
VII. Legislative Issues and Relations

A. Supporting or Opposing a Ballot Measure or Candidate

1. The Governing Body

A governing body of elected officials can take positions on ballot measures. Staff can record votes and type resolutions of support or opposition if that is part of their normal work duties. Staff can also do research to bring the measure to the governing body. This research can describe background information on the measure, its potential effects, and pros and cons of the measure.

The governing body **may not** make a mass distribution of their advocacy position on a ballot measure to the public. However, if copies are requested by the public, the agency may use office facilities to copy the resolution expressing their position.

2. Elected Officials

Elected officials may spend their work time on ballot measures, whether the position they hold is paid or unpaid under ORS 260.432(4)(a). The courts have recognized the right, if not the duty, of public officials to speak out on major issues, particularly on matters that affect the governmental body on which they serve. However, elected officials must be careful not to involve staff in their advocacy campaign; e.g., staff persons cannot type advocacy statements or speeches for elected officials on agency time or using agency resources.

3. Agency Staff

ORS 260.432 prohibits “any person” from requiring or attempting to require a public employee to give money, service, or anything of value to promote or oppose the adoption of a measure. Agency staff must use their own personal time if they want to advocate a position on a measure. A public employer is required to post, in a conspicuous place, a notice that outlines legal restrictions on the political activity of their employees while on the job during working hours. Contents of the notice are contained in ORS 260.432(3):

ATTENTION ALL PUBLIC EMPLOYEES:

The restrictions imposed by the law of the State of Oregon on your political activities are 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. However, this section does not restrict the right of a public employee to express personal political views."

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours.

If a public employee makes a presentation outside working hours which will include advocacy statements, it may still be advisable to announce to the audience that they are speaking not in their "official capacity" but as a private individual.

Subject to limited regulation by the employer to avoid disruption in the workplace or suggesting to the public that the employee's personal political views are endorsed by the public employer, public employees may express their personal opinion on the job, wear buttons, and do other things which are protected under their right to free speech.

A public employee may not be coerced to vote for a measure, or work to advocate for or against it. For example, a manager representing the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but must not threaten them with financial loss if they vote one way or another.

A public employee can make an impartial presentation of information relating to a ballot measure. This presentation can include a discussion about how the measure came into being (history) and its impacts, so long as it does not segue into advocacy. An elected official may follow a staff person's presentation and advocate in support of or opposition to the measure.

ORS 260.432 prohibits political activities by public employees while “on the job during working hours”. In addition, ORS 294.100(1) makes it unlawful for “any public official” to spend public funds for any purpose not authorized by law, and subsection (2) of the statute makes public officials personally liable for money improperly spent. **This statute has been found by Oregon courts to apply to public officials who used public funds to either support or oppose measures brought before voters.**

In addition, ORS 260.432 (2) states “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. However, this section does not restrict the right of a public employee to express personal political views.”

Political activities or efforts by conservation district employees are prohibited unless they are done specifically on the employee’s own time, at the employee’s expense, and away from the district office.

Although it is technically legal for an employee to work on advocacy during his or her lunch hour or break time, public perception of the employee’s action must be considered. Therefore, it is highly recommended all work relating to advocacy be done outside of regular work hours and without using district resources.

As a general rule, public employees may say “Here are the facts.” Elected officials may say, “Here are the facts, please vote for/against this measure”, provided public funds are not used to advocate the position and no public employee time is used to assist in delivering that message.

4. Political Action Committee (PAC)

Formation of a Political Action Committee (PAC) must occur before any funds are collected. PACs must be filed with the county elections officer. The forms and guidebooks necessary to form a political committee and report contributions and expenditures are available from the county elections officer.

5. Ballot Measure Campaigns

While the following guidelines are offered, local officials are encouraged to consult with their attorney when specific questions arise. The guidelines apply to the expenditure of public funds, with a focus on the use of work time by public employees. Confusion about the use of funds may be avoided if interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/distribute advocacy materials.

A. General

Public agencies are subject to the general rule prohibiting the use of public funds to advocate a position either in support of, or opposed to, a ballot measure. All information presented and paid for with tax dollars must be impartial. ORS 260.432 prohibits public employees from spending time “while on the job during working hours” to promote or oppose a ballot measure. While it does not apply to elected public officials, the definition of “public employees” includes not only paid staff, but also unpaid appointed members of boards, commissions, and committees.

Issues relating to the use or misuse of public funds, equipment, materials, supplies, or space are likely to be dealt with under the provisions of ORS 294.100, which establishes personal liability for misappropriation of public funds.

B. Preparation and Distribution of Written Material

Local officials, both elected and appointed, can develop and distribute impartial and factual information on the effects of a ballot measure and may use public funds to do so. Such material should be informational, provide the public with a fair presentation of relevant facts, and not advocate a particular position. For example, staff may spend time doing research and preparing information that fairly assesses the effects of the measure on the agency. Local officials can use such information in meeting with individuals and organizations, e.g., newspaper editors and reporters, legislators, local civic organizations, and special interest groups to explain objectively the measure’s impact on the agency.

