



Colorado's Fair Campaign Practices Act Restricts Use of Public Funds

Ballots in statewide or local elections often include issues of profound importance to Colorado municipalities. As community leaders, municipal officials can and should become actively involved in the public discussion of these issues. However, the state Fair Campaign Practices Act (FCPA) places significant restrictions on the use of public funds for advocacy purposes or for dispensing information in connection with local or statewide ballot issues (C.R.S. § 1-45-117).

The FCPA restrictions on the use of public funds apply:

- to statutory cities and towns or to those home rule municipalities that have not adopted provisions regarding campaign finance, and
- once a statewide petition has been submitted for title setting, or
- for local ballot issues, once an issue has been submitted for the purpose of having a title fixed or that has had a title fixed, upon final action of the governing body placing a referred measure on the ballot, or
- once the recall election of any officer has been certified to voters.

These guidelines are intended to provide municipal officials and employees with general guidance concerning what they may or may not do, consistent with the FCPA. However, *your municipal attorney should be consulted, and any home rule provision(s) reviewed, before any action is taken that could be viewed as subject to the public-funds restrictions in the FCPA.*

Permissible activities

It is permissible to do the following in campaigns in support of or in opposition to a proposed measure:

1. The local governing body may take a position of advocacy on the issue. The governing body may pass a resolution and take a public stand urging the electorate to vote for or against any matter. Local governments may report the passage of or distribute such resolutions only through the customary means to furnish such resolutions to the public. A local governing body may not additionally furnish the resolution through other means, such as an op-ed piece in the local newspaper.

2. The Act provides that any public official who has “policy-making responsibilities” may spend up to \$50 of public money on phone calls, letters, or other activities “incidental” to expressing his or her opinion on any issue. It is advisable to consult with your municipal attorney before expending public funds in reliance on this provision.
3. Elected officials may speak out on the issues presented on the ballot. There is no limitation in the FCPA on the right of public officials to address any matter before the electorate; the limitations in the Act are on the expenditure of public funds.
4. Public employees and paid elected officials may work on a campaign and speak out on the issues on their own time. Any public employee who becomes involved in the campaign should be prepared to document that such work was done on his or her own time. If the public employee is on a recorded-hour system, make sure the record reflects that the public employee took time off from public duties to engage in campaign activities.
5. Public employees may respond to unsolicited questions or requests for information about a ballot issue; however, the local government should carefully avoid producing information for distribution that is designed to influence the passage or defeat the issue.
6. The local governing body may use public funds to develop and distribute a factual summary on any issue of official concern¹ that will appear on a ballot in the jurisdiction. The summary must include arguments for or against the proposal, but the summary itself may not contain a conclusion or opinion in favor of or against the proposal.

Impermissible activities

It is impermissible under the FCPA, except as indicated above, to do the following in campaigns in support of or in opposition to a proposed measure:

1. Use or expend public funds or supplies;
2. Allow employees or paid officers to work on a campaign during their working hours or use any public facility or equipment for the purposes of a campaign;
3. Provide transportation or advertising using public property or funds to influence, directly or indirectly, the passage or defeat of any issue; or
4. Grant an employee or officer leave from his job or office with the local government, with pay, to work on a campaign.

For more information, contact the CML Legal Department at 303-831-6411.

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¹ Official concern involves, at the very least, questions which come before officials for an official decision. *See e.g., Campbell v. Joint Dist.* 28-J, 704 F.2d 501 (10th Cir. 1983); *Mountain States Legal Found. v. Denver Sch. Dist.* No. 1, 459 F. Supp. 357 (D. Colo. 1978).