

## ADVISORY OPINION

APPROVAL DATE: January 10, 2003

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REVIEWED ON: February 26, 2016

NEXT REVIEW: February 2021

REFERENCES: RCW 42.52.180

SUMMARY OF CHANGES: Amended to update statutory references.

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### Use of State Resources/Political Campaigns/Voters Pamphlet Statements

#### QUESTION

May an elected officials use state resources to draft a statement supporting or opposing the passage of ballot proposition that will be published in the statewide voters' pamphlet?

#### ANSWER

Yes, under specific circumstances. When a an elected official is appointed to a statewide voters' pamphlet committee, using state resources to draft arguments that oppose or support a pending ballot proposition is authorized under RCW 42.52.180(2)(d).

#### ANALYSIS

Under RCW 29A.32.010, the Secretary of State distributes a statewide voters' pamphlet, which contains the text of any statewide ballot propositions and arguments both for and against passage of those ballot propositions. The arguments printed in the voters' pamphlet are drafted by committees, which are selected by the Secretary of State and other elected officials. RCW 29A.32.060 provides that

Committees shall write and submit arguments advocating the approval or rejection of each statewide ballot issue and rebuttals of those arguments. The secretary of state, the presiding officer of the senate, and the presiding officer of the house of representatives shall appoint the initial two members of each committee. In making these committee appointments the secretary of state and presiding officers of the senate and house of representatives shall consider legislators, sponsors of initiatives and referendums, and other interested groups known to advocate or oppose the ballot measure.

Sometime after Referendum 51 was approved by the State Legislature, the Secretary of State, the presiding officer of the Senate, and the presiding officer of the House of Representatives

appointed the Governor to be an initial member of the committee supporting passage of Referendum 51. The question before the Board was whether appointment to a voters' pamphlet committee under RCW 29A.32.060 authorized an elected official to use state facilities to draft an argument supporting or opposing a statewide ballot proposition.

The Ethics in Public Service Act generally prohibits the use of state facilities to support or oppose a statewide ballot proposition. RCW 42.52.180(1) provides that:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition.

The statute, however, contains several specific exemptions that apply to statewide elected officers. RCW 42.52.180(2) provides that:

- (2) This section shall not apply to the following activities:
  - (a) ...
  - (b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. ...;
  - (c) ...
  - (d) Activities that are part of the normal and regular conduct of the office or agency; and
  - (e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities. (Emphasis added)

Prior to 1995, the political use restrictions provided in RCW 42.52.180 were included in RCW 42.17.130<sup>1</sup>, which is enforced by the Public Disclosure Commission (PDC). RCW 42.17.130 continues to apply to local governments. To maintain consistency when applying these statutes, the Board may refer to relevant PDC opinions, declaratory rulings, court cases or Washington State Attorney General opinions when considering issues of first impression.

In prior opinions, the Board adopted a PDC rule regarding the normal and regular conduct of a state agency. In WAC 390-05-273, the PDC defines normal and regular conduct of an agency as:

Conduct which is (1) lawful, i.e., specifically authorized, either expressly or

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<sup>1</sup> RCW 42.17.130 was recodified as RCW 42.17A.555 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

by necessary implication, in an appropriate enactment, and (2) usual, i.e., not affected or authorized in or by some extraordinary means or manner.

When an elected official is appointed to a committee that will draft an argument supporting or not supporting the passage of a statewide ballot proposition for inclusion in the statewide voters' pamphlet under RCW 29A.32.060, such activities would be considered part of the normal and regular conduct of their office and would not violate the Ethics in Public Service Act.