



LAW UPDATE EDUCATION

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POLITICS AS USUAL: ELECTION UPDATE AND REVIEW OF POLITICAL ACTIVITY ISSUES

As the November elections approach, campaign ads dominate television, radio, and social media. Yard signs and bumper stickers express the political sentiments of homeowners, businesses, and tenants. The activities of board members, employees, and community members often raise questions for school and community college district administrators during this season. This Update reviews the legal issues that can arise during an election season.

- ▶ To what extent can school resources or facilities be used in support of a campaign or candidate?
- ▶ Can governing boards take positions on campaign issues?
- ▶ Are 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 – government resources should not be used to influence elections.
- ▶ 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.

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.¹

¹ Education Code section 7052.

Outside the educational setting (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 generally only where there is a nexus to students or district resources that restrictions may come into play.

“Except as otherwise provided in this article, or as 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

Districts regulate political activities on district premises through adopted policies and regulations. K-12 district policies (see CSBA model Administrative Regulations 1160, 1325, 1330, 4119.25, 4218, 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.²

While elected officials and employees are free to express their views outside the school setting, they should take care to make clear in printed materials and verbal communications that they are speaking in their capacity as private individuals and not on behalf of the district. In addition, time and expenses connected to the support or opposition of ballot measures or candidate elections may be subject to reporting requirements under the Political Reform Act.

No district officer or employee may participate in political activities of any kind while in uniform.³

BASIC PREMISE NO. 2: WITH LIMITED EXCEPTIONS, DISTRICT RESOURCES (FUNDS, SERVICES, SUPPLIES, AND EQUIPMENT) CANNOT 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.)⁴ Accordingly, it would not be permissible for a trustee to use district employees, funds, or equipment (including email and computer systems) 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 The Schools Legal Service model *Acceptable Use Policy* specifically prohibits the use of district technology resources for political activity and makes violation of the policy a disciplinary offense.

³ Government Code section 3206.

⁴ See also Government Code section 8314 (unlawful for state or local officials and employees/consultants to use or permit others to use public resources for campaign activity. There are also restrictions in the Political Reform Act (see Government Code section 85300) which prohibit expenditure and receipt of public funds for the purpose of seeking public office.

Districts should be aware of the Political Reform Act's prohibition on "mass mailings" featuring the name, photograph, or office of elected officials at district expense, with limited exceptions.⁵ Those rules do not currently apply to electronic communications.

Candidates who are incumbent board members, district officials, or employees cannot use district email accounts for campaign purposes, or obtain mail or email contact information for employees for that purpose.⁶ Candidates should be mindful not to use staff resources in a way they would not normally if not running for office (e.g., make unusual requests of staff to research an issue, draft a communication, etc.) Existing board members and candidates cannot promise advantages or benefits to employees who support them, such as assisting them in securing a position or promotion or change in compensation, or threaten adverse consequences to employees for failing to support them.⁷

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? Inform, Don't Advocate!*

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.⁸ In distinguishing proper informational activities from improper campaign expenditures, courts look at factors such as the "style,

"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*

⁵ The rules are normally triggered by sending more than 200 substantially similar items in a single calendar month. See Political Reform Act, Government Code section 89001 and following.

⁶ Public employee addresses are not considered public records. Public Records Act, Government Code section 6254.3.

⁷ See Education Code section 7053; Government Code section 3204.

⁸ Other language typically considered to signal advocacy and not mere information includes "elect," "support," "cast your ballot," "vote for/against," "defeat," "reject," "sign petition for" (Title 2, California Code of Regulations section 18225).

tenor and timing" of the publication.⁹ 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.

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

"Nonworking time" for purposes of political activities means time outside an employee's working hours, whether before or after school or during the employee's lunch period or after scheduled breaks during the school day.

– Education Code section 7056

Note: The California Supreme Court has indicated that public officials who make improper expenditures for partisan political purposes without exercising due care may be subject to personal liability.¹⁰

■ *Can a Governing Board Take an Official Position on a Ballot Measure?*

A board can pass a resolution in favor of or in opposition to a ballot measure. However, the resolution should not urge the public to take a particular action on the measure, and 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 advertisement promoting a board's resolution in favor of a ballot measure would likely be improper whereas television coverage of adoption of the resolution could be permissible if a board's meetings are normally televised.¹¹

■ *What about the Use of District Facilities?*

The Civic Center Act¹² specifically contemplates the use of school facilities and grounds by various groups 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 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) as long as the facility is made available to other candidates on an equitable basis.

⁹ *Stanson v. Mott* (1976) 17 Cal.3d 206.

¹⁰ *Stanson v. Mott, supra*, 17 Cal.3d 206.

¹¹ See, for example, *Choice-in-Education League v. LAUSD* (1993) 17 Cal.App.4th 415.

¹² Education Code sections 38130-38138 for K-12 districts; sections 82537-82548 for community college districts.

■ *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. The Code does permit district officers and employees to solicit or receive funds outside of working hours to promote supporting or defeating 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.¹³ District policies typically also forbid solicitation of funds for other types of ballot measures during working hours since this involves a use of public resources.

Employee unions may solicit political contributions to support or oppose a ballot measure from employee members on district property so long as they do so during nonworking time.

Board members, employees, and candidates cannot solicit contributions from other district employees or officers unless the solicitation is “part of a solicitation made to a significant segment of the public which may include officers or employees of that local agency.”¹⁴

■ *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 v. San Diego Unified School District*,¹⁵ 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 setting and at school events such as “Back to School Night.”¹⁶

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

School and community college districts are in a unique position to explain the benefits and detriments of proposed legislation relating to students and schools and are permitted to lobby the Legislature.¹⁷

¹³ Education Code section 7056.

¹⁴ Government Code section 3205.

¹⁵ *California Teachers Association v. San Diego Unified School District* (1996) 45 Cal.App.4th 1383.

¹⁶ The Public Employment Relations Board has taken the position that teachers cannot be prevented from wearing union buttons in the classroom absent special circumstances, such as distraction. See 29 PERC 40 (2004.)

¹⁷ Government Code section 53060.5.

Districts are also permitted to draft ballot initiatives and secure a legislative sponsor; however, once an initiative is drafted districts cannot expend funds or resources seeking to influence the outcome or persuade voters on the issue.¹⁸

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

The Educational Employment Relations Act 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 . . ." ¹⁹ 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 Public Employment Relations Board 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.²⁰ The California Supreme Court reached the same conclusion with respect to use of mailboxes to distribute material endorsing particular school board candidates to union members. While the Court declined to address the use of mailboxes to support or oppose ballot measures, it did characterize "this special access to an internal channel of communications to influence elections" as "a potential abuse" that Education Code section 7054 was designed to guard against.²¹

As referenced above, employee unions can solicit political contributions to support or oppose ballot measures from employee members on district property, but only during nonworking hours.

Districts are urged to review their policies relating to political activity as Election Day approaches. If you have questions concerning this or related issues, please contact our office.

— Grant Herndon

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies, and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

¹⁸ See *League of Women Voters v. Countrywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529; 73 Ops.Cal.Atty.Gen. 225 (1990); *Santa Barbara Co. Coalition Against Automobile Subsidies v. Santa Barbara Association of Governments* (2008) 167 Cal.App.4th 1229.

¹⁹ Government Code section 3543.1(b).

²⁰ *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.

²¹ *San Leandro Teachers Association v. San Leandro Unified School District* (2009) 46 Cal.4th 822.