

V. Advisory Questions

Highly publicized referenda in other states previously led to demands that certain locally controversial measures be determined by the voters. Those demands, in turn, led to the practice of placing advisory questions on the ballot to determine popular sentiment on particular local matters. Despite the fact that no law authorized the use of advisory opinions, this practice went relatively unchallenged for many years. However, in 1990, the Commonwealth Court made clear that nonbinding advisory questions are not permissible in Pennsylvania.

In that case, the Lancaster County Board of Elections permitted an advisory question about whether to build a new high school in the Hempfield School District. The court of common pleas rejected the school district's request for an injunction to preclude the question from being placed on the ballot and the school district appealed. The Commonwealth Court reversed and granted the injunction, ruling that the Election Code does not give county boards of elections the discretion to place nonbinding referenda questions on the ballot. The court found that the Public School Code determines how the school board must obtain public review of issues involving school construction and that the board of elections had no legal authority to place the nonbinding question on the ballot.¹

The issue of advisory questions came up again before the Commonwealth Court in 1991. In that case, the Schuylkill County Board of Elections placed an advisory question on the ballot concerning a plan to build a soil remediation facility in Blythe Township. The township and the operator of the proposed facility asked the court of common pleas to remove the question from the ballot. The court followed the precedent established in *Hempfield School Dist.* and ordered that the issue be removed from the ballot. Schuylkill County appealed to the Commonwealth Court, which affirmed the decision of the court of common pleas. The court clearly stated that the county lacked authority to place a nonbinding referendum on the ballot absent specific statutory authority.²

References

1. *Hempfield School Dist. v. Election Bd. of Lancaster County*, 574 A.2d 1190, 133 Pa.Cmwlth. 85 (1990).
2. *Board of Elections of Schuylkill County v. Blythe Tp.*, 600 A.2d 231, 143 Pa.Cmwlth. 341 (1991).