

GUIDELINES FOR ACTIVITIES DURING
SCHOOL DISTRICT BOND AND BUDGET OVERRIDE ELECTIONS

STATUTORY RESTRICTION:*

Section 15-511, Arizona Revised Statutes

A. A person acting on behalf of a school district or a person who aids another person acting on behalf of a school district [one acting with the express or implied consent or assent of the school district or aiding such a person] shall not spend or use school district...resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment [copiers, bulletin boards, telephones, automatic dialing devices, facsimile machines, computers, mailboxes, furniture, vehicles, postage meters, internet connections and any district communication networks, such as school newsletters, public announcement systems or devices, web pages and advertising space in student newspapers], materials [supplies or tools, including but not limited to paper, labels, facsimile paper, pens, pencils, markers, paints, art supplies, food, cafeteria supplies, and postage], buildings [including but not limited to playing fields, parking lots, walls and fencing] or any other thing of value for the purpose of influencing the outcomes of elections [engaging in any activity that is an attempt to persuade persons to vote for or against a particular ballot measure – TEST = DOES THE COMMUNICATION TAKEN AS A WHOLE, UNAMBIGUOUSLY URGE A PERSON TO VOTE IN A PARTICULAR MANNER? THE COMMUNICATION “MUST CLEARLY AND UNMISTAKABLY PRESENT A PLEA FOR ACTION, AND IDENTIFY THE ADVOCATED ACTION; IT IS NOT EXPRESS ADVOCACY IF REASONABLE MINDS COULD DIFFER AS TO WHETHER IT ENCOURAGES A VOTE FOR OR AGAINST OR ENCOURAGES THE READER TO TAKE SOME OTHER KIND OF ACTION”]. Notwithstanding this section, a school district may distribute informational reports on a proposed budget override election as provided in section 15-481, subsection B and C or informational reports on a proposed bond election as provided in section 15-491, subsection D if those informational reports present factual information in a neutral manner, except for those arguments presented as prescribed in section 15-481, subsection B, paragraph 9. Nothing in this section precludes a school district from reporting on official actions of the governing board.

B. The prohibition on the use of public resources to influence the outcome of bond, budget override and other tax-related elections includes the use of school district-focused promotional expenditures that occur **AFTER AN ELECTION IS CALLED** and through election day. This prohibition does not include routine school district communications [*messages or advertisements that are germane to the functions of the school district and that maintain the frequency, scope and distribution consistent with past practices or are necessary for public safety*].

C. This section does not prohibit the use of school district resources, including facilities and equipment, for government-sponsored forums or debates [*any event, or part of an event or meeting, in which the government is an official sponsor, which is open to the public or to invited members of the public, and whose purpose is to inform the public about an issue or proposition that is before the voters*] if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints. The rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted if it does not occur at the same time and place as a government-sponsored forum or debate.

D. An employee of a school district...who is acting as an agent of or working in an official capacity for the school district...may not give pupils written materials to influence the outcome of an election or to advocate support for or opposition to pending or proposed legislation.

E. Employees of a school district...may not use the authority of their positions to influence the vote or political activities of any subordinate employee.

F. Notwithstanding section 15-342, paragraph 8, a school district shall not spend monies for membership in an association that attempts to influence the outcome of an election.

G. Nothing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions.

* Section 15-481, Arizona Revised Statutes, which applies only to budget overrides provides specifically that any distribution of material concerning the proposed increase in the budget shall not be conducted by children enrolled in the school district. It also confirms that a district may use its staff, equipment, materials, buildings or other resources only to distribute the informational report at the school district office or at public hearings and to produce such information as required in the statute.

APPLICATION:*

THE ISSUES IN THESE MATTERS SHOULD BE RESOLVED GENERALLY BY BALANCING THE CONSTITUTIONAL RIGHT OF FREEDOM OF SPEECH AND THE DUE PROCESS AND EQUAL PROTECTION ASPECTS RELATIVE TO ELECTIONS. AS SUCH, ACTIVITIES MAY GENERALLY BE DIVIDED BETWEEN THOSE IN WHICH THE ACTOR IS ACTING AS A PRIVATE CITIZEN, EXERCISING THE ACTOR'S RIGHT OF FREE SPEECH, AND THOSE IN WHICH THE ACTOR IS ACTING IN A CAPACITY FOR THE INSTITUTION, RESPONSIBLE FOR HOLDING THE ELECTION IN AN UNBIASED MANNER.

