

BALLOT LANGUAGE ON APRIL 29 POLK COUNTY ELECTION VIOLATES IOWA LAW

FOR IMMEDIATE RELEASE

www.PolkJustice.com

April 18, 2008

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Des Moines, IA - Polk County officials admitted April 7 that the projected tax rate they have been using for the \$132,000,000 bond on the proposed new courthouse addition was in error. Now the ballot language showing the amount of the general obligation bond, which Polk County voters are being asked to vote on April 29, being \$5,000,000 higher than the total project costs is wrong too, says George Davey, chairman of CitizensForReasonableJustice.com. The pattern of ineptitude and lack of oversight continues.

See the ballot language here - <http://auditor.co.polk.ia.us/election/4-29-2008/sample.pdf>

Last night a representative of our committee wrote to Polk County Auditor Jamie Fitzgerald and County Attorney John Sarcone and asked them, "As it is Polk County's position that Iowa Code 331.442 allows them to place a general obligation [bond] amount on the ballot, in an amount \$5,000,000 larger than the project cost listed on the ballot, then is there anything in Iowa Code which limits the amount in excess of the total project costs, which Polk County can seek general obligation bonding authority for? **When the total project cost is \$127,000,000 could the county supervisors, for example, have voted to seek authority for a \$200,000,000 GO bond?**" Meanwhile Davey also asks, "Where are they going to spend the other \$5 million?"

As of this release we have not heard back from any county official.

This morning we sent a copy of a long-standing Iowa court ruling, *GRAY ET AL v. MOUNT ET AL. Iowa 1877*, to these same officials. The Iowa Court in Gray said,

"If there be two objects and a specified amount of funds to be devoted to each, it is very plain that there are two propositions submitted at the same election. If they are submitted together, it is very clear that the voter cannot vote for one and against the other...The plan of submitting the questions, for there are two, resembles more the common device of an auctioneer in disposing of worthless goods, whereby a good article is mingled with them and made to draw bids, or the cunning tricks of gamblers to induce wagers of the unwary, rather than the open, direct and fair manner that always should prevail in elections by the people. The very letter as well as the spirit of our election laws condemns this plan."

Davey concluded, "The courts have spoken to this issue. While the total project costs can exceed the general obligation bond amount where a project is being shared with another jurisdiction (I.e. City of Des Moines), this court ruling clearly indicates the bond amount cannot exceed the total project costs as they are seen as two propositions? The very letter as well as the spirit of our election laws condemn the ballot which confused voters are being asked to consider April 29.

CitizensForReasonableJustice.com calls on Polk County to cancel this election, approve a proper ballot and reschedule for another date. If they fail to do this and if it would pass, it wouldn't be a surprise if the election results are tied up in court over this ballot language. The group will next seek an opinion from the Iowa Attorney General on 331.442 and 331.441.

The very last part of Iowa Code Section 331.441 defines the "costs" associated with a project:

3. *The "cost" of a project for an essential county purpose or general county purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.*

The first part of Iowa Code Section 331.442 explains a bond referendum can only include all or part of these costs:

1. *A county which proposes to carry out any general county purpose within or without its boundaries, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, shall do so in accordance with this part.*
 2. *Before the board may institute proceedings for the issuance of bonds for a general county purpose, it shall call a county special election to vote upon the question of issuing the bonds. At the election the proposition shall be submitted in the following form:*

Shall the county of, state of Iowa, be authorized to (state purpose of project) at a total cost not exceeding \$... and issue its general obligation bonds in an amount not exceeding \$... for that purpose?

3. *Notice of the election shall be given by publication as specified in section 331.305. At the election the ballot used for the submission of the proposition shall be in substantially the form for submitting special questions at general elections.*

The ballot offered to voters in Polk County on April 29, 2008 has \$5M in extra costs not defined by any project and

especially not defined by the current project value not to exceed \$127M within the ballot language.

These costs should be assigned to a project with known value on the ballot itself.

Case law also dictates any and all costs on the ballot must be clearly linked to the individual projects.

GRAY ET AL v. MOUNT ET AL. Iowa 1877



McMillan v. Boyles et al., 3 Iowa, 311

Additionally, the ballot defies simple logic, if the total costs will not exceed \$127M, one has to ask why are we voting a ballot that also says the costs won't exceed \$132M.

Obviously using simple logic both values go to \$132M. This ballot therefore tricks voters which has already been addressed in the case law.

**SAMPLE BALLOT
SPECIAL ELECTION
COUNTY OF POLK, STATE OF IOWA
APRIL 29, 2008**

INSTRUCTIONS FOR VOTING PUBLIC MEASURE

TO APPROVE A PUBLIC MEASURE OR QUESTION ON THIS BALLOT, FILL IN THE OVAL BEFORE THE WORD "YES" LIKE THIS: 
TO VOTE AGAINST A PUBLIC MEASURE OR QUESTION ON THIS BALLOT, FILL IN THE OVAL BEFORE THE WORD "NO" LIKE THIS: 

PUBLIC MEASURE LETTER A

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

SHALL THE COUNTY OF POLK, STATE OF IOWA, BE AUTHORIZED TO RENOVATE AND IMPROVE THE EXISTING COURTHOUSE AND CONSTRUCT AN 8-1/2 STORY COURTHOUSE FACILITY LOCATED IMMEDIATELY SOUTH OF THE EXISTING COURTHOUSE, WITH RELATED SITE IMPROVEMENTS, AT A TOTAL COST NOT EXCEEDING \$127,000,000 AND ISSUE ITS GENERAL OBLIGATION BONDS IN AN AMOUNT NOT EXCEEDING \$132,000,000 FOR THAT PURPOSE?

YES

NO