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**Restrictions on Political Campaigning
by Public Employees
ORS 260.432**

Issued By
Bill Bradbury
Secretary of State
141 State Capitol
Salem, Oregon 97310
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RESTRICTIONS ON POLITICAL CAMPAIGNING
BY PUBLIC EMPLOYEES

ORS 260.432

**Solicitation of Public Employees; Activities of Public Employees During Working
Hours**

On-the-Job Political Activities by Public Employees

Introduction:

The purpose of this document is to provide the reader with guidance on how the provisions of ORS 260.432 (1) and (2) apply to public employees, public employers and elected officials. The information should be viewed as a reference or starting point rather than a comprehensive list of all activities which could fall under these statutes. It is our intent to give the reader a framework upon which to base decisions regarding election-related activities. Further, we also extend the services of our office to provide prior review and advice to public agencies and individuals on allowable actions.

Statutes:

ORS 260.432 (1) states that a person — including public employers and elected officials — may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.

ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in promoting or opposing any political committee or any initiative, referendum or recall petition, measure or candidate "while on the job during working hours." *NOTE: This subsection does not apply to elected public officials but does apply to all other public employees including the staff of elected public officials. Public officials who are not elected —whether paid for their service or not — such as members of appointed boards*

and commissions, are considered to be "public employees" for purposes of this statute.

Restrictions and Allowable Activities

The overriding principle is that public employees cannot use their work time to support or oppose measures, candidates, or petitions.

A common violation involves preparing or distributing written material supporting or opposing a measure, candidate, or petition.

Moreover, an elected official or any other employer of a public employee may not require or direct public employees to prepare or distribute such materials. A work assignment made by a supervisor to a subordinate public employee is a command or requirement within the meaning of ORS 260.432(1).

In fact, elected officials or other employers of public employees should be aware that when they — in the role of a supervisor — request a public employee to perform any campaign activity (such as typing and mailing a campaign related document) that the request is considered to be an attempt to require the public employee to perform those tasks.

The Elections Division has consistently found that in the work place, a superior's request to a subordinate is considered to be a command.

The following examples of restrictions and allowable activities are not all inclusive; however they do address a list of common concerns and issues.

Examples of Restrictions on Public Employees

- Public employees may not be involved in activities such as collection of funds, receipt and distribution of advocacy materials, or preparation of correspondence on behalf of political action committees or candidates while on their work time.
- Public employees may not assist with candidate filing forms, voters' pamphlet filings, contribution and expenditure (C&E) report forms or related correspondence during their work time.
- Public employee's work time can not be used to perform any related activities such as producing or distributing political documents advocating a vote for or against a measure, or news releases or letters announcing the elected official's support or opposition to a measure, candidate, or petition.
- A public employee may not be involved in producing or distributing a news release announcing a candidate's filing which includes reasons for support of the candidate, the candidate's goals if elected, or other supportive information.

Examples of Allowable Activities for Public Employees

- Lunch hours and breaks — when the employee is considered to be off duty — may be used for political activity, dependent on other employer lunch/break policies. However, any such activity must be of a voluntary nature on the part of the employee. In other words, employees who elect to use this time for political activity must not feel obligated or coerced to do so by co-workers or supervisors.
- A public employee may be involved in voluntary campaign activity during the employee's personal time in the evenings and on days off. Again, they should not feel coerced or obligated by their supervisor.
- Political buttons may be worn at any time subject to applicable employer policies.
- The planning stage of a governing body's proposed issue, before it is certified as a measure to the ballot, is not subject to ORS 260.432. Research, public meetings, surveys and other actions by a governing body to aid in the decision making process of whether to put an issue to the ballot are not covered by the statute.
- It is not an election law violation for public employees to use work time to perform their standard job duty of taking the minutes of a public meeting, including an elected official's discussion and reasoning for adopting a resolution or voting to support or oppose a measure.
- The follow-up maintenance of the public record and making copies available upon request from the public, in the same manner as staff would process any other similar citizen request, is permitted.
- If a body consisting of elected officials votes to support or oppose a measure, a public employee's work time may be used in an incidental way to record the vote if that is part of the employee's normal work duties. Activities beyond that, related to the elected official's vote, or that are intended to help in implementing a campaign strategy in some way, are not allowed on the public employee's work time.
- If an elected official's staff person participates in any campaign activity — on a voluntary basis — during working hours using lunch hours or any leave time, they should document the dates and times spent in a personal journal or log book. The employee must accurately record the use of the leave time on their payroll worksheets.

