



Legislation and Communications Committee

Permissible Activities Related to Ballot Measures

Item 6a

June 10, 2024

Summary

- Private citizens may engage in campaign activities
- Use of public funds for campaign activities or express advocacy is prohibited by courts and by statute
- Local agencies may expend public funds to provide accurate, fair, and impartial presentations of the relevant facts to educate voters
- There are criminal and civil liabilities for using public funds for campaign purposes

Campaign
activity
versus
informational
material

- A public agency **cannot** spend public funds to promote a partisan position in an election campaign, including ballot measures
- A public agency can disseminate information to the public if it provides a fair presentation of the relevant facts
 - *Stanson v. Mott* (1976) and *Vargus v. City of Salinas* (2009)

Informational material or campaign activity?



Information

Campaign

“Frequently the line between authorized informational activities and unauthorized campaign expenditures is not so clear.”

Stanson v. Mott, 17 Cal. 3d at 222

Permissible activities

- **Analyze** the measure and its impacts
- **Adopt a formal position** through usual board process
- **Publicize the adopted position** in an informational and balanced manner and through its usual methods
- **Inform the public** about the possible effects of a measure on the activities, operations, or policies of the agency **in a fair, accurate, and impartial manner**

Prohibited Actions

- **Advocate** that voters take **a position** for or against a measure
- **Use traditional campaign materials** to publicize ballot measure (bumper stickers, social media ads)
- **Use argumentative or inflammatory language** to present public agency position
- **Contribute public funds or resources** to election campaigns (public employee time, use of public agency car or office products)

Prohibitions
apply to
directors,
officers,
employees,
and
consultants

- An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any local agency funds to support or oppose the approval or rejection of a ballot measure by the voters. **Gov. Code § 54964(a)**
- Using public resources for a campaign activity, or personal or other purposes not authorized by law, is unlawful. **Gov. Code § 8314**

Potential civil liability

- Penalties of **three times the amount** improperly used plus **\$1,000 per day** (Gov. Code § 8314)
- **Up to \$5,000 per violation** (Gov. Code § 91005.5; FPPC Regulations, 2 C.C.R. §§ 18104, et seq.)

Potential criminal liability

- Penal Code § 424—Prohibits public officials from appropriating public moneys for any purpose not authorized by law
 - Up to 4 years (felony)
 - *People v. Battin* (1978): jury found county supervisor running for another elected office guilty of using county resources for his campaign
- Government Code § 91000
 - Imposes criminal (misdemeanor) liability for each violation
 - Plus penalties the greater of \$10,000 or three times the amount improperly used

Personal
political
activities
permitted if
no use of
public
resources

- Directors, officers and employees, in their personal capacities **can**:
 - Contribute to campaigns from personal funds
 - Advocate for or against a measure
- Clarify that this is a personal opinion, and not done in an official capacity