ACTING IN A CAPACITY FOR THE INSTITUTION, INDIVIDUALS MAY NOT -

- Permit campaign signs, banners, stickers or any item that advocates for or against a measure to be placed in or on school district buildings (including but not limited to playing fields, parking lots, walls and fencing).
- Wear political buttons, T-shirts, hats or other items displayed on their persons or apparel that are designed to influence the outcome of an election in a classroom or other instructional setting.
- In permitting use of school buildings by outside groups for meetings, favor proponents of one side over another, *i.e.*, if access is allowed to proponents of a ballot measure, equal access under the same terms and conditions must be allowed for all opponents of ballot measures.
- Use the authority of their positions when expressing an opinion either verbally or in writing or attempting in any other manner to influence the vote or political activities of any subordinate employee. (Administrators must be careful to avoid even the appearance of exerting any pressure on teachers or other subordinates to support the election. Although employee political activities are generally restricted only during working hours, a subordinate employee's status continues even during off-duty hours. Statements to a subordinate employee during off-duty hours may be taken by the subordinate employee in the context of the employment relationship, even though the superior may not have intended it.)
- Act as an advocate in the election, appearing to be a spokesperson for the District, except, in the case of override elections, at public hearings where at least one opponent speaks.
- Use school mailboxes, telephones or e-mail accounts to distribute a communication for the purpose of influencing the outcomes of elections even if a

* On January 1, 2004, pursuant to section 15-511(H), Arizona Revised Statutes, as amended, the Attorney General provided a "detailed guideline" regarding prohibited activities under such section. The contents of the guideline have been generally incorporated in the following materials, but the guideline should be read in its entirety for specific details.

school district permits some personal, private use of these resources. (School telephone systems shall not be used as telephone banks for the purpose of influencing the outcomes of elections. E-mails to influence the outcomes of elections may not be generated, distributed or forwarded via a school e-mail account.)

- Give pupils written materials to influence the outcome of an election regardless of the fact that no school district personnel, equipment or resources were used to prepare the materials. (This includes flyers prepared by a private citizen group supporting passage of a ballot measure.)
- Permit the school parking lot to be used to permanently park a vehicle displaying signs in the lot during an election cycle, when the owner of the vehicle is not visiting the school for school business or other permitted activities at the school. (On election day, if the school is a polling place, a vehicle displaying electioneering messages may not be parked within the 75 foot limit designated by election officials.)
- Support passage of the election at internal District staff meetings as the time spent would be an inappropriate use of “on duty” time and could also be viewed as an attempt to influence the vote of subordinate employees.
- Pre-approve or otherwise control the content of newsletters, flyers or other material prepared by and published at the expense of private organizations such as a PTA, parent booster club, citizens group or teacher association.
- Review or control the agendas, discussions or positions taken by PTA, parent booster clubs, teacher associations or other organizations.
- Use school district personnel, equipment, materials, buildings or other school resources to solicit contributions to be used in support of or opposition to a ballot measure.

, BUT MAY -

- Prepare and disseminate reports on official actions of the governing board. (Note, however, that a “governing body may not adopt a resolution supporting or opposing an initiative or referendum and then under the guise of ‘reporting on official actions’ mail brochures to all residents.”)
- Receive (but not send) information or literature advocating a position on an election matter if the school district permits private use of school district mailboxes, telephones, and e-mail accounts.
- Conduct non-partisan activity designed to encourage individuals to register to vote and make voter registration forms available on school district property if it regularly does so throughout the year.