Provision of Information

- A public employee may provide only impartial, factual information related to an initiative, referendum or recall petition, measure or candidate as a part of the employee's job on work time.
- If any public employee makes public presentations or speeches regarding an initiative or referendum petition, or ballot measure while on their work time, or in an employee's "official capacity," they must make sure the speech is only factual and neutral in its presentation. The criteria for written material discussed later in this memorandum applies.

- A public employer can tell employees about the possible effects of a measure, such as possible layoffs; but the public employer must not threaten employees with financial loss if they vote one way or another.
- A public employee may address election-related issues while on the job, in a factual and unbiased manner, if such activity is legitimately within the scope of the employee's normal duties. For instance, the political process is a subject that might reasonably be discussed in a high school social studies class. In this context, the focus on a specific election for illustrative purposes is not inappropriate as long as the employee's presentation of the material does not support or oppose any particular candidate, petition or ballot measure.

Telephone Calls

- The handling of incoming calls about the elected official's availability for political events is permitted because the elected official's scheduler must be aware of the elected official's schedule.
- Additionally, incoming calls about measures must be answered in a strictly factual manner.
- Elected official's staff should not make outgoing calls while on the job during working hours to solicit political scheduling opportunities for the elected official, organize campaign events, notify the press or constituents, or initiate any other political activity on behalf of the official.

Salaried vs. Hourly Staff

- Salaried employees' work time is not as easily measured as that of hourly workers. Salaried employees must be careful during all appearances both after normal work day hours as well as during working hours. They must not advocate on behalf of, or against a petition, measure or candidate if they are considered to be in their "official capacity." For example, if the salaried employee applies for expense reimbursement for the function, it would indicate that they were "on duty." *NOTE: If complaints of this nature are received by the Elections Division, we will investigate whether or not the activity was undertaken in the employee's official capacity.*
- Personal note-keeping by salaried employees is suggested. Recording when the employee is on or off duty can determine whether they are acting in their "official capacity". Also, during public appearances, the employee should specifically announce to the audience in what capacity they are speaking.

Use of Public Buildings and Other Facilities

- If the governing body allows one political group to use public facilities, all groups should have the same opportunity. The same building policy should be used for everyone, including charging the same fee. If unequal access is granted, a public employee who facilitates such services may have committed an election law violation.

Elected Officials

An elected official may personally advocate for or against candidates or measures on the official's work time. *NOTE: A person appointed to fill a vacancy in an elective public office is considered an elected official for purposes of this statute.*

Oregon election law does not prohibit elected officials from communicating with their constituents about election issues. However, caution must be taken by elected officials to not involve public employee's work time in any activities that could be construed to be supporting or aiding an advocacy campaign effort, such as preparing advocacy material on behalf of an elected official (i.e. speeches, letters, advertising pieces).

For instance, support staff can not prepare press releases or constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, contribution and expenditure (C&E) report forms or related correspondence during their work time.

Furthermore, care must also be taken in soliciting "volunteer help" during employee breaks, or other personal time, as the employee may feel required to participate.

Written Material Relating to Measures

Factual versus Promotional Material Prepared by Public Employee

- Written material prepared or distributed by public employees must be impartial. "Impartial" means equitable, fair, unbiased and dispassionate. The material needs to contain a balance of factual information. This means that the material can not lead the voters to support or oppose the measure by selective use of factual material, even if the material does not expressly urge a yes or no vote. The material may be determined to be advocacy if, when read in its entirety, it appears to be intended to generate votes for or against the measure. A reader should finish reading the information and think, "I have learned something about the measure," not, "Now I know why I should support (or oppose) the measure."
- The distinction between strictly factual information about ballot measures and material that is considered to be promoting or opposing a measure must be made by reviewing the entire material, in the context of the presentation.
- According to the Attorney General in a letter dated October 5, 1993, "public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election." It goes on to state, "However, we also have pointed out that 'informational' material may be found to 'promote or oppose' a measure even if it does not do so in so many words if the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure."

