

Campaigning by Public Officials/PA269 Dos and Don'ts

Introduction

U.S. District Judge John Corbett O'Meara accepted an agreement between the Secretary of State's office and local governments and school groups, permanently keeping the Secretary of State from enforcing a law that prevented local officials from providing factual information on local ballot proposals. O'Meara's order, entered April 28, 2016, references his previous temporary injunction against enforcement of the law, saying that the local governments had "demonstrated a strong likelihood of success on the merits of their claim that (the law) is unconstitutionally vague and thus void." The gag order was part of a larger campaign finance bill that passed the Legislature with little debate in 2015's legislative session and was signed by Gov. Rick Snyder, becoming Public Act 269 of 2015.

Section 57 of the Michigan Campaign Finance Act limits how a public body can use public funds or property when it comes to campaigning for ballot questions or candidates.

Campaign Finance Act—Permitted Activities

Generally, public officials can issue communications to voters using public dollars if the communications contain factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the public body. Moreover, the prohibition on using public monies to support or defeat a ballot proposal does not prevent certain high-level officers and employees from expressing their opinions. For example, nothing prevents a municipal official from standing up at a public meeting and telling the gathering that, in his or her opinion, the municipality needs to ask for a millage increase and the voters need to support it.

Although there are opportunities to carefully use public time and money to further educate the electorate on a proposal, public employees and officials should also keep the following additional guidelines in mind:

- 1) Non-policy making staff may not take "official" time (i.e., time during their regular jobs) to participate in campaign committee activities, as this would constitute an inappropriate expenditure of public funds. Nothing would restrict the ability of these individuals to work in any way on the campaign on their own time.
- 2) A public body may provide information to individuals and/or a campaign committee that is publicly available in the same manner as it would provide information to anyone else requesting the information.
- 3) Campaign committees may meet at public facilities only to the extent that, and on the same terms as, any other group is permitted to use the same facilities. If the public body incurs any expense in providing meeting space to the committee, the committee must reimburse the public for that expense.

Campaign Finance Act Don'ts

- 1) Don't use city or village funds, municipal-owned office space, or other property to expressly advocate a vote for or against a candidate or ballot question. "Expressly advocate" means to state support for the passage or defeat of a ballot question or the election or defeat of a candidate—in other words, to say "Vote yes for" (or no) or "Support" (or defeat) a candidate or ballot question.
- 2) Don't put links on your municipal website to sites that expressly advocate only for or against one candidate, one slate of candidates, or one side of a ballot question.
- 3) A city or village council cannot authorize or use public resources for a payroll deduction plan to collect for a campaign committee

Appendices

Appendix I USE OF PUBLIC FACILITIES, FUNDS, ETC. PROHIBITED

An injunction issued on February 5, 2016 by U. S. District Judge John Corbett O'Meara, from the U.S. District Court in Ann Arbor prevents the enforcement of PA 269 of 2015 as it affects Section 57 of the MCFA only. As a result, 57(3) is not in effect.

Section 57 of the Michigan Campaign Finance Act (MCFA) stipulates a public body or person acting for a public body **must not use or authorize the use of public funds or resources** to make a contribution or expenditure to further the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. Section 57 of the MCFA does not restrict the constitutionally protected right to associate or to engage in political speech. It is intended to prevent those who control public resources from using those resources to influence the outcome of an election. It is up to the people and not public bodies to decide elections. A public body is prohibited in participating in elections for:

- State and Local Ballot Questions
- Federal Candidates
- State Candidates
- Local Candidates

This means that a public body cannot contribute to or make expenditures on behalf of committee's registered to support or oppose candidates and ballot questions. This prohibition includes Candidate Committees, Ballot Question Committees, PACS, Super PACS and Political Party Committees nor can a public body make independent expenditures to influence voters in an election.

A public body is:

- A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
- The legislature or an agency, board, commission or council in the legislative branch of state government.
- A county, city, township, village, intercounty, intercity, or regional board; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.
- Any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises

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governmental or proprietary authority or performs a government or proprietary function.

EXAMPLES OF PROHIBITED USES

The prohibition includes, but is not limited to the use of personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, provide volunteer personal services or other public resources.

- A public body is prohibited from displaying political signs, brochures, pamphlets, etc in any governmental building or government property.
- Public officeholders and other public bodies are prohibited from using their office email and phones for campaign purposes.

Payroll Deduction Prohibition

The prohibition includes using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to or make an expenditure for a committee. Advance payment or reimbursement to a public body does not cure a use of public resources.

EXEMPTIONS

The prohibition does not apply to any of the following:

- The expression of views by an elected or appointed public official who has policy-making responsibilities.
- The production or dissemination of factual information concerning issues relevant to the function of the public body.
- The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication. This exemption does not apply to the dissemination of an advertisement of a candidate.
- The use of a public facility owned or leased by or on behalf of a public body if any candidate or committee has an equal opportunity to use the public facility.
- The use of a public facility owned or leased by or on behalf of a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund raising event.
- An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

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Appendices:



Include TOC

[Publish](#)

- The mere act of voting on a resolution that encompasses matters at a meeting does not constitute a misuse of public resources within the meaning of Section 57. A public body may record the resolution in the meeting minutes as required by the Open Meetings Act and may disseminate copies of those minutes in its regular course of publication.
- Public facilities that are rented to committees for use, may display the committee function on the facility marquee without violating section 57 as long as any candidate or committee has an equal opportunity to use the facility and the marquee is use equally for all events.
- Public facilities and resources can be used for public forums and public education on candidate elections and ballot questions provided the public resources are not used to influence the outcome of the election and views of all candidates and views of both supporters and opponents of a ballot question are treated equally.