- Make publicity pamphlets, early ballot request forms and other election materials published and distributed by government election officials available on school property. (Early ballot request forms must be those prepared by a public election official and may not be those prepared by political committees.)
- Host a non-partisan forum for the purpose of educating voters about the issues at which speakers and/or members of the public discuss the pros and cons of a ballot measure, so long as there is an equal opportunity to present all viewpoints and testimony is given by at least one person opposing the ballot proposition. (See specifically section 15-481(C), Arizona Revised Statutes with regard to override elections.)
- Respond to questions about ballot measures so long as the responses provide factual information in a neutral manner and do not present a clear and unmistakable plea to vote for or against the measures or encourage the person making the inquiry to take some other kind of action in support of or opposition to the measures.
- Rent or lease its buildings and facilities to partisan and ballot measure groups on the same basis and conditions as other groups who are permitted to rent or lease school buildings or facilities.
- Use resources to investigate the fiscal impact of ballot measures on the district or school.
- Make a brief factual, “content neutral” announcement such as “Remember to vote in the Election” or about election date or polling places at any school function or staff meeting (e.g., athletic events, concerts, open houses, holiday programs department meetings) or in school or district publications.

ACTING IN A CAPACITY AS A PRIVATE CITIZEN, INDIVIDUALS MAY -

- Act as advocates and express their opinions or preferences on elections, circulate petitions, solicit contributions and distribute election literature during non-duty time outside the classroom or other instructional settings (which, provided they make it clear they are speaking as private citizens and not on behalf of the school district, includes school-sponsored extracurricular activities), using their own or other private resources, but must not represent that they are acting on behalf of the school district. (At a school function though such individuals are likely to be perceived as “on duty” regardless of what they say, and proving they are not may be quite difficult if personnel are generally expected to be present as part of their jobs. Consequently, it would be better to avoid the risk of a violation and ask that such district personnel not speak at school functions.)
- Wear buttons, place bumper stickers on their cars, wear clothing with political messages, distribute flyers or information, make contributions, talk with

neighbors, friends and members of the community, put up or display signs, make speeches and speak to community or civic groups or engage in any other political activity they choose to in non-instructional settings, as long as they are not using school district or charter personnel, equipment, materials, buildings or other resources. (To the extent the names of personnel are used, they must make it clear that they are acting as private citizens and not on behalf of the District.)

- Park private vehicles with bumper stickers and other electioneering signs or materials relating to an election on school district property for school-related activities or for voting when the school is used as a polling place.

REMEMBER MEMBERS OF THE GOVERNING BOARD ARE “POLITICIANS” AND MAY ACT AS SUCH. EXCEPT FOR OVERRIDE ELECTIONS, FOR WHICH THEY ARE REQUIRED BY STATUTE, ARGUMENTS MAY NOT BE SUBMITTED BY “THE BOARD” FOR INCLUSION IN THE INFORMATIONAL PAMPHLET BECAUSE OF ISSUES REGARDING OPEN MEETINGS. INDIVIDUAL MEMBERS ARE FREE TO SUBMIT ARGUMENTS.

CONSEQUENCES OF VIOLATIONS:

- Civil and criminal penalties are provided for most violations. For each violation of section 15-511, Arizona Revised Statutes, the court may impose a civil penalty not to exceed five thousand dollars plus any amount of misused funds subtracted from the school district budget against a person who knowingly violates or a person who knowingly aids another person in violating this section. The person determined to be out of compliance with this section shall be responsible for the payment of all penalties and misused funds. School district funds or insurance payments shall not be used to pay these penalties or misused funds. All misused funds collected pursuant to section 15-511, Arizona Revised Statutes shall be returned to the school district whose funds were misused.
- Employees are subject to discipline, up to and including termination.
- The county attorney is charged with investigating and prosecuting civil and criminal campaign finance violations and may also bring quo warranto proceedings against abuses in office seeking injunctive of other relief. The attorney general or the county attorney for the county in which an alleged violation of section 15-511, Arizona Revised Statutes occurred may initiate a suit in the superior court in the county in which the school district is located for the purpose of complying with such section.
- Taxpayers may bring their own actions to recover misspent public funds.
- Employees and any other aggrieved parties may have several potential civil causes of action against persons who usurp or violate these laws or violate employee rights.

SOURCES OF ADVICE:

- An attorney acting on behalf of a public school may request a legal opinion of the county attorney or attorney general as to whether a proposed use of school district resources would violate section 15-511, Arizona Revised Statutes.