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PUBLIC SERVICE ETHICS

Legal Issues Associated with Use of Public Resources and Ballot Measure Activities

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Important policy decisions affecting local agencies in California are made by the electorate through the initiative and referendum process. What role may local agencies and their officials play in the initiative and referendum process?

The following series of questions and answers provide general guidelines and analyses of issues based on what law is available. *A local agency official should always consult with the agency's attorney concerning the propriety of any given course of conduct.*

Finding What You Need

Thanks to Our Supporter

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General Framework

1. Our agency is interested in a measure that is appearing on an upcoming ballot. We have information that may be helpful to the public in making its decision on how to vote. What do we need to keep in mind as we ponder sharing that information with the public?

Public agencies play an important and ongoing role in contributing to the public's information on important issues affecting the community. The flow of information back and forth between public agencies and residents, as well as among residents, is vital to effective decision-making.

When it comes to issues that either may be or are on the ballot, there are two different areas of law that bear on public agency communication activities:

- One is a body of case law that says what public agencies may and may not do to communicate their views on ballot measures with public resources. "Public resources" includes not only money, but things paid for with public money, including staff time, agency facilities, materials and equipment and agency communications channels.[1]

- The other area of law relates to campaign restrictions and transparency requirements under the state's Political Reform Act. Part of the theory of transparency requirements is that the public has a right to know who is spending what to influence their votes.[2] There also are also restrictions on using public resources to mail advocacy materials to voters.[3]

This question and answer guide will address both areas of the law, along with others that apply to specific kinds of activities an agency and its officials may engage in.

2. What is the underlying theory for restricting public agency activities with respect to ballot measure advocacy? Aren't public information efforts relating to what's best for the community a core function for local agencies?

The reason courts have given for the restriction is a concern that using taxpayer dollars in an election campaign could distort the debate[4] and undermine the fairness of the election.[5] More specifically, courts have worried about public agency communications overwhelming voters[6] and drowning out the views of others.[7] It also is a way of maintaining the integrity of the electoral process by neutralizing any advantage that those with special access to government resources might possess.[8]

That having been said, courts have also recognized that public agencies also have a role to play in making sure the public has the information it needs to make informed decisions. One court explained the role this way:

> If government is to secure cooperation in implementing its programs, if it is to be able to maintain a dialogue with its citizens about their needs and the extent to which

> government can or should meet those needs, government must be able to communicate. An approach that would invalidate all controversial government speech would seriously impair the democratic process. [9]

The court also noted that, if public agencies cannot address issues of public concern and controversy, they cannot govern.[10]

A Note on the Goals Underlying This Guide

The purpose of this guide is to provide guidance that represents the Institute's best judgment, based on the law available, on how to avoid stepping over the line that divides lawful from unlawful conduct. And, as a general matter, the Institute believes in not snuggling right up to any such lines, but instead giving them some berth. Therefore, it is possible that a court could conclude some activities that this guide advises against do not violate the law.

It is also important to remember that just because a given course of action may be lawful, it may not satisfy the agency's or the public's notions of what constitutes an appropriate use of public resources. Proper use of public resources is a key stewardship issue for public officials. In determining proper use of public resources, it is important to remember the law creates only minimum standards. In addition, there may be potential political implications of walking too close to the line in terms of the public's overall reaction to a ballot measure and where one wants the public's attention to be focused.

And of course, this guide is offered for general information only and is not intended as legal advice. Reasonable attorneys can and do disagree on where the boundaries are on these issues; moreover, the specific facts of the situation are an important element of the analysis. **Always consult an attorney knowledgeable about this area of the law when analyzing what to do in specific situations. An extensive set of endnotes is provided so attorneys can understand the basis for the analysis in this guide.**

Finally, suggestions and feedback on this and all Institute resources are always welcome. Please send those comments to info@ca-ilg.org. Additional information on this area is available at www.ca-ilg/org/ballotmeasure. This includes a much more user-friendly three-fold pamphlet of ballot measure do's and don'ts for public officials.

3. What guidelines have the courts provided on using public resources relating to ballot measures?

The California Supreme Court has, in essence, created three categories of activities:

1) Those that are usually *impermissible* campaign activities;

2) Those that are usually *permissible* informational activities; and

3) Those that may *require further analysis* under the "style, tenor and timing" test.[11]

Impermissible activities include campaign materials: bumper stickers, posters, advertising "floats," television and radio spots, and billboards.[12] Another improper activity is using public resources to disseminate advocacy materials prepared by others.[13] "Promotional campaign brochures" are also not allowed, even when those documents contain some useful factual information for the public.[14]

Permissible activities include:

- Taking a position on a ballot measure in an open and public meeting where all perspectives may be shared;[15]

- Preparing staff reports and other analyses to assist decision-makers in determining the impact of the measure and what position to take;[16]

- Responding to inquiries about ballot measures in ways that provide a fair presentation of the facts about the measure and the agency's view of the merits of a ballot measure.[17]

- Accepting invitations to present the agency's views before organizations interested in the ballot measure's effects.[18]

Any activity or expenditure that doesn't fall into the above two groups must be evaluated by a "style, tenor and timing" standard against the backdrop of the overarching concern for fairness and non-distortion in the electoral process.[19]

What kinds of things do the courts look for in evaluating "style, tenor and timing"? The safest approach is to deliver the information through regular agency communications channels (for example, the agency's existing website and newsletter), in a way that emphasizes facts and does not use inflammatory language or argumentative rhetoric.[20] Any communications should not encourage the public to adopt the agency's views, vote one way or another, or take any other actions in support of or in opposition to the measure.[21]

Thank You to Our Reviewers

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4. Are there additional restrictions a public agency should keep in mind with respect to ballot measure communications?

