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LEGAL UPDATE

February 14, 2020

To: **Superintendents/Presidents/Chancellors, Member Community College Districts**

From: **Carl D. Corbin** CDC
General Counsel

Subject: **FAQ Regarding Political Activities by School Districts and District Employees**
Memo No. 03-2020(CC)

Set forth below are frequently asked questions regarding political activities by Districts and their employees.

Question: Can District funds or supplies be used to urge support for or defeat of an upcoming ballot measure or candidate?

No.

Education Code section 7054, subdivision (a) provides:

> No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

These provisions also apply to County Offices of Education.[1]

Question: Can a District use District money to send an informational letter to the public about a ballot measure?

Yes.

[1] See Educ. Code section 7051.

Education Code section 7054, subdivision (b) provides:

> Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if *both* of the following conditions are met:
>
> (1) The informational activities are otherwise authorized by the Constitution or laws of this state.
>
> (2) The information provided constitutes a fair and *impartial* presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure." (Emphasis added.)

An *impartial* presentation of the facts will necessarily include all consequences, good and bad, of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences that may be foreseen.[2]

Question: What are some examples of "informational" materials paid for with public money that have been found to be illegal?

"Frequently, the line between unauthorized campaign expenditures and authorized informational activities is not so clear. In such cases, the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case."[3]

- In one case, the trustees of the Madera Union High School District spent public funds to place a full-page advertisement in a general circulation newspaper one day before a school board election. The advertisement did not expressly advocate voters to "Vote Yes" on the bond issue, but stated in large letters, "A CLASSROOM EMERGENCY EXISTS NOW AT MADERA UNION HIGH SCHOOL," and listed a number of reasons why additional funds were needed by the school district. The Attorney General concluded that, in light of the "style, tenor and timing" of the advertisement, it was unlawful for the district to have expended public funds for the advertisement.[4]

- In another case, school district money was spent for printing, artist's work and postage to circulate an 18-page booklet entitled "Read the Facts Behind the School Building Program." All but one page of the booklet depicted in graphic form such facts as the growth of the grade school population, the inadequacies of existing facilities, the proposed additions, with architectural sketches, to two schools, the aggregate and annual costs, principal and interest, of the immediate program and the effect upon taxes of such

[2] *Citizens to Protect Public Funds v. Board of Education* (1953) 98 A.2d 673.
[3] *Vargas* v. *City of Salinas* (2009) 46 Cal.4th 1, 25.
[4] 35 Ops.Cal.Atty.Gen 112 (1960).

cost. However, there also appeared on the cover and on two of the pages 'Vote Yes,' and 'Vote Yes – December 2, and an entire page that included:
"What Will Happen if You Don't Vote Yes?

"Double Sessions!!!
"This will automatically cheat your child of 1/3 of his education (4 hours instead of 6).
"Yearly school changing and hour long bus rides will continue for many children.
"Morning Session (8:30-12:30) Children will leave home ½ hour earlier.
"Afternoon Session (12:30-4:30) Children will return home 1 ½ hours later (many after dark).
"Children in some families would be attending different sessions (depending upon grade).
"Transportation costs will increase (could double) with 2 sets of bus routes per day.
"Temporary room rentals will continue.
"Double use of equipment will necessitate more rapid replacement.

"Note: Operating expenses will continue to rise as the enrollment increases (more teachers, more supplies and equipment for children. This Will Be So Whether We Build Or Not.)"

The court found that most of the booklet under attack, in 17 of its 18 pages, fairly presented the facts as to need and the advantages and disadvantages of the program, including the tax effect of its cost, and if it had stopped there, the district's expenditures would have been permissible.

The school board was not content simply to present the facts. The exhortation "Vote Yes" was repeated on three pages, and the dire consequences of the failure so to do were over-dramatized. For those reasons, the court found the board's use of public funds to advocate one side only of the controversial question violated the law. "The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not merely the presentation of facts but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint."[5]

Question: Can a school board express its *opinion* regarding a ballot measure?

Yes.

In *Choice-in-Education League* v. *Los Angeles Unified School District*,[6] the court of appeal considered whether it was proper for the school district board of trustees to announce at a public meeting, which was televised, its opposition to a proposed "choice in education" ballot initiative. In finding that the board's conduct was legal, the court noted that speakers in favor of the initiative were afforded an opportunity to speak at that board meeting in accordance with the Brown Act. The fact that no one chose to speak in favor of the initiative at the meeting did not bar the board from expressing its view on the initiative.[7]

[5] *Citizens to Protect Public Funds* v. *Board of Education of Parsippany-Troy Hills* (1953) 98 A.2d 673, 674.
[6] *Choice-in-Education League* v. *Los Angeles Unified School District* (1993) 17 Cal.App.4th 415.
[7] *Choice-in-Education League*, *supra*, 17 Cal.App.4th at 429. See also *Vargas* v. *City of Salinas*, *supra*.

