

## Neighborhood Councils and Ballot Measures

There are various laws including the First and Fourteenth Amendments of the Constitution, California Penal Code §§ 424, 524 and court decisions that limit or otherwise restrict the use of public resources in relation to election matters. The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206 at 217 provided the general guiding principle prohibiting the use of public funds and resources in election matters: "A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office [citations]; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process." The court also stated that "judicial reluctance to sanction the use of public funds for election campaigns rests on an implicit recognition that such expenditures raise potentially serious constitutional questions." *Id.* at 216. Consequently, a neighborhood council may not use public funds or resources to support or oppose ballot measures.

The courts have generally distinguished between actions taken before and those taken after a measure is on the ballot. Prior to being placed on the ballot communications regarding the drafting of a proposed measure are generally not considered as actions to influence the voters in a partisan matter, but more closely aligned with the exercise of proper legislative authority, and therefore more likely to withstand challenge. However, even expenditures made prior to a ballot measure being placed on the ballot may be prohibited if they are aimed at influencing the voters or only present one side of the matter.

Expenditures after a ballot measure is placed on a ballot are no longer within the legislative realm and therefore generally prohibited. However, funds can be spent for the limited purposes of providing neutral and objective factual material about a measure upon request. Any other expenditures would be prohibited under the Penal Code and existing case law. See *Penal Code §§ 424, 524; League of Women Voters v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 550-551; Attorney General Opinion 2004-211 (April 7, 2005).

However, although not without risk to the neighborhood council and potential individual liability on behalf of its boardmembers, under certain circumstances,<sup>1</sup> it may be permissible for a neighborhood council to agendize a discussion and potentially take a position on a pending ballot measure even after it is placed before the voters. The Court of Appeal has previously rejected a preliminary injunction against the school

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<sup>1</sup> Less risk would be associated with an item appearing on a regular meeting agenda than an item appearing on a special meeting agenda unless the item is incidental to the holding of the special meeting; *i.e.* the special meeting agenda also includes other neighborhood council items.

district charging misuse of funds where the district had taken a position at a public and televised meeting of the district in relation to a school-related ballot initiative that had not yet qualified for the ballot. *Choice-in-Education League v. Los Angeles Unified School District* (2d Dist. 1993) 17 Cal. App. 4<sup>th</sup> 415. The court concluded that the district's expenditure of funds regarding the televised airing of its meeting was unrelated to its advocacy of a partisan position particularly given the nature and timing of the broadcast. In making its findings the court appeared to also rely upon the district's responsibilities and the public forum nature of the meeting. See also *League of Women Voters v. Countywide Crim. Justice Coordination Com.*, 203 Cal.App.3d 529, 550-551 (board of supervisors did not improperly spend public funds when it held a public meeting to endorse an initiative that had not yet qualified for the ballot); *Ballot Measure Advocacy and the Law: Legal Issues Associated with City Participation in Ballot Measure Campaigns*, League of California Cities (September 2003). Because the only cases to date have concerned taking a position before a measure is placed on the ballot, it is not entirely clear whether a neighborhood council can take a position on a ballot measure once it has been placed before the voters.

A neighborhood council might also face less risk in holding a public meeting using a neutral framework on a ballot measure provided no other funds are expended because of neighborhood councils' unique nature and role. However, the Attorney General has opined that certain community college auxiliary organizations are subject to the same restrictions on partisan political activities as the college with regard to facilities and resources provided by the college. Attorney General Opinion 2004-211, n. 10 (April 7, 2005).

Consequently, the safest course of action for a neighborhood council is to refrain from taking a position on a ballot measure once it has been placed on a ballot. However, if a neighborhood council decides to take a position on a ballot measure it should ensure that it is contained on a regular meeting agenda and both supporting and opposing views are treated equally. Moreover, given that a court may consider the proximity to the election to be a factor in whether unlawful use of public resources have been spent, a neighborhood council should consider the timing of such a meeting in relation to the election. Even in the event that a neighborhood council was to take a position in opposition or support of a ballot measure at a regular meeting after the measure has been placed on the ballot by the legislative body, no public funds may be used to publicize that position.

Because of these restrictions on the use of public funds in relation to elections, we caution neighborhood councils to be particularly mindful of the legal risks associated with such activity.