Written material prepared or distributed by public employees must be impartial, neutral, unbiased, equitable, and dispassionate. The material cannot lead the voters to support or oppose a measure by **selective use of factual information**, even if the information does not urge a yes or no vote. A statement is advocacy if, when read in its entirety, it clearly intended to generate votes for or against a measure. Factors which may be used to determine the line between information and campaign advocacy include the following:

1. The timing of the material relative to an election date.
2. The balance of factual information including pros and cons about the measure.
3. The overall impression a reader may be left with. Have facts been presented neutrally so that the reader has to decide how to vote, i.e. it informs rather than persuades?
4. The tone of the material. Is it dispassionate rather than enthusiastic for one side or the other of the measure? Do headings, words and phrases lend a positive, negative, or neutral tone in favor of, or in opposition to, the measure?

5. The quotes used. Are they favorable or unfavorable? Are they all from persons on one or the other side of the measure?
6. References to contact with supporting or opposing PACs – such references may imply a connection between the agency and the campaign.
7. The content of the document – it cannot explicitly urge a “yes” or “no” vote.

Any conservation district which has concerns or doubts about the impartiality of information, such as news articles, fact sheets or posters, should contact the Secretary of State’s Election staff to review the copy for compliance with the law before release of the information for public distribution.

Conservation district employees must ensure that information speeches regarding an initiative, referendum, recall petition, or ballot measure, while on work time or in an employee’s official capacity of the district are not advocacy. If any part of any presentation may be perceived as advocacy, the best course of action is to have those presentations given by a director.

The Attorney General has concluded public bodies may use public funds to inform voters of facts pertinent to a measure pending before the voters, if the information is not used to lead voters to support or oppose a particular position in the election.

6. Penalties for Violations

ORS 260.995 authorizes the Secretary of State to impose a civil penalty of up to \$250 for each violation of ORS 260.432. A conservation district employee who is determined by the Secretary of State to have violated ORS 260.432 must pay any assessed civil penalty out of his/her own funds.

It is illegal for public bodies to use public funds to advocate for or against ballot measures or candidates as stated previously in the finance section of this Guidebook. In addition, ORS 294.100(1) states that “it is unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by Law.” ORS 294.100(2) makes public officials who violate subsection (1) civilly liable for money improperly spent, and authorizes suit by the district attorney or taxpayers to seek recovery of that money from the officials who authorized the expenditure.

B. Lobbying

1. Definition

ORS 171.725(7) defines lobbying as "influencing or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials."

2. What is Lobbying?

You are lobbying when you:

Talk or write to a legislator or to his or her staff to influence legislative action. This includes:

- Testimony favoring or opposing a bill or budget.
- Proposing amendments to a bill, including technical amendments.
- A letter, memo, or e-mail favoring or opposing a bill or budget.
- Formal or casual conversations favoring or opposing a bill or budget.
- Talk or write to a legislator or to his or her staff to promote good will toward an agency or program.
- Talk or write to others with the intent to ask them to influence legislative action. This includes:
 - Meetings where you ask people to support or oppose a bill or budget.
 - Letters, memos, e-mails, or newsletters asking people to support or oppose a bill.

You are not lobbying when you:

- Talk or write to a legislator or to his or her staff merely to provide facts. (Facts may include fact estimates and expert opinions of fact.) The facts may apply to any program, budget, bill, or issue.
- Work within your agency to research, write, or otherwise develop a bill or budget.
- Research or write testimony supporting or opposing a bill.
- Are waiting to present testimony or meet with legislators or staff.
- Write or talk to anyone to solicit their input on an agency's legislative proposals or budget.
- Support work for an agency's lobbying activities, ***but do not communicate, yourself, with legislators or their staff.***

3. Conservation Districts' Authority to Lobby

In an Attorney General's Opinion, DOJ File No. 603-137-NR012-90, dated May 24, 1990, a response was provided for the question, "do soil and water conservation districts have authority to lobby, and if so, what are the limitations?" The answer provided was, "yes, but with some limited actions."

Conservation districts are authorized under ORS 568.225(2) to "participate in effectuating" the policy by which they are formed, which is set out in ORS 568.225(1). ORS 568.225(2) provides a broad grant of authority by the legislature to the districts to engage in activities which further the legislative policy set out in ORS 568.225(1).

The use of public funds for lobbying is permissible as long as:

- A. it is the legislature or other government entity that is being lobbied and not the electorate;
- B. the lobbying does not take place indirectly through a political action committee;
- C. the lobbying is not in support or opposition of a particular candidate or measure (i.e., a district may lobby for a bill presented to the legislature or other government body, but cannot lobby for a measure or candidate brought before the voters during an election); and
- D. the funds used to pay for the lobbying or lobbyist be either from funds specifically designated for that purpose or at least from funds not designated for some other specific purpose. General grant money, not restricted to particular purposes, can be used for general conservation district business, including lobbying.

4. Registration

Persons who exceed 24 hours lobbying or who spend more than \$100 during a calendar quarter lobbying must register with the Oregon Government Standards and Practices Commission (GSPC). Once registered, lobbyist expenditures must be reported twice during each even-numbered year and three times during each odd-numbered year. Entities who have lobbyists representing them must report expenditures annually.