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### Referendum advocacy was legal and terrible

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You may have read that voters in Upper Saucon Township narrowly rejected a referendum to pay an additional 0.25 percent in earned income tax to preserve open space. It failed by 33 votes.

That's not terribly surprising. Voters are notoriously reluctant to approve taxing themselves more.

What was unusual about this referendum was that Upper Saucon government actively campaigned for Yes votes.

Communities sometimes will make an effort to educate voters about what's on the ballot. In some instances, private groups will come together to promote a particular result.

What doesn't happen, at least in my experience, is local government leaders using taxpayer money to tell people how they should vote. Upper Saucon spent \$12,000 on three mailings, an advertisement and yard signs, according to Township Manager Thomas Beil, so this was a significant effort.

It's hard to argue against protecting open space, but from a good government standpoint, that's terrible. If I live in Upper Saucon and oppose this tax, why should my money be used to promote it? Why don't I have access to public resources to advocate for my view? It's fundamentally unfair.

Yet that's exactly what happened. The township produced and sent out fancy mailers that were about as subtle as a rap with a 2-by-4. Township Supervisor Chairman Miro Gutzmirtl portrayed the mailings as "getting the information out," but the cover of one of them said, "Support Upper Saucon Township Natural Areas Referendum by voting YES on November 4th!!!"

Neutral? Not so much.

One exclamation point means: This is a really good idea! Three means: I'm screaming and jumping up and down because I really really want you to do this!!!

Gutzmirtl, the force behind the creation of a township Environmental Advisory Council and the referendum, said this advocacy was OK because he and four other supervisors were elected on environmental platforms. "This is representative government," he said. "We're trying our best to address an agenda from the people who voted us in."

My first reaction was that the township's approach couldn't possibly be legal. But getting an answer was more difficult than I expected.

Janel Miller of the state Department of Community and Economic Development, for example, noted, "Generally speaking, there's nothing wrong with using taxpayer funds for mailings and signs to make voters aware of a referendum question."

Understood, I replied. But what if the taxpayer funds are being used to tell people how to vote?

Oh. She'd have to check around and get back to me.

As it happens, she never got an answer. She said DCED officials are reluctant to comment on local issues.

The state Department of State punted, too.

Stacy Sterner, chief clerk of the Lehigh County Board of Elections, acknowledged she had received complaints from township residents about their money being used to promote a Yes vote, so she researched the issue -- and learned that it isn't addressed in the law. She also got complaints about the lack of disclaimers identifying the source of the yard signs. That is technically illegal, but unenforceable because of court precedents.

Upper Saucon solicitor Jeffrey Dimmich said he had concerns about the township's advocacy, but he found there was no law or precedent on this issue. So he consulted the legal department at the state Association of Township Supervisors, which told him it was permissible.

Considering that, and the powers allowed an Environmental Advisory Board under the second class township code, he concluded, "We felt we at least had sufficient authorization to proceed."

I guess my question has been answered. It was legal for Upper Saucon to spend \$12,000 telling people how to vote in their referendum.

But I don't need a lawyer to tell me it wasn't right.

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