Yes. To complicate matters further, regulations adopted by the Fair Political Practices Commission further prohibit certain kinds of communications using a similar, but not identical, standard as the courts. The regulation prohibits *mailed* communications[22] that *either* expressly advocate the passage or defeat of a clearly identified ballot measure[23] *or*, when taken as a whole and in context, unambiguously urge a particular result in an election.[24] Among the criteria for whether a communication meets this test is whether, considering the style, tenor, and timing of the communication, the communication can reasonably be characterized as campaign material (not a fair presentation of the facts serving only an informational purpose).[25]

The regulation goes on to say that, when considering the style, tenor and timing of an item, factors to be considered include (but are not limited to) whether the item:

- Uses inflammatory or argumentative language (an indicator of an advocacy piece)
- Is funded from a special appropriation related to the measure (possibly another indicator of an advocacy piece);
- Is consistent with normal communications patterns for the agency (possibly an indicator of an informational piece); and
- Is consistent with the style of other agency communications (possibly an indicator of an informational piece).[26]

These restrictions expand previous Fair Political Practices Commission interpretations of what constitutes a prohibited mass mailing.[27] The basic prohibition is very broad: "No newsletter or other mass mailing shall be sent at public expense."[28] The original ballot measure materials relating to this section indicate that the target of this prohibition was mailings by elected officials to raise their profile with voters.[29]

Mass mailing restrictions apply to 200 or more substantially similar pieces of mail. Under the Fair Political Practices Commission regulation, items are "substantially similar" if they both expressly advocate or unambiguously urge the passage or defeat of the same ballot measure.[30]

5. What about transparency requirements under the Political Reform Act?

Local agencies engaged in activities related to ballot measures should also be mindful of campaign expenditure reporting requirements when the agency produces materials which either expressly advocate or unambiguously urge a particular result in a ballot measure election.[31] These reporting requirements apply both *before and after* a measure has qualified for the ballot.[32]

In this regard, it is important to distinguish between transparency requirements and prohibitions. The earlier discussion in this guide relates to the *prohibition* against using public resources for campaign purposes. The Political Reform Act's campaign disclosure requirements, however, are *transparency* requirements: the message is that the public has a right to know who is spending what amounts of money to influence elections.

For state and local agencies, the Fair Political Practices Commission's regulations say that public agencies must report the direct and indirect costs of materials and activities that either expressly advocate or unambiguously urge the qualification, passage or defeat of a ballot measure.[33] Communications meet these criteria if they:

- Are clearly campaign material or activities (bumper stickers, billboards, door-to-door canvassing, or mass media advertising, including but not limited to television and radio spots) or

- Can reasonably be characterized as campaign materials considering their style, tenor and timing and do not involve a fair presentation of the facts serving only an informational purpose.[34]

Again, the regulation goes on to say that, when considering the style, tenor and timing of an item, factors to be considered include (but are not limited to) whether the item:

- Is funded from a special appropriation related to the measure;

- Is consistent with normal communications patterns for the agency;

- Is consistent with the style of other agency communications; and

- Uses inflammatory or argumentative language.[35]

The regulations except, however, certain communications from reporting requirements. These exceptions include such communications as providing internal analyses of a measure to a member of the public on request, reports of an agency's position in the minutes of a meeting, agency arguments in a voter's pamphlet, presentations by public employees on the agency's

position requested by organizations, and communications "clearly and unambiguously" authorized by law.[36]

These transparency requirements present tricky issues for local agencies. Local agencies may be inclined to report any costs incurred relating to ballot measure communications out of an abundance of caution. However, in so doing, an agency may be creating a basis for someone to challenge an agency as having made an impermissible expenditure of public resources under the case law and Fair Political Practices regulations discussed under questions 3 and 4. This is one of the many reasons it is wise to be in close contact with agency counsel regarding issues relating to ballot measure activities.

6. What are the consequences of stepping over the line dividing permissible from impermissible uses of public resources with respect to ballot measure activities?

The stakes are high for those involved in misuses of public resources. Public officials face personal liability—criminal and civil--for stepping over the line.

Improper use of public resources is a crime.[37] Criminal penalties include a two- to four-year state prison term and permanent disqualification from public office.[38]

Civil penalties include a fine of up to $1,000 for each day the violation occurs, *plus* three times the value of the resource used.[39] Other consequences may include having to reimburse the agency for the value of the resources used.[40] Those charged with improper use of public resources may have to pay not only their own attorneys fees, but also those of any individual who is challenging the use of resources.[41]

In addition, conflicting perspectives[42] on whether there might be a "*de minimus*" defense makes relying on such a defense risky. This includes relying on the defense that one has reimbursed the value of using public resources improperly.

Finally, engaging in such activities gives rise to reporting obligations for public agencies under the Political Reform Act.[43] Failure to comply with these requirements subjects an agency to additional penalties.[44]

7. Are there general strategies a public agency should employ to make sure that it doesn't step over any lines?

The first is to make sure that public agency employees and officials are aware of these restrictions.

Another strategy is to review the issues in this guide with agency counsel at the outset of any ballot measure related activities to be clear on how he or she interprets the law in this area. In many areas, the law is not clear and an agency is well-advised to understand their attorney's interpretations of what is allowed and what is risky. The next strategy is to have a practice of

consulting with agency counsel on the application of these restrictions to specific issues that arise.

Finally, documenting an agency's respect for these restrictions is another important strategy. Attorneys refer to this as creating a *record.* Potential challengers to an agency's activities will review the record and other materials (including emails, for example) to determine whether to file a lawsuit. A court will examine the record in deciding whether any missteps occurred. The agency will want to be able to point to documentation that demonstrates that all actions were well within the boundaries dividing lawful from unlawful conduct.

More Specific Questions about Ballot Measure Activities

1. The ballot measure my agency is concerned about has serious legal flaws; may my agency use public resources to file suit against the measure?

Yes. An appellate court has held that a local agency may use public resources to make a pre-election legal challenge to a ballot measure.[45]

2. May public resources be used for voter registration or get out the vote efforts?

Yes. An appellate court has determined that this is an appropriate use of public resources, as long as the efforts funded with public resources did not involve urging the public to vote one way or another in upcoming elections.[46]

3. *May an agency adopt a resolution supporting or opposing a ballot measure? Are there restrictions on the language that should be used in such resolutions?*

Yes, taking a position on a ballot measure in an open and public meeting where all perspectives may be shared is permissible.[47]

In terms of language, the safest practice is to apply the Supreme Court's standard of language that is "simple, measured and informative," which is language that emphasizes facts and does not use inflammatory language or argumentative rhetoric.[48] Additional good practice is to not encourage the public to adopt the agency's views, vote one way or another, or take any other actions in support of or in opposition to the measure.[49]

Some municipal attorneys believe that taking a position on a ballot measure will increase either judicial or Fair Political Practices Commission scrutiny of a public agency's informational activities. The theory is that an agency that has a position on a measure may be more inclined to step over the line dividing permissible informational activities from impermissible campaign materials.

4. May an agency provide links on its website to other organizations' campaign materials on a ballot measure?

Linking to just one side of the debate on a ballot measure would be impermissible campaigning.[50]

Providing links to both sides (pro and con) may also be risky.[51] Current case law allows an agency to reserve its website or other communications vehicles to communicating the agency's *own* information.[52] A concern is that once an agency starts using its site to communicate *others'* information, including that with which it may disagree, the agency may undermine its prerogatives to exclude content.[53]

For that reason, the safest approach under both First Amendment principles and use-of-public-

resources principles is not to include links to campaign websites. An agency may, however, link to nonpartisan analyses of ballot measures, such as those offered on a statewide basis by the Legislative Analyst's Office, Attorney General, the League of Women Voters' Easy Voter Guide, and the Center for Governmental Studies (the latter two organizations also offer nonpartisan video overviews of ballot measures in English and Spanish via their YouTube channels).

