

The Alamance News



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July 16, 2024

Mayor Jim Butler, City council members Harold Owen,
Bob Ward, Ronnie Wall, and Dejuana Bigelow
Mr. Craig Honeycutt, City manager
City of Burlington
425 South Lexington Street
Burlington, North Carolina 27215

Dear Mayor Butler, council members, and city manager Honeycutt:

I want to take a few minutes to express my concern with the city's initial efforts to influence voters in support of the two bond referendum questions that are being considered tonight to be on the November ballot. The city must be very careful to comply with state law to ensure that no tax dollars, no official city efforts may be used to support or advocate for these bond referendums – not even in the name of a so-called “informational” or “educational” campaign.

State law has a very short, succinct prohibition: “A municipality shall not use public funds to endorse or oppose a referendum, election or a particular candidate for elective office.” (N.C.G.S. § 160A499.3. Limitation on the use of public funds.)

This statute was enacted by the General Assembly in 2010 in response to concerns that certain municipalities had crossed the line into advocacy of certain bond referendum questions.

Dollar vs. Town of Cary, a North Carolina Court of Appeals case decided in 2002, provides more guidance about how to ensure that government agencies do not violate the fundamental principle that voters should not be forced to finance advocacy against their own preferences.

An important cornerstone of American democracy is that the government, itself, maintains a strict neutrality in elections. The fairness and integrity of the election process demands that government entities not attempt to “tip the scales,” so to speak, in an election by advocating or promoting a position on an issue that its elected members, or other city officials, support – or may devoutly wish to see enacted.

It is “election interference” of the worst kind to have governments trying to influence the electoral decision(s) of its citizens.

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I think it is important to note that the Court of Appeals decision provided guidance on distinguishing between providing so-called “information” (which, within reason, is allowed) vs. prohibited actions that cross into advocacy, promotion, or even outright propaganda.

Here are some of the key phrases from that 2002 decision: “The determination of whether advertising is informational or promotional is a factual question, and factors such as the style, tenor, and timing of the publication should be considered. . . It is not necessary for the advertisement to urge voters to vote ‘yes’ or ‘no’ or ‘for’ or ‘against’ a particular issue or candidate in order for the advertising to be promotional.”

Keep these phrases in mind: the “style, tenor, and timing.”

The Court of Appeals also found that the town’s “advertisements, in the context of the Council elections, appear to be more than informational in nature and instead implicitly promote [various council candidates].” The town’s efforts promoted, according to the court opinion, “only one point of view.”

I’m attaching some examples from the city’s website which demonstrate that the city is *already* violating these principles.

I have also reviewed some of the discussion from yesterday’s city council work session. While great emphasis was put on the assertion that the city government’s focus is on “information” or “education,” even a casual look at the city’s promotional website for the bonds makes clear that, in fact, the city is already participating in the very kind of lopsided advocacy that the North Carolina Court of Appeals – and, I might add, many other state courts across the country – have found to be unacceptable.

Even more disturbing was the suggestion that the city would pay to provide printed materials, perhaps through the city’s water bills, or printed cards for distribution, which I’m concerned would be just as one-sided as the city’s website already is. Where is the legislative authorization for city payment of such materials? I’m not at all sure there is any.

First, and perhaps most importantly, this strategy nakedly reveals the city’s implicit bias in favor of the bonds inasmuch as the materials are proposed to be sent, citywide, *without* regard to whether citizens actually desire, or requested, any “information” or “education” on the bonds. In fact, the idea that city officials have already met with one or more various groups – the chamber of commerce was mentioned last night – *even before* the city council has finalized its approval of placing

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the bonds on the ballot (which perhaps could come as early as later tonight) further demonstrates an overt example of partiality and prejudice.

Another statement made last night was the assertion that some dimensions of these bond packages would have a broad economic impact. There has been no previous discussion about this alleged impact (it certainly had not been a stated reason for either package), nor is there *any* actual evidence or data to support such a contention.

The city has not put forward a bond referendum question in at least several decades, but we are always concerned that governments comply with the limitations provided in state law and court precedents. And we find that, in between such bond referendums, officials often forget – or perhaps ignore – these statutory requirements.

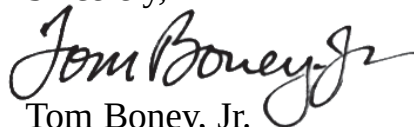
In most recent bond referendum issues that have appeared in Alamance County – in both cases involving educational bond referendums – independent, third-party groups were formed to provide the kind of advocacy that city officials appear to want to support. Third parties can be one-sided, can understate the financial impact on residents, and can support or advocate for passage of the bonds, but city governments cannot.

I would suggest that if individual members of the council – who are not as limited in their *personal* advocacy as is city government as a whole – should approach outside individuals or organizations to develop an advocacy campaign, or campaigns, to support passage of each bond referendum, which also must adhere to federal (IRS) guidelines.

But the city government, itself, must take special care not to violate North Carolina law by using tax dollars to advocate for these bonds – whether overtly or surreptitiously. And council members and other city officials must refrain from using tax dollars, city staff, or other city resources in any way to advocate for the bond packages.

Thank you for your consideration and attention to these concerns.

Sincerely,

A handwritten signature in black ink that reads "Tom Boney, Jr." with a stylized flourish at the end.

Tom Boney, Jr.
Publisher