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RESTRICTIONS ON POLITICAL CAMPAIGNING

by PUBLIC EMPLOYEES, ORS 260.432

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2008 RESTRICTIONS ON POLITICAL CAMPAIGNING BY PUBLIC EMPLOYEES

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RESTRICTIONS ON POLITICAL CAMPAIGNING
BY PUBLIC EMPLOYEES, ORS 260.432
(updated March 2008)

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 that 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. *NOTE: Federal employees must also follow the requirements of the Federal Hatch Act - including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants - check with your employer if you have questions on applicability. See page 33 of this memorandum for contact information on the Federal Hatch Act.*

ORS 260.432 STATUTORY PROVISIONS:

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.*

**Until 2012, a special exception was added to also exclude from being considered a public employee for purposes of this statute "a person appointed as a director to the board of a pilot education service district..."*

ORS 260.432(3) states that each public employer must have posted - in all appropriate places where public employees work - a notice about the prohibitions of ORS 260.432. See page 31 of this memorandum for more information about this requirement.

Note: ORS 260.432 is in effect as follows: for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer; for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot; for candidate issues, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and for actions related to a political committee, whenever the political committee is active.

OVERVIEW OF RESTRICTIONS AND ALLOWABLE ACTIVITIES

The overriding principle is that public employees may not use their work time to support or oppose measures, candidates, political committees or petitions. Oregon election law does not specify any amount of work time that may be used before a violation occurs. The fact that the work time used may have been minimal is not a mitigating circumstance.

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. A supervisor may be an elected official or another public employee. If they ask a public employee to do something as an expectation of employment, the request is considered 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 while on their work time 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.
- ◆ 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 employees' work time **may not** be used to produce or distribute political documents advocating a vote for or against a measure, or a news release, speech to be given by the elected official, transcript or a letter announcing the elected official's support or opposition to a political committee, measure, candidate or election petition.
- ◆ Public employees' work time **may not** be used to post website information, transmit emails or make a presentation that advocates a political position.
- ◆ A public employee **may not** be involved on work time in producing or distributing a news release announcing a candidate's filing (except an election official as an official duty) or that includes reasons for support of the candidate, the candidate's goals if elected, or other supportive information.
- ◆ A public employee **may not** on work time make outgoing calls to schedule or organize campaign events or other political activity on behalf of an elected official or political committee. However, taking such incoming calls about an elected official's availability and adding an event to a schedule is allowable, if done as a part of a scheduler's official duties.
- ◆ A public employee **may not** on work time offer any encouragement for others to volunteer for a PAC or other support or opposition efforts related to a candidate or other election issues, such as phone banks, etc.
- ◆ A public employee **may not** grant unequal access to public facilities to candidates or political committees.
- ◆ A public employee may not on work time draft, type, format, edit, sign or promote a governing body's resolution (vote) that advocates a political position on a filed ballot measure (certified to the ballot), candidate, political committee or initiative, referendum or recall petition. Additionally, they may not take other related actions. (See specific information on page 13).
- ◆ A public employee, who provides voter registration assistance and services under the National Voter Registration Act (NVRA), is subject to additional restrictions under ORS 247.208(3). While performing these functions, a public employee may not influence the political choices of a client. See page 11 of this memo for more details.

EXAMPLES OF ALLOWABLE ACTIVITIES FOR PUBLIC EMPLOYEES

- ◆ Public employees may use personal time, lunch hours, breaks, days off - when the employee is considered to be off duty - for political activity, dependent on other employer lunch/break policies. Even though the breaks and days off may be paid (as in vacation and sick leave) this is still considered the employee's personal time, as long as the employee is not acting in their official capacity. 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.

We note that the Bureau of Labor and Industries (BOLI) regulations do not require breaks or lunches to be taken away from an employer's desk or office, unless there are specific policies in an agency. See BOLI contact information on page 35 of this memo. A public employee, should a complaint be filed alleging they used work time for a political activity, should be able to justify or substantiate that what they considered a break was reasonably considered a break based on the timing. For any such complaint, this office would have to review the individual circumstances involved to determine whether or not there was a violation of election law.

- ◆ Public employees (except those performing voter registration duties under the National Voter Registration Act, NVRA - see page 11) may wear political buttons at any time subject to applicable employer policies. This is because the statute expressly permits the expression of personal political views. However, other activities such as displaying campaign signs or distributing campaign materials are not allowed during public employee work time.
- ◆ Public employees may participate in the planning stage of a governing body's proposed issue, before it is certified as a measure to the ballot, as this stage 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 refer a measure to the ballot are not covered by the statute.

(Note: ORS 260.432 applies to an initiative, referendum or recall petition as soon as it is filed with the elections filing officer, even before it is approved for the gathering of signatures.)

- ◆ A public employee may use work time to perform their standard job duties, such as maintaining public records, opening mail and taking the minutes of a public meeting, including recording elected officials' discussion and reasoning for adopting a resolution or voting to support or oppose a measure (see page 13 for further discussion of such resolutions by a governing body).
- ◆ A public employee may perform the follow-up maintenance of public records and making copies available upon request from the public, in the same manner as staff would process any other similar citizen request.
- ◆ A public employee may participate in an elected official's campaign activity on a voluntary basis on their personal time. If the employee uses 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.
- ◆ A public employee may, as staff of an elected official, handle incoming calls about the official's availability for political events (but may not on work time make outgoing calls to schedule or organize campaign events or other political activity on behalf of an elected official or political committee).
- ◆ A public employee (or other person) may impartially advise employees about possible effects of a ballot measure, but may not threaten them with financial loss to vote a particular way.
- ◆ A public employee may address election-related issues while on the job, in a factual and impartial manner, if such activity is legitimately within scope of employee's normal duties. This may include the production and distribution of impartial ballot measure information. See pages 21-26 for a discussion of factors to consider in ensuring ballot measure information is impartial.
- ◆ A public employee may, at any time, express personal political views (with the exception of

employees performing voter registration duties under the National Voter Registration Act – see page 11). ORS 260.432 is not intended to grant unconditional permission to "express personal political views" in any way at any time.

Conversely, a public employer must be cautious to not infringe on the public employee's right to express personal political views. For further discussion on personal expression allowances, see page 12.

SOME SPECIFIC SITUATIONS

1. Appointed Boards and Commissions, When ORS 260.432 Applies

On page 1, we explained that ORS 260.432 (2) does not apply to elected officials but it does apply to all public employees,* including the staff of elected public officials and appointed boards and commission members, whether paid or unpaid.

*Effective until 2012, a special exception was added in 2007 that also excludes from being considered a public employee for purposes of this statute "a person appointed as a director to the board of a pilot education service district..."

When does this statute apply to such appointed officials?

A question arises as to when this statute applies to appointed officials who are not paid and do not necessarily have any regular work hours. ORS 260.432 applies when the appointed official is acting in their official capacity. When they take off that "hat," then just as any other public employee, they may promote or oppose candidates, ballot measures, etc.

For example, when the board or commission meets, the members are acting in their official capacity. Also, when a member works on a duty assigned by the board or commission, that would indicate they are acting in an official capacity. For example, if such a member works on a ballot measure article that is to be in a government agency publication or posted on the agency's website, then the article may not support or oppose the ballot measure.

If the article is intended for a private publication, such as a private newspaper or letter to the editor,

then as long as the article is written in non-official capacity, it may advocate a political opinion. However, if the article is to be in a government agency publication or posted on the agency's website and this publication uses any public employee work time or appointed commissioners' official capacity, then the article may not promote or oppose a ballot measure.

2. Candidate Forums and Measure Debates held by Public Jurisdictions

It is not an election law violation for a government jurisdiction to sponsor a candidate forum if it is open to all candidates. All candidates filed for the same office must be invited to participate (the candidate forum is still acceptable even if a candidate chooses not to attend). There must not be any intent to promote or oppose specific political views, candidates or issues.

Similarly, a forum to allow political proponents and opponents to debate ballot measures may be held using public employee work time if equal access is granted. (For a discussion about other visits by candidates or their representatives, see page 17.)

Under these circumstances, the public employee work time used in arranging such a forum would not be in violation of election law. The public employees may perform normal job duties in conjunction with the forum and may attend on work time as long as they do not take any actions while on the job to promote or oppose the candidates or measures, beyond facilitating the event. Further, it is not a violation of election law for a candidate at such a forum to discuss issues that may be a part of their campaign.

It is helpful if the public jurisdiction has in place and follows a policy on these types of situations. Such a policy must be reasonable and impartial.

May a public employee attend or participate in a candidate forum?

A public employee may attend a candidate forum, at which all candidates are invited, even in official capacity, as long as there is no political support or opposition by the employee. Merely being in the audience or speaking about official business does not in itself indicate an election law violation. Nevertheless, caution is advised for a public employee at such an event, to be aware of any action that could be perceived as political advocacy.

Inasmuch as the candidate forums are intended to provide the candidates an opportunity to make their cases for election, the participation of a public employee in such a forum – even if presumably only to provide factual information – can easily create at least the impression of favoritism toward individual candidates, and may rise to the level of advocacy in violation of ORS 260.432. A public employee who is in a management position known to the community must be especially cautious in that they are seen to represent the jurisdiction.

A public employee who attends a candidate forum and presents any related information should be aware that the standards for impartiality include that the overall impression is not persuasive and that the tone of the communication is not overly emotional, or is not, in essence, negative or positive towards an election issue or candidate. If written words can convey a biased connotation, it follows that so will the same sort of language when spoken, especially if in addition to the spoken words, **non-verbal communications** serve to add to the effect. In fact, spoken words may even have more impact than written words, when the tone of voice, facial expressions and possible hand gestures are taken into consideration. We note that even if the public employee communicating believes all of the information they present is accurate; the information must not be presented in a way that promotes or opposes.

3. Distribution of Political Material within a Government Agency, including Schools

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 may 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 that may include political material addressed to employees. However, it is a 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.

If an outside source provides any publication that advocates a political position to a school district employee, that material must not be distributed by teachers or other public employees to students to take home and share with their family or others in their household. Even if the political campaign material is given to students to take home by a private person (such as a classroom volunteer) and no public employee work time is used, there is still a possible election law violation by the public employee allowing such an action (such as a teacher or principal in charge of the school's activities), unless specific policies allow any other outside group to distribute political campaign material on either side of the issue in the same manner.

However, this practice is still not advisable in that it is difficult to keep the situation evenhanded and complaints are often made when students are used to transmit any political communications.

If the material is clearly impartial ballot measure information, it would not be a violation for public employees such as teachers to pass out such material to students. However, due to frequent concerns expressed, we advise that students not be used as a conduit to take political materials home to parents. If a parent group wants to distribute it at their own cost to the parents using no public employee work time, (such as by mailing it) then the material would not be subject to the restrictions in ORS 260.432.

Whether there is an election law violation would depend on the material being distributed and whether it is strictly impartial ballot measure information or crosses the line into advocacy. If the material is impartial, then it would not constitute an election law violation by the staff members who worked on producing and mailing it. Nevertheless, we understand the concerns about students being used to transmit such information and our advice is always that such impartial ballot measure information be mailed to every household or voter in the district, rather than sent home with the students or mailed with the addressee being the student.

However, school district newsletters are reasonably sent only to students' parents or

guardians, since newsletters mainly contain information only relevant to them. Therefore, even though the general advice is that impartial ballot measure information is sent to all residents of the affected jurisdiction, there may be some exceptions, such as school district newsletters that contain impartial ballot measure information. However, if the impartial ballot measure information is in the form of a separate flyer, for instance, a school district should send it to all district residents. Not doing so would not necessarily, in and of itself, indicate an election law violation, but would be a consideration in such a determination.

4. Facilities and Property, Use of

ORS 260.432(2) prohibits only the use of a public employee's work time for campaign activities while on the public payroll, and does not regulate the use of public facilities or property for election purposes. 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 or requiring the same permit. (A limited exception applies to an elected official's use of their own office space and equipment, which will be discussed below in the answer to a question.)

If unequal access is granted, a public employee who facilitates such services may have committed an election law violation. It is not an election law violation for a public facility to have policies exceeding the requirements of election law.

For instance, the State of Oregon, through the Department of Administrative Services (DAS), has policies in place for state buildings. An Administrative Rule, OAR 125-80-0010 restricts sales or solicitations in state office buildings under DAS control. Restricted activities under this rule include, in part, "...soliciting donations or signatures; or distributing handbills or posting posters on any wall space designated for such purposes by the agency leasing the space."

A public official may have access to information such as employee lists of names and addresses that are not available in any way to a private individual. This could result in a perception that unequal access to public facilities was granted (including a candidate for public office). One person should not be allowed to purchase or obtain access and use a list if the general public would not

be given the same opportunity to purchase such a list.

ORS 294.100 provides a limited remedy for complaints and concerns about possible inappropriate use of public resources, which may involve a civil suit by the District Attorney or taxpayer. ORS 294.100 is not under the Elections Division's jurisdiction.

