

Guidance Regarding Political Activities

The freedom to engage in political activities is a fundamental right under the state and federal constitutions. Unless authorized by law “no restriction shall be placed on the political activities of any officer or employee of a local agency.” (Education Code § 7052; see also Government Code § 3203.)

With very limited exceptions, restrictions generally may not be placed on the private political activities of public employees. However, the District may establish rules and regulations restricting officers and employees from engaging in political activity during working hours and on District premises. (Education Code § 7055; see also Government Code § 3207.) Restrictions may also be established to ensure that District officers and employees do not use their positions, or District resources, to engage in partisan politics.

This guidance provides direction regarding political activities which are generally permitted and actions that should be avoided. It is not an all-inclusive list, nor is it intended to provide legal advice. If in doubt regarding whether an activity is allowed, you are encouraged to consult with the Chancellor’s office.

POLITICAL ACTIVITIES OF OFFICERS AND EMPLOYEES

Permitted Activities:

1. **In general, District officers and employees may participate in outside political activities as private citizens on non-work time as long as the activities do not involve the use of public funds.** In addition to the time when an employee is not regularly scheduled to work, non-work hours generally also include when the district official or employee is on approved lunch breaks, has taken a vacation or administrative day or during a public holiday.
 - ***What are some examples of permitted activities?***
 - Attending rallies, demonstrations, meetings and other political or campaign-related events.
 - Participating in a campaign committee.
 - Performing campaign-related work, including:
 - ✓ Posting campaign signs.
 - ✓ Manning a phone bank or making campaign calls.
 - ✓ Creating, preparing or copying campaign materials.
 - ✓ Stuffing envelopes with campaign materials.
 - ✓ Sending campaign-related emails.
 - ✓ Distributing political pamphlets, leaflets, handbills, political buttons or other materials.

- Other activities which advocate for or against a candidate or ballot measure.
 - *District equipment, including district telephones, cell phones, computers, copiers, fax machines, Internet, email accounts and servers, may not be used to perform any of these activities.*
 - *District supplies, such as paper, pens and other office supplies, also may not be used for these activities.*
 - *If conducting campaign activities on campus, they generally must take place in public forums (i.e., spaces generally available to the general public for such activities, including sidewalks, lawns and plazas).*
2. **District officers and employees may endorse a ballot measure in his or her private capacity and identify himself/herself by District title in the same manner as others who sign an endorsement.** An express disclaimer of District endorsement is required only where the contact might reasonably cause confusion as to whether the endorsement is made in an official or unofficial capacity. Because of the nature of their positions, Board Members, Chancellors, Vice Chancellors, Presidents, Vice Presidents and Deans typically need to provide a disclaimer.
 3. **District officers and employees, while acting in their individual capacities and on non-work time, may contribute to political campaigns, whether in support of or opposition to ballot measures or candidates.**
 4. **District officers and employees, acting in their individual capacities and on non-work time, may solicit campaign contributions for individual candidates and ballot measures.** However, District officers and employees may not solicit political contributions from other District officers or employees 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.” (Cal. Government Code § 3205.) For example, a District officer or employee may engage in a mass mailing to all registered voters in a specific area within the District that may include District officers and employees. Also, while officers and employees may solicit or receive political funds or contributions to promote the support or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of District officers or employees, these specific activities related to ballots measures that affect working conditions of District officers or employees are prohibited during working hours and on District premises (Cal. Education Code § 7056(a)).
 5. **Union officers and representatives may solicit and receive funds from employee members on District property to promote the support or defeat of any ballot measure during non-work time.** (Cal. Education Code § 7056(b)). “Nonworking time” means time outside an employee’s working hours, whether before or after school, during a lunch break or other “scheduled work intermittency” during the day. (*Id.*)

Prohibited Activities:

1. **District officers and employees may not use district resources to support or oppose ballot measures or candidates.** Specifically, “[n]o ... community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.” (Cal. Education Code §7054.) Therefore:
 - District officers and employees may not engage in political activities during their work time, or when such solicitation activities impact the work time of others. Such activities include attending campaign-related events (e.g., rallies, demonstrations, meetings), participating on a campaign committee, or performing campaign-related work (e.g., posting campaign signs, making campaign calls, sending campaign-related emails, distributing political materials).
 - District officers and employee also may not use any District equipment (such as District telephones, cell phones, computers, copiers, fax machines, Internet, email accounts and servers) or any District supplies (such as paper, pens and other office supplies) to perform political activities.
 - If conducting campaign activities on campus, such activities generally must take place in public forums (i.e., spaces generally available to members of the public for such activities, including sidewalks, lawns and plazas).
2. **As discussed above, District officers and employees may not solicit political contributions from another District officer or employee unless “the solicitation is part of a solicitation made to a significant segment of the public.”** It does not matter if the solicitation is direct (i.e., asking an employee directly for a contribution) or indirect (e.g., supplying favored candidates with nonpublic employee lists that may then be used for the solicitation of support). (Cal. Government Code § 3205.)
3. **District officers and employees also may not solicit or receive political funds or contributions to promote the support or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions during working hours and/or on District premises during working hours.** (Cal. Education Code § 7056(a)).
4. **District or college letterhead may not be used to advocate for or against any ballot measure or candidate, or to express personal political views of District employees or officers.** District or college letterhead may only be used only when the writer is representing the District or college.
5. **Districts may prohibit the distribution of political materials through its mail and/or email systems that urge the support or defeat of any ballot measure or candidate for election.** It is permissible for the District to prohibit the distribution of political flyers urging the support or defeat of any ballot measure or candidate for election through its mail and/or

e-mail systems. (*American Federation of Teacher's Guild v. San Diego Community College District* (2001) PERB Decision No. 1467 [26 PERC ¶ 33014])

ELECTION OF TRUSTEES

Permitted Activities:

1. **Districts may pay for the printing, handling, translating and mailing of trustee candidate statements contained in the voter pamphlet.** While Elections Code § 13307 allows districts to charge a pro rata share to candidates for the cost of printing and disseminating the candidate's statement in the voter's pamphlet, the collection of such costs is not required. In 2002, the Attorney General explained that "paying the costs of distributing all trustee candidate statements included in the voter's pamphlet cannot be said to be 'campaigning' for any particular candidate" in violation of Education Code section 7054. (85 Ops. Cal. Atty. Gen. 49 (2002)).
2. **Districts may provide neutral public forums where all legally qualified candidates are invited and provided equal access.** Under California Education Code § 7058, a forum under the control of the governing board of a community college district may be used for political activities if the forum is made available to all sides on an equitable basis.
3. **Districts may permit candidates and persons supporting or opposing their candidacy to use public bulletin boards that are available for public use by all candidates on an equal basis.** (Cal. Education Code § 7058.)

Prohibited Activities:

1. **District officers and employees may not use District resources for their own campaign or to campaign for others seeking election (or reelection).** Generally, elected local officers and employees are prohibited from using public resources for campaign activity. (Cal. Government Code § 8314; Cal. Education Code § 7054).
 - **What are some examples of prohibited activities?**
 - Candidates making public appearances in support of their campaign during work time.
 - Use of the District's mail and printing services to distribute political materials supporting particular candidates.
 - Distributing political material advocating the support or defeat of candidates via the District email system.
2. **No person who holds office, or who is seeking election, may directly or indirectly use or attempt to use the office to influence campaign activity.** Elected local officers, or individuals seeking election or appointment to any office or employment in the District, cannot promise a position, promotion, increase in salary or other benefit (or threaten to obstruct another in gaining a position, promotion or other benefit) in exchange for votes, a contribution or loan, or other political activity by the employee. (Cal. Education Code § 7053; Cal. Government Code §§ 3204, 3205.5.)

3. **District funds generally may not be used to send newsletters or other mass mailings which “feature” an incumbent board member.** (Cal. Government Code § 89001; Cal. Code of Regulations, Title 2, § 18901(a).) This restriction is in place to prevent elected officials from using public funds to gain an advantage for themselves in public office. (*Watson v. Fair Political Practices Comm’n* (1990) 217 Cal. App. 3d 1059.) It applies when more than two hundred substantially similar items are sent in a month by a district (excluding items sent in response to an unsolicited request) and the mailing (1) “features” an elected agency officer, or (2) includes the name, office, photograph or reference to an elected officer and the mailing was prepared or sent in consultation or coordination with the elected officer. (Cal. Code of Regulations, Title 2, § 18901(a)(4).) An item “features an elected officer” if “the item mailed includes the elected officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.” (Cal. Code of Regulations, Title 2, § 18901(c)(2).)
 - There are several exceptions to the restrictions regarding the use of District funds for newsletters and mass mailings (e.g., the elected officer’s name may appear in letterhead or press releases to the media). These exceptions are outlined in the California Code of Regulations, Title 2, § 18901(b).
4. **Districts cannot endorse candidates or publish ratings of candidates.**