5. What about using public property for press conferences and rallies relating to ballot measures?

The key question is the nature of the property. Certain kinds of public property, like streets, sidewalks, and parks, have been traditionally open to public assembly and debate.[54] The notion is that everyone can use such spaces and public agencies cannot restrict access to them based on the point of view that will be expressed.[55] Because everyone has access to such spaces and no one can be excluded based on their views, using such spaces for press conference and rallies does not pose a risk of distorting the debate on a ballot measure[56] or undermining the fairness of the election.[57]

There are other kinds of public property that are not places that are by tradition or designation a forum for members of the public to communicate with each other.[58] The insides of public buildings tend to fall into this category. The notion is that rallies and press conferences will disrupt the orderly provision of public services in such places.

The basic rule is evenhandedness. If it would be disruptive for some or all perspectives to use a particular place for press conferences and rallies, then no one should be allowed to use those places for those purposes.[59]

6. What about using other agency communications channels (for example, email or intra-office mail systems) to communicate the agency's (or public official's) views on a ballot measure?

The safest approach is *not* to use systems that have been developed with public resources to disseminate campaign materials. This sends a clear message to employees, public officials and others that such systems are not for personal or political use. With respect to intra-net or internal mail systems, restricting such use also avoids putting the public agency in the position of making decisions based on the viewpoint being expressed.[60]

That having been said, it should be acknowledged that there is a court of appeal decision in which the majority of justices that found that one email sent on a local official's lunch hour transmitting an editorial in favor of one side of an election issue did not constitute a punishable violation of the law.[61] The result turned on the majority's conclusion that the action constituted a minimal use of public resources—a conclusion with which the dissenting justice disagreed.

7. What guidelines should an agency follow with respect to communications relating to "PEG channel" television coverage of the ballot measure? For example, what if either the agency or the League of Women Voters wants to produce a program presenting the views of both proponents and opponents to a ballot measure to help educate the community?

Generally speaking, the courts distinguish between situations in which public agencies have allowed "general access" to the broadcasting facilities as opposed to allowing "selective access."[62]

If a public agency makes the channel generally available to either all speakers or certain classes of speakers, then the channel is what First Amendment attorneys call a "designated public forum."[63] If the channel falls into this category, the safest approach is generally to treat political programming no differently from any other programming on the public access channel. This would comply with First Amendment protections against discriminating against certain kinds of speech,[64]as well as the reasoning in Cable TV Access Channel Rules.[65]

On the specific issue of debates, the courts have indicated that using public resources for public forums at which all may appear and freely express their views pro and con are not improper; similarly, reasonable expenses for radio and television debates between proponents of the differing sides of the proposition would also be okay.[66] The courts have recognized some latitude for those who organize debates to create *viewpoint neutral* criteria to determine who will participate.[67]

Even so, to avoid arguments over who would be the best representative for each side of the debate, it may be preferable to have an organization that does not have a position on a ballot measure organize the debate or to let each side of a ballot measure select its representative. Having a viewpoint-neutral group like League of Women Voters organize the debate (as opposed to the local agency that has taken a position on the matter being debated) can also avoid second-guessing about the motivations underlying who was selected to participate.

8. Our staff is sensitive to the issue of not appearing to advocate on ballot measures. Sometimes, however, when we have presented the facts as we understand them or believe them to be, we find that those who disagree with our agency's view of the facts will try to engage staff in a debate. If we respond, we worry we look like we are going beyond our informational role (and potentially being set up to look like we are advocating instead of informing).

A possible response to suggest staff give in such situations is:

> "We are offering this information based on our research and analysis of this issue. If others have research and analysis they want to offer, they should make it available so the public can evaluate all available information, as well as the research and analysis on which the information is based. My role here as a representative of our agency is not to debate, but to provide the information our agency has on this topic."

It may also be helpful to remind staff that, when in doubt about how to respond in a particular situation, staff may want to keep in mind the option of referring questions or issues to others in the organization. If an issue comes up relating to what the agency has done on a ballot measure, a good practice is for all staff who may receive inquiries to know to whom in the agency such inquiries should be referred.

9. Proposition 218 creates special procedures for the approval of assessments and certain kinds of fees. To what extent do the restrictions on campaign communications apply to agency communications relating to Proposition 218 proceedings?

No court has squarely addressed this issue, but the prevailing view is that an agency is well-advised to conform its communications that relate to Proposition 218 proceedings to the same standards as it adheres to in typical elections.[68] This includes the advisability of communications early on that are even-toned and based on solid analytics about the need to either impose or increase a revenue source that is subject to Proposition 218's procedures. Such communications create a basis for supplemental (and still even-toned) information later on, should questions or arguably inaccurate information creep into discussions about the merits of the measure closer to the decision point.

Before a Measure is Put on the Ballot

1. What about if a public agency wants to draft a measure on the ballot; may public resources be used for that?

Under both statutory and case law, local agencies may use public resources to draft a measure for the ballot.[69] The theory is that, prior to and through the drafting stage of a proposed ballot measure, the activities do not involve attempting to either persuade the voters or otherwise influencing the vote.[70]

2. What about other activities a local agency may wish to engage in prior to placing a measure on the ballot?

Local agencies do not have specific guidance from a majority of the California Supreme Court on this issue, although there are general principles that can be applied. The Court seems to use a two-part analysis in evaluating public agency activities vis-à-vis ballot measures. One part goes to the issue of whether a particular public agency has the *authority* to spend monies on ballot measure activities. The other is whether that authority oversteps what the courts may perceive as constitutional restrictions on what may be done with public resources.[71]

Again, for placing a measure on the ballot, the Elections Code answers the authority question for cities and counties.[72] The question is what kinds of other activities can they engage in as part of that effort?