May an elected official use their own office space and equipment when advocating a political position?

Elected officials are not prohibited from political advocacy communication and activities on work time (see page 18). Inherent with holding the public office such officials often have access provided to some public property – such as their own, designated office space and equipment. Of course, the elected official should follow the governing body's policy on such usage, if any, but as discussed above, it would not in itself indicate an election law violation. ORS 260.432 does not regulate the use of public facilities or property for election purposes.

However, it is not reasonable or expected that the use of this office space and equipment would be required to be extended to other persons that are not incumbents to the office or the elected official's own staff. Therefore, our advice on allowing other candidates and political groups equal access does not mean that the building administrator must allow use of the elected official's office and equipment to others.

As an example, the fact that all state legislators have been granted access to communicate with their constituents by email through a listserv at the State Library does not mean the same listserv must be made available to other candidates or political groups. Certainly, if a particular email contains political advocacy, no public work time should be used other than the original set up of the listserv which was not tied to the content of the subsequent communications by legislators.

What about campaign signs located on public property?

Questions sometimes arise about **campaign signs on public property**. Oregon election law does not address the size, location or timing of political campaign signs (except that ORS 260.695(2) prohibits campaign signs inside or within 100 feet

of any entrance to a state or local government elections office building designated for the deposit of ballots from the date ballots are mailed and ending on election day at 8:00 p.m. or when all persons in line have finished voting). Many local jurisdictions (cities and counties) have ordinances that address campaign signs.

In addition, the Oregon Department of Transportation has policies regarding political signs on state highways (see contact information on page 34). Although this office cannot generally offer advice as to the applicability of these provisions to particular locations, there is a concern that public employees enforce such regulations in an equitable manner so as not to indicate any support or opposition to political candidates or issues.

Campaign signs on or in public buildings or property may violate the public facility's building policy, which is not under this office's jurisdiction. To indicate an election law violation there would have to be evidence of public employee involvement while on the job during working hours in the placement of the sign, or allowing unequal access for the placement of such signs to all sides of an issue or to any candidate.

Most public jurisdictions wish to avoid the public perception of the jurisdiction's endorsement and may have a policy of not allowing campaign signs on or in the public building, property or on public equipment.

What about campaign signs on public vehicles that are parked at a public building?

Similarly, placement of **campaign signs on public vehicles** is inadvisable, although again not necessarily an indication of election law violation. Campaign signs on private vehicles located in the vicinity of a public building are not within the purview of election law (except under ORS 260.695(2), if located within 100 feet of any entrance to a state or local government elections office building designated for the deposit of ballots from the date ballots are mailed and ending on election day at 8:00 p.m. or when all persons in line have finished voting). Public employees should take caution in this area - there may be circumstances in which an election law violation occurs.

Are there concerns about the use of public vehicles during campaign activities?

Another related question is about the use of **public vehicles** during campaign activities. An elected official is not in violation of election law to use a public vehicle for campaign purposes - but may be subject to the jurisdiction's policies and may violate Government Ethics laws. Similar to the above advice, it is not an election law violation for public employees on off-duty time to use a public vehicle for campaign activities - but again, they would be subject to the jurisdiction's policies and these activities may also violate Oregon Ethics laws in ORS Chapter 244 (OGEC contact information is on page 33).

May official government letterhead be used for political purposes?

Another issue that arises about public property is the use of **official government letterhead** for political purposes. For the reasons explained above about the limits of ORS 260.432, such usage is not in and of itself a violation of election law. In order for a violation of ORS 260.432 to be found with regard to a campaign publication on official government letterhead, public employee work time would have to have been used in its production or distribution.

Are there concerns about the use of the Oregon State Seal in connection with political publications?

Connected to this issue is use of the **Oregon State Seal**. ORS 186.023 governs the use of the Oregon State Seal. Elected officials are entitled to use the state seal in their official capacity, but **not** in their capacity as candidates for public office. The state seal may **not** be used in connection with an individual or organization if its use implies endorsement or sponsorship of the State of Oregon.

The Secretary of State, Executive Office enforces this provision. Questions about the appropriate use of the Oregon state seal should be directed to that office. Any complaints of misuse of the state seal should also be directed to that office. Civil penalties up to \$500 per occurrence may be imposed for any violations of ORS 186.023 pursuant to ORS 186.025. See page 35 for contact information.

5. Governing Body Actions Before Issue Certified as Measure

ORS 260.432 does **not** apply to measures referred to the ballot by a governing body until the governing body has certified the proposed issue to the ballot as a measure. "Measure" is defined in ORS 260.005(12), as something that has been "submitted to the people for their approval or rejection at an election." The actions taken by a governing body and its public employees in the planning stages of a proposed measure, before it is certified to the ballot (for local measures, this means filed with the County Elections Office on a Notice of Measure Election form SEL 801, 802 or 803; for state measures, this means the statement of measures has been filed ("certified") by the Secretary of State with the County Elections officials), are 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 on the ballot are not within the purview of the statute. Once the issue is certified to the ballot, however, no public employee work time may be used to distribute any material previously prepared that advocates a political position on the measure. We note that this office provides a *2008 County, City and District Referral Manual* that outlines the process these jurisdictions must follow in referring a ballot measure to the ballot.

For initiative, referendum or recall petitions, ORS 260.432 does apply during the signature gathering phase even before the proposed measure or recall is certified to the ballot. ORS 260.432 applies to these petition efforts as soon as the prospective petition is filed with the elections filing officer, even before it is approved for circulation of signatures. This is because any communications made by public employees at this time could also affect the petition circulation once it is approved.

While ORS 260.432 does not prohibit public employees from discussing the subject of an initiative or referendum petition or ballot measure, a distinction must be made between an act that supports or opposes a petition or measure and the performance of duties normally expected or required of a public employee as part of his or her job. For instance, a

spokesperson for an agency, if interviewed by the news media as part of the employee's normal duties, may respond with factual information on possible effects of a petition or measure. In this case, the public employee must be cautious not to imply to listeners that the employee or public employer support or oppose the petition or measure.

Public agencies and employees may provide information on an issue that is also the subject of an election petition or measure as long as the information is factual, unbiased and appropriate to the conduct of the agency's usual business. The fact that information is an analysis of a petition or ballot measure is not, in and of itself, unlawful advocacy. However, any analysis must be fairly presented to include only factual information, not speculation. Further, the analysis cannot be one-sided, but must provide a balance of information.

Additionally, ORS 260.432 does not prohibit the expression of personal political views. However, such expression may not be a part of an official public agency communication, done while the employee is on the job or in an official capacity. If the employee chooses to express personal political views, the employee needs to make it clear that he is not speaking on behalf of the public employer.

6. Information about Election Matters Provided by Public Employees

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. For detailed information on determining whether information is impartial, see pages 20-26 of this memorandum.

Does this apply to information that is related to a measure, but does not specifically mention the measure?

Information about ballot measures (produced and distributed by public employees on duty) must be impartial (equitable, fair, unbiased and dispassionate). This requirement applies to any type of documents and communications involved, including informational brochures and newsletter articles that discuss ballot measures (or are on topics very closely-related to a current ballot measure).

For instance, the fact that a city newsletter may contain articles which cover the same subjects as a city referred ballot measure, does not in and of itself prove advocacy on the part of the city. We advise that any publication that addresses, even peripherally, issues that pertain to such a measure, be reviewed by the agency's legal counsel and if feasible, this office as well, prior to publication, to ensure the document contains only impartial language and avoid a possible violation of election law by the public employees involved.

Does this apply to public presentations or speeches?

If any public employee makes public presentations or speeches regarding an initiative or referendum petition, or ballot measure while on the job during working hours ("official duty") they must make sure the speech is only factual and neutral in its presentation. The criteria for written material discussed later on pages 21-26 of this memorandum apply. Speeches are further discussed on page 15.

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. Nevertheless, ORS 260.432 does limit governmental participation in election-related speech, and the statutory prohibition overrides any general statutory authority to educate the public on specific issues - they may do so but it must be impartial.

May a public employer inform employees about possible effects of a measure?

A public employer may 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.

However, a public employer must not, along with this information, offer any encouragement for the public employees to volunteer for or contribute to a PAC or other support or opposition efforts related to the measure.

May political issues be discussed in schools?

This is a frequently asked question. The political process is a subject that might reasonably be discussed in a middle or 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 political committee or any particular candidate, petition or ballot measure.

Instructional material must provide a balanced review of both sides of an issue.

However, a student's work may express political advocacy. If credit is offered to students who voluntarily participate in a political campaign (must be voluntary), this would not be in violation of election law unless students were instructed or urged by the public employee to support or oppose a political committee or specific candidate, petition or ballot measure.

A related question is whether a **student newspaper** produced by the students, but under the direction of a public employee teacher or adviser, may include political advocacy. This would be allowable so long as any political advocacy content is voluntarily written by the students and does not involve the teacher or adviser except for editorial review; the newspaper is distributed only to other students directly (not sent home to all parents for example); and the students do the work of distributing the paper (other than possible minimal clerical assistance by public employees).

If a teacher's work includes grading a student's project that includes the student's political opinions, that in itself does not make the teacher in violation, as by performing that function the teacher is not personally promoting or opposing a political issue. The teacher may assist the students with such a project as long as the teacher stays in a neutral, **advisory mode** and does not assist the students to develop their arguments more on one side than the other. This does not mean the teacher may not impart neutral, factual information on related subjects to the students, but they must do so in an impartial manner.

7. Legal Challenges by Public Jurisdictions

In general, public employee's work involvement in legal court challenges such as challenging the underlying legality of placing a measure on the ballot are not in violation of ORS 260.432 - it is not the same as opposing the measure itself. Examples of such legal challenges include

whether an initiative petition meets constitutional requirements and whether a ballot title complies with statutory standards. However, this does not mean that this type of action would be viewed as an allowable use of public funds by the public jurisdiction, as that is an issue not under the Secretary of State's authority.

8. Legislation and Lobbying: Support or Opposition of Legislative Bills

ORS 260.432 does not address the activity related to support or opposition to legislative bills before Oregon's state legislature, unless the bill is one that results in a referral to an election (usually a House or Senate Joint Resolution). If a bill results in a referral to an election, at the time the issue is certified to be included on the ballot for an election as a ballot measure, ORS 260.432 would take effect and any public employee would be restricted from using their work time to support or oppose the measure, and this office would investigate complaints of alleged violation. This however would not prohibit a public entity and its public employees from continuing work that might be related to the same subject as the measure, as long as the activity does not constitute support or opposition to the ballot measure.

Additionally, a public agency's activities supporting or opposing legislation do not make the agency a "political committee" within the meaning of ORS Chapter 260. A political committee involves the purpose of supporting a candidate, measure or political party. Supporting or opposing bills before the state legislature does not fit into the definition of a political committee and therefore no campaign finance reports are required.

For questions regarding enforcement of Oregon's government ethics and lobbyist registration laws, which are under the jurisdiction of the Oregon Ethics Commission (OGEC), refer to contact information listed on page 33. Public employees may support or oppose legislative bills, within the guidelines enforced by the OGEC.

9. Meetings and Presentations when Ballot Measures or Candidates are Discussed

It is possible that a public employee may be present at a meeting at which candidates or

election issues are discussed (for candidate or measure forums see page 4), along with a mixture of people, some of whom are not public employees and so are not bound by the same rules as public employees. A question may occur when a public employee attends a meeting and discussions or presentations arise concerning campaigning for or against passage of a measure. A similar question is whether a public employee may participate as a speaker in presentations to service organizations (such as the Rotary, Lions, Chamber of Commerce) if one of the other presenters (who is not a public employee) expresses political advocacy in their part of the presentation.

In the first instance, if discussions concerning campaigning for or against a measure (or petition, candidate etc.) are part of the pre-planned agenda, then the public employees should not participate in those activities, which could involve the need to leave the room. It is advisable that, if possible, an agenda be developed in which that part of the activities could be done at a separate time before or after public employees attend, to allow efficiency in use of work time. For more ad hoc discussions that may arise when a non-public employee decides to advocate for the measure, unless it becomes extensive, the public employee is not required to leave the room, but they should not join in those activities or discussions, other than to offer impartial information if needed.

Merely being in an audience when another person is campaigning for a measure is not in and of itself evidence that the public employee is promoting or opposing the measure. In any case, it is advisable that the facilitator make a statement at the beginning of the meeting that the public employees in attendance are only available to provide impartial, unbiased information.

A public employee who is in a management position known to the community must be especially cautious in that they are viewed to represent the jurisdiction. Any verbal or non-verbal communications (tone of voice, facial expressions and possible hand gestures) must be taken into consideration. We note that even if the public employee communicating believes all of the information they present is accurate, the information must not be presented in a way that promotes or opposes.

