

Office of the Governor
ADMINISTRATIVE POLICY

GENERAL TOPIC: Ethics

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SUBJECT: Use of Public Resources for Campaign Purposes

CONTACT: General Counsel

APPROVED: _____
Marty Brown, Deputy Chief of Staff

Policy:

The Governor's Office strictly adheres to the prohibition against using any public resources for political campaigns. No employee may use or authorize the use of state resources to assist a campaign for the election of a person, or to support or oppose a ballot proposition. Further, it is a violation for a person in charge to *knowingly acquiesce* in another person's violation of this law. Remember, always avoid the appearance of impropriety.

Introduction:

The prohibition against using public resources for political campaigns is found at RCW 42.52.180, "Use of Public Resources for Political Campaigns," a copy of which is attached. That statute provides that no state officer or employee may use or authorize the use of facilities of an agency to assist a campaign for the election of a person, or to support or oppose a ballot proposition. The statute also provides that it is a violation for a person in charge to *knowingly acquiesce* in another person's violation of this law.

It is permissible to undertake activities that are part of the "normal and regular" conduct of the office. De minimis use of public resources incidental to the preparation of written and verbal communications initiated by the Governor of his views on ballot propositions that foreseeably may affect a matter that falls within his constitutional or statutory responsibilities are also permissible.

What are "facilities of an agency"? The statute uses the term "facilities of an agency" and defines it to include use of stationery, postage, machines, and equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and the agency's lists of clients or stakeholders. This definition is provided here to emphasize the broad nature of the prohibition, and is not to be used to determine if a particular

resource or activity is permissible. *Any activity related to a campaign should be avoided, except as expressly provided below.*

RCW 42.52.180 provides certain, narrow exceptions that are designed to allow the office to continue to function normally when campaigns are happening. These guidelines look at specific activities and issues, and to help demonstrate what is permissible and what is not. If an issue is not addressed in this material, the General Counsel should be consulted. Please do not attempt to construe the statute independently.

Permissible Activity:

1. **Oral statements made by the Governor himself.** As an elected official, the Governor is permitted to make statements in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. This exception does *not* include issuing a written press release in lieu of a live press conference. This exception applies only to direct statements made by the Governor himself. It does *not* permit staff to make statements on the Governor's behalf or prepare the Governor's oral statements.

2. **Written statements made over the Governor's signature.** It is permissible for the Governor to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. Staff may facilitate such communications as part of the "normal and regular" conduct of the office.

a) **Responses to requests for information.** Staff is permitted to develop neutral explanations of ballot propositions for use in responding to general inquiries for information. As a matter of course, such statements should be prepared for each ballot proposition and provided to the public in response to requests for information. Neutral comparisons of similar ballot measures are also permitted. These neutral statements may be read over the telephone in response to requests for information.

b) **Responses to requests for the Governor's position.** Because the Governor is an officer whose normal and regular responsibilities include the providing of leadership on all questions of public importance, the Governor may choose to state his opinion on ballot propositions (AGO 1975 No. 23)

The Governor's positions on ballot propositions are personal and should not be formulated using state resources. Staff is, however, permitted to prepare written statements of the Governor's official position (supporting, opposing, or neutral) regarding ballot propositions, together with an explanation of the Governor's rationale. Those statements may *not* be

used by the office to support or oppose campaigns, or in response to inquiries for information about a proposition. They should be kept on file and used to respond to inquiries of the Governor's position. They may be read over the telephone in response to specific inquiries for the Governor's opinion.

Because of his constitutional responsibility to communicate with the legislature in order recommend such measures as he shall deem expedient for their action, the Governor may use staff and other state resources in communicating his position to the legislature. (AGO 1975 No. 23)

3. Research into the likely results of the passage of a ballot proposition. The Governor's office is permitted to gather facts and conduct research into the likely results of the passage of a ballot proposition. It must be clear that such work is neutral and is not designed to support or oppose the ballot measure. Such work may only be done with the express prior approval of the Chief of Staff.

4. Public records requests. Staff can and should continue to supply properly requested public records (that are not covered by an exemption from disclosure) to all members of the public, including those intending to use the public records in connection with a campaign. *It is essential that both proponents and opponents of all campaigns be treated the same, in the manner and timing of responses to public records requests and any exemptions claimed.*

5. Oral and written statements by staff members of their personal opinions. Because staff time is a public resource, state employees are prohibited from making any statements on state time of their own views, orally or in writing, in support of or in opposition to a ballot proposition or campaign for elective office.

However, staff members are free to speak openly for or against any campaign in their capacities as private citizens, on personal time, away from the office, without using any state time or other resources. A separate statute (RCW 42.52.070) prevents staff from using their position to gain special privileges or exemptions for a campaign, such as reserving all the time for use of a public auditorium before the general public has an opportunity, or monopolizing a public bulletin board, or using a title to gain influence.

