

MEMORANDUM

TO: Seneca Healthcare District Board of Directors and Employees
FROM: William Priest
Mrunal Shah
Jennifer Bradlee
DATE: June 16, 2022
RE: Legal Restrictions on Campaign Activities

Given that we are quickly approaching the 2022 election season, we would like to remind Board members, employees, and staff of the Seneca Healthcare District (the “District”) of some of the legal restrictions applicable to activities associated with campaigning for elections. This memorandum does not cover every circumstance or scenario that you may encounter while involved in the election process. If you have specific issues or questions not covered in this memorandum, please feel free to contact us.

As a general guiding principle, State law prohibits the use of “public resources” for campaign-related purposes. “Public resources” are broadly defined to include any property or asset owned by the District including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and District compensated time. An official or employee is making “use” of public resources, including staff time, if it is substantial enough to result in a gain or advantage to the user or a loss to the District for which a monetary value may be estimated.¹

District officials are prohibited from engaging in campaign activities or services of any nature during District work hours. Likewise, public officials are prohibited from utilizing any District funds, supplies, property or equipment in performing any activity related to political campaigning. The rules may be summarized as follows:

1. Political Activities During District Work Hours.

Public officers and employees may not engage in campaign activities during work hours.²

For purposes of this rule, “during work hours” includes any standard or overtime hours that are part of a shift that a public officer or employee is required to work. A public officer or employee is considered “off-duty” for purposes of this rule, however, when he or she is on a permitted lunch break, vacation, an administrative leave day, or during a public holiday when not working.³

¹ Government Code § 8314

² Government Code § 3207

³ Many public officials and employees work on public holidays (e.g., fire, police, public works). To the extent that a public official or employee is actually working for the agency on a public holiday, that person is “on duty.”



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Implementing This Rule

A. Distributing Materials. A public officer or employee may not distribute political campaign pamphlets, flyers, or other materials, or post political campaign signs while on duty.

B. Campaign Events. A public officer or employee may not attend campaign meetings, rallies, or other campaign-related functions while on duty.

C. Telephone Calls. A public officer or employee may not make campaign telephone calls while on duty.

D. Campaign Activities. Public officers or employees may not perform any other campaign-related tasks while on duty. This would include making copies, stuffing envelopes, writing campaign statements, or advocating or informing fellow District employees about campaign issues. Wearing of campaign buttons, hats, shirts or other clothing, or signs is also prohibited while on duty or while on District property.

2. Use of Public Funds or Resources to Advocate.

A public officer or employee may not use District funds or resources to advocate a partisan position or otherwise use public agency funds or resources to support his or her personal political campaign activities.⁴

Implementing This Rule

A. Office Equipment. A public officer or employee may not use District copy machines, faxes, computers, printers, or other office equipment or supplies to design, make, or distribute political pamphlets, flyers, signs, or other materials in support of his or her own political campaign activity. To do so would be a misuse of public resources.

B. Telephones/E-Mail/Social Media. A public officer or employee may not use District phones in support of his or her personal political activities. Prohibited activities include the following: making political cold calls, calling any campaign organizations with which they may be involved, or otherwise using a District-issued phone or equipment (e.g., smartphone) to communicate personal views about candidates or ballot measures. This would include use of District-provided email addresses and social media platforms to send and receive messages related to personal political activities.

C. Office Space. A public officer or employee may not use a District office or workspace to engage in his or her personal political activities. Prohibited activities include the

⁴ Government Code § 54964; *Vargas v. Salinas*, (2009) 46 Cal. 4th 1, 24-25; *Stanson v. Mott*, (1976) 17 Cal.3d 206, 209-210



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following: holding political meetings, organizing political events, preparing arguments, preparing ballot statements, preparing advertisements, and other such political activities.

D. District Facilities. State law generally prohibits a public officer or employee from using District facilities to engage in his or her personal political activities if doing so would result in a gain or advantage to the officer/employee or a loss to the District for which a monetary value may be estimated. State law, however, does not prohibit a public officer or employee from using a District facility for personal political/campaign activities if (i) District policy makes such facility available to all residents of the District or to the general public, (ii) District policy does not prohibit the use of the facility for personal political/campaign activities, and (iii) the public officer or employee (or their campaign committee) pays the same applicable rent/fee for use of the District facility as any other applicant (no free or discounted prices for use).