In a case involving a local transportation agency, a court of appeal found the agency had authority under state law[73] to find additional sources of funding for transportation and the agency was following the prescribed steps for putting a measure before the voters (which included such activities as preparing a transportation plan).[74] The court noted that the activities the agency engaged in occurred before the transportation expenditure plan was approved or the ordinance placing a measure on the ballot was finalized.[75]

The fact that the agency's challenged activities occurred well before the measure was put on the ballot was enough for the court. In this regard, the court drew a distinction between activities involving the expenditure of public funds for *governing* and the expenditure of funds for election *campaigning.*[76]

The court in the transportation agency case relied heavily on the analysis of an earlier court of appeal decision. In that case, which involved a county, the court suggested that putting a measure on the ballot was okay, but other activities may be a closer call.[77] The court concluded that:

> On balance, we conclude the power to draft the proposed initiative necessarily implies the power to seek out a willing proponent. We do not perceive the activities of identifying and securing such a proponent for a draft initiative as entailing any degree of public advocacy or promotion, directed at the electorate, of the single viewpoint embodied in the

measure.[78]

The California Supreme Court says it agrees with this case to the extent that the case interpreted earlier Supreme Court decisions as allowing public agencies to express opinions on the merits of a proposed ballot measure, so long as agencies do not spend public funds to mount a campaign on it.[79] It did not address the issue of what kinds of activities (other than the act of putting a matter on the ballot) are okay.

3. Before we put a measure on the ballot, we want to evaluate its likelihood of success by engaging in various forms of public opinion research (for example, polling and focus groups) to understand how the community might feel about such a measure. May we use public resources for that kind of activity?

Although no court has specifically addressed this, the Attorney General has said "yes," as long as those resources are not being used to promote of a single view in an effort to influence the electorate. For example, the Attorney General has determined that, in preparation for submitting a bond measure to the electorate for approval, a community college district may use district funds to hire a consultant to conduct surveys and establish focus groups to assess the potential support and opposition to the 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.[80] The Attorney General based his analysis on a court of appeal case that allowed pre-qualification activities,[81] noting that the audience for such activities is not the electorate.[82]

4. May this research be used by advocacy or opposition groups to inform their strategies?

In the Attorney General opinion on the community college bond measure, the Attorney General noted that the fact that early focus group and polling information might prove to be of use in an ensuing campaign does not, in itself, necessitate the conclusion public funds were expended improperly.[83] The AG did note that donating or providing this information to a political campaign may give rise to campaign reporting obligations under the Political Reform Act.[84]

Note on Public Records

A factor to keep in mind is the degree to which the consultant's research is likely to constitute a public record[85] subject to disclosure upon request to anyone under California's Public Records Act.[86]

5. May a public agency use public resources to hire a communications strategist (consultant) to advise the agency on an effort to place a matter on the ballot? Some of the issues the consultant would advise us on include: interpreting and applying the public opinion research and advising on such issues as timing of the election, what kind of balloting method to use, effective themes and messages to use in describing the measure to the community, areas where the public may need more information, communications planning, community outreach activities, informational direct mail program, creating an informational speakers bureau and interpreting "tracking poll" data after outreach program to re-assess community support for the measure?

Some public agencies have ongoing and robust communications and engagement efforts with their communities as part of their philosophy of governance. In such communities, hiring help on community outreach activities and communications planning (or having such capacity in house) is part of how the agency generally operates. Consistency with a public agency's established practices is one of the factors the courts look for in assessing whether a particular use of public resources with respect to ballot measure communications is okay.[87]

The key distinction to keep in mind under the current state of appellate guidance is whether a given use of public resources relates to *governing* as opposed to election *campaigning.*[88] Understanding community sentiment and needs and then developing measures to meet those needs can be part of an agency's ongoing governance and communications practices. So can maintaining regular lines of communications between decision-makers and the community.

However, if these activities are not typically part of the agency's philosophy of governance and regular communications practices, then using public resources for these purposes can be riskier. For example, the Attorney General has concluded that it would be unlawful to use public agency funds to hire a consultant to develop and implement a strategy for building support for a ballot measure (both in terms of building coalitions and financial support for a campaign). The Attorney General said having the consultant assist the district chancellor in scheduling meetings with civic leaders and potential campaign contributors in order to gauge their support for the bond measure would be unlawful if the purpose or effect of such actions is to develop a campaign to promote approval of the bond measure by the electorate.[89]

Under this opinion, the key test is whether the "purpose *or effect*" of a consultant's activities is to develop a campaign to promote approval of the bond measure; if so, those activities should not be undertaken with public resources.[90] The Attorney General said this means public resources should not be used to fund activities that will form the basis for an eventual campaign to obtain approval of a measure.[91] It also means that the safest thing to do is to avoid using public resources for activities that may have the effect of influencing the voters (for example, "developing themes or messages").

If the agency does hire communications consultants, the agency and the consultants should be aware of the transparency requirements that apply to public entity endeavors. This includes the fact that the scope of work in the consultant's contract, the consultant's work product, emails and

other writings relating to their work that are in the possession of and regularly retained by the agency will be subject to public disclosure should there be an inquiry.[92]

6. Are there any concerns if the communications strategist ultimately becomes either one of the consultants or the sole consultant to the campaign?

No court decision or Attorney General opinion addresses this specific issue. Having consultants involved in pre-qualification activities (which are not supposed to involve actions designed to develop a campaign to promote approval of a measure) and then become involved in campaign activities may create a greater risk that a court may conclude the pre-qualification activities were truly designed to support a campaign to promote approval of a measure. It also increases the possibility that the pre-qualification expenses will be reportable as in kind support for the campaign.

7. May public resources be used to fund signature gathering to qualify a measure for the ballot?

The Attorney General says "no."[93] The Attorney General reasoned that such activities cross the line to promoting a single point of view and influence the electorate, which cannot occur unless there is clear and explicit authorization for such activities.[94]

Individual Activities

1. What may individual public officials do to support or oppose ballot measures?

Individual officials and employees can work on the campaign during their personal time, including lunch hours, coffee breaks, vacation days, etc. They can make a campaign contribution to a ballot measure campaign committee using personal funds, and/or pay for and attend a campaign fundraiser during personal time. They can also make campaign appearances during personal time.

2. May I use agency letterhead or my title when communicating my support for a ballot measure?

As a general matter, public agency letterhead is a public resource bought and paid for with taxpayer funds. As a result, it should not be used for ballot measure advocacy activities.

Sometimes campaigns will use a species of facsimile letterhead that looks like official agency letterhead but is paid for with private funds. If the agency's letterhead is to be used in this manner, the governing body of the agency should approve such use and the letterhead should clearly indicate that it was not paid for with public funds.[95] Other Political Reform Act requirements may also apply, for example, placing the name of the committee or candidate on the outside of the envelope.[96]

The tradition when using titles ("county supervisor," "mayor," or "council member") is to indicate that the titles are used for identification purposes only. The theory underlying this policy is to be clear that one is not communicating on behalf of the agency.

