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
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LEGAL UPDATE

January 25, 2022

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

From: Erin E. Stagg 
Associate General Counsel

**Subject: FAQ Regarding Political Activities by Local Educational Agencies,
Employees, and Candidates**
Memo No. 03-2022(CC)

As the 2022 election cycle gears up, the following Legal Update provides guidance regarding political activities for local educational agencies, employees and candidates.

AGENCY¹ RESOURCES

Question: Can District² 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.

And, subdivision (c) imposes criminal penalties for a violation of this Section.

In addition, Government Code section 8314 provides that “[i]t is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity”

¹ Education Code section 7051: “Local agency” means a county superintendent of schools, an elementary, high, or unified school district, or a community college district.

² For purposes of this memo, “District” shall be understood to include K-12 school districts, county offices of education and community college districts.



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

Yes. Under Education Code section 7054, a District may prohibit the use of campus mailboxes for distribution of materials urging the support or defeat of any ballot measure or candidate. In *San Leandro Teachers Association v. Governing Board*,³ the California Supreme Court 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. However, the Court noted that section 7054 does not prohibit a school board from opening up mailboxes to political endorsement literature, as long as this is done “on an equitable basis.”

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.⁴ 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 other mass mailing shall be sent at public expense.”⁵

The “mass mailing” restrictions are designed to prohibit “elected officials from using public moneys to perpetuate themselves in public office.”⁶

Government Code section 89002 defines a “mass mailing” for purposes of section 89001 as follows:

- (1) A tangible item delivered, by any means, to the recipient at the recipient’s residence, place of employment or business, or post office box.
- (2) The item either: (A) Features an elected officer affiliated with the agency that produces or sends the mailing; [or] (B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
- (3) The costs of distribution are paid for with public money or the costs of design, production, and printing exceeding fifty dollars (\$50) are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this section.
- (4) More than 200 substantially similar items are sent in a single calendar month.

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

³ *San Leandro Teachers Association v. Governing Board*, 46 Cal.4th. 822 (2009).

⁴ Government Code section 81002, subd. (e).

⁵ Government Code section 89001.

⁶ *Watson v. Fair Political Practices Commission* (1990) 217 Cal.App.3d 1059, 1074-75.



Yes, so long as no District funds, personnel or equipment are used in that effort. Certain contributions may be reportable under the Political Reform Act and the Foundation should consult with its legal advisor as there are significant restrictions on a non-profit corporation's ability to engage in political activity, the violation of which may result in loss of 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."⁷ 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."⁸

CANDIDATES/INCUMBENTS

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

No. Candidates who have District e-mail accounts should not use those accounts to send campaign materials. However, as detailed in the next question, a candidate may use their private email account to send a mass e-mail that targets a significant segment of the public even if some of those contacted are District employees.

Incumbents are also encouraged to be aware of agency policies regarding using the symbols, or indicia of your office such as an official's title or the agency seal. Candidates for re-election should be clear in campaign materials that use of an official title is for identification purposes only.

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

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 their support of the candidate?

⁷ Education Code sections 38130 (K-12 districts) and 82537 (community colleges).

⁸ *Stanson v. Mott* (1976) 17 Cal.3d 206, 219.



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.⁹

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.¹⁰

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.¹¹ If an incumbent 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 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 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. not campaigning), and so long as the school official is available to meet with other candidates as well.

⁹ Education Code section 7053 and Government Code section 3204.

¹⁰ Government Code section 3205.

¹¹ Government Code section 6254.3.



Candidates who are seeking re-election should be aware that staff time is a District resource. As such, incumbents are encouraged to keep in mind that if you wouldn't ask a District official for this discussion or to look into a matter if you weren't running for re-election, it is a misuse of District resources to look into it because you are running for re-election.

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.

LOBBYING

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 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.¹²

BALLOT MEASURES

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

Yes. 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.)

¹² *Stanson v. Mott* (1976) 17 Cal.3d 206 at 218.

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.¹³

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

The line between unauthorized campaign expenditures and authorized informational activities is often unclear. “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.”¹⁴

- 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.¹⁵

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

Yes. In *Choice-in-Education League v. Los Angeles Unified School District*,¹⁶ 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.¹⁷

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?

¹³ *Vargas v. City of Salinas*, 46 Cal.4th 1, 25 (2009)(citing *Citizens to Protect Public Funds v. Board of Education*, 98 A.2d 673 (1953)).

¹⁴ *Vargas v. City of Salinas* 46 Cal.4th at 25.

¹⁵ *Stanson v. Mott*, 17 Cal.3d 206 (citing 35 Ops. Cal. Atty. Gen 112 (1960)).

¹⁶ *Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415.

¹⁷ *Choice-in-Education League*, *supra*, 17 Cal.App.4th at 429. See also *Vargas v. City of Salinas*, *supra*.



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.¹⁸ 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.

DISTRICT EMPLOYEES: POLITICAL ACTIVITIES AND EXPRESSION

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

No. *See* Government Code section 3206.

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.¹⁹

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

¹⁸ 88 Ops. Cal. Atty. Gen. 46 (2005).

¹⁹ *Los Angeles Teachers Union, etc. v. Los Angeles City Bd. of Ed.*, 71 Cal.2d 551, 560 (1969); *Adcock v. Board of Education*, 10 Cal.3d 60, 65 (1973).



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.²⁰

Education Code section 7055 provides:

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

- (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*,²¹ 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.”²²

²⁰ 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.

²¹ *California Teachers Association v. Governing Board*, 45 Cal.App.4th 1383 (1998).

²² 84 Ops. Cal. Atty. Gen. 106 (2001).



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 challenged as an unfair labor practice and ultimately addressed by the California Public Employment Relations Board (“PERB”). 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 7055.²³

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

Yes. PERB 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 7055.²⁴

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.²⁵

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.

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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²³ 24 PERC 31053 (2000).

²⁴ 29 PERC 40 (2004).

²⁵ *CSEA v. Desert Community College District*, 31 PERC 137 (2007).