



## CAMPAIGN FINANCE AND POLITICAL CONDUCT RULES FOR CALIFORNIA SCHOOL DISTRICT AND COMMUNITY COLLEGE DISTRICT BOND AND TAX ELECTIONS

### Introduction

Board members and staff of California school districts and community college districts often have questions about the role that district officers and employees and interested constituents may play in promoting successful passage of a bond or tax measure. The General Obligation/School Finance Practice Group at Orrick, Herrington & Sutcliffe has developed this guide to highlight some of the most important legal issues that public agencies need to be aware of.

The validity of a bond election and of the bonds is generally not jeopardized by improper campaign activities, and thus it is not strictly Bond Counsel's role to provide legal advice on matters such as campaign spending restrictions and reporting requirements for spending and contributions under federal law or the Political Reform Act. Accordingly, this guide is not intended to be exhaustive or definitive, nor is it intended to constitute legal advice. For further guidance, it is recommended that interested parties seek advice from their own counsel. In addition, several sources of official information are listed at the end of this guide.

It may be also inappropriate for the District's hired Bond Counsel or general counsel to render assistance to the partisan campaign. Therefore, the bond campaign committee generally must seek its own counsel on such matters. Similarly, the public official who violates the rules discussed here may be found to be acting on her own and not in service to the public agency, and might not be able to rely on the agency's counsel for help.

### Use of Public Funds and Resources

#### Guiding Principles:

**A public agency may not spend public funds to promote a partisan position in an election campaign without clear and explicit statutory authority to do so.**

**The governing board has the implicit power to make reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgement when voting upon a proposal.**

Because public tax monies belong to both proponents and opponents of a bond measure, it is unfair to force opponents of the measure to lend financial support to the proponents. Public officials who violate the following rules may be subject to civil fines or criminal penalties, and violation of these rules could cause the election to be invalidated.

**WARNING:** *State law provides that any person who uses public funds or resources to support a bond measure may face imprisonment in county jail for up to one year, a fine of up to \$1,000, or both, or imprisonment for 16 months, two years, or three years in state prison. Criminal penalties for misuse of federal funds may include up to 25 years in federal prison. Officials can also be held personally liable to reimburse the public agency for any misspent funds.*



Public funds, services, supplies or equipment may not be used for the following:

- (Even before an election is called by the governing board,) to recruit or organize supporters or raise funds for a future campaign, hire a consultant to develop a public relations and fund-raising strategy, or any other activities that form the basis for an eventual bond measure campaign;
- To urge voters to favor or oppose a bond measure that is before the voters;
- To purchase such campaign items as bumper stickers, posters, advertising, parade floats, or television and radio advertisements;
- To release public employees from ordinary duties during the paid working day in order to allow them to campaign on behalf of a bond measure;
- To disseminate partisan campaign literature prepared by private partisan groups; this includes the use of a public agency's personnel, internal mail system or other facilities to circulate partisan materials to employees or the public at large.

A school or community college district, its officers or employees may:

- Undertake studies (including voter surveys) and gather data in connection with the condition and needs of the campus buildings, as well as financial support and general management, including hiring consultants for the purpose;
- Inform the citizens of the District's educational programs and activities;
- Submit a partisan ballot argument for a bond measure;
- Distribute information to the public that constitutes a fair and impartial presentation of relevant facts to aid the voters in reaching an informed judgement regarding a bond issue;
- Give a fair presentation of the facts in response to a citizen's request for information;
- Make a public forum available on equal terms to all sides in a campaign.
- Any officer or board member may appear at any time before a public or private organization, when requested to do so by the organization, to present the District's view of a bond measure, to discuss the reasons why the governing board has called a bond election, and to answer taxpayer questions. It is recommended that a written invitation be obtained from the requesting group.



District staff and Board members should always bear in mind the potentially serious civil and criminal liability that may result from seemingly harmless actions. There is no “*de minimis*” level of public spending on a partisan campaign that would be acceptable under the applicable laws and rules. District officers should take steps to make clear to employees that they are not permitted to use any publicly funded, District-owned equipment for any political purposes in connection with the election, including District-issued cell phones, the District e-mail system, District-owned computers (including laptops issued to staff and used outside the office), phones, fax machines, etc. There are rare instances where the line is less than bright. However, a good guide may be that if the District prohibits or even discourages use of such resources for private purposes or conversations, it should definitely forbid any use for partisan campaigning.