3. Can I contribute to the ballot measure campaign from my campaign funds?

Yes: the Fair Political Practices Commission has generally advised that candidates and officeholders may transfer funds from their candidate committees to ballot measure committee.[97] In general, money raised to support a person's election to office is considered to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.[98] As such, these funds must be used only for may only be used for political, legislative, or governmental purposes.[99]

Although the Commission hasn't specifically explained why, presumably it is because by their very nature, ballot measures are legislative in nature.

Note, however, that special disclosure rules apply to candidate-sponsored ballot measure committees.[100]

4. May I fundraise for the measure, so private resources can pay for campaign activities? What about approaching those who do business with my agency for financial support for the campaign?

The answer is generally yes, although with two caveats.

In terms of legal restrictions, one needs to be aware that the restrictions against seeking campaign contributions from those involved in license and permit proceedings also applies to solicitations of contributions to ballot measure campaigns.[101] For more information about this restriction, see "Campaign Contributions May Cause Conflicts for Appointees and Commissioners," which is available online at www.fppc.ca.gov. Local agencies may have their own, broader restrictions.

Even under circumstances when the law does not constrain an official's political fund-raising activities (other than requiring disclosure of donors), it is important to be extraordinarily judicious in choosing those one will ask for campaign contributions. If an individual or company has matters pending with one's agency, they (and others, including the media and one's fellow candidates) are going to perceive a relationship between the decision and whether they contribute to one's campaign. The unkind characterization for this dynamic is "shake-down."

Two important points to remember:

- The legal restrictions on campaign fund-raising are minimum standards.
- Public officials who indicate their actions on a matter will be influenced by whether they receive a campaign contribution put themselves at risk of being accused of soliciting a bribe or extortion.

5. May we ask staff to support the ballot measure, for example, by asking them to endorse the measure, make campaign contributions or volunteer their time?

It's not a good idea. California law has a strong tradition of separating the electoral process from decisions relating to public employment.

For this reason, state law forbids elected officials and employees from soliciting campaign funds from employees.[102] (The exception is if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.[103])

State law also forbids conditioning employment related decisions on supporting a candidate or "other corrupt condition or consideration" which includes urging "individual employee's action."[104]

Note that there are exceptions to these restrictions if the ballot measure would affect the rate of

pay, hours of work, retirement, civil service or other working conditions.[105]

6. May I ask fellow elected and appointed officials to contribute time, endorsements and/or money to the campaign?

The same state law that prohibits solicitations of campaign contributions from one's employees' prohibits solicitations of one's fellow officials in the same jurisdiction.[106]

7. I generally share my views on ballot measures with my friends and constituents; is it okay to send that out using my public agency email address and the public agency email system?

The better practice is to use a personal email address and send such information from a non-public agency computer system.

8. May I attend a fundraiser for the ballot measure, using public funds to pay for the ticket?

No. This squarely violates the proscription against using public funds for ballot measure advocacy.

9. What about if someone gives me one or more tickets to a fundraiser on a ballot measure?

From time to time a public official will be invited by candidates or ballot measure campaigns to attend political fundraisers. The rule is that a committee or candidate may provide **one ticket** per event to an official without the invited official having to report the value of the ticket on his or her Statement of Economic Interests.[107] If the official receives more than one ticket, the face value of the extra tickets must be reported on his or her Statement of Economic Interests.

10. I have an agency cell phone; what if someone calls me on it to discuss ballot measure campaign activities?

The safest approach is to ask the caller to call you back on a non-agency line.[108]

11. May I wear my public agency uniform while expressing my views about a ballot measure?

No, state law specifically prohibits wearing public agency uniforms while participating in political activities.[109]

Endnotes

[1] *See Stanson v. Mott*, 17 Cal. 3d 206, 210-11 (referring to expenditure of staff "time and state resources" to promote passage of bond act); *Vargas v. City of Salinas*, 46 Cal. 4th 1, 31-32 (2009). *See also People v. Battin*, 77 Cal. App. 3d 635, 650 (4th Dist. 1978) (county supervisor's diversion of county staff time for improper political purposes constituted criminal misuse of public monies under Penal Code section 424), *cert. denied*, 439 U.S. 862 (1978), *superseded on other grounds by People v. Conner*, 34 Cal. 3d 141 (1983). *But see Bardolph v. Arnold*, 435 S.E. 2d 109, 113 (N.C. App 1993) (local government may expend public funds to create support for qualified ballot measure), *rev. denied*, 439 S.E.2d 141 (1993).

[2] *See* 2 Cal. Code of Regs. § 18420.1 (defining campaign-related expenditures as either reportable independent expenditures or contributions).

[3] *See* 2 Cal. Code of Regs. § 18901.1 (prohibiting campaign mailings sent at public expense).

[4] *See Vargas v. City of Salinas*, 46 Cal. 4th 1, 31-32 (2009).

[5] 46 Cal. 4th at 36-37.

[6] *See* 46 Cal. 4th at 23-24, 32, citing *Stanson v. Mott*, 17 Cal. 3d 206, 216-217 (explaining that, as a constitutional matter, "the use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leave[s] to the 'free election' of the people (see Cal. Const., art. II, § 2) ... present[s] a serious threat to the integrity of the electoral process"). *See also Keller v. State Bar*, 47 Cal.3d 1152, 1170-1172, (1989), *reversed on other grounds* 496 U.S. 1 (1990).

[7] 46 Cal. 4th at 46 (concurring opinion).

[8] *San Leandro Teachers Association v. Governing Board of San Leandro School District*, 46 Cal.4th 822, 845 (2009).

[9] *Miller v. Commission on the Status of Women*, 151 Cal. App. 3d 693, 701 (1984).

[10] *Id.*

[11] 46 Cal. 4th at 7, citing *Stanson*, 17 Cal. 3d at 222 and n. 8.

[12] 46 Cal. 4th at 24, 32, 42.

[13] 46 Cal. 4th at 24, 35.

[14] 46 Cal. 4th at 39 n. 20.

[15] 46 Cal. 4th at 37. *See also Choice-In-Education League v. Los Angeles Unified School District*, 17 Cal. App. 4th 415, 429-30 (1993).

[16] 46 Cal. 4th at 36-37.

[17] 46 Cal. 4th at 24-25, 33.

[18] 46 Cal. 4th at 25, 36, *citing Stanson*, 17 Cal. 3d at p. 221.

[19] 46 Cal. 4th at 7, 30 and 40.

[20] 46 Cal. 4th at 34, 40 (compare with the tone of the newsletter described in footnote 20).