This same advice extends to the question about public employees participating in presentations to Rotary, Lions, Chamber of Commerce and other service organizations if one of the other presenters, who is not a public employee, campaigns in their part of the presentation. For instance, if the public employee is to be a part of a panel of speakers, at the beginning of the presentation, the facilitator should announce that the public employee involved may not advocate on work time and is only there to provide impartial information.

A public employee presenting impartial information about a ballot measure on their work time or official capacity must follow similar standards for impartiality as for written materials (see pages 20-26 of this memo). Furthermore, if the employee is a salaried employee (management type position) rather than hourly, see additional cautions in this memo, page 15.

If the public employee is not attending on their work time or in their official capacity, they may themselves announce that they are on their own time and not be under the same restrictions. In this case, the employee must be able to document that they were not on the job should a complaint be filed against them alleging a possible election law violation.

Again, although the best way may be to have the public employee, if they are on work time, attend only for the information portion, it is not an election law violation should the employee sit at a speakers table with other participants and merely listen while another non-public employee speaker makes an advocacy presentation.

If a public agency has a **mandatory staff meeting** (staff training, retreat, etc.) and the agency also plans to allow a political committee supporting a ballot measure to make a presentation at the same date and site (for instance to recruit volunteers and support), the agency must make it clear to the public employees that attendance at the PAC presentation portion is optional and voluntary. (Also, as discussed in number 4 above about use of public facilities, if a governing body allows one group to do so, all groups should have the same opportunity.) Therefore, the PAC presentation must not be on the employee's work time and should be separated by time (with a sufficient break after or in-between other sessions) in order to allow the employees to choose whether or not to

remain for the presentation. Further, employees must not be made to feel compelled to stay for the PAC presentation. Based on these concerns, it is advisable that such political advocacy presentations not occur in close proximity to events at which public employee attendance is mandatory.

Complying with the restrictions of ORS 260.432 does require making judgment calls by public employees and there are sometimes no hard and fast rules that regulate every circumstance. Public employees should exercise caution and pay careful attention to the guidelines discussed here.

10. National Voter Registration Act (NVRA) and ORS 247.208(3)

While the restrictions imposed under ORS 260.432 apply generally to all public employees, ORS 247.208(3) imposes a separate, rigorous set of restrictions that apply **only** to public employees and other persons who provide voter registration services required under the National Voter Registration Act (NVRA). NVRA is a federal Act enacted by Congress in 1993. For employees covered by ORS 247.208(3), the restrictions imposed by this statute apply *in addition* to the restrictions imposed by ORS 260.432.

ORS 247.208(3) restricts public employees or other persons providing NVRA-required voter registration services on behalf of a designated public agency from engaging in political activity when they are providing such services. The employee or other person **may not** seek to influence the political preference or party registration of a person registering to vote; **may not** attempt to discourage a customer from registering to vote; **may not** display any indications of political preference or party allegiance (including the choice of candidates for partisan political office); **may not** make any statement or take any action towards a person registering to vote that would lead the person to believe the voter registration has any bearing on the availability of services or benefits; and **may not** seek to induce any person to register to vote or to vote in any particular manner. (Note: this restriction does not apply to private voter registration drive efforts.)

For example, these restrictions prohibit public employees from wearing political buttons while

performing NVRA services, which is more restrictive than the general rule that is explained on page 12.

OAR 165-005-0070 provides more detailed guidelines. This Administrative Rule specifies the items that personnel **may not** wear or display in the presence of clients while offering the opportunity to register to vote. These prohibited items include materials that identify past, present, or future holders or seekers of partisan elective office. The items must not contain logos or other graphics that may be identified with or reasonably be understood to be associated with a political party or other party preference and must not be reasonably understood to be advocating support or opposition to a ballot measure or candidate for elective office.

11. Personal Expression by Public Employees, Wearing Political Buttons

ORS 260.432 "does not restrict the right of a public employee to express personal political views." ORS 260.432 (2). However, as explained previously, ORS 260.432 is not intended to grant unconditional permission to "express personal political views" in any way at any time. Conversely, a public employer must be cautious to not infringe on the public employee's right to express personal political views. Further, public employees may participate in campaigns of their choice during non-work hours.

This does not mean a public employee is authorized to engage in a political lecture while at work to other employees or members of the public, even if the employee continues to perform their duties. A public employer may establish equitable policies restricting expression of personal political views by employees where such expression reasonably may be interpreted by others as officially endorsed by the public employer. Further an employer may restrict political conduct that causes workplace disruption or impairs the efficiency of other employees. Different work places give rise to different concerns. However, a public employer can regulate the manner of expression only to the limited extent necessary to prevent interference with the performance of the employee's duties and the employer's mission.

Public employees who are not subject to ORS 247.208 (those who are providing voter

registration services – see item 10, page 11, above) **may** therefore generally wear political buttons on their work time, with some restrictions. While employees may exercise their right to free speech while on the job, the governing body may regulate the time, place and manner of that speech, if necessary, to ensure efficient and effective operations.

For instance, employees required to wear uniforms and who work with the public could be restricted from wearing political buttons while on duty. This is because the wearing of such buttons might cause members of the public to perceive the agency the employee represents holds a political position or that the employee may act in a biased manner towards some members of the public due to political considerations.

May political materials be posted in a public agency work area?

A question that arises about allowable personal expression is whether or not political material (posters, signs and other paraphernalia) may be posted by a public employee in a public agency work area, such as an individual public employee's workspace and whether it matters if the political material is visible to the public or not.

Even though a public employee may have personal property at his or her workspace, these work areas are in fact public property. Therefore, it is a reasonable position for a public employer to restrict the display of political posters, signs and other items (besides campaign buttons worn by the public employee) in work areas that can be viewed by the public (even if they are only visible when clients are routinely asked back to the work area for official purposes). This restriction also protects the employer from allegations that the agency is taking a political position. In work areas that are not at all visible to the public, the employer could permit political items in an employee's workspace in the same manner as other personal matters.

May a public employee wear a t-shirt or other clothing item that advocates a political position?

We have previously advised that a public employee (other than those subject to ORS 247.208 when they are providing voter registration services) may generally wear political

buttons on work time, with some restrictions discussed, without violating ORS 260.432. Additionally, we receive questions on whether this advice extends to a public employee wearing a clothing item (most often a t-shirt is the item asked about) that includes a political advocacy statement of some kind. For example, it may be questioned whether a public employee should be allowed, on work time, to wear a t-shirt that includes a slogan *inferring* support or opposition to a ballot measure (such as "Our city is big enough..." when there is an upcoming ballot measure to expand city boundaries). It may also be questioned whether a public employee should be allowed, on work time, to wear a t-shirt that includes a slogan that *explicitly* supports or opposes a ballot measure, such as "Vote Yes on Measure 41-88," when that is an upcoming ballot measure, or supports or opposes a candidate, such as "John Smith for County Commissioner."

We advise that, similar to wearing campaign buttons, generally a public employee (who is not subject to ORS 247.208 when providing voter registration services) may wear clothing items that express a political opinion, but that this is again subject to a governing body's reasonable and equitably applied regulation of the time, place and manner of speech considerations, in order to ensure efficient and effective operations. See the discussion above about political buttons, on page 12.

However, we note that there is likely more reason for a public employer to equitably restrict explicit political statements, especially for public employees who directly serve the public and in situations where the employee is representing the public agency. Another reason a public employer may want to consider a policy of equitably limiting these types of clothing items is if an elected official in charge of the agency is up for re-election in a contested race. An additional consideration in this type of situation is whether the public employee's union contract language specifies allowances for the wearing of such clothing items.

The discussion in item 17, page 16, later in this memo about uniforms worn by a public employee is also relevant to this question.

12. Resolutions (Vote taken) by an Elected Governing Body, Advocating a Political Position

First, to point out when ORS 260.432 takes effect in relation to a governing body's referral of a ballot measure or takes effect in regard to other ballot measures and initiative, referendum and recall petitions, see the above discussion under item 5 on page 8. Also note that this office provides a *2008 County, City and District Referral Manual* that outlines the procedures that must be followed by local jurisdictions in referring a ballot measure to the ballot.

Based on the discussion in item 5, page 8, that explains ORS 260.432 does not apply until a local governing body's referral of a ballot measure has been filed with the County Elections Office with a Notice of Measure Election form, we note that ORS 260.432 is **not** in effect and the following restrictions do **not** apply for an elected board's passage of a resolution to refer their own ballot measure. However, after the notice of measure is filed with the County, the following ORS 260.432 restrictions do apply. The following restrictions also apply if an elected board works to pass a resolution to support or oppose any other ballot measure that is certified to the ballot, such as a measure that is on the ballot due to a citizen's referendum petition; a state measure; or to support or oppose an initiative, referendum or recall petition.

In summary, with more detailed guidelines to follow, elected boards of governing bodies may take a position on a filed ballot measure (or initiative, referendum or recall petition) provided there is no use of public employee work time to advocate that position. Board resolutions for or against a ballot measure or petition must be drafted by a member of the board, not by the Administrator, President, Superintendent, board secretary or other public employee. A public employee may make copies of the proposed resolution and include it with the board packets sent out before the board meeting. A public employee may prepare information indicating the impact the measure would have on the jurisdiction, but must make sure that information is balanced and impartial.

After passage of such a resolution, a public employee may retype the resolution to conform it

to the governing body's format. The Administrator, President, Superintendent or other public employee may not endorse the board's action but can sign the resolution strictly attesting to the action taken and as the official clerk. In this case, it is advisable that the signature line be labeled as such. If the jurisdiction normally includes information on all board meeting actions in a regular publication, the action the board took on the ballot measure resolution can be included as part of the listing of board actions, but should not be specifically highlighted or expanded upon. The board's action to support or oppose a ballot measure may be included in the board's official minutes.

A public employee, in regards to an elected governing body's resolution that advocates a political position on any ballot measure that has been certified to the ballot or an initiative, referendum or recall petition:

- **May not** draft, type, format or edit the resolution. (Edits to insert the appropriate jurisdiction's name and board member names are allowed, to conform it to the standards for a resolution.) Such a resolution should be drafted and prepared by a member of the elected board or someone who is not a public employee;
- **May not** prepare or recommend to the governing body which way to vote on such a resolution;
- **May not** sign such a resolution, unless the employee's signature is only ministerial and clearly included to attest that the board took the vote. Language labeling the signature as such must be included;
- **May not** use work time to prepare a news release or other announcement of the resolution;
- **May not** announce the governing body's position on such a vote to the media in an advocating manner (employee may respond to direct questions from media about the resolution by impartially stating the board's vote); and
- **May not** include the position or vote on such a resolution in a jurisdiction's newsletter or other publication. In very limited circumstances, there may be an exception: if the jurisdiction has a history of listing all resolutions and action

items at a board meeting in a regularly published format and the advocating resolution is listed in an impartial manner. In any case, it is not advisable to include any text from the resolution that advocates for or against a ballot measure.

Note: A board or commission consisting of appointed members is considered to consist of public employees for purposes of ORS 260.432. Therefore, these appointed board or commission members may not act in their official capacity to pass a resolution advocating a political position.

A public employee, in regards to an elected governing body's resolution that advocates a political position on a ballot measure or initiative, referendum or recall petition:

- **May** use work time in an incidental way to record the vote if that is part of the employee's normal work duties. For example, a public employee may take the board's minutes and, in a clerical manner, incorporate amendments into a finalized version of a governing body's resolution on an issue;
- **May** prepare strictly neutral, factual information for a board to use in taking a position on a measure, such as financial impacts of a ballot measure;
- **May** be available at the board meeting to offer neutral information about a ballot measure to the board upon the board's request;
- **May** make copies of the proposed resolution and include the drafted resolution in the board packet to be distributed as usual before the board meeting;
- **May** prepare impartial information that indicates the impact that a ballot measure would have on the jurisdiction;
- **May**, following passage of a resolution, retype the resolution to conform to the jurisdiction's usual resolution format and place the resolution and related documents into the official public record of the meeting; and
- **May** fill public record requests as usual.

Activities, beyond these, related to the elected official's vote on a resolution advocating a position on a filed ballot measure or election petition, or

those that are intended to help in implementing a campaign strategy in some way, are not allowed on the public employee's work time.

Elected officials may not request public employees to perform prohibited activities as outlined above. They may not compel public employee staff to become involved in a ballot measure campaign.

13. Salaried (Management) vs. Hourly Staff

Salaried employees' work time is not as easily measured as that of hourly workers. If the work performed falls generally within the job duties of the public employee, then it is assumed that the work is performed in an official capacity, regardless of the time of day or location. 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 the Elections Division receives complaints of this nature, an investigation will be done to determine 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.

It is important to recognize that "regular workday" may not be definable for a position, or may not have a specific time period but is based on the activities and whether the person is acting, or appears to be acting, in an official capacity. The employee may need to define this with their employer. It would be up to the appointing authority or employer to determine what is considered the "regular workday" and what time would be considered his or her own time, when the person would be able to support or oppose a candidate, measure or political party.

