

**Office of the County Counsel**

651 Pine Street, 9th Floor  
Martinez, CA 94553

Contra Costa County

Phone: (925) 335-1800

Fax: (925) 646-1078

Date: July 16, 2019

To: Finance Committee

From: Sharon L. Anderson, County Counsel  
by: Mary Ann McNett Mason, Chief Assistant County Counsel *M.A.M.*

Re: **Use Of Public Resources In Relation to Tax Measure Campaigns**

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This memorandum discusses the limitations on the use of public resources in relation to ballot measure campaigns for a tax.

**A. May public resources be used in ballot measure campaigns for a tax?**

1. General Prohibition.

Government Code section 54964 generally prohibits local agencies from using agency funds, including i.e., staff, facilities, equipment, supplies, and time, to support or oppose the approval or rejection of a ballot measure. However, in limited circumstances, the County may use County resources to engage in a *neutral* evaluation of the merits and effects of a proposed ballot measure and to inform the public of these findings.<sup>1</sup>

2. Prohibited Communications.

The County and its employees and officials, including Board, committee and commission members, are not permitted to use County resources to campaign for or against a ballot measure.<sup>2</sup> Officials, in their official capacity, may not engage in communications traditionally associated with political campaigns such as:

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<sup>1</sup> *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.

<sup>2</sup> Historically, courts have disapproved the use of public funds in political campaigns on the basis that political expenditures are unauthorized by law and likely are unconstitutional. Public agencies may not 'take sides' in an election contest. (See, e.g. *Stanson v. Mott* (1976) 17 Cal.3d 206; *Mines v. Del Valle* (1927) 201 Cal. 273; *Miller v. Miller* (1978) 87 Cal.App.3d 762; *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529; and *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.)

- Advertising through bumper stickers, posters, television, radio, and billboards;
- Preparing advocacy materials;
- Disseminating advocacy materials prepared internally or by others; and
- Circulating promotional campaign materials such as brochures, even if the materials contain some useful factual information.<sup>3</sup>

### 3. Limited Permissible Communications

If the Board of Supervisors votes to place a tax measure on the ballot, County officials may make *neutral*, informational communications about the ballot measure, including:

- Take a position on the ballot measure at a properly noticed public meeting of the Board of Supervisors;
- Prepare neutral, informational reports and other analyses to help voters determine the impacts of the measure, when use of funds for this purpose has been authorized by the Board of Supervisors; and
- Respond to inquiries about the ballot measure in a manner that provides a fair, neutral presentation of the facts.<sup>4</sup>

Information must be communicated in a way that does not use inflammatory language or argumentative rhetoric, and does not urge the public to adopt a particular position or to take any other actions supporting or opposing the measure.<sup>5</sup> When sharing information related to a ballot measure, County officials must deliver the information through the County's regular communications channels (for example, through the County's existing website or existing newsletter).<sup>6</sup> No special expenditure should be made by the County to publicize a position on a tax measure. For example, the County may not send out a special mailing about the ballot measure to area residents. Expenditures related to the ballot measure require the Board of Supervisors approval.

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<sup>3</sup> *Vargas* at 24,32,39, 42.

<sup>4</sup> *Id.* at 24, 25, 35-37.

<sup>5</sup> *Id.* at 30, 34, 40.

<sup>6</sup> *Id.*

#### 4. Reporting Requirements.

Government entities that engage in ballot measure-related activities must file campaign expenditure reports when required by law to do so. The Political Reform Act requires agencies that make certain ballot measure-related communications to report expenditures for these communications.<sup>7</sup>

Please be advised that the Fair Political Practices Commission is aggressively pursuing allegations involving the use of public funds for campaign purposes. The FPPC recently fined the Bay Area Rapid Transit District (“BART”) for failing to disclose campaign activity in support of a ballot measure. When the Board considers any use of public resources or expenditures related to the parcel tax measure, the Board and staff should err on the side of caution.

#### 5. Activities as Private Citizens.

In their capacity as private citizens, County officials are permitted to campaign for or against local ballot measures and to join citizens’ groups that advocate for or against local ballot measures.<sup>8</sup> When doing so, they should specifically state that their comments are not made in their capacity as County officials. If, in their capacity as private citizens, officials make contributions and independent expenditures related to a County tax measure, they should consider whether their expenditures are reportable and file reports as required by law.<sup>9</sup>

MAM/am

cc: David Twa, County Administrator

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<sup>7</sup> Gov. Code, §§ 82013, 82015, 82025, 82031. Public agencies must report payments of public resources made in connection with a communication that expressly advocates the passage or defeat of a clearly identified ballot measure (2 Cal. Code Regs. §§ 18420 (d), 18420.1 (a).) However, certain communications are exempted from the expenditure reporting requirements: the preparation of an agency report providing the agency’s internal evaluation of a measure made available to a member of the public upon the individual’s request; the announcement of the agency’s position at a public meeting or with the agenda or hearing minutes prepared for a meeting; a written argument filed by the agency for publishing in the voter information pamphlet; a departmental view presented by an agency employee upon request by a public or private organization at the meeting of that organization; and a communication clearly and unambiguously authorized by law. (2 Cal. Code Regs. §18420.1 (e).)

<sup>8</sup> *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, (1988) 203 Cal.App.3d 529, 555-56.

<sup>9</sup> Gov’t Code, § 82013.