



**GUIDELINES FOR SPECIAL DISTRICTS
REGARDING BALLOT MEASURES**

I. General Rule-Information, Not Advocacy; Explanation Not Promotion

- Special districts may not spend money to support or oppose ballot measures placed before the electorate. It is permissible, however, for special districts to expend public funds for informational purposes to provide the public with a “fair presentation” of the facts relating to a ballot measure which directly concerns the special district. It is also permissible for special districts to formally adopt a position on a ballot measure and educate the public on the measure, its impacts on the district, and the basis for the district’s position.
- If public funds or special district equipment or facilities are used to provide information regarding a ballot measure, that information provided by the special district must be accurate and balanced and represent supporting as well as opposing views.
- However, if a special district has formally adopted a position on a ballot measure, and is **responding to a request** from the public, the media, or some other source to explain the district’s position, then the district may merely state and explain the district’s position without being obligated to present all possible views on the issue.
- Special district employees and directors retain their free speech guarantees to express their personal viewpoints on any ballot measure. The right of free speech is not forfeited because of any association with a special district. Therefore, special district employees and Board members may express their personal opinion on ballot measures and urge the support or opposition to a ballot measure in a public forum **so long as no public funds are expended**, including district reimbursement of a district employee or Board member’s expenses incurred making such a presentation. If a district’s funds or facilities are involved in any way in the activity of an employee or director with respect to a ballot measure, that individual will be deemed to be acting as a representative of the district and will be required to limit his or her comments to a balanced, factual presentation containing supporting as well as opposing views.

II. Permissible Activities

The law allows special districts to expend public funds to take the following actions regarding a ballot measure:

- Expend public funds for the purpose of formulating and drafting a proposed initiative and securing appropriate initiative sponsors.
- Adopt a formal position in support of or in opposition to a ballot measure at an open meeting of the special district. Representatives may also respond to requests for explanation of the district's position by merely stating and explaining the district's position without being obligated to explain all sides of the issue.
- If a district is initiating a presentation or information piece regarding a ballot measure, a special district may notify the public, media and others of the district's position through news releases, bulletins or other vehicles at public expense that are informational and balanced but do not advocate a yes or no vote, or contain language which indicates that the district is "taking sides" with respect to the ballot measure.
- In addition to informing the public of the district's position with respect to a ballot measure, the district may expend public funds, without taking a formal position on the ballot measure, to initiate, prepare and distribute factual, balanced information on a ballot measure to the public and other organizations, which material should represent both pro and con viewpoints in a fair manner.
- Special district representatives may respond to inquiries from the media, the public, or other organizations about the impact of a measure on the district as long as such response is factual and does not advocate a position.
- Special district representatives may participate in forums or debates on a ballot measure at public expense if all views are represented.
- Special districts may sponsor forums or debates on a ballot measure at public expense if all views are represented. If only one side is able to attend, districts should be prepared to document the fact that opponents were actually invited.
- District staff and elected officials may meet with newspaper editors and other groups to objectively explain a ballot measure's impact on the district, as long as such explanations do not advocate a position on the ballot measure.
- Special district Board members and employees may participate in forums or debates and advocate a position if it is expressly stated that they are speaking in their personal capacity, and that no public agency funds, expense reimbursements or

facilities are being utilized for such advocacy.

- Upon request, special district Board members and employees are free to explain their personal views of a ballot measure.

III. Prohibited Activities

Pursuant to state law special districts may not engage in the following activities:

- Use public funds to purchase such items as bumper stickers, posters, advertising, or television or radio “spots” as well as the dissemination at public expense of campaign literature prepared by private proponents or opponents of a measure, or otherwise spend public money to clearly advocate a yes or no vote on a ballot measure.
- Use public funds to contribute to a campaign supporting or opposing a ballot measure.
- Expend public funds or utilize public facilities such as photocopy machines, facsimile machines, computer e-mail, etc., or office supplies or staff time in connection with any activity designed to support or oppose a ballot measure; expend public funds to attempt to influence voters to qualify a ballot measure, including utilizing public funds to gather signatures for the ballot measure. Utilizing public funds to secure signatures to qualify the ballot measure has been held to constitute “improper advocacy”.

IV. Additional Guidelines to Avoid Advocacy

- Timing, Style and Tenor of the Publication

To avoid the appearance of advocacy, special districts need to analyze the timing, style and tenor of their publications with respect to ballot measures. Several court decisions and attorney general opinions have found publicly financed brochures or newspaper advertisements that contain only relevant factual information and which refrain from asking voters to vote in a particular way to constitute improper expenditure of public funds for ballot measure advocacy because the publication is sent within two weeks prior to the date of election. Any items mailed in the last two weeks before an election may be found to constitute improper expenditures because they appear to be primarily designed to influence voters, and not to convey information.

Regarding the style of the publication, if the explanation of impacts of a ballot measure on a district contains only the significant adverse impacts and fails to disclose other less serious impacts, it may be found that the purpose of the publication was to influence voters rather than to inform voters.

Hiring a public relations firm to promote a measure and prepare publications for the district may be considered evidence of an attempt to influence voters, rather than inform them.

A call for action urging the public simply to vote, without urging a particular vote, may, under certain circumstances, be found to be improper advocacy.

A high volume of mailed brochures may be found to go beyond responding to requests for information from the public and be considered an attempt to influence voters.

In order to avoid the impression that materials are being sent to influence the public, publications should contain information on opposing viewpoints.

- Full Disclosure

Special districts need to insure that any materials they produce provide a factual and complete presentation of the ballot measure and its positive as well as negative impacts on the district, as well as a full explanation of the pros and cons if the publication is initiated by the district, rather than formulated in response to a request for information.

- Choosing the Appropriate Vehicle for Publication

Special districts may produce special publications or materials regarding ballot measures, but the use of existing newsletters or other forms of communication to educate the public about a ballot measure is considered by the FPPC to be more indicative of an informational piece, as opposed to a promotional piece.

- Use of Disclaimers

Special districts may wish to include a disclaimer on any printed materials that states the materials being provided are for informational purposes only and are not meant to advocate a yes or no vote on the ballot measure.

- Consult Legal Counsel

Because the legal principles in this area of law change frequently, special districts should consult their legal counsel for guidance with respect to any activities relating to ballot measures, particularly printed materials distributed to the public, and the use of public funds to finance speakers with respect to the ballot measure. This fact sheet is meant only to be general guidance and is not legal advice.