

Restrictions on Political Campaigning by Public Employees ORS 260.432

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RESTRICTIONS ON POLITICAL CAMPAIGNING BY PUBLIC EMPLOYEES

ORS 260.432

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

On-the-Job Political Activities by Public Employees

Introduction:

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

Statutes:

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

ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in promoting or opposing any political committee or any initiative, referendum or recall petition, measure or candidate "while on the job during working hours." *NOTE: This subsection does not apply to elected public officials but does apply to all*

other public employees including the staff of elected public officials. Public officials who are not elected—whether paid for their service or not—such as members of appointed boards and commissions, are considered to be "public employees" for purposes of this statute.

Restrictions and Allowable Activities

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

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

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

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

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

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

Examples of Restrictions on Public Employees

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

Examples of Allowable Activities for Public Employees

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

Provision of Information

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

layoffs; but the public employer must not threaten employees with financial loss if they vote one way or another.

- A public employee may address election-related issues while on the job, in a factual and unbiased manner, if such activity is legitimately within the scope of the employee's normal duties. For instance, the political process is a subject that might reasonably be discussed in a high school social studies class. In this context, the focus on a specific election for illustrative purposes is not inappropriate as long as the employee's presentation of the material does not support or oppose any particular candidate, petition or ballot measure.

Telephone Calls

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

Salaried vs. Hourly Staff

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

Use of Public Buildings and Other Facilities

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

Elected Officials

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

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

For instance, support staff can not prepare press releases or constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, contribution and expenditure (C&E) report forms or related correspondence during their work time. Furthermore, care must also be taken in soliciting "volunteer help" during employee breaks, or other personal time, as the employee may feel required to participate.

Written Material Relating to Measures

Factual versus Promotional Material Prepared by Public Employee

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

Determining Whether Material is Campaign Advocacy:

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

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