For instance, in the case of a school superintendent, at all school board meetings and school functions, he or she would be considered acting in official

capacity based on their administrative and management position. Another instance where the public employee is considered "on the job during working hours" is when a salaried, executive or management level public employee (or other level) uses what they consider personal time and personal equipment to prepare an official public agency publication that is to be distributed using public agency resources. Since in this case the public employee is conducting official agency business, the publication must be impartial or a violation would occur.

Nevertheless, salaried employees have the right to participate in political activity on their own time and an employee would not be "on the job" solely because they may be subject to a call back to duty at any time.

14. Speeches on Political Issues by Public Employees

A speech on a ballot measure (or candidate, initiative petition, etc.) given by an elected official **may** advocate, even if the elected official is in their official capacity. However, a public employee on their work time/official capacity **may not** in a speech advocate for or against a ballot measure (or candidate, initiative petition, etc.)

Therefore, any speech that is pre-scripted by a public employee for use by an elected official must be impartial in regard to any discussion about a ballot measure, candidate (including the elected official's own candidacy), political committee or initiative, referendum or recall petition. A public employee presenting impartial information about a ballot measure, etc., on their work time or official capacity must follow similar standards for impartiality as outlined for written materials (see page 20-26 of this memo). Furthermore, if the employee is a salaried employee (management type position) rather than hourly, see additional cautions in this memo, page 15.

As previously stated in this memo, if written words can convey a biased connotation, it follows that so will the same sort of language when spoken, especially if in addition to the spoken words, **non-verbal communications** serve to add to the effect. In fact, spoken words may even have more impact than written words, when the tone of voice, facial expressions and possible hand gestures are taken into consideration. Any verbal or non-verbal communications (tone of voice, facial expressions

and possible hand gestures) must be taken into consideration. We note that even if the public employee communicating believes all of the information they present is accurate; the information must not be presented in a way that promotes or opposes a political issue.

If the public employee is not attending on their work time or in their official capacity, they may themselves announce that they are on their own personal time and not be under the same restrictions (under reasonable circumstances). In this case, the employee must be able to document that they were not on the job should a complaint be filed against them alleging a possible election law violation.

15. 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.

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, communicate on political matters with the press or constituents, or initiate any other political activity on behalf of the official.

Additionally, incoming calls about measures must be answered in a strictly factual manner.

16. Title of Public Employee, Use of

It is not an election law violation in and of itself for a public employee's working title to be included in a campaign publication or in a private newspaper's editorial letter if either was written or produced on the employee's personal time and not in the public employee's official capacity* (with no on-the-job assistance of other public employees). Likewise, it would not be an election law violation in itself for a public employee to use personal time and funds to submit an argument supporting or opposing a ballot measure for a state or local voters' pamphlet and which included their working title (although it would be advisable that the title not be included).

If someone else (such as the media) refers to a public employee by the employee's title at the media representative's initiative and without consulting the public employee, that in itself would

not suggest a violation of election law by the public employee.

*An administrative, management employee must be cautious in that they may be a publicly known figure in the jurisdiction. An administrative, management employee must not use a letter to the editor or series of such letters as an outlet for political advocacy if it is done recognizably in the context of their official capacity. Even if the letters are written on personal time using personal equipment, the content and verbiage of the published material may indicate they were written in the context of speaking as the administrator or manager and thus be a potential election law violation of ORS 260.432(2).

So, if a political opinion piece is intended for publication in a private publication - such as in a private newspaper or letter to editor - then as long as it is in the public employee's non-official capacity, it can advocate. However, if the article is to be in a government agency publication or posted on a public agency's website and the publication is done with any public employee work time or appointed commissioners official capacity time, then the article may not promote or oppose a ballot measure.

What about guest opinions written by a public employee at the request of the media?

A public employee may be asked to compose a guest opinion related to a ballot measure for a private newspaper or other private media publication. If the public employee is asked in the context of their role as the public employee (such as a public employee who is an expert on city road work in regard to a bond measure proposing a roads project, or a School Superintendent in regard to a school bond measure) the guest opinion must meet the standards for impartiality as discussed on pages 20-26. This is the case even if the employee produces the guest opinion off the work site and on personal equipment, since in this context they would be acting in their official capacity.

17. Uniform Worn by Public Employee

A question often arises as to whether it is an election law violation for a public employee to wear an official uniform (such as that of a law enforcement officer) outside of the employee's work hours and not at work - in the context of political activity of some kind. Obviously, the

public would identify the uniform with the position. (See also page 16.)

ORS 260.432 does not address the use of public funds or facilities and it would not be a violation of ORS 260.432 for a public employee to wear their uniform on personal time during political activities. However, it would likely be against the employer's policies and in many cases inadvisable. Our office does not arbitrate disputes between such policy and procedures and employees over matters not related to state election law.

As stated in this memorandum, if the employee is salaried, they must be careful not to advocate a political position if they are considered in their "official capacity" and must be able to provide such documentation if a complaint were filed.

Notwithstanding this advice, it is important to understand why the public may perceive that an election law violation has occurred in such a situation. The public perception that an employee is on duty because they are in uniform is understandable. When a member of the public views a public employee participating in an otherwise prohibited activity while they appear to be in their official capacity, it raises questions.

Contributing factors to this perception, even though they may not in and of themselves be a violation of election law, include:

- The public employee is photographed in a work setting;
- Whether the public employee is wearing a uniform;
- The literature identifies the public employee by their work title; and
- The content of the literature in which a photo of the public employee appears may imply a personalization or support of the candidate by the employee or employer, which could contribute to the public perception of a possible violation.

18. Union Bulletin Boards

Public employee unions may be allowed to have a designated bulletin board to post information regarding union business. The governing body's policies, contract language and the public agency's practices typically allow employee unions to have a designated bulletin board to post information regarding "union business." The contents of those

bulletin boards are regulated only by collective bargaining agreements.

19. Visits by Candidate or Candidate Representative

A political candidate, or candidate representative, may request a visit to a government agency work site (often times a school). (Note: This discussion is not about an elected official's official visits to their jurisdiction's public agency worksites, which in general are not prohibited by ORS 260.432.) On page 4 of this memo, there is a discussion of candidate forums and measure debates and advice that these are allowable for a government jurisdiction to sponsor if they are open to all candidates for the same office or all political proponents and opponents of a measure are allowed to debate. Along these same lines, if a candidate is allowed to visit the government agency work site, then all candidates for the same office must also be allowed similar access, if requested.

For example, a school district may allow candidate visits (most often of a nationally or state recognized political figure) as an educational experience for its students, as long as candidates for the same office could request equal time. Further, it is not a violation of election law for a candidate at such an appearance to discuss issues that may be a part of their campaign. When a nationally or state recognized political figure, such as a presidential candidate, arranges a visit to a government agency site, such as a school, special arrangements may be required for security purposes. Public employees involved with the arrangements are not considered promoting or opposing the candidate when performing normal job duties.

It is advisable for a government agency such as a school district to have a policy in place for handling such candidate visits. To avoid even the appearance of prohibited political advocacy by public employees at a government agency, the policy about candidate visits should include:

- In most cases, the government agency should not initiate the visit (normally these visits are requested by the candidate), unless it is to be a candidate forum as discussed on page 4;
- Any other candidate for the same office shall be allowed similar access if they request it (if the visit occurs as the result of one candidate's request for the visit and it involves more than

just a tour of facilities, such as a speech to a student body, the agency is not required to proactively invite all other candidates, although some type of notification to the other candidates would be appropriate);

- The government agency's purpose for allowing the candidate visit is not to advocate a political position to constituents, but rather to, for example, provide an educational experience, discuss policy, etc.;
- Public employees may perform normal job duties to assist in any special arrangements needed for security or other purposes;
- No public employee may take any actions to proactively promote or oppose the candidate before or during the visit, such as taking a political position when announcing the event, holding a campaign sign during the event, or assisting the candidate in distributing campaign advocacy materials; and
- Overall, great caution should be taken by all public employees involved in such a candidate visit to ensure their activities in regard to the visit, while on work time or in official capacity, do not in some way promote or oppose the candidate. All involved public employees should be reminded of the election law ORS 260.432 and its restrictions on political campaigning by public employees prior to such a visit. The notice required by ORS 260.432 (3) must continue to be posted in conspicuous places in the work site.

20. Volunteer Personnel at a Public Agency

Questions arise about whether or not ORS 260.432 applies to **volunteers** at a fire district, library, Sheriff's office or other government agency, for whom no compensation is provided (other than perhaps some kind of insurance coverage, such as workers' compensation). The volunteers referenced in this discussion are not the appointed board or commission members discussed in item 1, on page 41, who are considered public employees for purposes of ORS 260.432, as those appointed board or commission members are in effect a policy making body. The volunteers referred to in this discussion are those who volunteer to assist in the routine functions performed by the government agency – such as a volunteer firefighter, a library assistant or an uncompensated Reserve Sheriff Deputy.

In general, the volunteers at a fire district, library, Sheriff's office or other governmental agency who are not compensated for their work are not considered public employees, even though they may be covered by insurance such as workers compensation (usually only during an incident response or training activity). Therefore, the restrictions of ORS 260.432 do not apply. However, these volunteers may be bound by the policies of the jurisdiction, which may include limits on political advocacy during their volunteer activities. The Secretary of State does not have jurisdiction on those public body policies.

21. Voters' Pamphlet

A question was asked whether it is a violation for a public employee to work on an official state or local Voters' Pamphlet which contains candidate statements and measure arguments, as allowed by statute, both in support or opposition to ballot measures. Because preparation of Voters' Pamphlets is authorized and governed by statute, it is not an election law violation for a public employee to work on an official Voters' Pamphlet. A public employee of an elections office processing voters' pamphlet statements and arguments, as allowed by statute, for an official state or local voters' pamphlet, is not considered to support or oppose candidates or ballot measures.

With regard to preparing arguments or statements for inclusion in a Voters' Pamphlet, an elected official may singly or together with other elected officials (such as a city council), submit signed arguments in support or opposition to a ballot measure for an official state or county Voters' Pamphlet. However, no public employee staff work time may be used in preparing or submitting the arguments. A payment for the filing fee for a Voters' Pamphlet argument must not involve public employee work time or public funds.

ELECTED OFFICIALS

An elected official may personally advocate for or against candidates, political committees, initiative, referendum or recall petitions or measures on the official's work time. Elected

officials are not considered public employees for purposes of ORS 260.432. ORS 260.432(4)(a).

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 employees' 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, and advertising pieces).

An elected official's opinion piece, letter or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees. For instance, public employee support staff may not prepare the text for a speech, a press release or constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure (C&E) transactions online or related correspondence during their work time.

Elected officials, as part of a governing body, may vote with other elected officials (such as a school board, city council or county commission) to support or oppose a measure, and publicly discuss such a vote - but must not use the public employee staff time to assist in this, except for ministerial functions. (See the discussion of such resolutions on pages 13-15). 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. A request made by a person in a position of supervisor or superior is viewed as a command for purposes of this election law.

Oregon election law does not require an elected official, during the time when the official runs for re-election or for another public office, to discontinue activities that are a regular part of the elected official's duties - such as updates on official business. This office does not find that all communication from an elected official, based only on the timing of the communication in relation to an election, necessarily means that the communication is campaign advocacy for their

candidacy. In such cases, the public employees participating in the publication would not be in violation of ORS 260.432.

For a discussion on an elected official's use of their public office space and equipment when they advocate a political position, see item 4, on page 6 above.

IMPARTIAL BALLOT MEASURE INFORMATION

THE ROLE OF THE ELECTIONS DIVISION IN REVIEWING DOCUMENTS

This office 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 that caused material to be considered advocacy.

This office offers 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 will 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.

For instance, we cannot advise an agency on whether any critical piece of information is missing in the drafted information about the measure that a reader may perceive as affecting their position on the measures, and thus could be deemed to reflect on the information's neutrality.

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.

Once this office has reviewed a draft publication and all suggested changes have been made, the public agency may want to include a disclaimer on the document about that review. However, because as discussed above such reviews are issued with the understanding that this office does not know whether the information presented about a measure is accurate or sufficiently comprehensive or whether there are other unknown circumstances, it is not appropriate to imply the information is "approved by the Secretary of State." Rather, an acceptable disclaimer that may be used (only if all changes were made as suggested) is, "This information was reviewed by the Oregon Secretary of State's Office."

If a complaint is filed alleging that a public employee violated ORS 260.432 with regard to written materials (or video, audio) the complainant believes advocates a political position, this office considers several factors in assessing a civil penalty. One factor is whether the governing body's legal counsel reviewed the document before its distribution and advised the governing body in writing that the publication as distributed was impartial information that the governing body could legally produce and distribute, and was not in violation of election law.

Another consideration is whether the material was submitted to and reviewed by the Secretary of State's office, Elections Division, in consultation with legal counsel from the Attorney General's office, before its publication. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing could legally produce and distribute or with regard to which the Secretary provided suggestions towards the goal of assuring the publication was impartial information regarding the ballot measure.

