

MEMORANDUM

To: Mayor Rocky Anderson
Rocky Fluhart
David Nimkin
Department Heads

FROM: Ed Rutan, City Attorney
Boyd Ferguson, Senior City Attorney

RE: Activities of City Officials and Employees Regarding Ballot Propositions

DATE: October 10, 2003

On November 7, 2003, the City will hold a bond election at which voters will consider six propositions for bond issues that the City supports. Questions have arisen about the degree to which City personnel may campaign and advocate for or against the passage of the propositions. The following is a brief summary of the applicable rules.

A. General Limitation on Spending City Funds to Influence Ballot Propositions

The City may not make “expenditures from public funds” to “influence” a ballot proposition (such as the bond propositions).¹ “Influence” means to campaign or advocate for or against a ballot proposition. However, “influence” does not mean providing a brief statement about the City’s position on a ballot proposition and the reason for that position.²

B. Non-Elected City Personnel

1. No Use of City Time, Equipment, or Facilities

Non-elected city officials or employees may not use City time, equipment, or facilities to campaign or advocate for or against passage of the bond issues (because a portion of that person’s salary would indirectly be spent to influence the ballot propositions).

2. Exception for Answering Factual Questions

City personnel may answer *unsolicited* factual questions put to them about ballot positions.

¹ Utah Code § 20A-11-1203(1).

² Utah Code § 20A-11-1202(5).

For example, if a person telephones a City employee and asks how much taxes will increase if a proposition passes, the employee may answer that question. Similarly, if a City employee is invited to a community council or similar meeting to provide factual information about the bond propositions, he or she may attend and provide the factual information, but only if the sponsor of the meeting commits to granting equal access to opponents of the bond proposition.³

3. Exception for Stating City's Position

If a City employee is asked what the City's position is on the bond issue or a particular aspect of the bond issue, he or she may "briefly" state the City's position and the reason for that position.⁴ A "hard sell" response, encouraging the person to vote for the ballot proposition, would not be consistent with the spirit of this exception.

4. Use of Personal Time and Personal Equipment and Facilities

When not using City time, equipment, or facilities, non-elected City personnel may freely express their personal beliefs by campaigning or advocating for or against a ballot proposition. However, such personnel, when speaking, should state that they are expressing their own personal views, not those of the City. They should not claim or imply that they are speaking for the City or stating the City's position on the issue. City employees should recognize that if they have been invited to a meeting in their capacity as a City employee and have been introduced by their City title, it may not be feasible in that context to speak as an individual.

5. Summary

We recognize that the applicable statutory provisions are difficult to apply in the "real world" (and that may be reflected in the fact that there is no stated penalty for violation of the statute). The best "safe harbor" is a good faith recognition that while the City is permitted to briefly state and explain its position and the City is the best source for the factual information that citizens need to cast an informed vote, the spirit of the statute is that City resources not be mobilized to unfairly influence the outcome of the election.

C. Special Rule for Elected Officials

An elected City official is not subject to the foregoing limitations, and may freely campaign or advocate for or against a ballot proposition.⁵

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³ Utah Code § 20A-11-1203(3).

⁴ Utah Code § 20A-11-1203(5)(b).

⁵ Utah Code § 20A-11-1203(6).