[21] 46 Cal. 4th at 40. Here is the full text of the *Vargas*' court's conclusion:

> In sum, a variety of factors contributes to our conclusion that the actions of the City that are challenged in this case are more properly characterized as providing information than as campaigning: (1) the information conveyed generally involved past and present facts, such as how the original UUT was enacted, what proportion of the budget was produced by the tax, and how the city council had voted to modify the budget in the event Measure O were to pass; (2) the communications avoided argumentative or inflammatory rhetoric and did not urge voters to vote in a particular manner or to take other actions in support of or in opposition to the measure; and (3) the information provided and the manner in which it was disseminated were consistent with established practice regarding use of the Web site and regular circulation of the city's official newsletter. Furthermore, we emphasize that the principles that we have applied in this setting are equally applicable without regard to the content of whatever particular ballot measure may be before the voters-whether it be a tax-cutting proposal such as that involved in this case, a "slow-growth" zoning measure restricting the pace of development, a school bond issue providing additional revenue for education, or any other of the diverse local ballot measures that have been considered in California municipalities in recent years. (See, e.g., Cal. Elections Data Archive, Cal. County, City & School District Election Outcomes: 2004 Elections: City Offices and Ballot Measures, City Report, table 1.2, pp. 21-43 <http:// www. csus. edu/ isr/ isr 3. html> [as of Apr. 20, 2009].) In any of these contexts, a municipality's expenditure of public funds must be consistent with the standard set forth in Stanson, supra, 17 Cal.3d 206, 130 Cal.Rptr. 697, 551 P.2d 1.

See also Cal. Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure).

[22] *See* 2 Cal. Code of Regs. § 18901.1(a)(1) (referring to "tangible item[s] . . . .delivered, by any means . . . .").

[23] *See* 2 Cal. Code of Regs. § 18901.1(a)(2)(A).

[24] *See* 2 Cal. Code of Regs. § 18901.1(a)(2)(B).

[25] *See* 2 Cal. Code of Regs. § 18901.1(c)(2).

[26] *See* 2 Cal. Code of Regs. § 18901.1(e).

[27] *See* 2 Cal. Code of Regs. § 18901.1.

[28] Cal. Gov't Code § 89001.

[29] *See* California Voters Pamphlet, Proposition 9, Legislative Counsel Analysis, (June 4, 1974) ("[This initiative" would prohibit the mailing of legislative newsletters or other mass mailings at public expense by or on behalf of any state officer after he ahs filed as a candidate for office.").

[30] *See* 2 Cal. Code of Regs. § 18901.1(d) ("For purposes of subdivision (a)(4), an item is "substantially similar" to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.")

[31] Cal. Gov's Code § 82013(b), 84200.2 Cal. Code Regs., § 18225(b)(2). *See also Yes on Measure A v. City of Lake Forest*, 60 Cal. App. 4th 620, 625-626 (1997).

[32] 2 Cal. Code of Regs. § 18225(b) (defining an expenditure as monetary and non-monetary payments used for communications with expressly advocate the qualification, passage or defeat of a clearly identified ballot measure).

[33] *See* 2 Cal. Code of Regs. § 18420.1(a) and (c).

[34] *See* 2 Cal. Code of Regs. § 18420.1(b).

[35] *See* 2 Cal. Code of Regs. § 18420(d).

[36] *See* 2 Cal. Code of Regs. § 18420(e).

[37] *See* Cal. Penal Code §§ 72.5(b) (use of public funds to attend a political function to support or oppose a ballot measure); 424 (misappropriation of public funds); 484-87 (theft). *See also People v. Battin*, 77 Cal. App. 3d 635 (1978) (prosecution of county supervisor for engaging campaign activities during county business hours using county facilities), *superceded on other grounds by People v. Conner*, 34 Cal. 3d 141 (1983).

[38] Cal. Penal Code § 424.

[39] Cal. Gov't Code § 8314(c)(1).

[40] *Stanson*, 17 Cal. 3d at 226-227 (finding that "public officials must use due care, *i.e.*, reasonable diligence in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of due care"). *See also Harvey v. County of Butte*, 203 Cal. App. 3d 714, 719 (1988).

[41] *See generally Tenwolde v. County of San Diego*, 14 Cal. App. 4th 1083 (4th Dist. 1993), *rev. denied*.

[42] *See People v. Battin*, 77 Cal. App. 3d at 65 (1978) (Penal Code section 424's "proscription is not limited to the misuse of public funds in a particular monetary amount. Rather it proscribes *any* misuse, no matter how small." [emphasis in original]). *See also People v. Bishop*, A081989 (1st Dist. 2000) (this unpublished opinion follows *People v. Battin* and holds that reimbursement is not a defense). *But see DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (majority found that sending an editorial against a ballot measure via email on one's lunch hour constituted advocacy, but involved a minimal use of public resources—note dissenting opinion disagreeing with majority's minimal-use-of-public-resources conclusion).

[43] Cal. Gov't Code § 84203.5 (requiring independent expenditure reports by committees spending more than $500 each year in support or opposition to a ballot measure).

[44] *See, for example,* Cal. Gov't Code § 83116, 91001(b), 91000(a), 91001.5, 91002, 91004, 91005, 91012.

[45] *Yes on Measure A v. City of Lake Forest,* 60 Cal. App. 4th 620,625-626 (1997).

[46] *Schroeder v. Irvine City Council*, 97 Cal. App. 4th 174, 187-88 (2002).

[47] *Vargas*, 46 Cal. 4th at 35-37. *See also Choice-In-Education League v. Los Angeles Unified School District*, 17 Cal. App. 4th 415, 429-30 (1993).

[48] 46 Cal. 4th at 34, 40; (compare with the tone of the newsletter described in footnote 20).

[49] 46 Cal. 4th at 40. *See also* Cal. Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure).

[50] *See* 46 Cal. 4th at 24 (observing that " . . . the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure" "unquestionably constitutes improper campaign activity" citing *Stanson*).

[51] Strictly speaking, the state law that prohibits using public resources (including equipment and compensated time, *see* Cal. Gov't Code § 8314(b)(3)) for campaign purposes excludes from the prohibition referrals of visitors to private political entities. *See* Cal. Gov't Code § 8314(b)(2) (""Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.") Thus, an argument exists that links to campaign resources on a website fall within this exception to the prohibition.

Does this exception satisfy *Stanson's* requirement that any use of public resources for campaign purposes be "clearly and unmistakably authorized?" One might think so, but as the *Vargas* decision illustrated, courts can find that statutory language that limits the scope of a prohibition does not constitute a clear and unmistakable authorization. *See Vargas*, 46 Cal. 4th at 29-30. The *Vargas* court also noted that even where there are explicit authorizations, such authorizations can present serious constitutional questions. *Id* at 29. Although the "reference to private political entities" would represent a fairly limited authorization, it's not clear how the courts would evaluate this issue.

