



Ballot Measures and Public Agencies

Individual Activities

2014 Version

www.ca-ilg.org/ballot-measure-activities

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 regarding the ballot measure activities of individuals. The purpose of this guide is to provide guidance that represents the Institute's best judgment, based on the law, on how to avoid stepping over the line that divides lawful from unlawful conduct. As a general matter, the Institute believes in not snuggling right up to any such lines, but instead giving them some berth.

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.

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.**

For more information on legal issues associated with use of public resources and ballot measure activities, see parts 1-3 of this resource available at www.ca-ilg.org/ballot-measure-activities:

- Part 1: General Framework
- Part 2: Before a Measure is Put on the Ballot
- Part 3: Specific Questions

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?

Restrictions on the use of an agency's seal, logos and letterhead are common.¹ 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.²

Sometimes campaigns will use a 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.³ Other Political Reform Act requirements may also apply, for example, placing the name of the committee or candidate on the outside of the envelope.⁴

Using an agency's logo, letterhead or seal with the intent to deceive voters into thinking the communication is from an agency can be a violation of California election law.⁵ California law makes it a misdemeanor to use city seals with the intention of creating an impression that a document is authorized by a public official.⁶

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.

For more information on this topic, see "Who Gets to Use Agency Seals, Logos, Letterhead and Other Insignia" available at www.ca-ilg.org/AgencySeals_Logos_Letterhead.

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 committees.⁷ 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.⁸ As such, these funds must be used only for may only be used for political, legislative, or governmental purposes.⁹

Although the Commission hasn't specifically explained why, one theory is because ballot measures are legislative in nature.

Note, however, that special disclosure rules apply to candidate-sponsored ballot measure committees.¹⁰

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.¹¹ For more information about this restriction, see "Campaign Contributions May Cause Conflicts for Appointees and Commissioners," which is available online at <http://www.fppc.ca.gov/index.php?id=103>. 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 who to 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.¹² (The exception is if the solicitation is made to a significant segment of the public that happens to include agency officers or employees.¹³)

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.”¹⁴

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.¹⁵

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.¹⁶

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?

Local officials who have used their agency emails for such purposes have faced criticism. In fact one such use led to a lawsuit that went to the California Court of Appeal. Although a divided court ultimately found that sending an editorial against a ballot measure via email on one’s lunch hour constituted advocacy, it involved only a minimal use of public resources.¹⁷

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 **two tickets** 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.¹⁸ If the official receives more than two tickets, 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.¹⁹

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

No, California law specifically prohibits wearing public agency uniforms while participating in political activities.²⁰

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The Institute for Local Government is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on ethics visit www.ca-ilg.org/trust. If you would like to access this resource directly, go to www.ca-ilg.org/ballot-measure-activities.

The Institute welcomes feedback on this resource:

- *Email:* ethicsmailbox@ca-ilg.org Subject: *Legal Issues Associated with Use of Public Resources and Ballot Measure Activities Part 4: Individual Activities*
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

References and Resources

Note: Sections in the California Code are accessible at <http://leginfo.legislature.ca.gov/>. Fair Political Practices Commission regulations are accessible at www.fppc.ca.gov/index.php?id=52. A source for case law information is www.findlaw.com/cacases/ (requires registration).

- ¹ The Institute has collected samples of such policies on its website, available at www.ca-ilg.org/post/sample-policies-related-use-agency-insignia.
- ² See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- ³ 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.
- ⁴ See Cal. Gov't Code § 84305.
- ⁵ Cal. Elect. Code § 18304.
- ⁶ See Cal. Gov't Code §34501.5, which provides:
 - (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the city in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.
 - (b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

Note that a parallel state-wide provision for county and special district seals does not exist, however many have adopted local provisions.

⁷ California Fair Political Practices Commission Advice Letters No. I-00-068 (May 31, 2000) and I-91-153 (April 01, 1991).

⁸ See Cal. Gov't Code § 89510(b).

⁹ 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).

¹⁰ 2 Cal. Code Regs. § 18521.5.

¹¹ Cal. Gov't Code § 84308(b).

¹² 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).

¹³ See Cal. Gov't Code § 3205(c).

¹⁴ 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.

¹⁵ 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.").

¹⁶ 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.").

¹⁷ See *DiQuisto v. County of Santa Clara*, 181 Cal. App. 4th 236 (2010) (Note dissenting opinion disagreeing with majority's minimal-use-of-public-resources conclusion).

¹⁸ 2 Cal. Code Regs. § 18946.4(c).

- ¹⁹ *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.”).
- ²⁰ *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.”).