That said, State law authorizes the legislative body to adopt local rules and regulations that “prohibit or otherwise restrict. . . [P]olitical activities on the premises of the local agency.”⁵ While such a policy cannot prohibit political activities in the District’s “traditional public forums” reserved for free speech such as public parks and sidewalks, it can constitutionally prohibit political activities in the District’s “limited public forums” which are reserved for District business and events and not for personal political campaigning, such as administrative buildings, hospitals, public works yards, community centers, District-sponsored events, and the like. If the District is interested to considering such a policy, our office can assist in its preparation.

E. Office Equipment. A public officer or employee may not use or take away District office supplies in support of personal political/campaign activities. For example, a public officer or employee may not print off flyers on District printer paper, take pens and paper clips for use at a campaign office, or use District copiers to make copies.

F. Statements by Officials about Measures at Public Meetings. Individual officials may urge citizens at public meetings to generally get informed and to vote, without making any reference to a specific candidate or measure. They may also provide impartial non-advocacy information to the public about a measure. While individual officials are generally discouraged from making statements in support or against a specific measure at a public meeting, if the comment is brief (15-20 seconds), this would likely be viewed as a *de minimus* spending of public resources for advocacy. Officials, however, should refrain from extended or repeated comments or statements in favor or against a measure as that would certainly be viewed as prohibited government funded advocacy.

G. Taking an Official Position at a Public Meeting. Either before or when a measure is officially placed on the ballot, the District’s Board of Directors, as a body, may state on the record (including by adoption of a resolution), the District’s position regarding the measure at a

⁵ Government Code § 3207(b)
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public meeting, where the meeting affords an opportunity for others to speak out in opposition.⁶ After a measure is placed on the ballot, however, the expenditure of staff time and District resources to agendize such an item would constitute prohibited government funded “communications that expressly advocate” for or against a measure.⁷

H. Statements by Officials about Candidates at Public Meetings. There is no legal authority for the District’s Board of Directors, as a body, or for any individual Director or official to advocate for or against an identified candidate during a public meeting. Officials should refrain from making such statements as they are also deemed to be prohibited government funded “communications that expressly advocate” for or against a candidate.⁸

3. Appearance in Uniform or with District Vehicles/Equipment.

Employees who wear a District provided uniform required by their employment may not participate in any political activity while in uniform.⁹

Implementing This Rule

If a public officer or employee wears a uniform that has become associated with a specific position at the District, he or she may not appear at any political function in that uniform *even when off duty* and may not appear in campaign literature in uniform.

The District may not authorize a public officer, employee, or candidate for elected office to appear in, on, next to, or otherwise appear to drive, use, or otherwise operate District vehicles or equipment for personal political activities, as this would suggest a District endorsement of a particular candidate as well as being a misuse of public resources.

4. Making Promises for Political Favors.

A public officer or employee may not promise to provide any person with a gift, money, promotion, job, or other form of compensation in return for a contribution or vote.¹⁰

⁶ *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee*, (1988) 203 Cal.App.3d 529, 560.

⁷ Government Code § 54964

⁸ *Id.*

⁹ Government Code § 3206

¹⁰ Government Code § 3204



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Implementing This Rule

A. Hiring. A public officer or employee may not promise to hire or appoint any person for a District position in return for a contribution or vote for or against any candidate or ballot measure.

B. Salaries. A public officer or employee may not promise to increase the pay rate, salary, or fringe benefits of any officer or employee in return for a contribution or vote for or against any candidate or ballot measure.

C. Gifts. A public officer or employee may not promise to provide any person with money, a loan, or a gift in return for a contribution or vote for or against any candidate or ballot measure.

