

COUNTY OF ORANGE
COUNTY COUNSEL

MEMORANDUM

April 21, 2005

TO: Employees of the Sheriff-Coroner Department

FROM: Barbara L. Stocker, Senior Deputy County Counsel
Nicole A. Sims, Deputy County Counsel

SUBJECT: Election Activities

We understand that questions have arisen concerning the legal parameters within which County employees may advocate the passage or defeat of a ballot measure or the election of a candidate for public office. The following is intended as a brief summary of applicable law.

1. As a general rule, public funds may not be spent to advocate passage or defeat of a ballot measure or the election of a candidate for public office.

As stated in *Stanson v. Mott*, 17 Cal. 3d 206, 217, 130 Cal. Rptr. 697 (1976):

“A fundamental precept of this nation’s democratic electoral process is that the government may not ‘take sides’ in election contests or bestow an unfair advantage on one of several competing factions.”

This general principle – that resources provided by all the taxpayers should not be used to support a candidate for election or a position on a ballot measure that only some of the taxpayers support – is the basis of all of the more specific rules set forth below.

2. County employees may not engage in political activities while in uniform.

Government Code section 3206 provides in its entirety as follows:

“No officer or employee of a local agency shall participate in political activities of any kind while in uniform.”

3. Non-elected County officials and employees may not give speeches, may not make public appearances, and may not do staff work in support of or opposition to ballot measures or candidates for elected office during their normal County work hours, unless the time they spend on such activities is charged to personal leave time.

In *People v. Battin*, 77 Cal. App. 3d 635, 143 Cal. Rptr. 731 (1978), an Orange County Supervisor was convicted of violating Penal Code section 424, subdivision 2 (misuse of public funds) for, among other things, utilizing his staff to engage in campaign activities on his behalf during their regular County working hours.

4. County employees may not utilize County property to advocate passage or defeat of a ballot measure or a candidate for elective office, unless that property is a public forum.

The principle enunciated by the court in *People v. Battin* applies not just to the use of County staff time, but also to the use of equipment, supplies and other property provided with County resources. In a nutshell: It is not legal to use County funds **or anything paid for with County funds** for a purpose not authorized by law, and use of County resources to advocate for one side or the other in an election contest generally is not authorized by law. This prohibition covers, but is not limited to, the use for election advocacy or campaigning of County vehicles, County computers, County e-mail, County "In" boxes, County copiers, and County phones (including County cell phones).

The major exception to the rule stated above is for County buildings and land that have become "public fora", i.e., property like sidewalks and parks that customarily are open for public assembly and discourse, and other property that the County has decided to open for public assembly or discourse. County property that is a public forum may be used for political assembly and speech, subject to applicable permit regulations and any other legal restrictions pertaining to the time, place and manner of speaking or assembling. Note, however, that the prohibitions against campaign activities while in uniform or on County time probably still apply to political activities in public fora. Thus, we believe it probably would be illegal for you to participate in a political rally in the Civic Center while on County time or while in uniform, but it would be legally unobjectionable for you to participate in the same rally on your own time and out of uniform.

5. As a general rule, County funds may not be used to produce or distribute more than two hundred (200) unsolicited copies per month of a document that "features" an elected official, even if that document is politically neutral.

The foregoing summarizes the general principle of the 1988 "mass mailing" initiative, Proposition 73, as it has been narrowly construed in the regulations of the California Fair Political Practices Commission. These regulations are fairly complex, and we would be happy to answer specific questions that you may have about them.

6. As a general rule, neither candidates for County office nor County officials or employees may solicit political contributions from County employees or applicants for County employment.

Government Code section 3205 states in its entirety:

“(a) An officer or employee of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

(b) A candidate for elective office of a local agency shall not, directly or indirectly, solicit a political contribution from an officer or employee of that agency, or from a person on an employment list of that agency, with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency.

(c) This section shall not prohibit an officer or employee of a local agency, or a candidate for elective office in a local agency, from requesting political contributions from officers or employees of that agency if the solicitation is part of a solicitation made to a significant segment of the public which may include officers or employees of that local agency.

(d) Violation of this section is punishable as a misdemeanor. The district attorney shall have all authority to prosecute under this section.

(e) For purposes of this section, the term ‘contribution’ shall have the same meaning as defined in Section 82015 [i.e., ‘a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes’].”

7. No campaign contribution may be received or delivered in any County office or in any other County building.

Orange County Codified Ordinance section 1-6-13 provides as follows:

"Sec. 1-6-13. Transmittal of campaign contributions in County office buildings.

(a) No person shall receive or personally deliver or attempt to deliver a contribution in any office which the County owns or for which the County pays the majority of the rent

(b) For purposes of this section:

- (1) *Personally deliver* means delivery of a contribution in person or causing a contribution to be delivered in person by an agent or intermediary, other than the United States Mail.
- (2) *Receive* includes the receipt of a campaign contribution delivered in person."

Although this ordinance expressly covers only County offices, we believe the principles of *People v. Battin*, *supra*, would prohibit the receipt or delivery of campaign contributions in or on any County property other than public fora.

8. We recommend that when publicly stating an opinion on an election issue, you do not identify yourself as a Sheriff-Coroner employee, or, if you do so identify yourself, you make clear that the opinion you are expressing is your own and not the Sheriff-Coroner's or the County's.

We make this recommendation so that you can avoid creating even the appearance that either you or your superiors in the Department are using County resources to advocate for one side or the other in an election campaign.

Although the laws outlined above restrict political activity while in uniform, while on County time and when using County resources, they do not restrict your off-duty political activity, as long as you are not in uniform or using County resources.

We hope the foregoing will assist you.



Nicole A. Sims

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