Determining Whether Material is Campaign Advocacy:

Some factors that will be considered in making the determination of whether the material is advocacy include, but are not limited to, the following listing. *NOTE: Any of the factors listed below, viewed in isolation, may not be sufficient to reach this conclusion. However, taken as a whole, the combination of factors may indicate that the material is campaign advocacy.*

a) The timing of the publication relative to the election may, in some situations, be a factor if material is not typically published except at the time of an election and the information can be construed as advocacy.

Example: A special district produces a newsletter published shortly before a March election at which board members are to be elected and the newsletter prominently features photographs of all of the current board members. Some of these board members are up for election. Whether or not this newsletter is considered advocacy for the candidates must be made based on a review of the entire newsletter. At a minimum, the newsletter should not address the fact that some of these board members are also candidates at an election and should not include any information that could be perceived as advocacy for a candidate.

b) The balance of factual information and whether any negative (or positive) facts are mentioned at all. This does not necessarily mean an equal number of facts on either “side” must be mentioned.

Example: If a measure proposes to affect taxes or fees, the specific cost of the measure to an average individual taxpayer or consumer should be included. If appropriate, we suggest that the amount of yearly taxes based on the average price of a home in that community be included. Also, if the information is specific as to what the funds would be used for, it is then appropriately left up to the voters to decide if they want to implement the described effects and authorize the additional tax increases to pay for them. This type of explanation of costs involved and how funds would be used is considered factual information.

Documents about ballot measures published by public governing bodies should not be one-sided, but should fairly and impartially set out known advantages and disadvantages of a proposal.

c) The overall impression a reader gets after reading the material should be an impression that neutral facts have been presented. The impression should be that the material is being presented to inform the voter rather than persuade them. Information that is only speculative should not be included as it tends to be persuasive.

d) The tone of the publication should be described as dispassionate rather than enthusiastic for one side of the measure. The article should not include only statements regarding the possible favorable (or unfavorable) effects that passage of the measure would have. The public may perceive information as persuasive or threatening if it presents dire consequences that are bound to elicit strong public response. For example, information that a “levy would allow a program to continue” is a more neutral statement than saying “failure of the measure will destroy the program.”

e) Documents should not, in most contexts, use the word “will” in describing the results of passage of the measure. The word “would” is a better alternative as it suggests that voters have a choice. The use of the word “will” suggests a desired outcome of passage of the measure.

f) Documents should not, in most contexts, use the word “need” in describing the purpose of the measure. Often times the word “need(s)” is more emotionally charged and can be interpreted to be a favorable statement about the measure. It has an element of urgency that is not appropriate in a factual, neutral piece.

g) Headings or lead lines should not lend a positive (or negative) tone to the material, in favor or opposition to the ballot measure. This also applies to the usage of positive or

negative connotations given by words or phrases. An informational publication should not be emotional, enthusiastic or persuasive. *NOTE: Some examples of inappropriate words and phrases in publications about ballot measures produced by governing bodies and the reasons they are inappropriate are listed in an attachment to this memorandum.*

h) Quotes about the measure should not be included. Likewise, lists of members of a political committee or others supporting or opposing the measure should not be included. This holds true even if a quote is from a government body's elected officials. The use of such quotes and lists indicate an endorsement similar to campaign advocacy material and is, therefore, inappropriate. Again, it is imperative that publications produced and distributed by public employees be impartial, informational documents.

i) The use of graphics, checkmarks and photographs. Checkmarks are often used as an indicator of what someone should do, and have a very positive implication. Checkmarks are also used in informal ballots and surveys that people complete by checking to indicate their choices. Therefore, we advise against the use of checkmarks in material about ballot measures produced by a government entity because the use of checkmarks significantly contributes to an effect of advocacy. For the same reasons, we advise against the use of positive graphics (such as a hand placing a ballot in a ballot box) in material about ballot measures produced by a government entity.

