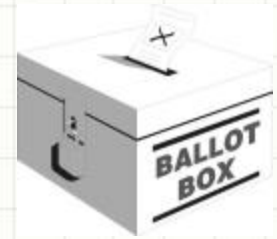


# **PUBLIC ENTITY INVOLVEMENT IN BALLOT MEASURES**

Kay Reimann,  
TAMC Legal Counsel  
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# Public Entities' Involvement in Ballot Measures – Why?



- Changes in local government financing
  - Less funding from Federal and State sources
  - Need for local entities to sponsor ballot measures for funding
  - Required voter approval for local revenue measures

# Legal Context



- Constitutional right to “free election” of the people – Cal. Constitution, art. II, § 2
- Prohibition on use of public funds for “campaign activities” – Gov’t. Code § 54964
- Key cases interpreting public agency actions:
  - Stanson v. Mott (1976) 17 Cal.3d 206
  - Vargas v. City of Salinas (2009) 46 Cal.4th 1

# Gov't Code § 54964



- (a) An officer, employee or consultant of a local agency may not expend or authorize the expenditure of any funds of the local agency to support or oppose the approval or rejection of a ballot measure . . .
- (b)(3) “Expenditure” means a payment of local agency funds that is used for communications . . .

# Gov't Code § 54964 (con't.)



- (c) This section does not prohibit the expenditure of local agency funds to provide information to the public . . . if . . .
  - (1) the informational activities are not otherwise prohibited . . . and
  - (2) The information provided constitutes an accurate, fair and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure



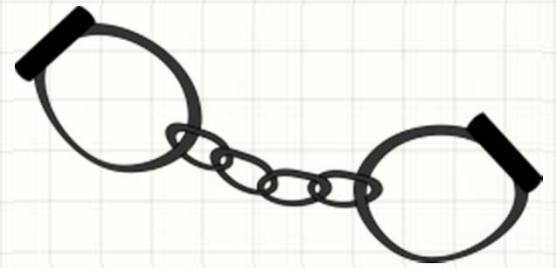
# How to Comply:

## Three Areas of Focus



- Focus on whether local agency resources are being used:
  - Funds
  - Paid time
  - Equipment, materials, facilities
- Distinguish “legitimate informational activities” from “unlawful campaign activities”
- Distinguish between local agency activities and private activities of individual employees

# Consequences of Errors



- Potential criminal and civil penalties for misuse of public resources
- Public official may have to reimburse agency from personal funds
- May trigger reporting obligations under Political Reform Act. Penalties for failure to report.
- Negative Public Reception; possible legal challenges

# Information or Advocacy?



- No “bright line” or hard and fast rules
- Context counts
- Courts will look to
  - Style (newsletter vs. bumper sticker)
  - Tenor (objective vs. inflammatory rhetoric)
  - Timing (part of pre-existing process vs. special mailing just before election)



# Public Time or Private Time?



- Public employees have constitutional right to engage in private political activities:
  - On own time (must still devote full attention to job)
  - Without Using Public Agency Resources (don't print/copy/call from agency sources)
  - Keep records to be safe (track time, expenditure of private funds, in case have to establish that actions were private)

# Helpful Hints for Public Agencies



- Once a matter is placed on the ballot, be available to respond if requested, but do not seek out speaking opportunities
- Keep to factual information: impact of current conditions on agency with (or without) measure; impact of measure on agency
- Keep tone objective, moderate
- Do not suggest how to vote (or how you will)



**QUESTIONS?**