If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, even if such an advice letter was issued, a violation may be found if a complaint and investigation discloses circumstances or facts not brought to this office's attention before publication, which reveal that the publication had the effect of promoting or opposing the adoption of the measure.

FACTUAL VERSUS PROMOTIONAL MATERIAL PREPARED BY PUBLIC EMPLOYEES

Written (or video/audio) 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 may 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. Impartial ballot measure information should be objective material on the effects of the ballot measure - information providing the public with a fair presentation of all relevant facts.

A summary of the more detailed advice that follows is that impartial ballot measure information must be **neutral**, not persuasive or speculative, and backed up as appropriate by citations of **source of information** or some **substantiating information** or citation of authority to which a voter might refer to confirm the statements. The tone must be **dispassionate** rather than enthusiastic. The document should not include consequences of non-passage described in a way to elicit strong public response. The information should be a description of what the measure does, **an unbiased statement of objective fact**, not a justification of why the measure is needed.

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. We note that a publication that purports to contain only factual information may not necessarily be impartial, if the "facts" are presented in a persuasive manner.

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: *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 1: A special district produces a newsletter published shortly before a May election at which incumbent board members are candidates and the newsletter prominently features photographs of all of the current board members. 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.

Example 2: Another example is a city councilor who includes an update on city activities in the city newsletter right before the primary election at which he is a candidate up for re-election, with opposing candidates on the ballot. Because the city newsletter would use public employee work time, the city councilor's update would have to be carefully worded to remain an update on what is happening on city issues. It should not be a point by point rebuttal to statements being issued by other candidates; it should not directly get into the

disputes that involve the specific actions of another city councilor or candidate - because it may be determined to be too closely related to the candidacies. If the communication were found to be in effect supporting or opposing a candidacy, then public employees involved would be in violation of ORS 260.432 and the city councilor could be found in violation also, for asking them to do so.

Of course the incumbent city councilor who is up for re-election at the upcoming election, may on his own time and using his own campaign funds, publish any campaign literature that disputes another campaign piece. That would be the appropriate way to "respond" to what may be felt to be false or misleading statements made in an opposing candidate's campaign flyer during the time before the election.

- b) The **contents of the document must not explicitly urge a yes or no vote for the measure.** 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,"
- "Why Should I Vote for Measure 99?"
- "The District seeks funds to improve equipment and buildings,"
- "Voters are asked to consider support for Measure 99,"
- "At election time, please support the Home Rule Charter," and
- "On May 20, 2008, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57."

The remaining text of the publication does not cancel out such a statement. That is, a document that is otherwise totally factual, balanced and neutral, yet includes a sentence such as the ones above, would most likely result in our determination of a violation of state law.

Another caution is to not include wording such as, "a Yes vote means..." unless "a No vote means..." is also included and both are balanced and impartial.

- c) **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. 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. The information should reasonably explain the full scope of the measure and not concentrate only on certain aspects of the measure.

When the information is specific as to what the funds would be used for, it is then appropriate to leave it up to the voters to decide if they want to obtain the benefits by authorizing 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 and adds a balance to the information.

Impartial ballot measure information should be a **comprehensive description of what the measure would do**, and not be only a selection of aspects that may be viewed as more advantageous to discuss.

If a measure proposes to affect taxes or fees the following types of information should be included:

- The **specific cost** of the measure to an individual taxpayer or consumer;
- If appropriate, the **amount of yearly taxes** based on the average price of a home in that community. (The "average price" should be a realistic figure for that community - too low a figure could result in a misleading estimate biased in favor of the measure. Also, although a monthly cost amount may be included, a yearly amount more importantly needs to be included);
- Clarification on whether it is an **increase in current taxes**;
- Clarification on whether the amount is an **estimate**;

- If appropriate, the **number of years of the bond**;
- Reference for bond levy calculations and whether the calculations are fixed or may have future increases; and
- In cases where there is an **overall cost**, the total amount should be included (for instance the total amount of a bond). Ideally, this should include principal and interest for the total cost.

Additionally, the cost should not be worded in a way to minimize it (such as "less than or only \$5.00 per month" or "It's merely the cost of a paperback a month").

An example of advisable language explaining a measure's effect on taxes is, *"Measure 37-88 proposes a 3.5 million dollar twenty year bond and passage of this measure would result in an increase in property taxes of \$1.25 per year per \$1,000 of assessed value. For the average homeowner in Everyday City with a home assessed at \$150,000, the annual property tax increase would be \$200."*

Another way to achieve balance in impartial measure information is to **include any other known, feasible options**, even those that may be considered unfavorable to the public agency. However, these options must be impartially presented and not described in a way to imply they are totally unacceptable. These options should not be presented solely in order to be criticized. **Source information** should be included for the reader to verify the information and to learn more if desired.

Another method sometimes used to present various sides of an issue is a side-by-side comparison. In this case, the reader must not be led to feel they have been persuaded that one way is the right way to go and the "other side" is not acceptable. There is a potential problem in lining up two plans and comparing them when one is already adopted and is better understood. The level of detail for the unimplemented plan would then be less and could look less considered.

- d) **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. We advise steering away from theoretical, subjective and opinionated content. Rather, the material should be specific, descriptive and objective.

For example, the following speculative statements are inadvisable, "*Having modern computer software available will result in greatly enhanced test scores, improved attendance, faster learning of new skills, a lower drop-out rate, and an increase in college and training school attendance.*" Unless the document provides **some sources and substantiation** for these speculative statements, we advise they lend too much enthusiasm and persuasiveness to the information.

Whenever appropriate, we advise the **inclusion of citations to source information**, such as specific case studies. Statements such as "*District Schools are overcrowded,*" need a basis either included or referred to. Do not include such sweeping statements such as, "*Many cities obtain water from rivers that are more polluted than the Crystal River, using treatment technology far less comprehensive and modern than what is proposed for Everyday City by Measure 37-29,*" without providing some substantiating information or citation to authority to which a voter might refer to confirm the statements.

Additionally, we advise caution when including **comparisons** (listing pro and cons for a measure) and purporting to speak on both support and opposition sides. Any such formatted information should be impartial and as inclusive as possible.

- e) **The tone of the publication should be dispassionate rather than enthusiastic** for one side of the measure and not argumentative or persuasive. The material 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 the program to continue*" is a more neutral statement than

saying "*failure of the measure will destroy the program.*"

The information should be a description of what the measure does, an unbiased statement of objective fact, not a justification of why the measure is needed. Additionally, we advise **avoiding glowing commentary on the jurisdiction** that would benefit from a measure's passage, as this lends a tone of "We are great so you should support this measure..." to the information.

- f) **Documents should not be personalized or use personalizing pronouns.** We advise against providing information about a measure in a personalized format, such as a letter format addressed to "Dear Parents," customized for each area, and then signed by a public official. Rather, to ensure the neutrality of information about a ballot measure offered by a governing body, the information should be generic. A signed letter from a public official, who may be personally known by most constituents receiving the information, may evoke more empathy, enthusiasm and emotion than a generic fact sheet on a ballot measure. Additionally, such information should be made available to all voters in the jurisdiction, not just to certain constituents.

Along these lines, we advise that the use of personal pronouns, such as "our," "we," "I," "us," etc., lend a tone of "we are in this together" to a document and personalizes it, rather than the neutrality needed in an impartial informational document about a ballot measure. Therefore, we suggest that such words be changed to less personal words, such as "the," "it," "the district," "the board," "voters," "taxpayers," "citizens" or "constituents."

Finally, rather than terms such as "neighbors," "friends," or "patrons," we advise more using neutral terms such as "voters," "taxpayers" or "constituents."

- g) **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 and the issue is not yet decided. The use of the word "will" suggests a desired

outcome of passage of the measure and that it is set to happen. There may be other wording that should be changed for the same reason, such as "The measure provides a new source of income." In this case, a suggested alternative is, "The measure would provide a new source of income."

We note that in some cases, the use of the word "will" is appropriate based on the context - if it is not dependent on the measure's passage (such as "*The election will be held on May 20, 2008.*")

- h) **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. Basic facts about a measure should be offered, so that the voters may make their own assessment of what is "needed."
- i) **Headings, lead lines and other words or phrases 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. **Adjectives should not be value laden or add a persuasive tone, such as "urgent, critical, important, dire,"** Another inadvisable word is "cut(s)." This word has a more raw and emotional tone to it and should be replaced by a more neutral word such as reduction, eliminate, etc. The cumulative effect of individual word choices in the context of the entire publication must be considered.

Along these lines, there are words that when used once, may not be problematic; however used several times in a document may add to a persuasive tone. An example of this is the use of the word "excellence," such as in "To ensure continued excellence, ..." Repeated use adds a promotional tone. A suggested alternative is, "To maintain existing levels of performance,..." This omits the positive characterization involved by the word

"excellence." Other examples that should not be repeated in an impartial measure document are, "approved" and emotional phrases such as "we'd be proud to serve," "we pledge to you," and "can be assured."

Another recommendation to enhance neutrality is to keep a **more formal tone**, rather than a conversational, colloquial tone. For example, instead of stating, "This would assist our kids in..." we suggest, "This would assist students in..." (Based on recommendations in factor F above, note that the personal pronoun "our" is also omitted.)

NOTE: Some other 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, page 38.

- j) **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 official. The use of such quotes and lists indicate an endorsement similar to campaign advocacy material and is, therefore, inappropriate. Additionally, it is not allowable for a public agency to incorporate political advocacy material just because it has been previously published by a private entity, such as a newspaper. Again, it is imperative that publications produced and distributed by public employees be impartial, informational documents, regardless of who prepared the material.
- k) **The use of graphics, checkmarks, formatting 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

or a pencil marking an X in a box) in material about ballot measures produced by a government entity.

Additionally, caution should be used in formatting. Extensive formatting methods that serve to emphasize or de-emphasize certain information may result in a persuasive tone (such as the use of all caps, underlining, bolding, making some information (such as cost) in much smaller print, stars around wording, etc.)

Along the same lines, photographs used in a 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.

- l) **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," "Planning for our Future, Improving the Community," or "Our schools are an intelligent investment." These phrases are not impartial and informational, but are advocacy.

Another instance might be a "mission statement," which may, dependent on the wording, serve to affect the tone of the information. This could be the case if it results in a very positive commentary on the jurisdiction that would benefit from a measure's passage, lending a tone of "We are wonderful so you should support this measure..."

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.

- m) **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, for both sides, it may lend to the balance of the document.

Along these lines, government agency measure information must not include any encouragement for readers to volunteer for a PAC or other support or opposition efforts related to a measure, such as phone banks, etc.

- n) **Reporting of an elected official's position on a ballot measure or an elected official's article advocating a position on a measure** should not be included in a publication using public employee work time. A publication produced using public employee time may only include facts about a ballot measure, not who supports or opposes the measure. Such inclusion would lend an implication of "I/we support/oppose this measure and so should you..."

For example, do not include, "*The Anywhere School Board position on Measure 46-89: Oppose*" or the text from the resolution that advocates for or against a measure." In very limited circumstances, there may be an exception: if the jurisdiction has a history of listing all resolutions and action items at a board meeting in a regularly published format and the advocating resolution is listed in an impartial manner. In any case, it is not advisable to include any text from the resolution that advocates for or against a ballot measure.

Even in this case, the reporting must be done in a neutral manner. This also pertains to articles by elected officials advocating a political position. Even though an elected official may use their own work time to advocate a political position, such an article may not be included in a document produced and/or distributed by public employees on their work time.

- o) **Information about the "50% voter turnout requirement."** In 1997, Ballot Measure 50 was passed, amending the state constitution. The

Constitution (Article XI, Sec. 11) now requires that the passage of a measure to approve new or additional ad valorem property tax levies 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 requirement applies 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." (Also see page 27 for a discussion of "Don't forget to vote" messages.)

For example, we suggest that publications not include the phrases "double majority" or "super majority." These phrases have strong political connotations, so may lend themselves to the implication that the district is suggesting that a voter must pass the measure now.

Merely stating, "*If fewer than 50% vote, this election will not count,*" misleads the reader and implies people must vote. If the measure does not pass, the turnout requirement does not apply and the election still "counts." Only passage of the measure would not be in effect if the turnout is less than 50% of eligible voters, even if a majority of affirmative votes for the measure. Either way, the elections results would still be "valid." Language characterizing the turnout requirement as necessary to make the election "valid," is inappropriate, because it implies that passage of the measure is the only "valid" result.

Some suggested, acceptable language for this requirement is:

- "For this local option tax levy measure to be enacted, it must receive a majority of the votes cast and voter turnout must be at least

50% of the registered voters in the district (or county, city...) (or 50% of the eligible voters."

- "Passage of the local option tax levy measure requires that it receive a majority approval of those voting on the issue. In addition, voter turnout at the election must be at least 50% of eligible electors."