5. Officers/Candidates Soliciting Contributions or Political Support from District Officers/Employees.

An officer or employee of a local agency or a candidate for elective office of a local agency may not, directly or indirectly, solicit a political contribution from another officer or employee of that agency with knowledge that the person from whom the contribution is solicited is an officer or employee of that agency. The only exception is if an officer/candidate solicits contributions from “a significant segment of the public which may include officers or employees of that local agency.”¹¹

Implementing This Rule

A. No Specific Solicitation of District Officers/Employees - Anywhere. Requests made to District officers/employees (either verbal or written) for contributions or political support are prohibited. This rule applies to both direct (by the officer/candidate) and indirect (through a third party) solicitations. Further, the prohibition applies regardless of location – even to solicitations made outside of District facilities.

B. Broad Campaign Efforts are Allowed to Include District Officers/Employees. The one exception is that an officer/candidate may include District officers/employees if they are part of a broader campaign effort. For example, if a candidate were to send out 1,000 campaign mailers and 20 of them were sent to District employees as part of the larger group, that would not violate this rule. The key is that District officers/employees cannot be specifically approached for contributions/political support.

¹¹ Government Code § 3205
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C. Solicitation of Relatives of a District Officer/Employee. Soliciting contributions or political support from the spouse or relative of a District officer/employee is permissible, so long as it is not a subterfuge for soliciting the District officer/employee indirectly.

D. Violation is a Misdemeanor. Violation of this rule is a crime, punishable as a misdemeanor.

6. What Public Officers and Employees May Do.

Off-Duty Activities. Acting in his or her off-duty individual capacity, a public officer or employee may engage in any political activities such as campaigning and fundraisers.

A. Hourly Employees. For purposes of this guideline, public officers and employees are considered to be “off-duty” before the commencement of, or at the end of, any standard or overtime hours in their shift or that they are otherwise required to work. Public officers and employees are considered to be “off-duty” for purposes of this guideline when they are on their approved lunch break or when they are on vacation, have taken an administrative leave day, or during a public holiday when not working.

B. Salaried Employees. Public officers and employees who are salaried employees and do not have a regular shift or hours are generally considered to be “off-duty” before the commencement of, or at the end of, the District’s normal business hours. Some salaried officers and employees, however, perform part of their official duties outside of the District’s normal business hours (e.g., appearance at after-hours Board, committee, and commission meetings). Salaried officers and employees should be particularly careful to observe when they are and are not “off duty” for purposes of this guideline. A public officer or employee is considered to be “off-duty” for purposes of this guideline when they are on approved lunch breaks or when they are on vacation, have taken an administrative leave day, or during a public holiday when not working.

C. Political Activities. Political activities include such things as attending a political rally, participating in a campaign committee, sitting on a phone bank, doing campaign-related work, posting campaign signs, registering voters, or advocating that persons contribute or vote for or against a candidate or ballot measure.



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POLITICAL ACTIVITY QUICK SHEET

Laws governing the political activity of District officials have been established to (1) safeguard public resources; (2) ensure the government remains nonpartisan and neutral in election matters; and (3) protect District employees from pressure to support or oppose candidates or ballot measures.

What Is Prohibited Political Activity?

You may not:

- use or authorize the use of District offices, stationery, telephones, vehicles, equipment or any other District property for any campaign activity;
- engage in fundraising or other campaign activities during hours for which you are paid to conduct District business;
- knowingly solicit contributions for or against a political candidate or ballot measure from *any* District official or employee. Soliciting a contribution from the spouse of a District officer or employee is permissible so long as it is not a subterfuge for soliciting the District employee;
- permit yourself to be solicited for a campaign contribution by another District official or employee;
- receive, deliver, or attempt to deliver a political contribution in District Offices or in any office for which the District pays the majority of the rent.



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POLITICAL ACTIVITY QUICK SHEET

What Is Permissible Political Activity? You may:

- perform volunteer work, endorse* candidates, and take personal positions on ballot measures, as long as these activities do not involve the use of District time, property, facilities or equipment;
- use your own funds to make political contributions, subject to applicable laws;
- solicit political contributions from persons *other* than District officials and employees on behalf of candidates or ballot measures.
- use District resources to provide unbiased, balanced, and neutral information about the purposes, provisions and estimated impact of District bond issues and ballot measures. (Remember, however, that District funds may not be spent to urge the passage or defeat of any ballot measure.)

* District officials should make clear that they are acting as individuals and take *all* steps to avoid giving the impression that the District, as an organization, supports the candidate.