Along the same lines, photographs used in document should not be overly emotional. In an informational document it is important that photographs do not add to a tone of advocacy. Plain text without pictures lessens the likelihood that readers feel they are being persuaded to empathize with the depicted situation and thus to support or oppose the measure.

j) The use of phrases similar to campaign slogans. Informational documents should not contain phrases that do not serve to present any factual information, but rather are a sort of motto, logo or catch phrase; in a way a "rallying cry." Some examples might be, "Help plan for the future," "Preserve Our Heritage, Guide Our Future," or "Our schools are an intelligent investment." These phrases are not impartial and informational, but are advocacy.

The use of such a motto or logo outside the context of an election would not result in an election law violation. However, used in the context of an election, they are, in effect, a campaign slogan promoting passage of the measure. Such "campaign slogans" are appropriately used by private political committees, but not by government agencies in publications about ballot measures.

k) Information about how to contact the supporting or opposing political committee (PAC), such as listing the PAC's phone number, may imply a connection between the governing body and the petitioners or supporters of the measure. However, if all PAC's are listed, both supporting and opposing, it may lend to the balance of the document.

l) Information about the "50% voter turnout requirement." In 1997, Ballot Measure 50 was passed, amending the state constitution. The Constitution now requires that the passage of a measure to approve new or additional ad valorem property tax levies and to approve taxing district annexations be obtained at an election where the number of electors casting a ballot is not less than 50% "of the registered voters eligible to vote on the question." This is the case for every election except for the general election during an even numbered year.

It has become common for governing bodies to include some information about this requirement in their publications about ballot measures. It is not considered advocacy to include strictly neutral, factual information about this requirement. Encouraging people to vote is an accepted practice of election officials and other public officials; however, that is different than encouraging passage of a measure. The concern here is that this information should not be worded in such a way that it persuades voters that they must vote for the measure "now."

For example, we suggest that publications not include the phrase "double majority." This phrase currently has a strong political connotation, thus, it may lend itself to the implication that the district is suggesting that a voter must pass the measure now.

m) Finally, the contents of the document must not explicitly urge a yes or no vote for the measure in that there should be no "vote yes" or "vote no" type language. For example, the document should not include phrases such as:

- "Vote Yes on Measure 99,"
- "Support for Measure 99 is encouraged,"
- "Measure 99 asks ABC County voters to authorize a temporary fee increase,"
- "The County is asking voters to approve funding that will maintain.." and
- "Why Should I Vote for Measure 99?"

The rest of the text of a publication does not cancel out such a statement. That is, a document could be otherwise totally factual, balanced and neutral, yet include a sentence such as the ones above. This would result in our determination of a violation of state law.

What is the role of the Elections Division in reviewing documents?

We may need to review individual documents to determine if they must be considered advocacy material. In our review of such materials, we do not know whether all of the information presented in such a publication is accurate, but it is presumed accurate for purposes of the review. However, there would be a possible violation of ORS 260.432, if an elector filed a complaint with us that a public body presented inaccurate information which caused material to be considered advocacy.

We offer to review draft documents prior to publication and issue an advisory letter with suggested changes with the goal of assuring the publication is impartial. However, we must offer a general caution that if a written complaint is filed with this office alleging violations of election law about a publication by a governing body, we must take all factors into consideration when examining the publication and surrounding circumstances. The complaint may bring forth surrounding facts, circumstances and information that are not within the purview of this office to know prior to a complaint. Therefore, we must caution that compliance with the suggestions does not preclude further review of the publication by this office in the event such a complaint is filed.