BALLOT TITLES AND EXPLANATORY STATEMENTS

Ballot titles:

This office has been requested in some instances to review **ballot titles** pertaining to local governing body measures. For local measures, ORS 250.035 (1) (c) states that the ballot title summary must be, "A concise and impartial statement of not more than 175 words summarizing the measure and its major effect." (Emphasis added.) Under state law, the appropriate way to challenge a ballot title filed with the elections officer by the jurisdiction's attorney or the governing body is to file a petition in the Supreme Court (for state measures) or circuit court (for local measures). ORS 250.085 (for state measures), ORS 250.195 (for county measures), ORS 250.296 (for city measures) or ORS 255.155 (for special district measures).

This office's review of a governing body's ballot title for a measure (caption, question and summary) is limited to whether the content is sufficiently impartial in accordance with the standards used in reviewing for possible violations of the election law ORS 260.432. The other standards a ballot statement must meet as stated in ORS 250.035 (which are that the statement must be concise, not more than 175 words for local measures and 125 words for state measures and summarize the measure and its major effects) are not within the purview of this office. The jurisdiction's legal counsel is responsible for such advice.

Additionally, this office does not determine whether the ballot title must include the three percent language or other required language for local option tax measures, general obligation bonds or other local measures under ORS 280.070 and ORS 280.075, or the language required by ORS 250.036, ORS 250.037 or ORS 250.038.

Further, this office does not evaluate the substance of proposed measures. The governing body's legal counsel is responsible for such advice.

Explanatory statements:

ORS 251.345 states that the governing body for any electoral district that has referred a measure to the voters shall submit "an impartial, simple and understandable statement explaining the measure and its effect." (Emphasis added.) It is noted that the Secretary of State's review of any draft explanatory statement intended for a voters' pamphlet is limited to whether the contents are sufficiently impartial in accordance with the standards used in reviewing for possible violations of the election law ORS 260.432.

The Secretary of State does not provide a service of reviewing local governing body's draft explanatory statements for the other standards they must meet as stated in ORS 251.345 - that the statement must be simple and understandable and explain the measure's effect. The local governing body and its legal counsel are responsible for meeting these standards, because they require a comprehensive knowledge of the measure and its surrounding facts and circumstances not available to this office without sufficient research.

POSTCARDS AND SEPARATE INFORMATION PIECES

Another method government agencies may use to provide election information is the **use of postcards**. Postcards usually allow for fewer words to be included, and often include graphics, so there is a need for discretion.

A concern that may arise is when a series of postcards are distributed for this purpose. There are general concerns about an information effort done in separate pieces, because whenever such information is separated, there is always the chance that a reader may miss part of the information in the midst of the amount of mail they may receive. Therefore, the optimum advice is that any ballot measure information document that is published (for a measure imposing taxes or fees) and that includes any discussion of what the measure would do, needs to be balanced with the amount of the tax or fees.

Overall, while postcards may not be the best method for presenting important information

about a ballot measure, they are appropriate for a "don't forget to vote" type of notice, as that does not need to contain much information.

What about a postcard/mailer that only contains a communication "don't forget to vote"?

If the postcard is only a "don't forget to vote," type of notice, which does **not** even mention a measure or measure number, then detailed measure information including the cost information is not required.

What about a postcard/mailer that communicates a "don't forget to vote" message but has a measure number and/or ballot title with that message?

If the "don't forget to vote" message also includes mention of a ballot measure number or title (with no further detail on the measure), this is of concern. The concern is that this type of message may imply support of the measure - as it in essence implies, "don't forget to vote **for** Measure 41-123." Therefore, a "don't forget to vote" message should either not include any mention of a ballot measure, or if it does include mention of a ballot measure, it needs to also include some brief measure information, as discussed in the following question.

What about a postcard/mailer that communicates a "don't forget to vote" message but includes some information about a ballot measure?

For a postcard/mailer that communicates a "don't forget to vote" message and includes some information about a ballot measure, the information needs to be balanced, which means it must also include basic cost information (if it is a ballot measure that would cause any changes to taxes or fees).

PREVIOUSLY PUBLISHED MATERIALS

If material (whether complete articles or excerpts) has been **previously published** (such as in a private newspaper, for legislative analysis or other legislative purposes, a survey before an issue is referred by a governing body, etc.) it may not be included in a government agency publication about a petition or ballot measure or re-distributed by a government agency unless it is impartial on election matters. The public employee work time spent distributing any previously published documents that are not impartial at the time when

ORS 260.432 is in effect would still be in violation of ORS 260.432.

Note: ORS 260.432 is in effect whenever the actions taken by a public employee apply to any of the following: for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer; for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot; for candidate issues, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and for actions related to a political committee, whenever the political committee is active.

It is recognized that such documents are historical documents and can be retained in government agency files. However, the fact that these earlier documents that are not neutral are "part of the public record," does not mean that the government agency may use current public employee work time to proactively distribute them for a different purpose. If someone asks for a copy of the record from public record files, the public employee may provide it under the same procedures as any other public record. Caution must also be exercised in excerpting any portions of such a document to include in any newly distributed material, to ensure any such excerpts are worded and used in a neutral manner.

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.

A question sometimes arises about whether it is allowable for a public agency to provide signage in an area that would be affected by a ballot measure, with the purpose of indicating where improvements or changes would be made. For instance, a school district may wish to post signs at each school listing the changes that would be made upon passage of a ballot measure. This practice is allowable, so long as all the standards of impartiality discussed in pages 20-26 are met.

VIDEO AND AUDIO PRODUCTIONS

This office offers to review **draft video and audio productions** produced by a government agency about a ballot measure, which must maintain the same standards of impartiality as discussed in this memorandum. A written transcript needs to be provided, as well as the actual draft video or audiotape. If a video or audiotape is not available at the time the review request is made, then a detailed description of the planned broadcast would need to be provided.

In any case, if the actual visual or audio part is not pre-reviewed, this office can only offer suggestions on the written words. This is because the presentation of the text in video or audio may include other factors, such as tone and pictures, which may make a difference in the overall message. The same standards of being informational and neutral must be maintained in all aspects of the final publication.

What about public access cable channels and how the ORS 260.432 restrictions apply?

Many local jurisdictions have a public access cable channel on which the governing body's regular business meetings are broadcast - often live and then possibly repeated as a set schedule. The programming may also be made available afterwards via the government agency's official website, as a type of public record. Questions arise as to how this programming should be handled if an elected official (who may personally advocate on election issues at any time) or a private individual attending the public meeting advocates a political position during the routinely taped meeting. The concern is whether the full, un-edited taping may later be re-broadcast and posted on the government agency's website, since public employee work time is used.

The optimal advice and safest way to ensure compliance with ORS 260.432 in these circumstances is to edit out the portions of the taped public meeting that contain political advocacy prior to posting it on the jurisdiction's website or re-broadcasting it after the original event on the public access cable channel. A disclaimer could be added as to why it was edited and that the full public record version would be made available by request on a video or DVD. This is because taped recordings made

available at a public library or other place, upon a public records request, would not be considered as problematic as a link on the county's website or a county cable channel program.

The jurisdiction is advised to be cautious in these circumstances, but there are situations in which political advocacy is expressed at such a meeting where public employee work time would not be a violation even if it were re-broadcast or posted on the web. If the political advocacy occurs during a time of planned discussion open to all candidates for an office or sides of a political issue (see Candidate and Measure Debates on page 4), there would not be a violation by public employees involved in taping, broadcasting and re-broadcasting the event, un-edited. Another set of circumstances would be if an elected official were to express his opinion on the jurisdiction's up-coming ballot measure during a time routinely allotted for his communication and this is known ahead of time. In this case a public notice should be posted ahead of time, which announces that a public testimony portion will be allowed at the meeting after those remarks for any citizen's remarks on the measure. Those circumstances would make re-broadcasts using public employee work time not in violation.

We note that in the situation where the political advocacy expressed by an elected official or private individual is not pre-planned, scripted or known in advance by a public employee, then the original taping and broadcast of the meeting using public employee work time would not be a violation. If the political advocacy comments are very minimal, that would not likely indicate a violation, even if the meeting is un-edited and re-broadcast on the public agency's website. However, if the political advocacy is substantial, then for the taping to be re-broadcast or posted on the jurisdiction's website, it should be edited to remove that portion.

However, if an elected official uses a taped meeting to promote his or her own candidacy for re-election, even if it is not pre-planned or known in advance by a public employee, unless a portion of the meeting is set up as a candidate debate (see page 4), then public employee work time must not be used to re-broadcast that portion or post it on the jurisdiction's website

(unless the elected official's comments are very minimal and indirect).

As the circumstances in this area could greatly vary, as always, caution is given as to the use of any public employee work time used for these and similar purposes.

WEBSITES AND E-MAIL

Websites and e-mail are now another common method for communication by governing bodies. Each agency must make it a priority to ensure 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.

E-mail

An e-mail that supports or opposes a political committee, election petition, candidate or measure and that is sent or forwarded on a public employee's work time 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 or who forwarded it. It is not necessarily a violation of election law ORS 260.432 by a public employee to receive a political advocacy e-mail, even if the employee receives it on a work computer.

The mere act of opening and reading a political e-mail sent to them by someone else, not at their request, does not constitute promoting or opposing a candidate, political committee, election petition or measure on public employee work time. If, however, the public employee takes further actions with the political e-mail on their work time, such as making copies of the political email and distributing it or forwarding it to others in order to communicate the political advocacy, there would be a violation.

A public employee must not go beyond personal expression of personal opinions on a political issue.

May a supervisory public employee or elected official send an email that contains political advocacy to other public employees?

A supervisory public employee or elected official of the jurisdiction should not send an email to the agency's public employees that contains any political advocacy. Even if such an email

appropriately cautions the recipient public employees against campaigning while on the job during work hours, the email would violate ORS 260.432(1) if it suggests in any way that the public employees should take a particular action to support or oppose candidates for public office, ballot measures or other election issues. This is because such a request made in official capacity to a subordinate would be considered a command (see pages 2 and 18 for more information). (In addition, if the supervisory public employee acted in his or her official capacity, they would violate ORS 260.432(2) themselves for using work time for political advocacy.)

By sending political advocacy emails to staff and asking them to pass the information on to others, this places the employees in a tenuous position. If the email recipients forward the advocacy information to other staff while on the job during work hours, they would also violate election law.

Websites

A public agency must have proper safeguards and oversight necessary to maintain the integrity of an **official website** to ensure the contents do not reflect political advocacy. Any public employee who uses work time to produce a website that is political advocacy would be in violation of election law. Whoever is ultimately responsible for the website would also be responsible for its content.

The agency must also be cautious about the links that are included in the public agency's website. On page 6 it is noted that if a public agency allows one political group to use public facilities, all groups should have the same opportunity. Along the same lines, if a link is provided to any political group on one side of the issue, links should also be provided to any other known political group of the opposite view.

May an elected official, who is also a candidate for re-election, mention the official public agency's website in his or her own campaign publication?

A question was asked about whether an elected official up for re-election, could mention the official government website name in a campaign publication. For instance, the candidate's purpose might be to refer to information on "community issues." It is understood that no public employee work time was used to produce or distribute this campaign publication (a public employee may help with campaign efforts if it is

strictly voluntary on their part and only done on the public employee's personal, off-duty time).

The only tie to the government agency is the reference to and inclusion of the agency's website address in the campaign flyer. The reference to the public agency website is not, for instance, to refer a reader to go to the site to find out about the elected official's candidacy or to contact them for campaign purposes. Based on these circumstances, there is no indication of a violation of state election law based solely on the specific reference to a public agency's website in the campaign flyer.

Because an elected official is not considered a "public employee" for purposes of ORS 260.432, they may advocate for or against candidates, election petitions, measures or political committees at any time. It is presumed that no public employee work time will be used to prepare or distribute this flyer. It would not be a violation of state election law for this candidate or any other candidate for the office to refer to and cite a government website in a campaign publication, solely as a source of information on community issues.

The reverse would be the problem – a public agency's website must not include a reference to or a link to a candidate's campaign website, unless it references to or includes links to all candidates for the same office (or at the least allows equal access). For instance, the Secretary of State's Elections Division contains a list of all state candidates, with their names, addresses, any email address they wish to include as well as any website address they wish to include as public information. This is done as a part of the Election's Division's role as filing officer for state candidates, for public information purposes, and is handled equitably amongst all such candidates.

However, it would be a possible violation for an elected official who is running for re-election to use the government agency's website to post campaign advocacy or to include a link to their campaign website, in that there would be some public employee involvement – even if it may be minimal as to the amount of time; at the least, a public employee in their official capacity would be responsible for the public agency's website content.

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 2006.

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

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, political committee, 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 moneys in excess of the amounts provided by law, 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. The suit would have

to prove the expenditure constitutes malfeasance in office or willful or wanton neglect of duty.