In general, while personal appearances are not expressly prohibited by law, the District must view with circumspection any out-of-pocket expenditures in connection with a board member’s or official’s public appearance to promote a bond measure. The line between a neutral presentation of facts and promotion of a partisan position on a ballot measure is not always clear. Whether or not a given publication or presentation is appropriate depends on the style, tenor and timing in each case.

## Freedom of Speech and Association

### Guiding Principle:

**District employees do not lose their individual rights of political expression because they work for a public agency.**

In its efforts to avoid violating campaign laws, a public agency must not improperly restrict the political expression of its officers and employees.

- The governing board may establish rules governing the political activities of their officers and employees during working hours and on District premises.
- Where young minds may be unduly impressed by a teacher’s influence, such as in the elementary school and possibly high school context, teachers may be prohibited from wearing campaign buttons in classrooms. However, in the community college context, where the maturity of the students suggests that they will not be unduly influenced by a teacher's political statements, or mistake those statements for official District policy, the validity of any official restrictions is not clear.
- Elementary school teachers may be prohibited from wearing campaign buttons in the classroom; however District employees may not be prohibited from expressing political views on District property in non-instructional settings.
- District officers and employees are not prohibited from soliciting or receiving political contributions to promote passage of a ballot measure that would affect their pay, hours, benefits or other working conditions. This might be taken to include construction projects that may be financed with bonds.



- No political contributions may be solicited or received during working hours, except by recognized employee organizations during any employee's nonworking hours (including lunch periods and other break times). No person may enter onto District premises for the purpose of such a solicitation.
- Local ordinances limiting the amount of money individuals or organizations may contribute to a ballot measure campaign, or limiting spending by such a campaign, are probably unconstitutional.

### Campaign Finance Reporting Requirements

#### Guiding Principle:

**Contributions of money, materials, and time to a political campaign are subject to the Political Reform Act, and donors and recipients must comply with certain reporting requirements.**

Although spending limitations do not apply to a ballot measure election, public agencies that assist an election effort must still comply with reporting requirements of the Political Reform Act.

Any person or entity that directly or indirectly **receives contributions or makes expenditures of \$1,000 per year** to or for a ballot measure campaign committee, or that **makes contributions amounting to \$10,000 or more per year** to such a committee, must comply with reporting requirements of the Political Reform Act. The Act makes no exception for public agencies.

"Contributions" include:

- Compensation paid to a person for services rendered to a committee, even if the compensation is paid by a third party. For example, if a campaign consultant performs services on behalf of the Citizens' Committee for Measure A, and is paid by the District for all or part of the services, the fee is a contribution;
- Payment of a public employee's salary for time spent working on behalf of a committee;
- Payment of an employee's ordinary salary when the employee spends more than 10% of his or her compensated time in any month rendering services for political purposes at the direction of the employer, or is otherwise relieved of ordinary duties to be able to contribute that time.
- Free use of public facilities for meeting purposes may constitute an in-kind contribution of the District's direct costs in providing the meeting rooms.



“Contributions” do not include:

- Volunteer personal services;
- Campaign activities conducted entirely on vacation time, or on time that is not publicly paid working hours;
- Contributions of time or money where it is clear from the surrounding circumstances that the purpose was not to attempt to influence the voters for or against the passage of a ballot measure.

## Federal Law Concerning Ballot Measure Elections

### Guiding Principle:

**Federal law governing campaign activity does not extend to local, nonpartisan ballot measure elections.**

However, misuse of federal funding provided for educational programs but diverted to campaign activity may be prosecuted by the U.S. Attorney and carry possible penalties of up to 25 years in federal prison.

## Where to Go for Further Information

California State Fair Political Practices Commission: (The following information is from [www.fppc.ca.gov](http://www.fppc.ca.gov); Visit the “Requesting Advice” page: <http://www.fppc.ca.gov/index.php?id=18>.)

- The FPPC staff is available by telephone Monday through Thursday to provide assistance to anyone who has reporting or other requirements under the Political Reform Act.
- Call **1-866-ASK-FPPC** (this is a toll-free number) or 1-916-322-5660 and press 2 to speak to a political reform consultant in the Technical Assistance Division. Political reform consultants field questions in all areas covered by the Act. In addition, voicemail is special prompt that allows you to order forms, manuals and other materials any time.

You should also consult your general counsel, who can refer you if necessary to a specialist in the field of campaign finance rules.

**For more information, please contact [publicfinance@orrick.com](mailto:publicfinance@orrick.com).**