[52] *See Vargas*, 46 Cal. 4th at 37 n. 18 (finding city had no obligation to provide those with a different point of view access to the city's website), *citing United States v. Am. Library Ass'n, Inc.*, 539 U.S. 194, 204-206 (2003); *Arkansas Educ. TV. v. Forbes*, 523 U.S. 666, 673-677 (1998); *Cornelius v. NAACP Legal Defense & Ed. Fund*, 473 U.S. 788 (1985); *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46 (1983); *Clark v. Burleigh*, 4 Cal.4th 474, 482-491 (1992)) *See also Sutliffe v. Epping School Dist*., --- F.3d ----, 2009 WL 2973115 (1st Cir 2009) (noting that it is possible there may be cases in which a government entity might open its website to private speech in such a way that its decisions on which links to allow on its website would be more aptly analyzed as government regulation of private speech); *Hogan v. Township of Haddon*, 278 Fed.Appx. 98, 101-02 (3d Cir 2008) (rejecting elected official's claim that she had a First Amendment right to publish articles in the town newsletter and to post on the town's website and cable channel because these communications vehicles were local government-owned and sponsored, and as such are not public or limited public forums); *Page v. Lexington County School Dist. One*, 531 F.3d 275, 285-85 (4th Cir. 2008) (rejecting claims that links to other websites did not vitiate school district's retention of complete control over its website or create a limited public forum, but noting that had a linked website somehow transformed the website into a type of "chat room" or "bulletin board" in which private viewers could express opinions or post information, the issue would, of course, be different).

[53] *See also Sutliffe v. Epping School District*, 584 F.3d 314 (1st Cir. 2009), *citing Pleasant Grove City, Utah v. Summum*, ___ U.S. ___, 129 S.Ct. 1125 (2009); *Ampex Corp v. Cargle*, 128 Cal. App. 4th 1569, 1576 (2005); *Computer Xpress, Inc. v. Johnson*, 93 Cal. App. 4th 993, 1009 (2001) (websites with chat rooms are public forums).

[54] *Preminger v. Peake*, 552 F.3d 757, 765 (9th Cir 2008).

[55] *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 97, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972); *Wirta v. Alameda Contra Costa County Transit District*, 68 Cal. 2d 51, 64 Cal. Rptr. 430 (1967).

[56] *See Vargas v. City of Salinas*, 46 Cal. 4th at 31-32.

[57] 46 Cal. 4th at 36-37.

[58] *Preminger v. Peake*, 552 F.3d 757, 765 (9th Cir 2008).

[59] *See generally San Leandro*, 46 Cal. 4th at 839 (noting that, even for nonpublic fora, the government may only impose *reasonable* regulations and the regulation must not relate to disagreement with the speaker's view), citing *Clark v. Burleigh*, 4 Cal. 4th 474, 483 (1993).

[60] *See Perry Educational Association v. Perry Local Educators Association*, 460 U.S. 37, 45 (1983) (noting that, in addition to viewpoint neutral, time, place and manner restrictions, public agencies may reserve communication forums for their intended purposes, as long as restrictions are reasonable and are not based on a speaker's views). *See also San Leandro Teachers Association v. Governing Board of San Leandro School District*, 46 Cal. 4th 822 (2009) (upholding school district's decision to prohibit use of teacher mailboxes for one-sided political endorsements against challenges under federal and state constitutional protections for free expression).

[61] *See DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (majority found that sending an editorial against a ballot measure via email on one's lunch hour constituted advocacy, but involved a minimal use of public resources—note dissenting opinion disagreeing with majority's minimal-use-of-public-resources conclusion).

[62] *See Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666, 678-82 (1998) (finding that a state public broadcasting entity could, consistent with First Amendment principles, broadcast a debate and use criteria for determining who may participate that are reasonable and do not discriminate based on the speaker's views).

[63] *See Arkansas Educational Television Commission*, 523 U.S. at 678-79.

[64] *See McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 347 (noting that when a governmental regulation restricts core political speech like election speech, the courts apply "exacting scrutiny" to assure that the restriction is narrowly tailored to uphold an overriding state (public) interest). S*ee also American Civil Liberties Union v. F.C.C.*, 523 F.2d 1344 (9th Cir. 1975) (noting public access channels must be open to non-discriminatory, first come first served access).

[65] 83 F.C.C.2d 147 (1980). (Note, however, that the FCC fairness doctrine rules do not apply to PEG channels, only cable providers (e.g. Time Warner Cable, Comcast etc.).

[66] *See Choice-In-Education League v. Los Angeles Unified School District*, 17 Cal. App. 4th 415, 429-30 (1993).

[67] *See Arkansas Educational Television Commission*, 523 U.S. at 678-83 (upholding candidate's exclusion from debate on the grounds that his candidacy had attracted "no appreciable public interest" and hence the exclusion was based on the candidate's status rather than his views).

[68]Government Code 53753(e)(6) states that a "majority protest proceeding" (for assessments) "shall not constitute an election or voting for purposes of Article II of the California Constitution or of the Elections Code." This appears to be a limited exception, since Elections Code 4000 treats Proposition 218 elections (for both assessments and fees) as an "election" for the purposes of all-mail ballot proceedings. Note too that the original basis for the rule from the *Mines* case "that the electors of the city who opposed the bond issue "had an equal right to and interest in the [public] funds ... as those who favored said bonds," seems to apply to any "measure" that has two sides - one "yes" and the other "no." *See Mines v. Del Valle*, 201 Cal. 273, 287 (1927).

[69] *Vargas*, 46 Cal. 4th at 36; *League of Women Voters of California. v. Countywide Criminal Justice Coordination Committee*, 203 Cal. App. 3d 529 (1988); *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*, 167 Cal. App. 4th 1229 (2008). *See also* Cal. Elect. Code § 9140 [county board of supervisors] & § 9222 [legislative body of municipality]; FPPC Advice Letter to Hicks, No. I-98-007 (02/20/98); FPPC Advice Letter to Roberts, No. A-98-125(06/01/98).

[70] *League of Women Voters*, 203 Cal. App. 3d at 550 ("The audience at which these activities are directed is not the electorate per se, but only potentially interested private citizens; there is no attempt to persuade or influence *any* vote."), citing *Miller v. Miller* (1978) 87 Cal. App. 3d 762, 768 (1978).