Lastly, we want to extend an offer to governing bodies to review any draft material about a ballot measure prior to its publication. We hope the advice we offer will be helpful and prevent concerns or complaints by the public. If you have questions about ORS 260.432 or other election laws, please contact the Secretary of State, Elections Division or your local elections office. Election officials are dedicated to helping citizens, public officials, candidates and political committees comply with Oregon law. Contact these offices to assist you with any questions.

Secretary of State, Elections Division
255 Capitol St NE, Suite 501
Salem, OR 97310
tel: 503-986-1518, fax: 503-373-7414
web: www.sos.state.or.us

CONTACT INFORMATION FOR OTHER INFORMATION SOURCES

Other Information Sources Index (note: for each subject, the contact information is listed in alphabetical order in the table below this index):

Subject	Contact #	Subject	Contact #
Automated call regulations	B	IRS	H
Business regulations	A	Lobbyist registration laws	D
Conflict of interest restrictions and disclosure	D	No call list restrictions	B
Consumer Hotline	B	Nonprofit entity	L
Consumer related complaints	B	Oregon business guide	A
County Elections	C	Oregon Department of Revenue	I
Economic Interest, Statements of	D	Payroll tax information	A
Employer Registration	A	Political signs visible from state highway	K
Employer/employee responsibilities	J	Public meetings, as to executive sessions	D
Ethics laws	D	Public records petitions	B
Executive session public meetings	D	Radio and Television regulations (FCC)	G
Federal Candidates and Federal Election regulations	E	Raffle license	L
Federal Communications Commission (FCC)	G	Safety and health regulations	A
Federal Elections Commission (FEC)	E	State Seal, use of regulations	M
Federal Hatch Act, Federal Employees	F	Statements of Economic Interest by public officials	D
Federal Reporting requirements (IRS)	H	Use of public office for personal gain restrictions	D
Income Tax Credits for political committee	I	Wage & hour provisions	N
Independent Contractors	J	Workers' compensation	A

CONTACT INFORMATION FOR OTHER INFORMATION SOURCES

A	<p>For questions regarding BUSINESS REGULATIONS contact: (information on compliance with business regulations, including payroll tax information, employer registration, workers' compensation and safety and health requirements, contact Secretary of State, Corporations Division. It publishes the Oregon Business Guide, a basic guide and checklist for new employers).</p> <p>Secretary of State, Corporations Division Business Information Center, Public Service Building 255 Capitol St NE Suite 151 Salem OR 97310-1327 Phone: (503) 986-2200 Email: BusinessRegistry.sos@state.or.us Website: www.filinginoregon.com</p>
B	<p>For questions about CONSUMER RELATED COMPLAINTS, no call list restrictions, automated call regulations and public records petitions, contact Oregon Attorney General's Office, Department of Justice</p> <p>Mailing address: Oregon Department of Justice 1162 Court Street NE Salem, OR 97301-4096 General phone number: (503) 378-4400</p>

(continued next page)

CONTACT INFORMATION FOR OTHER INFORMATION SOURCES (cont.)	
	<p>General email address: doj.info@state.or.us **Public records petitions must be mailed directly to the Department of Justice.</p> <p>For consumer-related matters, call the Attorney General's Consumer Hotline between the hours of 8:30 a.m. to 4:30 p.m. 378-4320 from Salem 229-5576 from Portland (toll free) 1-877-877-9392 elsewhere in Oregon (toll free) email: consumer.hotline@doj.state.or.us</p>
C	<p>For questions about COUNTY ELECTIONS, contact information is available at:</p> <p>Go to Website: www.sos.state.or.us - select link to "Elections," then select link to "Federal, State & County Officials."</p>
D	<p>For questions regarding ETHICS LAWS, ENFORCEMENT OF OREGON'S GOVERNMENT, which include matters involving conflicts of interest, disclosure of use of public office for personal gain, executive session provisions of public meeting laws, lobbyist registration laws and statements of economic interest filed by public officials contact:</p> <p>Oregon Government Ethics Commission Morrow Crane Building 3218 Pringle Rd SE, Ste. 220 Salem OR 97302-1544 Phone: (503) 378-5105, Fax (503) 373-1456 Website: www.gspc.state.or.us</p>
E	<p>For questions regarding FEDERAL CANDIDATES OR FEDERAL ELECTION REGULATIONS, contact:</p> <p>Federal Elections Commission 999 E. Street NW Washington DC 20463 Phone: (800) 424-9530, Fax: (202) 219-8500 Website: www.fec.gov</p>
F	<p>For questions regarding the FEDERAL HATCH ACT, APPLICABLE TO FEDERAL EMPLOYEES, (including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants - check with your employer if questions on applicability).</p> <p>U.S. Office of Special Counsel 1730 M St. NW, Suite 201 Washington, D.C. 20036-4505 Phone: (800) 854-2824 Website: www.osc.gov</p>
G	<p>For questions regarding FEDERAL REGULATIONS ON RADIO AND TELEVISION BROADCASTS contact:</p> <p>Federal Communications Commission 445 12th St. SW Washington DC 20554 Phone: (888) 225-5322, Fax (866) 418-0232 Website: www.fcc.gov</p>

CONTACT INFORMATION FOR OTHER INFORMATION SOURCES (cont.)	
H	<p>For questions regarding FEDERAL (IRS) REPORTING REQUIREMENTS FOR POLITICAL COMMITTEES (See below for state), contact:</p> <p>Internal Revenue Service Phone: 1-800-829-1040</p>
I	<p>For questions about INCOME TAX CREDITS FOR POLITICAL CONTRIBUTIONS, contact:</p> <p>Oregon Department of Revenue Revenue Building 955 Center St NE Salem OR 97301 Phone: (503) 378-4988 or 1-800-356-4222 A website document: http://www.oregon.gov/DOR/PERTAX/docs/101-622.pdf</p>
J	<p>For information about INDEPENDENT CONTRACTORS AND EMPLOYER/EMPLOYEE RESPONSIBILITIES, contact:</p> <p>Oregon Employment Department Tax Section 875 Union St NE Salem OR 97311-0030 Ph: 503-947-1488, fax 503-947-1488, fax (503) 947-1487 Email: taxinfo#emp.state.or.us or www.oregon.gov/employ/tax</p>
K	<p>For questions regarding POLITICAL SIGNS THAT ARE VISIBLE FROM STATE HIGHWAYS contact:</p> <p>Oregon Department of Transportation 355 Capitol St. NE, Rm. 135 Salem, OR 97301-3871 Phone: (888) 275-6368 Ask ODOT; or 503-986-3934 Direct; and Fax: (503) 986-3432 They have an email also: Ask.Odot@state.or.us An administrative rule: http://arcweb.sos.state.or.us/rules/OARS_700/OAR_734/734_060.html</p>
L	<p>For questions regarding RAFFLE LICENSE, APPLYING FOR, OR STATUS AS A NONPROFIT ENTITY contact:</p> <p>Oregon Department of Justice, Charitable Activities Section 1515 SW 5th Ave Suite 410 Portland OR 97201 Phone: (971) 673-1880, fax (971) 673-1882 Email: charitable.activities@doj.state.or.us Website: www.odoj.state.or.us/ChariGroup/index.shtml</p>

CONTACT INFORMATION FOR OTHER INFORMATION SOURCES (cont.)	
M	For questions regarding enforcement of OREGON STATE SEAL use restrictions: Secretary of State, Executive Office 136 State Capitol Bldg. Salem OR 97301 Ph: 503-986-1500 Fax: (503) 986-1616.
N	For questions regarding WAGE AND HOUR PROVISIONS, ENFORCEMENT OF: Oregon Bureau of Labor and Industries (BOLI) Ph: For information on filing a wage claim call: 971-673-0761 in Portland; 541-686-7623 in Eugene; 541-776-6270 in Medford; or 503-378-3292 in Salem. Spanish speakers are available in Portland, Salem and Medford.

SECRETARY OF STATE, ELECTIONS DIVISION PUBLICATIONS

CANDIDATES:

- State Candidate's Manual: Major Political Party
- State Candidate's Manual: Minor Political Party
- State Candidate's Manual: Nonpartisan
- State Candidate's Manual: Assembly of Electors
- State Candidate's Manual: Individual Elector
- County Candidate's Manual
- Note: for city and special district candidates see the City Elections Manual or District Elections Manual.

INITIATIVE AND REFERENDUM:

- State Initiative and Referendum Manual
- County Initiative and Referendum Manual
- Note: for city and special district initiative and referendum petition processes: see the City Elections Manual or District Elections Manual

CAMPAIGN FINANCE REGULATIONS:

- Campaign Finance Manual - applies to all election jurisdictions
- ORESTAR User Manual for use with the Secretary of State, Elections Division's new electronic campaign finance program

OTHER:

- 2007-2008 Oregon Election Laws
- City Elections Manual (contains candidate and initiative and referendum petition processes)
- County, City and District Referral Manual
- District Elections Manual (contains candidate and initiative and referendum petition processes)
- Election Law Summary for Candidates, PACs and Others memorandum
- Recall Manual
- Restrictions on Political Campaigning by Public Employees memorandum and "Quick Reference" flyer, both about ORS 260.432
- Oregon's Vote by Mail Procedures Manual
- Voting In Oregon pamphlet

You may contact us at:

Secretary of State, Elections Division
255 Capitol St NE, Suite 501
Salem OR 97310-0722
tel: 503-986-1518
tty: (503) 986-1521
fax: 503-373-7414
website: www.sos.state.or.us
(select Elections Division link)

ATTACHMENTS

Examples of Inadvisable Language

ORS 260.432 language

Checklist for Reviewing Draft Documents about Ballot Measures

**Attorney General Letter (10/5/93):
Statutory Restrictions**

Public Employer Notice Form

EXAMPLES OF INADVISABLE LANGUAGE

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. Informational documents produced by governing bodies should be as dispassionate as possible, even if the adjectives used are accurate. Other adjectives that may be inappropriate are “serious,” “critical need” and “important.” In an informational document the reader should be left on their own to come to the conclusion that the issues are important, rather than the information including impassioned descriptions.
- “Maintenance of library funding is requested,” or “Measure 99-72 is a request for voter approval of a revenue bond to pay for construction of the first phase.” The word “requested” and the phrase “request for voter approval” are suggestive of appeals in favor of the measure. Suggested alternatives are, “The purpose of the levy is to maintain library funding” and “Passage of Measure 99-72 would authorize a revenue bond to pay for construction of the first phase.”
- “This measure will renew the support for public libraries.” Use of the phrase “support for” lends a positive tone in favor of the measure. A suggested alternative is, “The levy is being proposed to maintain library funding for three more years...”
- “The county is asking (or seeks authorization from) voters to approve funding that will maintain the current level of services.” This wording is persuasive as it implies that the county is asking voters to approve the measure. A suggested alternative is, “Measure 99-84 is proposed to maintain the current level of services.”
- “We can’t afford to wait,” and “Why is the school bond so important?” These sentences are overly emotional, a matter of opinion, and therefore persuasive. The voters, upon a presentation of impartial factual information, should make this judgment themselves.
- “The District Board believes this solution would receive public support.” This may be a true statement, however it lends itself to a persuasive tone, because of the implication that the District is suggesting this solution is worthy of public support. The inclusion of the term “public support” in and of itself lends a positive tone.
- “The best way to relieve overcrowding is to build a new high school.” This sentence inappropriately uses the word “best” to qualify and describe the proposal. A suggested alternative is, “This measure proposes to address overcrowding in our schools by building a new high school.”
- “City of Anytown Public Schools are FULL.” The words of this sentence are not necessarily advocacy, however this sentence illustrates how the formatting and emphasis of words can contribute the tone of a document being persuasive.
- “Partners like you ... assure that our community.... can rely on quality of life we live here...” (Emphasis added.) We would advise omission of this sentence, as it is persuasive: personalized and emotional.
- “Preserve, Protect and Maintain.” This heading, which seems to be the slogan for what this bond is about, is almost too short and so doesn’t convey neutrally what the measure does – it just seems to promise that this bond would do these positive things.

EXAMPLES OF INADVISABLE LANGUAGE (continued)

- "Just as it is important to protect our personal investment in our cars and our homes, it is important that our community protect its investment in _____." This sentence includes reasoning that is presented in a personalized, persuasive manner.
- "Prosecuting Offenders for Better Public Safety." This is an example of a phrase that sounds like a campaign slogan, which is not impartial.
- "The cost each month is only about the cost of two hardbound books!" This sentence is persuasive, as the message it implies is that the measure should be supported, since the cost "isn't so much."
- "We strongly recommend everyone register to vote and do what you can to keep our schools intact." Urging voter participation is not in itself an election law violation. However, linking it with the "do what you can," impliedly urges a yes vote in order to "keep our schools intact."

STATUTE

ORS 260.432

ORS 260.432(1) states:

“No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to 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.”

ORS 260.432(2) states:

“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.”