BALLOT INITIATIVES

Permitted Activities:

1. **Districts may draft initiative or referendum measures on an area of legitimate interest.** The development and drafting stage of a proposed ballot measure is not considered partisan campaign activity because it does not involve actions that attempt to persuade voters or influence a vote to either qualify or pass a measure. (*Santa Barbara County Coalition Against Auto. Subsidies v. Santa Barbara County Ass’n of Governments* (2008) 167 Cal. App. 4th 1229, 1241; *League of Women Voters of California v. Countywide Criminal Justice Coordination Comm.* (1988) 203 Cal. App. 3d 529, 550.) Therefore, activities prior to and through the drafting stage of an initiative or referendum are found to be permissible informational activities for which public resources may be utilized.
2. **Districts may use funds to gather information and evaluate the potential for adoption of a bond measure by the electorate.** Before a measure is placed on the ballot, public funds may be used to evaluate the measure’s likelihood of success through various forums – including polling and focus groups – to assess potential support and opposition to the measure. (88 Ops. Cal. Att’y Gen. 46 (2005).) In a 2005 opinion, the Attorney General opined that it was permissible for a community college district to use district funds to hire a consultant to conduct surveys and establish focus groups to assess the potential support and opposition to a bond measure, the public’s awareness of the district’s financial needs and the overall feasibility of developing a bond measure that could win voter approval. (*Id.* at p. 6.) Donating or providing such information to a political campaign, however, may give rise to campaign reporting obligations under the Political Reform Act. (*Id.*)

3. **Districts may place a bond measure on the ballot.** (Cal. Education Code §§ 15100 and 70902(b)(5)).

4. **Districts may take a position supporting or opposing a ballot measure impacting the District.** A district may adopt a resolution supporting or opposing a ballot measure as long as no public funds are used in connection with the board’s action and the resolution states the board’s position without campaigning for or against the measure. (*Vargas v. City of Salinas*, (2009) 46 Cal. 4th 1, 36; *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal. App. 4th 415, 429; *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal. App. 3d 529, 560.) The courts have explained that to go on record with an endorsement in the regular course of a board meeting is not an improper expenditure of public funds because “[w]hile it may be construed as the advocacy of but a single viewpoint, there is no genuine effort to persuade the electorate such as that evinced in the activities of disseminating literature, purchasing advertisements or utilizing public employees for campaigning during normal working hours.” (*Choice-in-Education League, supra*, 17 Cal. App. 4th at 429 citing *League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal. App. 3d 529, 560.) In expressing an opinion on a ballot measure, it is important that the District avoids inflammatory or persuasive language which encourages the public to adopt a certain position on the initiative, and adopts the resolution during a regularly-scheduled open board meeting.

5. **Districts may use public resources to inform the public about the benefits and consequences of any bond or other ballot measure (i.e., perform “informational activities”).** Public resources may be used to provide information to the public about the possible effects of any bond or other ballot measure if the informational activities are otherwise authorized and “[t]he information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.” (Cal. Education Code § 7054(b)(2)). Because the style, tenor and timing of the communication influences whether such information is considered “informational activities” or “campaign expenditures,” it is important that the language utilized is not inflammatory, argumentative or persuasive, and that it provides a fair and balanced presentation of the facts. (*Vargas v. City of Salinas*, (2009) 46 Cal. 4th 1, 25; *Stanson v. Mott* (1976) 17 Cal. 3d 206, 222.)
 - **What does “fair and impartial presentation” generally require?**
 - Full disclosure of all relevant facts required for an informed decision.
 - Presentation of both the “pros” and “cons” of a measure.
 - Language that does not suggest a “yes” or “no” vote on the measure (e.g., avoid using words such as “support,” “reject,” “defeat,” “cast your ballot”).
 - Dissemination of the materials through normal channels of communication (e.g., regularly issued newsletters or press releases) rather than “special edition” materials or press conferences, or other distribution that is timed close to an election.

 - **What are some examples of permissible activities?**

- Providing a “fair presentation of the facts” in response to a citizen’s request for information.
- Distributing a “fact sheet” that states the “pros” and “cons” regarding a ballot measure or which adequately describes both sides of the issue.

- ***What are some examples of activities that are not informational, but instead constitute campaign activity for which public funds may not be used?***

- Purchasing materials such as bumper stickers, posters, and advertising “floats” or television/radio spots.
- Dissemination of campaign materials prepared by proponents or opponents of a ballot measure.

