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To: Linda Michalowski
Vice Chancellor, Student Services

From: Steve Bruckman
Executive Vice Chancellor of Operations and General Counsel

Subject: Associated Student Organization
Legal Opinion 12-07

Issue

You have asked a series of questions about the use of student association funds for the purpose of advocating for, or assisting in, the development and approval of ballot measures. Some of the questions are relatively easy to answer, but others are quite complex and are highly dependent on specific circumstances. While this opinion can be used as a guide, districts should consult local counsel to ensure compliance with all laws and regulations. Districts should also refer to Legal Advisory 04-05 issued by this office.

Introduction

Education Code section 7054 provides:

No school district or community 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, including, but not limited to, any candidate for election to the governing board of the district.

Because of the clarity of this statute, it would be prudent for districts and student associations to interpret the law strictly and conclude that where uncertain, the safest course is to avoid using student association funds for political activities. For purposes of this opinion, reference to "funds" includes services, supplies, or equipment.

<http://www.cccco.edu/Portals/4/Legal/opinions/attachments/10-01.pdf>. (This opinion does not address student representation fees collected pursuant to Education Code section 76060.5. Use of student representation fees is addressed in the Student Fee handbook.)

Questions

1. Can Associated Student Organization (ASO) funds provided by the district be used to support campaigns to pass or defeat an initiative that has qualified and been placed on a ballot?

No, this is clearly prohibited by Education Code section 7054.

2. Can an ASO use its own privately raised funds for this purpose?

Yes, funds raised independently by the ASO are not subject to the prohibition. Pursuant to Education Code section 72670, an ASO is an auxiliary organization and the Attorney General has determined that because an auxiliary organization is a private entity, its use of its own privately raised funds is not subject to the prohibition against the use of "public funds" for political purposes. This conclusion is not changed by the fact that districts have the power to oversee organization funds. 88 Ops.Cal.Atty.Gen. 46 (2005).

Public funds are those funds held by a district in the normal course of business received through traditional sources such as apportionment and grants. Privately raised funds are those received through the independent efforts of the ASO through activities such as sales of optional student ID cards, flea markets, and bake sales. If an ASO desires to use its privately raised funds for political purposes, it is essential that privately raised funds be maintained in a segregated account to ensure that public funds are not intermingled. Furthermore, organizations incorporated as "nonprofit organizations" may be subject to additional limitations.

3. Can ASO independently raised funds be used to support campaigns to qualify an initiative for the ballot? Specifically, can they be used for 1) donations to initiative qualification campaigns; 2) producing or purchasing flyers or other materials to promote a qualification campaign; and 3) paying signature-gatherers?

All ASO funds can be used for general advocacy; for example, to transport students to the March in March. On the other hand, as discussed above, ASO funds provided by a district cannot be used to support a ballot measure. This raises the question of precisely when an issue of interest on which advocacy is allowed becomes a ballot measure for which advocacy is permitted only with funds raised by the ASO.

Under Government Code section 82043(a):

"Measure" means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an

election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

The Fair Political Practices Commission has found that:

Under the Political Reform Act, a proposal can become a measure in two different ways. First, "measure" includes any proposition "which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot. This definition includes not only each initiative, referendum or recall that is actually submitted to the voters, but also applies to each such proposal that is intended to be submitted to a popular vote whether or not it qualifies for the ballot. Accordingly, an initiative, referendum or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot." (*In re Fontana* (1976) 2 FPPC Ops. 25.)

Thus, student associations may use district funds to advocate up to the point the proponents of the measure begin to circulate signature petitions. The question posed above is whether ASO funds can be used in "qualification campaigns." Clearly, district ASO funds cannot be used to pay signature gatherers. Conceivably, there could be elements of a "qualification campaign" that precede circulation of petitions and ASO funds could be used. However, this is a very gray area and the ASO may not necessarily know exactly when the proposal becomes a "measure." To avoid potential violation of Education Code section 7054, it is advisable that district ASO funds cease being used for some definable period prior to the time when petitions are actually being circulated. ASO's should work closely with their advisors and may need to consult legal counsel, depending on the specific circumstances involved.

4. Can an ASO take a position on a ballot initiative?

Yes, the ASO can take a position and adopt a resolution in support or against, but the ASO cannot use district funds to disseminate the resolution other than through the commonly used procedures of publication of minutes.

5. Can ASO members actively support campaigns to pass or defeat an initiative without the direct or indirect expenditure of district funds?

Yes, there are no limitations on ASO members expressing their opinions as individuals or as members of the ASO as long as no district funds are used.

6. Can district funds be used to present information about a ballot measure? What distinguishes sharing information from promoting a position?

District employees and ASO members are permitted to provide information on an initiative or ballot measure. Education Code section 7054 requires that “information provided constitutes a fair and impartial presentation of relevant facts.” For example, if representing the ASO at a public meeting regarding a ballot measure, an ASO representative can offer factual information describing the impacts of the ballot measure. Similarly, an ASO could produce an informational flyer describing the impacts of the ballot measure. Whether information is impartial or advocacy may be difficult to discern. Districts typically are very cautious in this area and work closely with their legal counsel and public information officers to craft messages that are permissible. Student associations should be equally cautious.

As mentioned at the outset, this topic can be very complex, and districts are advised to consult with local counsel on specific cases.

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