Note: the Board may express its opinion in a resolution, but it should refrain from telling voters how to vote.

Districts must be cautious regarding how to disseminate the Board's opinion because section 7054 does not permit District funds to be spent to further political advocacy. However, the Board resolution could be posted on the District website in the same manner as other District resolutions.

Question: Can Districts spend public money to evaluate whether it is appropriate to propose a ballot initiative?

Yes.

Because districts are authorized to place certain measures on the ballot, they may spend public money to evaluate whether to do so.

For example, the Attorney General has found that it is permissible for a community college district to spend district funds to hire a consultant for the purpose of evaluating the likelihood of the electorate's approval of a bond measure. The express power to propose a bond measure on the ballot when the district board finds it advisable to do so implies that the board has the power to make reasonable expenditures for the purpose of gathering information in order to exercise its discretion in an informed manner.[8] The district may also submit a partisan ballot argument in favor of a bond measure.

Not all pre-campaign public expenditures, however, are permissible. For example, a district board may not spend district funds on activities that form the basis for an eventual campaign to obtain approval of a bond measure and district resources may not be used to recruit or organize supporters for a campaign or raise funds for the campaign. See *League of Women Voters* v. *Countywide Criminal Justice*[9] [expenditures made in anticipation of supporting a measure once it is on the ballot come within reporting requirements of Political Reform Act of 1974]; *In re Fontana*[10] [expenditures made in support of a proposal become reportable after the proposal becomes a ballot measure].

Question: Can a District spend public money to lobby the Legislature?

Yes.

While public agency lobbying efforts undeniably involve the use of public funds to promote causes which some members of the public may not support, one of the primary functions of elected and appointed executive officials is to devise legislative proposals to attempt to implement the current administration's policies. Because the legislative process contemplates that interested parties will attend legislative hearings to explain the potential benefits or detriments of proposed legislation, public agency lobbying, within the limits authorized by

[8] 88 Ops.Cal.Atty.Gen. 46 (2005).
[9] *League of Women Voters* v. *Countywide Criminal Justice etc*. (1988) 203 Cal.App.3d 529 at 558.
[10] *In re Fontana* (1976) 2 FPPC Ops. 25.

statute, in no way undermines or distorts the legislative process. By contrast, the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leaves to the "free election" of the people does present a serious threat to the integrity of the electoral process.[11]

Question: Can District employees engage in political activities during off-duty time?

Yes.

Political activities are allowed during off-duty time so long as District resources are not used. No political activities are allowed during work time.

Teachers have the right to discuss with fellow teachers issues of public concern (such as cutbacks to educational funding) in faculty rooms and lunchrooms during duty-free periods.[12]

Education Code section 7056 provides:

> (a) Nothing in this article prevents an officer or employee of a local agency from soliciting or receiving political funds or contributions to promote the support or defeat a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the local agency. *These activities are prohibited during working hours.* In addition, entry into buildings and grounds under the control of a local agency for such purposes *during working hours* is also prohibited.
>
> (b) Nothing in this section shall be construed to prohibit any recognized employee organization or its officers, agents, and representatives from soliciting or receiving political funds or contributions from employee members to promote the support or defeat of any ballot measure on school district property or community college district property *during nonworking time*. As used in this subdivision, "nonworking time" means time outside an employee's working hours, whether before or after school or during the employee's luncheon period or other scheduled work intermittency during the school day.[13]

Education Code section 7055 provides:

> The governing body of each local agency may establish rules and regulations on the following:

[11] *Stanson* v. *Mott* (1976) 17 Cal.3d 206 at 218.
[12] *Los Angeles Teachers Union, etc.* v. *Los Angeles City Bd. of Ed*. (1969) 71 Cal.2d 551, 560; *Adcock* v. *Board of Education* (1973) 10 Cal.3d 60, 65.
[13] Emphases added. Contributions of money, materials, and time to a political campaign are subject to the Political Reform Act, and donors and recipients must comply with certain reporting requirements.

(a) Officers and employees engaging in political activity *during working hours*.

(b) Political activities on the premises of the local agency.

Question: Can a District regulate the wearing of political buttons by employees or other political expression by employees while on duty?

Yes.

A District can restrict political activities that occur during instructional activities, but not during non-instructional time, such as a lunch break.

