is of no consequence because, according to the School District's tax levy filings, its 2017 "levy year" is in place for a calendar year (January 1 through December 31) as opposed to a fiscal year. 35 ILCS 200/18-206.

Moreover, the construction advanced by the Objector leads to an unjust result by making it impossible to put concrete monetary figures in the form of the question involving the School District. *In re B.L.S.*, 202 Ill. 2d 510, 514–15, 782 N.E.2d 217, 220–21 (2002) ("The primary purpose of statutory construction is to determine and give effect to the legislature's intent, while

presuming the legislature did not intend to create absurd, inconvenient, or unjust results.”). To use the term “2019 levy year” would require reference to a tax levy extension amount that has not yet been determined or extended. Such amount is not required to be filed by the School District until December 26, 2018 and will not likely be actually extended until late March 2019. 105 ILCS 5/17-11.

Accordingly, the Electoral Board hereby finds that the form of the question in the Petition for Referendum is in compliance with the Election Code and the Revenue Code, as a matter of law. Therefore, the Respondent’s Motion to Strike and Dismiss is hereby **GRANTED** and the objection of the Objector is **OVERRULED**, as a matter of law.

CONCLUSION AND ORDER

Based upon the findings made herein, it is the decision of the Electoral Board that the public question set forth in the Petition for Referendum shall be printed on the Official Ballot for the April 2, 2019, General Consolidated Election.

REVIEW OF ELECTORAL BOARD DECISION

Any Party seeking to review this decision and determination of the Electoral Board shall do so in accordance with the provisions and time frame set forth in Section 10-10.1 of Illinois the Election Code. 10 ILCS 5/10-10.1.

DU PAGE COUNTY ELECTORAL BOARD

/s/ Cathy Terrill
CATHY TERRILL, CHAIRPERSON

/s/ James Lowe
JAMES LOWE, MEMBER

/s/ John Boske
JOHN BOSKE, MEMBER

Dated: November 26, 2018

CERTIFICATE OF SERVICE

I, Lori Kantner, Executive Assistant to the Electoral Board, certify that a copy of the DUPAGE COUNTY'S ELECTORAL BOARD DECISION IN CASE No. 2019 CE 001 was served upon the Parties pursuant to Section 10-10 of the Election Code on November 26, 2018.

/s/ Lori Kantner
Lori Kantner, Executive Assistant to the
DuPage County Electoral Board