

Cities on the Ballot: What, When & How of Speech

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Outline

- Introduction - The Basic Rule
- Before Placement - Minimal Restrictions
- After Placement - Elec. Code & Gov. Code / Mass Mailing Restrictions
- Best Practices and Recommendations - Dos and Don'ts
- Enforcement/Litigation Risks

Introduction

- Use of public resources in electoral process disfavored
 - Potential to negate the principal that electoral decisions are reserved to the people
 - Tempered by the fact that government possess a wealth of non-political information that the public needs to make informed electoral decisions
- Support or Opposition of candidates is PROHIBITED
- Participation in ballot measures is LIMITED

Before Placement

- Minimal limitations before an ‘idea’ has become a ballot measure
- OK to marshal support; inform public of needs but CANNOT lay the groundwork for a “successful” campaign
 - Warning: distinction between informing public needs and laying groundwork for campaign can be murky

After Placement

- Express provisions allowing Cities to Speak
 - Election Code 9212 Report
 - Ballot Arguments - Elec Code § 9282
 - Information, not advocacy
 - Ok to “educate” the public
 - Accurate, fair, and impartial relevant facts to aid the voters
 - No advocacy – no “vote for” or “vote against” language
 - Use City’s “normal” communicative practices.

After Placement – Statutory Provisions

- Express provisions allowing Cities to Speak
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 - Ballot Arguments - Elec Code § 9282
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After Placement – Political Reform Act

- Money spent on communication that “unambiguously urges a particular result “ = expenditure or contribution under the Act
- Considerations
 - Tone, tenor and timing
 - Campaign-like materials – bumper stickers, canvassing, radio/TV spots
 - Special appropriations vs. regular budgetary spending
- Triggers registration as a campaign committee

Mass Mailings

- 200 or more similar, unsolicited tangible communications (content is limited)
- No express advocacy for or against candidates or measures
- Cannot urge particular election result
- Does not include
 - Materials sent at request of member of public
 - Arguments in voter pamphlet
 - Emails

Recommendations & Best Practices

Before Placement

- DO establish robust communication methods in non-election years
 - Newsletters, budget updates, etc.
 - Utility billing envelope stuffers
- DO use consultants to fully explore public needs and appetite for a measure before placement
 - BUT DO NOT use consultants to develop a strategy for passage

Recommendations & Best Practices

After Placement

- DO prepare Elec Code § 9212 Report, if Council desires
 - Purpose is to provide unbiased information, not litigation roadmap
- DO utilize City's normal processes to evaluate budget/operational impacts of measures
- DO prepare objective, fact-based reports (no requirement to give “equal time” to opposing views)

Recommendations & Best Practices

After Placement (cont.)

- DO distribute information via normal means and in response to requests
 - Avoid creating new means of communication during election years
 - DO NOT create or adopt new means of communication in response to placement of measures
- DO advise Council of options for submitting ballot pamphlet arguments

Recommendations & Best Practices

After Placement (cont.)

- DO respond to unsolicited inquiries by:
 - Confirming that the City has endorsed or opposes a measure
 - Providing fair/impartial information about measure
 - Making referrals to organizations and campaigns supporting and opposing measures

Recommendations & Best Practices

After Placement (cont.)

- Officials, on their own and not on City, time can advocate in favor or opposition to ballot measures.
 - Warning: be careful, as the distinction between official actions and private actions can be a fine line and may be subject to scrutiny

Recommendations & Best Practices

After Placement (cont.) Prohibitions

- DO NOT use public funds or resources to campaign for / against any measure – even those placed by the city
- DO NOT use inflammatory or argumentative language in city communications
- DO NOT hold meetings in City facilities to discuss ballot measures
- DO NOT hire consultants to develop a strategy for passage of a measure (even before placement)

Enforcement / Litigation Risk

- Generally, litigation against the public agency alleging improper use of public funds:
 - *Stanson v. Mott*
 - *Vargas v. City of Salinas*
 - *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments*

Enforcement / Litigation Risk

- FPPC Enforcement – up to \$5,000 per violation
 - FPPC Regs. 18420.1 & 18901.1
 - Administrative enforcement - failure to register as a “committee”
 - 2016 - FPPC Case No. 12-19959 (BART) - \$7,500 fine
 - FPPC Regs. currently being challenged by CSAC & CSBA
 - FPPC exceeded its authority; violation of speech rights
 - Seeking invalidation of FPPC Regs. 18420.1 & 18901.1

Conclusion

QUESTIONS