Use of Signs or Banners

Signs and banners allow for only a few words to be read quickly at a distance, and often include graphics, so there is a need for discretion. There is not much opportunity to balance the document because of the few words used, and the few words have a lot of impact and focus. For signs and banners, we advise special caution about using checkmarks or graphics, or "campaign slogans" as discussed above.

Websites and E-mail

Website and e-mail usage are becoming another common method of communication for governing bodies. Therefore, a public agency must have proper safeguards and oversight necessary to maintain the integrity of an official web site to assure the contents do not reflect political advocacy. Each agency must make it a priority to insure that all personnel are apprised of the restrictions on political campaigning by public employees.

Public agencies should advise their employees of the proper and improper use of websites and e-mail in regards to political activity.

An e-mail that is supporting or opposing a petition, candidate or measure that is sent to a group of other employees of an agency or others would be a violation of election law by the public employee who wrote and sent it. Any public employee who uses work time to produce a website that is political advocacy would be in violation of election law.

Whomever is ultimately responsible for the website would also be responsible for its content.

Distribution of Political Material within a Government Agency

We routinely discourage the distribution of campaign advocacy materials to public employees through a government mail or distribution system, regardless of the source of the materials. (*NOTE: Unions can distribute such materials to their members pursuant to their contract.*)

It is not a violation for a public employee, as part of their regular job duties, to process incoming mail which may include political material addressed to employees. However, it is in violation of election law for a public employee to distribute political advocacy materials to other employees or constituents (such as students) while on the job during working hours.

If a public agency is given any election-related material to distribute to employees or constituents by any outside entity, the agency must vigilantly screen the information prior to distribution to assure it is not political advocacy

Public Notice required by ORS 260.432(3)

Each public employer must have posted — in all appropriate places where public employees work — a notice about the prohibitions of ORS 260.432. A copy of this notice is enclosed. You may make copies of this notice to distribute and post if you have not already done so. It is the same language as the notice distributed in 1998.

ORS 260.432(3) states:

"Each public employer shall have posted in a conspicuous place likely to be seen by its employees the following notice in printed or typewritten form:

ATTENTION ALL PUBLIC EMPLOYEES:

The restrictions imposed by the law of the State of Oregon on your political activities are that "No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views."

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours."

Conclusion about Restrictions on Public Employee Political Activity

We caution all government entities, elected officials and public employers to be vigilant in ensuring that no public employee work time is used in any activity that could be construed as support of or opposition to a candidate, initiative, referendum or recall petition, or ballot measure, apart from the expression of personal political views. While it is understood that a government entity may have much at stake in matters relating to an election, it has a responsibility to ensure that its activities and those of its employees comply with election laws.

One additional statute, that all public bodies should be aware of, is ORS 294.100. It is "unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by law." However, since this is not an election law, these complaints are to be filed with/by the District Attorney or by taxpayer suit. See *Burt v. Blumenauer*, 299 Or 55 (1985).

Lastly, we want to extend an offer to governing bodies to review any draft material about ballot measures prior to its publication. We hope the advice we offer will be helpful and prevent concerns or complaints by the public. If you have any questions, please contact this office.

If you have questions about these or other election laws, please contact the Secretary of State, Elections Division or your local elections office. Election officials are dedicated to helping public officials, candidates and political committees comply with Oregon law. Contact these offices to assist you with any questions.

Secretary of State/Elections Division
141 State Capitol, Salem, OR 97310
tel: 503-986-1518
fax: 503-373-7414

ATTACHMENTS

Examples

Statutes

Public Employer Notice Requirement

Attorney General Letter (10/5/93):

Statutory Restrictions

EXAMPLES

Following are some examples of inappropriate words and phrases, along with the reasons they are inappropriate, in publications about ballot measures produced by governing bodies. This list is not all-inclusive but will help provide additional guidance in assuring impartiality. (Emphasis added in each example.)

- "With this measure you will pay the same low amount," "You will still get the same great service," and "Passage of this measure is critical as the needs of our district are urgent." Adjectives that qualify such as "low" and "great" included in these sentences are not necessary to relay the factual information, rather they serve to add a persuasive tone.