



Education Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

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POLITICKING AT THE SCHOOLHOUSE

Communication of preferences for candidates or ballot issues (Yes or No) is a time-honored tradition. Campaign ads dominate television and radio, cover billboards, signboards and the sides and windows of businesses and homes. Yard signs and bumper stickers express the political sentiments of homeowners, businesses and tenants. Board members, employees and community members often seek to "push the envelope" on election activities during this season, whether inadvertently or consciously. This article reviews the legal issues that can arise during election season.¹

During an election season, a number of issues can arise for school administrators relating to campaigns:

- ▶ To what extent can school resources or facilities be used in support of a campaign or candidate?
- ▶ Can school boards take positions on campaign issues?
- ▶ Are school board trustees limited in what they can say on political matters?
- ▶ Can employees and others express their political opinions on campus?

These questions call into play a number of sometimes conflicting doctrines:

- ▶ Public money should not be used for partisan purposes
- ▶ Students are a captive audience, and political speech at school can be interpreted as approved by the school district
- ▶ Trustees, employees and others enjoy First Amendment rights to express their political ideas
- ▶ On a given issue, governing boards may generally inform the public, but may not campaign for a result

¹ This article is an adaptation of a 2008 article authored by retired Director of Labor Relations Carl B.A. Lange III.

BASIC PREMISE NO. 1: RESTRICTIONS ON POLITICAL ACTIVITY ARE LIMITED.

The Education Code addresses the issues beginning with an overall prohibition on restricting the political activities of employees and officers except as allowed by the Code or to comply with federal law.²

Outside the educational context (in other words, on one's own time and using one's own resources), trustees and employees are free to endorse candidates, make campaign contributions, join political parties and express their political convictions. It is only where there is a nexus to students or district resources that restrictions may come into play.

Districts regulate political activities on district premises through adopted policies and regulations. K-12 district policies (see CSBA model Administrative Regulations 1160, 1330, 4119.25, 4219.25 and 4319.25) generally limit employee political activities to non-work time. District policies typically permit but limit the use of district buildings and grounds for political activity.³

Except as otherwise provided in this article, or as otherwise necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a local agency.

-Education Code section 7052

BASIC PREMISE NO. 2: WITH LIMITED EXCEPTIONS, DISTRICT RESOURCES (FUNDS, SERVICES, SUPPLIES AND EQUIPMENT) CANNOT NOT BE USED TO URGE THE SUPPORT OR DEFEAT OF A BALLOT MEASURE OR CANDIDATE.

Clearly, district funds and resources must not be used to advocate for a particular candidate or ballot measure, even one specifically benefitting the District. (Education Code section 7054.) Accordingly, it would not be permissible for a school board trustee to use district employees, funds or equipment to distribute literature for the trustee's campaign. District funds cannot be used to purchase advertisements or bumper stickers advocating an election result. Violations of this rule can result in fines or imprisonment.

² Education Code section 7052.

³ Districts that have adopted the Schools Legal Service model "Acceptable Use Policy" specifically prohibit the use of district technology resources for political activity and make violations of the policy a disciplinary offense.

More leeway is permitted in the case of bond measures and other ballot initiatives (see below).

■ *What Can Districts Do with Respect to Their Own Bond Measures?*

Districts are permitted to use District resources to provide information to the public about the possible effects of a bond issue (or other ballot measure) if the informational activities are authorized by law, and involve a fair and impartial presentation to aid the electorate in reaching an informed judgment. Education Code section 35172(c) specifically permits K-12 boards to "inform and make known to the citizens of the district, the educational programs and activities of the schools therein," providing the statutory authorization to inform the public regarding the impact of a bond measure. An informational publication should NOT urge a "yes" vote and should not present only the advantages that flow from the bond or ballot measure, while ignoring potential disadvantages.

In distinguishing proper informational activities from improper campaign expenditures, courts look at factors such as the "style, tenor and timing" of the publication.⁴ A 1996 review by the Fair Political Practices Commission of materials distributed by the County of Sacramento considered the "totality of the circumstances, at various times and places" in determining whether the activities improperly urged the passage of ballot measures.⁵

"A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions."