In *California Teachers Association* v. *Governing Board*,[14] the court held that under Education Code section 7055, a school district could prohibit its employees from wearing political buttons during "instructional activities." This case considers the interplay between section 7055's grant of authority to regulate employee political activity and constitutional free speech guarantees. The court concluded that these constitutional rights should be read to limit regulation of political advocacy under section 7055 to instructional settings: "Under the California Constitution, as well as the First Amendment, school authorities retain the power to dissociate themselves from political controversy by prohibiting their employees from engaging in political advocacy in instructional settings." The court also expressly held that "as applied to non-instructional settings [the] district's regulation is unconstitutional but that in instructional settings it may be enforced." See also 77 Ops.Cal.Atty.Gen 56 (1994).

Question: Can a school district prohibit teachers from wearing political buttons while attending Back to School Night, where teachers meet only with parents?

No.

"The event does not involve an instructional setting for pupils of the district. Rather, the parents are in attendance to show support for their children's educational activities. In this setting, it need not be feared that 'young and impressionable minds' will be unduly influenced by teachers wearing political buttons or that the parents will believe that the teachers' political buttons reflect the view of the district's government board or other school officials."[15]

Question: Can an employee be prohibited from displaying a large campaign sign on her private car in the District lot?

Yes.

In one case, an employee's vehicle displayed a two-by-eight foot sign indicating which school board candidates the union endorsed in order to influence voters in the upcoming election. The district's request that the sign be removed or the vehicle parked off school property was

[14] *California Teachers Association* v. *Governing Board* (1998) 45 Cal.App.4th 1383.
[15] 84 Ops.Cal.Atty.Gen. 106 (2001).

challenged as an unfair labor practice and ultimately addressed by the California Public Employment Relations Board. Under the circumstances of the case, PERB found the school's actions seeking removal of either the sign or the vehicle were permissible under section 7055.[16]

Question: Can teachers wear *union* buttons while in the classroom?

Yes.

The Public Employment Relations Board has held that school districts cannot prohibit teachers from wearing union buttons in the classroom absent "special circumstances." One such circumstance might be "distraction," but PERB found that the district in that case failed to establish distraction as a special circumstance justifying its ban on union buttons. In addition, the Board rejected the employer's contention that the buttons at issue could be considered "political activity" within the meaning of Education Code section 7055.[17]

Question: May a District prohibit the use of District mailboxes to distribute partisan materials?

Yes.

Under Education Code section 7054, a District must prohibit the use of campus mailboxes for distribution of materials urging the support or defeat of any ballot measure or candidate.

In 2001,the Public Employment Relations Board concluded that such a prohibition "on the use of the inter-site mail system—and photocopying services—falls squarely within, *and is in fact mandated by*, the plain words of Section 7054."[18]

In *San Leandro Teachers Association* v. *Governing Board*,[19] the California Supreme Court reached a similar result when it upheld a school district's prohibition of the use of internal faculty mailboxes by the teacher's union as a means of distributing partisan political information to its members. Finding that this use violated section 7054, the court held that the internal teacher mailbox system is not a public forum and therefore the district was not required to allow such use by the teacher's union.

The court indicated that the teacher's union could use the mailbox system to disseminate non-partisan information.

Question: Can incumbents send partisan e-mails from or to District e-mail addresses?

No.

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[16] 24 PERC 31053.
[17] 29 PERC 40 (2004).
[18] *American Federation of Teacher, California Federation of Teachers, Local 1931* v. *San Diego Community College District* (2001) 26 Pub. Empl. Rep. 33014 (emphasis added).
[19] *San Leandro Teachers Association* v. *Governing Board* (2009) 46 Cal.4th. 822.

Candidates who have District e-mail accounts should not use those accounts to send partisan materials.

Candidates may use their private email accounts to send emails to District employees via District email accounts that are available to the general public. We suggest that this occur, if at all, as part of a "mass mailing." [See below.]

Question: May a candidate for the Board send letters to District employees seeking support?

School board candidates should not initiate contact with District employees in an attempt to enlist their support for the campaign; these actions may cause undue pressure on the employee to engage in the political activity.

However, the candidate may send "mass mailings" that target a significant segment of the public even if some of those contacted are District employees. Mailing lists should be obtained from a public source, not from the District.

Question: May a candidate promise an employee a promotion in exchange for his/her support of the candidate?

No.

Persons who hold office, or who are seeking election to office, may not threaten adverse consequences to District employees if they fail to support them, or promise advantages or benefits to District employees who do support them.[20]

Question: May a candidate seek political contributions from District employees?

No.

Current district employees and candidates for elective office shall not solicit political contributions from other district officers or employees unless "the solicitation is part of a solicitation made to a significant segment of the public . . . " It does not matter whether the solicitation is direct or indirect. Government Code section 3205.