[71] *See Vargas*, 46 Cal. 4th at 29:

> As we have seen, in *Stanson, supra*, 17 Cal.3d 206, this court, after explaining that a "serious constitutional question . . . would be posed by an explicit legislative authorization of the use of public funds for partisan campaigning" (*id.* at p. 219, italics added), reaffirmed our earlier holding in *Mines, supra*, 201 Cal. 273, that the use of public funds for campaign activities or materials unquestionably is impermissible in the absence of " 'clear and unmistakable language' " authorizing such expenditures. (*Stanson*, at pp. 219-220.) Section 54964 does not clearly and unmistakably authorize local agencies to use public funds for campaign materials or activities so long as those materials or activities avoid using language that expressly advocates approval or rejection of a ballot measure. Instead, the provision prohibits the expenditure of public funds for communications that contain such express advocacy, even if such expenditures have been affirmatively authorized, clearly and unmistakably, by a local agency itself. Although section 54964, subdivision (c) creates an exception to the statutory prohibition for communications that satisfy the two conditions set forth in that subdivision, subdivision (c) (like the other provisions of section 54964) does not purport affirmatively to grant authority to local entities to expend funds for communications that fall within its purview.

[72] *See* Cal. Elect. Code § 9140 (authorizing boards of supervisors to place measures on the ballot); § 9222 (authorizing city councils to place measures on the ballot).

[73] The Local Transportation Authority and Improvement Act (Act), which the court described as "a comprehensive statutory scheme to 'raise additional local revenues to provide highway capital improvements and maintenance and to meet local transportation needs in a timely manner'" citing Cal. Pub. Util. Code, § 180001 *et seq. See Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*, 167 Cal. App. 4th at 1239-40.

[74] *Id.* The agency had retained a private consultant to survey voter support for an extension of the sales tax. The consultant determined the arguments in favor of extension that were received most favorably by the voters polled, potential arguments in opposition, and the best strategy to maximize voter support. In addition, agency staff and committee members attended public meetings with civic groups during which staff presented information regarding the transportation expenditure plan, and the importance of extending an earlier sales tax to satisfying the county's transportation needs. *See id.* at 1234.

[75] *Id.* at 1240.

[76] *Id.* at 1241.

[77] *League of Women Voters*, 203 Cal. App. 3d at 553 ("Whether CCJCC legitimately could direct the task force to identify and secure a willing sponsor is somewhat more problematical.")

[78] *Id.* at 554.

[79] *Vargas*, 46 Cal. 4th at 36.

[80] 88 Ops. Cal. Att'y Gen. 46 (2005).

[81] *League of Women Voters*, 203 Cal. App. 3d at 552-54.

[82] 88 Ops. Cal. Att'y Gen. at 49-50 (noting that "not every activity in connection with a bond measure will necessarily be proper if taken before the measure is placed on the ballot. Activities directed at swaying voters' opinions are improper, even pre-filing.")

[83] 88 Ops. Cal. Att'y Gen. at 50, citing *League of Women Voters,* 203 Cal. App. 3d at 554.

[84] 88 Ops. Cal. Att'y Gen. at 50, citing Cal. Gov't Code, § 81000 et seq., 2 Cal. Code Regs. § 18215; 2000 Cal. Fair-Pract. LEXIS 52 [Hoffman Advice Letter, No. A-00-074]; Fair Political Practices Com. v. Suitt (1979) 90 Cal.App.3d 125, 128-132.)

[85] *See* Cal. Gov't Code § 6250(e) ("Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.")

[86] *See* Cal. Gov't Code § 6253 (a) and (b) ("Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. . . Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.").

[87] 46 Cal. 4th at 40.

See also Cal. Gov't Code § 54964(a), (b)(3) (prohibiting local public agency expenditures for activities that expressly advocate the approval or rejection of a clearly identified ballot measure).

[88] *Id.* at 1241.

[89] 88 Ops. Cal. Att'y Gen. at 53.

[90] *Id.*

[91] *Id.*, citing *League of Women Voters,* 203 Cal. App. 3d at 558 [expenditures made in anticipation of supporting a measure once it is on the ballot come within reporting requirements of Political Reform Act of 1974]; *In re Fontana* (1976) 2 FPPC Ops. 25 [expenditures made in support of proposal become reportable after proposal becomes a ballot measure].)

[92] *See* Cal. Gov't Code § 6250 *et seq.* (California Public Records Act).

[93] 73 Ops. Cal. Att'y Gen. 255 (1990).

[94] *See* 73 Ops. Cal. Att'y Gen. at 266 (finding no distinction between an initiative or referendum or whether the measure was a state or local one).

[95] *See, for example,* San Diego County Water Authority Administrative Code, § 1.08.10(d) ("The official seal and any emblem, symbol, logo or other distinctive mark of the Authority shall be used solely for Authority purposes and programs, unless otherwise authorized by the Board. Private, commercial or non-commercial use of the official seal, mark, name or identity of the Authority is prohibited."). The code is available online at: www.sdcwa.org/about/who-admincode.phtml.

[96] *See* Cal. Gov't Code § 84305.

[97] California Fair Political Practices Commission Advice Letters No. I-00-068 (May 31, 2000) and I-91-153 (April 01, 1991).

[98] *See* Cal. Gov't Code § 89510(b).

[99] Cal. Gov't Code § 89512 (an expenditure of campaign funds must be reasonably related to a legislative or governmental purpose, unless the expenditure confers a substantial personal benefit, in which case such expenditures must be directly related to a political, legislative or governmental purpose). "Substantial personal benefit" means a campaign expenditure which results in a direct personal benefit with a value of more than $200. Cal. Gov't Code § 89511(b)(3).

[100] 2 Cal. Code Regs. § 18521.5.

[101] Cal. Gov't Code § 84308(b).

[102] *See* Cal. Gov't Code § 3205 (except for those communications to a significant segment of the public that happens to include fellow public officials and employees).

[103] *See* Cal. Gov't Code § 3205(c).

[104] *See* Cal. Gov't Code § 3204, which reads as follows:

> No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

[105] *See* Cal. Gov't Code § 3209 ("Nothing in this chapter prevents an officer or employee of a state or local agency from soliciting or receiving political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of such state or local agency, except that a state or local agency may prohibit or limit such activities by its employees during their working hours and may prohibit or limit entry into governmental offices for such purposes during working hours.").

[106] *See* Cal. Gov't Code § 3205 (a) ("An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.").

[107] 2 Cal. Code Regs. § 18946.4(c).

[108] *See* Cal. Gov't Code § 8314(b)(2) ("'Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.").

[109] *See* Cal. Gov't Code § 3206 ("No officer or employee of a local agency shall participate in political activities of any kind while in uniform.").