

# POLITICAL ACTIVITIES

## A Primer on What's Allowed and What's Not

By Sean O'Day, LOC General Counsel

As we approach the peak of the election cycle, it's a good time for city officials to revisit the rules that govern political involvement. There are a number of restrictions on political activities by public officials imposed by the Oregon Revised Statutes. Because the restrictions are different for appointed officials than they are for elected officials, and the restrictions apply to measures going before the voters but not matters pending before the Legislature, sorting out these restrictions can be confusing. This article aims to alleviate some of that confusion with some clear do's and don'ts.

The general rule relating to political activity is found in ORS 260.432. That rule states that "No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall

petition, the adoption of a measure or the recall of a public office holder while on the job during working hours."

The statute defines the term "public employee" to include unpaid volunteers, such as advisory board or commission members. Elected officials are not considered "public employees" for purposes of ORS 260.432. Consequently, elected officials may engage in political activities.

Subject to any local restrictions imposed by city ordinance, elected officials may:

- Advocate for or against an initiative, referendum or recall petition, candidate, political committee or ballot measure;
- Vote with other elected officials to support or oppose a measure and publicly discuss such a vote; and
- Perform campaign activities.



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Elected officials, however, may not:

- Direct public employees to participate in political activities;
- Use public employees to prepare advocacy information on a political matter, such as a local measure; and
- Use public resources for campaign activities.

Public employees are much more restricted in their activities. During working hours a public employee may not:

- Prepare or distribute written material, post website information, transmit emails or make a presentation that advocates for or against an initiative, referendum or recall petition, candidate, political committee or ballot measure;
- Collect money or prepare forms or correspondence on behalf of any political candidate;
- Produce or distribute a news release on any elected official's candidacy for re-election;
- Draft, type, format or edit a council resolution that advocates a political position on an initiative, referendum or recall petition, candidate, political committee or ballot measure—even local measures put to the voters by the city council;
- Prepare or give recommendations to the council on which way to vote on such a resolution; or
- Produce or distribute a news release on the council's position on an initiative, referendum or recall petition, candidate, political committee or ballot measure.

However, public employees may prepare and distribute impartial written material or make an impartial presentation that discusses a local measure. Oregon law defines impartial to mean equitable, fair, unbiased and dispassionate. When preparing such materials, public employees are well advised to seek guidance from their legal counsel. Additionally, the Oregon Secretary of State's Elections Division is available for an advisory review of draft material about ballot measures. Also, it's important to note that the general rule relating to political activities does not apply to legislation pending before a city council or the Legislature.

Failure to follow state election laws can result in civil penalties. Because public officials can be personally liable for those penalties, it's important for public officials to be aware of the rules regarding involvement in political activities. The secretary of state has published a document containing more



Elected officials cannot use any public resources for campaign activities.

detailed information and guidelines on its website at [www.oregonvotes.org/doc/publications/restrictions.pdf](http://www.oregonvotes.org/doc/publications/restrictions.pdf).

*This article is general due to the complexities of the law. This article is not intended to substitute for the advice of qualified legal counsel. City officials needing legal advice should seek counsel from their city attorney in accordance with their city's procedures for obtaining such advice. ■*