

TO: De Anza College President Brian Murphy
FROM: John Shupe, Esq., Lynch and Shupe, LLC
RE: Political advocacy by College Employees
DATE: Sept. 18, 2012

California law establishes some parameters regarding political advocacy by College employees while on-duty. Of course, these rules do not restrict off-work employee political activities which occur off campus. Off work employees are free to spend their own time, off campus, pursuing political activities such as promoting or urging defeat of a ballot measure. Subject to the rules noted below, off duty employees may also pursue such political activities on campus.

The major source for the prohibition on employee political activity is Education Code section 7054, which provides, in pertinent part:

- (a) No...college district funds, services, supplies or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate....
- (b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any... ballot measure if both of the following conditions are met:
 - (1) The informational activities are otherwise authorized by the Constitution or laws of this state.
 - (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the...ballot measure.

The statute makes a violation of subdivision (a) punishable as a felony. (Section 7054(c)) Subdivision (b) of the statute confirms that using District resources to deliver a fair and impartial factual presentation on the possible effects of the passage or defeat of a ballot measure is not a violation of this law.

An employee on work time represents an expenditure of district funds. Thus, the statute prohibits campaign activities by employees on work time. Employees should also refrain from wearing their own campaign buttons or clothing adorned with pro or anti ballot measure messages during their on-duty hours. Certainly, instructors should refrain from such activities during teaching unless doing so is part of a pedagogically justified curricular activity.

All employees, whether or not they are on work time, are subject to the restriction on use of District supplies or equipment to campaign for or against a ballot measure. Classic examples are using District telephones, photocopy machines, paper, fax machines, printing equipment and supplies and so forth. Our Supreme Court has broadly construed "supplies or equipment" to include internal communications platforms such as employee mailboxes. Presumably, if a Court addressed the issue it would also rule that "supplies or equipment" includes the District's email platform when accessed by on or off work employees through District-owned computers or workstations. (This is to be distinguished from faculty association and classified union use of approved internal communication channels to disseminate association/union non-campaign information.)

Section 7054's prohibition on use of District resources does not include real property such as College sidewalks, quads or similar areas which are incidentally used by off work employees to stand, sit or walk while they deliver pro or anti ballot messages. Thus, faculty not in the classroom or in their district offices and not on work time would be free to express their political views on the public property of the district, subject to the campus time, place and manner regulations.