*- California Supreme Court in
Stanson v. Mott*

District trustees and employees can appear at the request of a citizens' group to discuss the reasons why the board called a bond election and to respond to inquiries from the group. Trustees should take care in that circumstance not to urge a "yes" vote on the measure. (Education Code section 7054.1.)

■ *Can a Governing Board Take an Official Position in Favor of a Ballot Measure?*

A board can pass a resolution in favor or in opposition to a ballot measure. However, the Board must take care not to use public funds or resources to promote or advertise that resolution, other than is normally done in the course of District business. So, for example, a television

⁴ See *Stanson v. Mott* (1976) 17 Cal.3d 206.

⁵ FPPC No. 93/345.

advertisement promoting a Board's resolution in favor of a ballot measure would likely be improper, where as television coverage of the adoption of the resolution could be permissible if a Board's meetings are normally televised.

■ *What about the Use of District Facilities?*

The Civic Center Act (Education Code sections 38130-38138) specifically contemplates the use by various groups of school facilities and grounds to meet and discuss "subjects and questions that in their judgment pertain to the . . . political . . . interests of the citizens in the communities in which they reside." Likewise, the Education Code provisions governing political activity affirm the ability of a district to allow the use of a forum under its control if made available to all sides on an equitable basis. Facilities are available to employees and school board trustees in the same manner as for community members. Accordingly, a sitting trustee can organize a campaign rally on school grounds (outside the school day), so long as the facility is made available to other candidates on an equitable basis.

■ *Can Political Contributions Be Solicited on Campus?*

Employees are free to solicit or receive political contributions outside the workplace. The Education Code prohibits solicitation and receipt of political contributions during working hours 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.⁶ District policies typically also forbid solicitation of funds for other types of ballot measures, since this involves a use of public resources. Employee unions may solicit political contributions from employee members on district property so long as they do so during nonworking time (outside an employee's working hours or during the lunch break).

■ *What about Political Speech During the School Day?*

District policy typically calls for teachers who make presentations on viewpoints regarding particular candidates or ballot measures to provide equal time to the presentation of opposing views. (See CSBA Model Administrative Regulation 4119.25(9).) Employees are also restricted in terms of expressive conduct during the school day. For example, in *California Teachers Association*

⁶ Education Code section 7056.

v. San Diego Unified School District,⁷ the California Court of Appeal held that the district could restrict employees from wearing political buttons in classrooms and when otherwise providing instruction to students. However, buttons can be worn on school property outside the instructional context and at school events such as "Back to School Night."

■ *Can School Officials Participate in the Legislative Process?*

School districts are in a unique position to explain the benefits and detriments of proposed legislation relating to children and schools and are permitted to lobby the Legislature.

Districts are also permitted to draft ballot initiatives. However, once drafted, they may not expend district funds or resources seeking to influence the outcome or persuade voters on the issue.⁸

BASIC PREMISE NO. 3: BARGAINING UNITS HAVE CERTAIN RIGHTS TO DISTRICT COMMUNICATION SYSTEMS, BUT CAN STILL BE REGULATED WHEN IT COMES TO POLITICAL ACTIVITY.

The EERA affords an exclusive bargaining representative the right to communicate with unit members via a district's ". . . bulletin boards, mailboxes and other means of communication . . . and the right to use institutional facilities . . ." (Government Code section 3543.1(b).) The rights of the union are subject to reasonable regulation. While union communications frequently do contain advocacy on ballot issues, political causes and candidates, the PERB has issued opinions upholding a district's assertion that the district's internal mail system and employee mailboxes could not be used by an exclusive representative to distribute political and campaign materials.⁹ The California Supreme Court reached the same result with respect to use of mailboxes to distribute material to union members endorsing particular school board candidates, declining to address the use of mailboxes to support or oppose ballot measures.¹⁰

⁷ *California Teachers Association v. San Diego Unified School District* (1996) 45 Cal.App.4th 1383.

⁸ See, *League of Women Voters v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529, 250 Cal.Rptr. 161, rev.den.; 73 Opinions of the California Attorney General 225 (1990).

⁹ *American Federation of Teachers Guild, California Federation of Teachers, Local 1931 v. San Diego Community College District* (2001) PERB Decision No. 1467, 26 PERC 33014.

¹⁰ *San Leandro Teachers Association v. San Leandro Unified School District* (2009) 46 Cal.4th 822.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— *Grant Herndon*

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