

Legislation and Communications Committee

#### Permissible Activities Related to Ballot Measures

Item 6a June 10, 2024

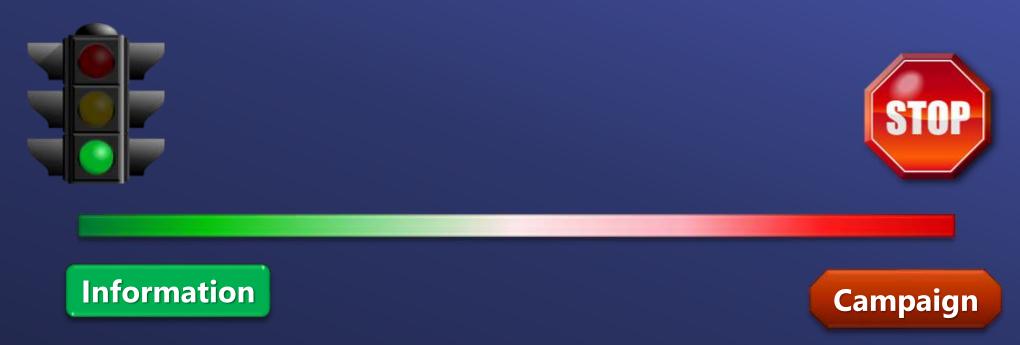
#### Summary

- 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?



"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