Question: May the District fund a "mass mailing" that features an elected official?

No.

The Political Reform Act of 1974 was intended to abolish practices that unfairly favor incumbents.[21] One means of preventing unfair advantage for an incumbent is the prohibition on use of public funds for mass mailings that "feature" the elected official. Thus, "no newsletter or

[20] See Education Code section 7053 and Government Code section 3204.
[21] See Government Code section 81002, subd. (e).

other mass mailing shall be sent at public expense."[22] A "mass mailing" consists of "over two hundred substantially similar pieces of mail" when the items feature an elected official and have not been solicited.[23]

The "mass mailing" restrictions are designed to prohibit "elected officials from using public moneys to perpetuate themselves in public office."[24] Section 18901 defines "mass mailings" in terms of the numbers of copies of an *unsolicited* mailed items, whether the items "feature" elected officers of the entity that produces or sends the mailing, and whether the mailing was prepared or sent in cooperation, consultation, coordination or concert with the elected officer. An elected officer is "featured" when:

> the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.[25]

Question: May a public employee engage in political activities while wearing a uniform utilized in his public employment?

No. See Government Code section 3206.

Question: May a candidate obtain from the District the home addresses of District employees to send them campaign material?

No.

A candidate for the Board may not access employee home addresses from the District. They are not public records.[26] If a candidate who is already in office used his or her public position to do so, it would be a violation of Education Code section 7054.

Question: May a candidate initiate contact with parents or boosters to enlist support?

Yes.

A candidate for office has the right to meet with members of the general public to enlist support. The "general public" includes parents and boosters.

Question: May a union group conduct a meeting at a school site when one of the topics is whether to support a school board member's candidacy?

Yes.[27]

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[22] Government Code section 89001.
[23] Government Code section 82041.5; Cal Code Regs., Title 2, §18901.
[24] *Watson* v. *Fair Political Practices Commission* (1990) 217 Cal.App.3d 1059, 1074-75.
[25] 2 Cal. Code Regs. § 18901, subd. (c)(2).
[26] See Government Code section 6254.3.
[27] See *CSEA* v. *Desert Community College District* (2007) PERB decision no. 1921.

Question: May a candidate address an employee group on site?

Candidates or proponents are allowed to do this only at the invitation of the employee group and only during reasonable non-working hours.

Question: May a candidate attend school events such as back to school night to enlist support?

This is allowed with certain restrictions and should be accompanied by an approved Use of School Facilities permit. The main restriction is that the presence may not interfere or disrupt in anyway with the school event itself. Typically a candidate or proponent is provided a table in a lobby area to display campaign materials and to discuss campaign issues *only* if approached by an interested party. Candidates or proponents shall not initiate interactions with staff or participants attending the school event. Such attendance would be open to all candidates.

Question: May a candidate meet with a District official during school hours?

Yes, so long as the meeting is not disruptive, so long as the subject matter is limited to discussing school business (i.e. non-partisan), and so long as the school official is available to meet with other candidates as well.

Question: If a District employee makes a political contribution, is that reportable?

Contributions to a political campaign may be subject to reporting requirements of the Political Reform Act. There are extensive regulations on this subject available on the Fair Political Practices Commission website.

Question: May the candidate seek contributions from vendors of the District?

While a private vendor has a right to make political contributions consistent with legal requirements, a candidate must be careful to avoid the appearance of "pay to play" or a *quid pro quo* when seeking a contribution from a vendor.

Question: May a District Foundation use privately raised funds to support a ballot campaign?

Yes, so long as no District funds, personnel or equipment are used in that effort, and so long as the funds utilized are not restricted by the donor to preclude such a use. Certain contributions may be reportable under the Political Reform Act. However, if the Foundation is a non-profit corporation, there are significant legal restrictions on the corporation's ability to engage in political activity, and doing so could well jeopardize its tax-exempt status.

Question: May a booster group use District facilities to help sponsor a campaign in support of a school bond measure?

Yes, with conditions.

Organizations separate from the school district itself, such as employee, student, or parent organizations, may hold events and disseminate information on school grounds that advocate for or against a measure providing they receive approval to use school facilities for such purposes through the "Civic Center Act."[28] Groups or individuals with opposing viewpoints have the same right to use school facilities under the Civic Center Act. "The First Amendment precludes the government from making public facilities available to only favored political viewpoints; once a public forum is opened, equal access must be provided to all competing factions."[29]

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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[28] Education Code sections 38130 (K-12 districts) and 82537 (community colleges).
[29] See *Stanson* v. *Mott*, supra, 17 Cal.3d at 219.