

Campaign reform law: Use of public funds restricted

By Geoff Wilson, CML General Counsel

Ballots in statewide or local elections often include issues of profound importance to Colorado municipalities. As community leaders, municipal officials can and should become actively involved in the public discussion of these issues. However, the state Fair Campaign Practices Act places significant restrictions on the use of public funds for advocacy purposes or for dispensing information in connection with local or statewide ballot issues (Section 1-45-117, C.R.S.).

The FCPA restrictions apply once a statewide petition has been submitted for title setting, once a title has been set on a local initiative or referendum, and upon final action of the governing body placing a referred measure on the ballot. These guidelines are intended to provide municipal officials and employees with general guidance concerning what they may or may not do, consistent with the FCPA. However, the municipal attorney should be consulted before any action is taken that could be viewed as subject to the public-funds restrictions in the FCPA.

Permissible activities

It is permissible to do the following in campaigns in support of or in opposition to a proposed measure:

1. The local governing body may take a position of advocacy on the issue. The governing body may pass a resolution and take a public stand urging the electorate to vote for or against any matter. Staff background research that leads to passage of a resolution is also permissible.

Local governments may report the passage of or distribute such

resolutions "through established, customary means, other than paid advertising, by which information about other proceedings of [the governing body] is regularly provided to the public" (such as via a local government newsletter or cable television broadcast).

2. The act provides that any public official who has policy-making responsibilities may spend up to \$50 of public money on phone calls, letters or other activities "incidental to expressing his or her opinion on any such issue."

This provision is intended to help public officials avoid technical violations of the act when they are otherwise endeavoring to avoid use of public funds in their advocacy activity; it should not be viewed as affirmative authority to spend public funds on advocacy.

3. Elected officials may speak out on the issues presented on the ballot. There is no limitation in the FCPA on the right of public officials to address any matter before the electorate; the limitation is on expenditure of public funds.

4. Public employees and paid elected officials may work on the campaign and speak out on the issues on their own time. Any public employee who becomes involved in the campaign should document that the effort is done on his or her own time.

If the public employee is on a recorded-hour system, make sure the record reflects that the public employee took time off from public duties to engage in campaign activities.

5. If the local government has a policy permitting public groups to use its facilities for community purposes, it may allow groups opposed to or supportive of the ballot proposition to use those facilities if the policy is applied in an evenhanded fashion.

6. Public employees may respond to unsolicited questions or requests for information about a ballot issue; however, the local government should carefully avoid producing information for distribution that is designed to influence the passage or defeat of the issue.

7. The local governing body may use public funds to develop and distribute a factual summary on any issue that will appear on a ballot in the jurisdiction. The summary must include arguments for or against the proposal, but the summary itself may not contain a conclusion or opinion in favor of or against the proposal.

Impermissible activities

It is impermissible under the FCPA, except as indicated above, to do the following in campaigns in support of or in opposition to a proposed measure:

1. use or expend public funds or supplies;

2. allow employees or paid officers to work on a campaign during their working hours or use any public facility or equipment for the purposes of a campaign;

3. provide transportation or advertising using public property or funds to influence, directly or indirectly, the passage or defeat of any issue; or

4. grant an employee or officer leave from his job or office with the local government, with pay, to work on a campaign.

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