



Labor and Employment Law Update

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EMPLOYEES CIRCULATING PETITIONS ON DUTY-FREE TIME

Our office has been advised that members of the California Teachers Association will be requesting permission to circulate ballot initiative petitions at school sites. As will be further explained below, it is our conclusion that certificated employees may circulate petitions in the faculty lounge during duty-free time.

Education Code section 7055 authorizes a district to establish regulations related to officers and employees engaging in political activity during working hours and political activities on district premises. Pursuant to Section 7054, many districts have promulgated both a policy and administrative regulation dealing with political activities of employees. CSBA Sample Board Policy BP 4119.25 states the following:

“The governing board respects the right of school employees to engage in political discussions and activities on their own time and at their own expense.”

Title 5, C.C.R. section 5600 states that:

“The duty-free lunch period for teachers and other certificated employees required by Education Code Section 44813 shall be not less than 30 minutes. It shall be allowed as near noon as is reasonably possible.”

During this 30 minutes of duty-free lunch, teachers are on their own time. Therefore, the Sample Board Policy would indicate that the teachers are free to engage in these activities, such as circulating a petition for a ballot initiative during their duty-free lunch period. Although Education Code section 7054 prohibits the use of “district funds, services, supplies or equipment” for the support or defeat of any ballot measure, it does not appear that the circulating of petitions would involve the utilization of any of the listed district property. It should also be noted that

soliciting and receiving political funds is specifically permitted under the provisions of Education Code section 7056(b). In applicable part, that section says:

“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 schoolday.”

It would appear that if the duty-free lunch period can be used for the purpose of fund-raising to support or defeat a ballot measure. The lunch period can also be used for obtaining signatures on the ballot measure, something which is arguably less invasive or intrusive than the soliciting of funds.

Please note that the above opinion applies only to the circulating of petitions during the duty-free lunch period or other duty-free time. If permission is requested to circulate a petition at some other time or location, please contact us as there are various statutory prohibitions which may apply under such circumstances.

— Christopher W. Hine

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