Any statements made for or against a campaign must be done as a private citizen, and a staff member's position in the Governor's office may not be used in connection with such statements. Staff members are neither encouraged nor discouraged from participating in political activities on personal time.

6. Campaign activities by staff. Also because staff time is a public resource, any work by staff for or against any campaign for a ballot proposition or elective office on state time (including the Governor's next campaign) is prohibited. However, staff is free to work for or against any campaign, voluntarily, on personal time, away from the office,

without using any state time or other resources (e.g., computers, photocopiers, paper, stamps, etc.).

Campaign work by staff must be done as a private citizen, and a staff member's position in the Governor's office should not be connected to those activities. Also, campaign work must be done voluntarily without any connection to job performance or pressure, direct or indirect, from supervisors or other state employees.

a) **Campaign activity on leave time, during normal working hours.** State employees are free to work for or against any campaign, voluntarily, on personal time, away from the office, without using any state time or other resources. If a person intends to undertake such activities on leave time, leave slips must be submitted and approved *in advance*.

b) **Use of public pay telephones and private wireless telephones in public buildings.** The statute does not prohibit the use of public pay telephones that may be located in government buildings for campaign activities on personal time. Similarly it is permissible to use private wireless telephones for campaign activities on personal time, in the open public areas of government buildings. However, personal wireless telephones should not be used for any campaign-related activities in the Governor's offices or in areas not open to the general public. Remember that no campaign activities, including telephone calls, may be conducted on state time.

c) **Examples of prohibited activities:**

- Soliciting signatures for a ballot proposition on state time
- Raising funds for or against any campaign
- Organizing campaign activities
- Using public property for campaign activities
- Using public stationery, postage, copy machines, other equipment, office supplies, employees (during work hours), vehicles, office space, publications of the Governor's office, or stakeholder or contact lists of the Governor's office
- Carrying or displaying political material in or on public vehicles or other equipment
- Displaying or distributing political material in government buildings, except open public areas approved for such purposes
- Instructing or urging other state employees to vote or campaign for or against any ballot proposition or elective campaign on state time.

d) **Campaign activities by staff with supervisory authority.** While all non-elected state employees are treated the same under the state ethics law, it is strongly recommended that supervisory employees avoid campaigning among

subordinate employees. There must be no implication, direct or indirect, intentional or unintentional, that an employee's involvement in a campaign, party affiliation or the way that an employee votes will have any bearing on the employee's job or performance evaluation.

7. **Campaign Activity While Traveling on State Business.** As described above, campaign activity on state time is not permitted. There may be occasions when an employee wants to participate in a political event on personal time while traveling on legitimate state business. Such activities are permitted under the same conditions discussed above, outside of standard working hours. Standard working hours are from 8:00 am to 5:00 pm, with lunch from noon to 1:00 pm. However, travel on official business as a pretext to attend political events is not permitted. The travel must be necessary for official state business, and cannot be extended or otherwise affected by the political activity at any cost to the state. The Governor may travel to and attend political events at any time of day, and his security and attendant transportation will be provided by EPU. Staff may voluntarily accompany the Governor only outside of standard office hours, or if leave slips are submitted and approved in advance.

a) **Examples:**

- The Governor is driven to Seattle by EPU to attend a political lunch from noon to 1:00, followed by an official appearance at a school. The Governor is not constrained. Staff may travel independently or ride along with the Governor and spend the lunch hour as personal time – either at the political event or doing personal business. If the political event were held from 1:00 to 2:00 pm, the employee would need to work on state business or have a leave slip approved in advance to attend the political event. If the political event were held after the official appearance in the evening after 5:00 pm, the employee would be free to attend the political event, do personal business, or go home. Travel arrangements may be made on a case-by-case basis at no extra cost to the state.
- Same example as above, except the event is in Yakima, and travel is provided in the state airplane. The Governor is permitted to arrive an hour early to attend the political event, and staff is free to use the lunch hour as described above. If the political event were held from 1:00 to 2:00, or in the evening after 5:00 pm – same as above. If the political event were held at breakfast the next morning, accommodations for both the Governor and any employees who choose to stay overnight cannot be at state expense. Absent an independent official reason for staying overnight, the airplane would return to

Olympia at the end of the official business with any employees who choose to return home.

8. An admonishment:

"It is important to remember that the public is generally very sensitive to the use of public facilities or property on ballot propositions, and takes accusations of violations very seriously. Officers and employees who try to bump up against the "line" that divides lawful from unlawful conduct in this area may find, even if their conduct is eventually judged lawful, that their questionable activity has incited a public backlash against the very position that they were attempting to advocate. As a result, public employees must walk a very careful line to assure that the public is fully and adequately informed about the consequences of voting on a particular ballot measure, without making unlawful use of public money or property to influence the vote."