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:”

(see attached notice)

ORS 260.432(4) states:

“As used in this section:

(a) ‘Public employee’ does not include an elected official or a person appointed as a director to the board of a pilot education service district under section 11, chapter 828, Oregon Laws 2005.

(b) ‘Public employer’ includes any board, commission, committee, department, division or institution in the executive, administrative, legislative or judicial branch of state government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations.”

Note: the “or a person appointed as a director to the board of a pilot education service district...” in ORS 260.432(4)(a) is sunset (deleted) in 2012.

OFFICE OF THE SECRETARY OF STATE

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION

JOHN LINDBACK
DIRECTOR

255 CAPITOL ST NE, SUITE 501
SALEM, OREGON 97310

ELECTIONS—(503) 986-1518

**Checklist Recommended for Reviewing Draft Documents about Ballot Measures
Produced By Government Agencies (ORS 260.432) (updated 2/2008)**

Note: this is a summary of factors to review for. Review the memorandum, "2008 Restrictions on Political Campaigning by Public Employees," for detailed advice in each category.

Check your draft document about a ballot measure for the following factors:	
a.	Timing of the publication.
b.	Must not contain any explicit language urging a yes or no vote for the measure. Some examples are provided in the detailed memorandum referenced above.
c.	Balance of factual information - include cost to taxpayer with specific examples, address all aspects of a measure rather than just selected aspects, include other options in an impartial manner.
d.	Overall impression of neutrality, not persuasive or speculative, and backed up as appropriate by citations of source of information or some substantiating information or citation to authority to which a voter might refer to confirm the statements.
e.	Tone of the publication, dispassionate rather than enthusiastic.
f.	Should not be personalized or use personalizing pronouns, advise against personalized letter format. Do not use personal words like, "our," "we," "I," "us," etc.
g.	Should not use the word "will," in describing the results of passage of the measure - the word "would" is a better alternative.
h.	Should not, in most contexts, use the word "need," in describing the purpose of the measure. Offer basic facts and let readers make own assessment of what is "needed."
i.	Should not lend a positive (or negative) tone by use of headings, lead lines, words or phrases.
j.	Should not include quotes, even from elected official.
k.	Graphics, checkmarks and photographs - graphics and photographs used must not express advocacy and checkmarks should not be used at all.
l.	Should not include phrases similar to campaign slogans, if expresses advocacy.
m.	Information about how to contact supporting or opposing political committees, should not be included unless both sides are listed.
n.	Reporting of an elected official's position on a ballot measure or an elected official's article advocating a position on a measure should not be included.
o.	Information about the "50% voter turnout requirement," needs to be correct and impartially worded.

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.

THEODORE R. KULONGOSKI
ATTORNEY GENERAL



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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

October 5, 1993

Colleen Sealock, Director
Elections Division
Office of the Secretary of State
Room 141 State Capitol
Salem, OR 97310

RE: Statutory Restrictions on Promoting or
Opposing Ballot Measures

Dear Ms. Sealock:

Oregon voters will face a number of contentious ballot measures at upcoming elections, and some of these measures will effect, directly or indirectly, the operation of state and local government. You have asked what restrictions may apply to public officials promoting or opposing ballot measures.

1. Statutory Restrictions on Public Employee Political Activities

ORS 260.432^{1/} prohibits political activities by public employees while "on the job during working hours." In addition, ORS 294.100(1) makes it unlawful for "any public official" to spend public funds for any purpose not authorized by law, and subsection (2) of that statute makes public officials personally liable for money improperly spent. This statute has been found by Oregon courts to apply to public officials who used public funds either to support or oppose measures which were before the voters.

ORS 260.432^{2/} provides, in relevant part:

(1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the adoption of a measure or the recall of a public office holder.

(2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote any political committee or promote or oppose the

nomination or election of a candidate, 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.

* * * * *

(4) As used in this section:

(a) "Public employee" does not include an elected official.

(b) "Public employer" includes any board, commission, committee, department, division or institution in the executive, administrative, legislative or judicial branch of state government, and any county, city, district or other municipal corporation or public corporation organized for a public purpose, including a cooperative body formed between municipal or public corporations.

(Emphasis added.)

Thus, ORS 260.432 prohibits "public employees" from promoting or opposing the adoption of a measure while on the job during working hours. It also prohibits "any person" from requiring or attempting to require a public employee to give money, service or anything of value to promote or oppose the adoption of a measure.

2. Who is a "Public Employee" Subject to these Restrictions?

We believe that "public employee," as used in ORS 260.432, includes not only rank and file employees but also supervisors, appointed agency administrators and appointed board and commission members at both the state and local government level.³¹ ORS 260.432(4) provides that "public employee" does not include elected officials. The implication of this definition is that "public employee," for purposes of ORS 260.432, does include all state and local government public employees and officials other than elected officials. For example, appointed members of state boards and commissions are included within this definition, but elected local school board members are not included. This result is consistent with the Attorney General's conclusion in a 1968 opinion that a member of the Industrial Accident Advisory Committee, a public appointee, is a public employee for purposes of ORS 260.432. 33 Op Atty Gen 473 (1968).

Thus, only elected officials lawfully may engage in advocacy for or against a ballot measure while on the job during working hours. However, even elected officials may not "coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose * * * the adoption of a measure." ORS 260.432(1).

3. Penalties

The penalty for failure to comply with ORS 260.432 potentially is quite severe. ORS 260.995 authorizes the Secretary of State to impose a civil penalty of up to \$250 for each violation of ORS 260.432. However, the more significant potential⁴⁷ penalty is found in ORS 294.100(1), which provides:

(1) 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.

ORS 294.100(2) makes public officials who violate subsection (1) civilly liable for money improperly spent, and authorizes suit by the district attorney or taxpayers to seek recovery of that money from the officials who authorized the expenditure.

Oregon courts on several occasions have found this statute to apply to public officials who used public funds either to support or oppose measures which were before the voters. In Porter v. Tiffany, 11 Or App 542 (1972), the Court of Appeals held that members of the board of directors of the Eugene Water and Electric Board (EWEB) were personally liable under ORS 294.100 for EWEB funds spent in connection with two ballot measures. One of those measures authorized the sale of bonds to be used by EWEB to acquire a partial interest in a nuclear power plant. The EWEB funds were used for television, radio and newspaper advertising, voter surveys and other materials to support a favorable vote on the measure. The other measure would have delayed the construction of a nuclear power plant for four years. EWEB used its funds for advertising, polls and other materials in opposition to this measure. The court found that the board had no authority to authorize payments for these activities, and ordered the board members personally to reimburse EWEB for the amount expended in promoting or opposing the measures.

Burt v. Blumenauer, 299 Or 55 (1985), involved a taxpayer suit under ORS 294.100 against three county commissioners, the county executive, and two county health officers for unlawful expenditure of public funds. The money was used to pay the salaries for persons, including one of the health officials, who staffed a "fluoridation public information project," and to pay for advertising, posters and polls to promote the benefits of fluoridation. This "information project" was undertaken at a time when an anti-fluoridation measure was on the City of Portland ballot. The court, citing ORS 260.432, found that if the officials established the "information project" with the purpose of opposing adoption of the anti-fluoridation measure, they would be subject to personal liability for public funds spent to oppose the measure. The case was remanded to the trial court to determine whether the expenditures were, in fact, made for the purpose of opposing the measure.

Note that in both of these cases some of the defendants were elected officials. ORS 260.432(4) was amended to exclude elected officials from the definition of "public employee" after these cases were decided. Nevertheless, this change in the law would almost certainly not have changed the results of these cases. We believe that the exclusion of elected officials from the

definition of public employee permits elected officials to give speeches or interviews in which they urge support of or opposition to ballot measures, even when those activities take place "on the job during working hours." We do not believe, however, that elected officials may direct that public resources, including use of public employee's time, be used to support or oppose the measure. This would appear to result in violation of ORS 260.432(1) by the elected official and ORS 260.432(2) by the public employee.

4. Permitted Activities

This is not to say that public officers and employees must remain entirely silent with regard to measures pending before the voters. The Attorney General has concluded that 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.⁵¹ See 35 Op Atty Gen 169 (1970), discussing use by a school district of district funds to inform voters of facts relevant to a school budget election. 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 the measure. Letter of Advice OP-3322 to Ray Robinett, Washington County District Attorney, July 24, 1975.

Moreover, ORS 260.432(2) specifically states that it does not restrict the right of public employees to express their personal political views. Thus, public employees may campaign for or against measures or candidates in their individual, as opposed to official, capacity while off the job. The Department of Justice also has concluded that the last sentence of ORS 260.432(2) authorizes public employees to express their personal political views while on the job, through such activities as wearing campaign buttons, subject to limited regulation by the public employer to the extent necessary to avoid interference with the employee's duties and the employer's mission. Letter of Advice to C. Gregory McMurdo, Deputy Secretary of State, October 10, 1984 (OP-5750). We also believe that a public employer may establish policies restricting expression of personal political views by employees where such expression reasonably may be interpreted by others as officially endorsed by the public employer. For example, an agency might have policies prohibiting its receptionist from displacing a political poster in his or her work area in view of the general public, or prohibiting uniformed employees from wearing any badge, insignia or button, political or otherwise, which is not an authorized part of the uniform.

Of course, an agency or other public body also must have legal authority for any expenditure of public funds. That is, the expenditure must be for the purpose of carrying out a task or program given to the public body by the legislature or by its charter or other enabling act. When there is a question whether the expenditure may be for the purpose of affecting the vote on a measure, there is some indication that Oregon appellate courts will apply a strict standard in determining whether the agency has legal authority to make the expenditure. In Porter v. Tiffany, supra, for example, EWEB was authorized by the city charter to "improve, extend, enlarge, and acquire water and

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electrical utilities systems * * * ". The court held that this language did not authorize EWEB to support a ballot measure to raise money to extend electrical service, because the power to raise money for this purpose was given to the city council, rather than to EWEB. Likewise, the legislature and the Governor have the responsibility for assuring adequate funds for operation of state government agencies. Thus, even purely informational activities related to a ballot measure should be carefully examined to ensure that the public body has statutory or other legal authority to engage in those activities.

5. Conclusion

In summary, public employees, including non-elected officials, may not support or oppose measures pending before the voters "while on the job during working hours." Public employees may campaign for or against measures or candidates while off the job, in their individual capacity. They may express their personal political views while on the job through such activities as wearing campaign buttons, subject to limited regulation by the employer to avoid disruption of the workplace or suggesting to members of the public that the employee's personal political views are endorsed by the public employer. In addition, public bodies generally may provide information to the public concerning their activities. However, when the information relates to a measure before the voters, special care should be taken to ensure that the information is fairly presented and is not used to lead voters to support a particular position in the election. In view of the potential financial penalties for violation of ORS 260.432 and 294.100, we urge agencies to consult with counsel before embarking on any informational program related to a ballot measure.

Sincerely,

Is: DONALD C. ARNOLD

Donald C. Arnold
Chief Counsel
General Counsel Division

DCA:bjs/JGG07C41
c: Theodore R. Kulongoski, Attorney General

¹⁷ Federal law also limits the political activities of certain state and local government employees. See 5 USCA § 1501 et. seq. These statutes apply generally to officers and employees of state and local government executive branch agencies, boards, commissions or departments which are financed in whole or in part by federal loans or grants, but excluding educational and research agencies. The restrictions in these statutes are similar to, although in some respects stricter than, the provisions of ORS 260.432.

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^{2/} This statute was amended by Or Laws 1993, ch 493, § 106 to add "gathering of signatures on an initiative, referendum or recall petition" to the list of activities referenced in ORS 260.432(1), (2) and (3). This amendment is effective November 4, 1993.

^{3/} The Oregon Court of Appeals has held that ORS 260.432 applies to both state and local government employees, and that it preempts any inconsistent local government ordinance. Williams v. City of Astoria, 43 Or App 745 (1979).

^{4/} ORS 294.100 is found in a chapter relating to county and municipal finances, yet it is applicable to "public officials" generally. We believe it is likely that the statute would be found to apply to all public officials. Even if it does not, however, other statutes which lead to the same result clearly do apply to state officers. ORS 293.515, for example, authorizes the Governor to withhold the salary of state officers or employees who fail to settle accounts with respect to disposition of public funds or property when use of those funds or property is questioned by the Secretary of State during his audit of the agency. Similarly, ORS 293.260 authorizes the Secretary of State to require persons who have received moneys or property belonging to the state for which they have not properly accounted to return the money or property to the state.

^{5/} Oregon election law recognizes that certain public bodies may provide informational material concerning measures which they have referred to the voters. ORS 260.522(3)(b) provides an exemption from certain requirements for identification of the source of a political publication for

(b) Any written matter relating to a measure at any election prepared under the direction of the governing body of the city, county or district that referred the measure if the written matter is impartial, neither supports nor opposes passage of the measure and contains the name and address of the city, county or district.

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. (ORS 260.432)