(Vargas, *supra* 46 Cal. 4th at 24-25; Stanson, *supra*, 17 Cal. 3d at 221-22.)

6. **A public official may use normal working hours to speak about the District’s position on a ballot measure.** A district is also engaging in a proper “informational” role when, in response to a request from a private or public organization, it authorizes a district officer to present the district’s view on a ballot proposal at a meeting of the organization. (Cal. Education Code § 7054.1; *Vargas v. City of Salinas*, (2009) 46 Cal. 4th 1, 25; *Stanson v. Mott* (1976) 17 Cal. 3d 206, 221.) Indeed, a district representative may accept invitations from community or other organizations to attend their meetings and speak about the district’s position on a measure.

- ***What is required when speaking about the District’s position?***

- It is not necessary to state the facts and arguments on the other side of the measure if speaking in response to a request.
- If the District representative initiates the request to appear on the organization’s agenda during working hours, presentations should be more balanced and neutral, explaining the facts on both sides of the issue.
- Either way, it is important that the District present its view without urging a vote for or against the measure.

7. **District nonprofit foundations, student body associations, and other auxiliary organizations may independently contribute their own privately raised funds to advocate for a bond measure.** This is permissible because California Courts have generally recognized auxiliary organizations to be private entities for such purposes, rather than public agencies or as part of the public bodies they seek to aid or assist and therefore, use of an organization’s own privately raised funds is not subject to the prohibition against the use of “public funds for political purposes. (88 Ops. Cal. Att’y Gen. 46 (2005); *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal. App. 4th 810, 826, 829.) The funds must have been obtained from private sources, however and must not have come through any District account.

- In contributing its own funds to a bond measure campaign, an auxiliary organization may become subject to campaign disclosure obligations under the Political Reform Act of 1974. (88 Ops. Cal. Att’y Gen. 46 (2005).
- Annual political donations and expenditures should also be kept below a specific dollar amount to maintain an organization’s non-profit status.

Prohibited Activities:

- **Districts may not use district funds on activities that form the basis for an eventual campaign to obtain approval of a bond measure.** In a 2005 opinion, the Attorney General opined that, in preparation for submitting a bond measure to the electorate for approval, a community college district may not use district funds to hire a consultant to develop and implement a strategy for building the broadest possible coalition in support of the measure and the financial support for a campaign if the purpose or effect of the actions is to develop a campaign to promote the approval of the bond measure by the electorate. (88 Ops. Cal. Atty. Gen. 46 (2005).) In 2016, the Attorney General reiterated the prohibition against using public funds if the pre-election services may be characterized as campaign activity. (99 Ops. Cal. Atty. Gen. 18 (2016)).

- ***What are some examples of activities for which public funds may not be used?***
 - Assisting district officials in scheduling meetings with civil leaders and potential campaign contributors in order to gauge support for a bond measure if the purpose or effect is to develop a campaign to promote approval of the bond measure by the electorate.
 - Recruiting or organizing supporters for a campaign or raising funds for the campaign.

- **Districts may not use district funds, services, supplies or equipment for the purpose of urging the support or defeat of any ballot measure.** (Cal. Education Code § 7054.)

- ***What are some examples of prohibited activities?***
 - Using district telephones or cell phones, fax, email, paper or other supplies, vehicles, printers, copiers, scanners or staff time to advocate for the support or defeat of any ballot measure.
 - Using district funds to purchase materials such as bumper stickers, posters, and advertising “floats” or television/radio spots in support or opposition to measures that have qualified for a ballot.
 - Dissemination of campaign materials prepared by non-district organizations that support or oppose ballot measures.
 - Generating promotional materials on behalf or in opposition to ballot measures, even when the Board initiated a ballot measure.
 - Printing and distributing information that supports or opposes a measure in a districtwide newsletter.
 - Using district funds to make contributions to organizations for the purpose of supporting or defeating the passage of a ballot measure.
 - Directing employees to spend working time preparing materials to support or oppose a ballot measure.
 - Authorizing auxiliary organizations or other district affiliated organizations to use district mailing labels to send out literature advocating the passage or defeat of a ballot measure.

- Soliciting contributions from district vendors to support or oppose measures. (*Vargas v. City of Salinas*, (2009) 46 Cal. 4th 1, 24-25; *Stanson v. Mott* (1976) 17 Cal. 3d 206, 221-22.)