— Jim Pharris, Sr. Assistant Attorney General

The foregoing policy statement makes use, in part, of memoranda and analysis prepared by Jim Pharris and other attorneys at the office of the Attorney General.

Standards of Conduct Regarding the Use of Public Facilities:

The following table distinguishes ELECTORAL CAMPAIGNING from ISSUE POLITICS to guide Governor's Office and Policy staff in complying with RCW 42.52.180 "Use of Public Resources for Political Campaigns." Violations of these standards are subject to disciplinary action.

For assistance in answering particular questions, please call the General Counsel.

	Electoral Campaigning (Not permitted in state offices or on state time either on a legal or policy basis)	Issue Politics (Permitted activity)
Policy Issue Research:	Preparation of a policy response to a questionnaire to be used for purposes of endorsement or campaign contributions; preparation of advocacy or opposition material specifically for a campaign.	Development of background policy options and recommendations; issue briefs on legislation which has passed or failed.
Press Releases/Conferences:	Specific campaign statements, i.e. "vote for X because..." made by staff.	Press release or "packet" describing a particular activity, policy position, or proposal or series of proposals; Governor may make statement supporting or opposing a ballot proposition at an open press conference or in response to inquiry.
Bill Action Records:	Analysis of bill action/veto records for campaign purposes.	Preparing a history of Governor's bill action/veto record; maintaining and distributing to anyone on request a history of the Governor's record on particular issues without subjective comment.
Drafting Speeches:	Speeches which include specific campaign references; speeches prepared for specific campaign appearances explicitly announced as a candidate forum.	Preparing a speech which explains a policy or the Governor's position on issues, for appearances as Governor.
Talking to Constituents and Interested Individuals or Groups:	Fundraising; soliciting volunteers; assisting in the development of a campaign plan.	Responding to constituent requests for assistance with government agencies; explaining current laws and issues to groups, as in a "town hall" meeting, and helping constituents with proposals for changes to laws.

	Electoral Campaigning (Not permitted in state offices or on state time either on a legal or policy basis)	Issue Politics (Permitted activity)
Political Strategy:	Campaign strategies or mail plans for a candidate, ballot issue, or caucus.	Developing and explaining non-election strategies for legislative and policy goals, including recommended partisan positions.
Surveys/ Questionnaires:	Collection of data that is designed to build a campaign contact list on demographic factors such as party label.	Trying to determine constituents' preferences on issues in order to better represent them.
Newsletters and Bulk Mailing or Internet Messages:	Content which contains candidate or ballot issue advocacy.	Information to constituents about actions and policy proposals; general "good government" information such as senior property tax information.
Contacting Candidates:	Offering or providing assistance in planning, organizing, or conducting a campaign.	Responding to inquiries regarding government process and the legal requirements of candidacy; explaining issues and positions on issues to anyone who asks, including candidates.
Preparing Brochures:	Preparation of any brochure, handout, etc. for a campaign.	Preparation of printed materials on policy issues.
Fundraising:	For a campaign or political committee; additionally, any solicitation for contributions, at any time or location, from staff on behalf of the Governor's campaign.	Handling the contributions and accounting for non-campaign charitable or personal functions such as Combined Fund Drive, retirement parties, etc.
Mailing or Internet Lists:	Developing and maintaining lists of campaign workers or contributors; providing an office mailing list to a campaign.	Developing and maintaining mailings lists for governing purposes.
Public Disclosure Commission Reports:	Collection and analysis at any time for campaign purposes; collection and analysis of Public Disclosure Commission filings unless approval is granted by the General Counsel for clearly non-campaign purposes.	Preparation of financial disclosure and office funds reports for the Governor.
Telecommunications or Internet Messages:	Initiating or returning calls or messages which are known to be primarily for campaign purposes.	Initiating or returning calls or messages for state business, or when the purpose of the caller is unknown; placing a call or message to the Governor at the campaign office if the purpose of the call is state business.

	Electoral Campaigning (Not permitted in state offices or on state time either on a legal or policy basis)	Issue Politics (Permitted activity)
State-Funded Trips:	State purpose is minor, or a pretext, and the electoral purpose is dominant.	Purpose is state business, but no electoral activity during normal working hours.
Preparing Schedules and Calendars:	Initiating arrangements for campaign appearances.	Establishing and maintaining the Governor's full schedule, including coordinating and responding to requests for all activities.
Electronic and Photographic Equipment:	Use of state photographic, video, voice recording, copying, or faxing equipment for campaign purposes at any time.	State uses other than directly for a campaign.

NOTE: Except as specified, each paragraph under "Electoral Campaigning" includes the qualifier "on state time or with state resources."