

Judge to rule Friday on legality of Rochester schools referendum

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State Supreme Court Justice J. Scott Odorisi expects to rule by midmorning Friday whether a referendum on the future of Rochester public schools will be placed on the November ballot.

The Rochester City School District and city of Rochester both presented their cases Thursday after a volley of paperwork over the last few days. The question was whether the city has the legal right to ask voters whether to remove language about school commissioners and their salaries from the city charter — an act that would send a signal to the state Legislature whether to suspend the school board entirely.

Speaking for the district and board, lawyer Alison Moyer said the proposed referendum was simply a “public opinion survey,” impermissible under state law.

“Asking voters to suspend or eliminate the board of education — they simply can’t do that,” she said. “An attempt to lay down precedent of an invalid nature at the local level does nothing legally to help the state act.”

But city Deputy Corporation Counsel Patrick Beath said the referendum, by “cleaning up the charter in this fashion, (would) make that transition more efficient down the road if the state chooses to take that action.”

Odorisi, who seemed skeptical of the city’s case throughout the hearing, questioned that argument on two fronts. First, he pointed out the city would be creating a conflict, not removing one, by putting its charter at odds with state law.

Then, he asked Beath: What if the Legislature decides against eliminating the school board even if the referendum were to pass?

“Then the board goes on as it is today, except they don’t get paid their

salaries,” Beath responded.

That is not the case, however, as the underlying local law was made contingent not just on the referendum’s outcome but on state action as well.

City Council in June approved placing a referendum on the November ballot asking residents whether to remove language about “commissioners of the board of education” — including a section on board salaries — from the City Charter.

The suggested ballot language reads: “Shall the City of Rochester enable the reform of our public schools by adopting a Local Law that would suspend the terms of the Commissioners of the Board of Education for a period of a least five (5) years?”

That action would not have the effect of actually abolishing the school board, but rather would potentially signal popular support for such a move by the state Legislature. Gov. Andrew Cuomo and state Sen. Rich Funke, among others, have said such an indicator is important before moving forward.

The district, school board and board leaders Van White and Cynthia Elliott, individually, sued to block the measure, arguing it is illegal. In legal papers filed Wednesday, the city sought to recoup salary paid to board members over the last month, if the court determined a referendum wasn’t needed to revise the charter.

Mayor Lovely Warren has been lead-

ing the charge for the referendum while also attempting to stay clear of restrictions on political advocacy with taxpayer dollars. She sent a letter to 30,000 residents at a public cost of \$10,000, “purely to educate,” Beath argued in court Thursday. Many saw it as the mayor signaling she wanted voters to support the referendum. Warren also recorded a message for an automated phone call criticizing the district’s opposition to the referendum. A spokesman said she did it “in her personal capacity,” without public funds. Warren did not respond to a request for comment on the phone call, and the spokesman did not have a script available.

“Isn’t it obvious from reading the letter — regardless of the last line, that says “vote with me” — that it is advocating for a particular outcome?” Odorisi asked Thursday.

“If that’s obvious to a reader, it’s not because anything that was said, was said telling the reader how to vote,” Beath responded. “What was said was outlining a history of failure.”

The official county Board of Elections deadline for gathering items to put on the printed ballot is Monday, Aug. 5. Chuck Johnson, a lawyer representing the Board of Elections, said there is some flexibility, with mid-August as a hard deadline.

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