

Public Agencies and Ballot Measures

Communications and Legislation Committee
Item #7c
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Basic Legal Principle

A public agency can educate the public on the impacts of a ballot measure, and adopt a formal position on the measure, but cannot use **ANY** public agency funds or public agency resources to persuade others to adopt the agency's stance.

Prohibited Actions

- Advocating that voters take a position for or against a measure in any forum—publications, website, panels, as speakers.
- Any use of traditional campaign materials to publicize MWD's position—i.e. banners, bumper stickers, TV or radio ads
- Using argumentative or inflammatory language to present MWD's position
- Contributing public funds or resources to election campaigns

Permissible Actions with Public Resources

- Analyze the measure and its impacts
- Adopt a formal position
- Publicize MWD's position on the measure in an informational and balanced manner through its usual methods (i.e. press releases, factual articles in regular MWD publications, posting MWD's position on its public website)
- Pay membership dues to professional associations (Gov. Code § 54964(b)(3))

Permissible Actions--continued

- When responding to questions or participating on information panels:
 - Present MWD's position and the facts supporting its position;
 - **Not** required to present both sides of the issue; and
 - **Cannot advocate** that others adopt MWD's position.
- Provide speakers on the measure that present the facts in a full, fair and impartial manner

Permissible Actions—continued

- Proactively prepare and distribute full, fair and balanced information about the measure, including pros and cons.
 - Any item distributed must be carefully reviewed as to its **timing, tenor and style** to ensure that it is not advocating a position, using inflammatory or argumentative language or suggesting or implying that a particular position be taken on the matter.

On Your Own Time—NO MWD Funds or Resources

- You are free to make a campaign contribution and advocate your position on a measure, urging voters to vote for or against a measure.
- **However, you need to clarify that this is strictly your personal opinion and that you are not representing MWD in any manner.**

Resolving Uncertain Situations

- **Consult with the General Counsel in case of any doubt as to the propriety of an action.**
 - A public official who fails to exercise due care can be held *personally* responsible for an improper expenditures.
 - Unlawful use of public funds for campaign activity can be a misdemeanor or felony (Gov. Code § 8314)

Resolving Uncertain Situations-cont.

“...the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the **style, tenor and timing** of the publication; no hard and fast rule governs every case.” *Stanson v. Mott* (1976) 17 Cal.3d 206, 222

Scenarios

In response to a request to MWD by the Rotary Club, a MWD staff member attends a Rotary Club meeting to speak on the ballot measure. The staff member uses a video and distributes informational materials produced by MWD.

- ❖ Since the staffer is attending on agency time, and using MWD materials, he/she is limited to a full and fair presentation of the facts.
- ❖ If asked, staffer can state MWD's official position.
- ❖ If asked how to vote, the staffer must state that MWD is not advocating a yes or no vote—that each person must decide how to vote based on the facts.

Scenarios

A director is personally contacted by a service club to discuss the ballot measure. AND

- **The director uses a MWD produced video or powerpoint in his/her presentation. OR**
- **The director gets a ride to the meeting from a MWD staffer using a MWD car.**

MWD resources are being used, so the director is limited to a full and fair presentation of the facts. The director cannot advocate that the club members take a position on the measure.

Scenarios

A director attends a Rotary Club meeting to discuss the ballot measure on his/her personal time.

No public funds are being used so the director is free to express and advocate the director's personal opinion. However, the director must be sure to clarify that he/she is NOT representing MWD and is only expressing a personal opinion.

Scenarios

While attending an ACWA meeting, a director participates on an ACWA discussion panel about the ballot measure. MWD pays for the director's traveling expenses.

- ❖ MWD funds are being used, so the director is representing MWD on the panel.
- ❖ The director can provide objective information about the pros and cons of the measure.
- ❖ If asked, the director can express MWD's position on the measure or the director's personal position, but cannot advocate a particular vote.

Scenarios

MWD publishes an article about the ballot measure in a regular issue of Your Water, MWD's e-newsletter, which is distributed in its usual manner.

This is permissible if the following guidelines are followed:

- ❖ The article must provide a full and fair presentation of the facts.
- ❖ The article cannot use inflammatory or argumentative language or advocate a position on the measure.
- ❖ The closer to the election, the more caution that needs to be taken to ensure that the article is balanced, informative and objective.

Scenarios

A director and staffer are on a MWD delta inspection trip.

- ❖ Public funds are being used for both the director and the staffer. The public funds rules apply—even when the director and staffer are not formally speaking or presenting information on the tour.
- ❖ ***If asked for their personal opinion on the measure,*** both the director and staffer can respond *as long as* they clarify that they are only expressing their OWN opinion. Further, they cannot advocate that anyone adopt their position on the measure.

Scenarios

MWD posts committee and board presentations about the measure on its website. A private group that has not made a presentation at any MWD meeting requests that its position paper on the measure also be posted on MWD's website. Is MWD required to post the opposition group's document?

NO – MWD's website is not a public forum, and its postings are part of MWD's regular information activities. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1)

Scenarios

A director is personally invited to appear on a radio or TV show about the measure, and no MWD resources are used for this appearance.

This is similar to the situation of attending a service club meeting. As no public funds or resources are being used, the director is free to express and advocate his/her personal opinion. The director should clarify that he/she is NOT representing MWD. **On the other hand**, if public resources are used (MWD provides transportation, staff support or materials for the appearance)—then public funds rules apply.

Any questions?