PENALTIES

A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by one of the following, whichever is greater: (a.) A fine of not more than \$20,000.00 or (b.) A fine equal to the amount of the improper contribution or expenditure.

OTHER PROHIBITIONS OF THE MCFA

For a more complete listing of prohibitions covered under the MCFA see Appendix O; Prohibited Contributions.

COMPLAINTS

If you believe a violation of any provision of the MCFA has occurred, the law provides for a specific process that can be followed to file a complaint. A Complaint Process Form has been created to assist you with filing a complaint.

FAQs

What is a public body? A public body is:

- A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
- The legislature or an agency, board, commission or council in the legislative branch of state government.
- A county, city, township, village, intercounty, intercity, or regional board; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.
- Any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a government or proprietary function.

What activities are exempt from Section 57? Section 57 is not intended to squash the constitutional right to free speech by public officials or public bodies, but rather ensure that public resources are not used to influence elections. That decision must be left to the voters. Therefore, the prohibition does not apply to any of the following:

- The expression of views by an elected or appointed public official who has policy-making responsibilities.
- The production or dissemination of factual information concerning issues relevant to the function of the public body.
- The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication. This exemption does not apply to the dissemination of an advertisement of a candidate.
- The use of a public facility owned or leased by or on behalf of a public body if any candidate or committee has an equal opportunity to use the public facility.
- The use of a public facility owned or leased by or on behalf of a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund raising event.
- An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

What constitutes express advocacy? A violation occurs when a public body uses public funds to send out a communications that contains words of express advocacy. A communication contains express advocacy when it contains the words “vote for”, “elect”, “support”, “cast your ballot for”, “Smith for governor”, “vote against”, “defeat”, or “reject”. These are often referred to as the “magic words.” While these are the most common terms of express advocacy and provided in Section 6 of the MCFA, other terms may be considered to fall into the definition of express advocacy. Each communication must be considered carefully to ensure that it does not violate the express advocacy prohibition.

Can a public official insert fliers with express advocacy in an established mailing such as tax bill? No. A public body must not use any public resources paid for with public funds to influence voters. Providing factual information that does not contain words or express advocacy does not violate the MCFA. However, it is not recommended as it may result in a complaint. While the mailing may not result in any additional cost in postage or envelopes this is not relevant and does not mitigate the violation. The entire cost of the mailing and any staff time or other resources used to stuff and handling the mailing is considered a misuse of the resources.

Can a public official use the office telephone for campaign purposes? No. A public official should not use his public office telephone or any phone paid for with public funds to campaign or advertise it as a way of contacting the public official for campaign purposes. Any time spent answering campaign phone calls diverts attention for the ordinary business of the public body and is permanently lost. Additionally, any staff time answering and transferring campaign related phone calls also causes the loss of time to the county. Any of this activity would result in a prohibited expenditure of public resources.

Can a public official use the office email for campaign purposes? No. A public official should not use his public office email system paid for with public funds to campaign or advertise it as a way of contacting the

public official for campaign purposes. Any time spent answering emails calls diverts attention for the ordinary business of the public body and is permanently lost. Additionally, any staff time reading, handling or transferring campaign related emails also causes the loss of time to the county. Any of this activity would result in a prohibited expenditure of public resources.

Can a public official use pictures taken in the public office and/or wearing their official uniform? Maybe. A public body violates the MCFA by expending its resources for prohibited campaign activity. The expenditure of public funds must have “ascertainable monetary value” in order to meet this threshold. There is no ascertainable monetary value in connection with a picture being taken in a public office. In addition, Section 57 of the MCFA contains an exception that allows the use of a public facility if any candidate has the same opportunity to use that facility.

Can a public official campaign in their uniform? Maybe. A public body violates the MCFA by expending its resources for prohibited campaign activity. The expenditure of public funds must have “ascertainable monetary value” in order to meet this threshold. There is no ascertainable monetary value in connection with a public official wearing a uniform. In addition, some public officials are asked to purchase their own uniforms. In this case, no public resources are involved.

Can a public official campaign using a publicly funded vehicle such as a patrol car? No. A publicly funded vehicle such as a patrol car must not be used to campaign. The prohibition would extend to attending campaign events, transporting campaign materials or any other exclusively campaign related use.

Can a public official campaign while on publicly paid time? No. At no time can a public official campaign when being paid to work. A public official must use personal time or accrued leave time to campaign during working hours. Public officials that are on call, but not actively working and not being paid are considered to be on personal time unless and until they are called to duty.

Can a public official use official letterhead for campaign purposes? No. A public official cannot use official letterhead of the public body to campaign for himself/herself or any other candidate.

Can a public official endorse another candidate? Yes. An endorsement in and of itself has no value. However, the public official cannot use public resources to promote or advertise the endorsement of himself or any other candidate.

Can a public official use public resources if the cost is reimbursed to the public body? No. A violation of the MCFA occurs at the point that the resources are used and reimbursement to the public body does not cure the violation.

Can campaign signs be placed on public property or displayed in public buildings? Maybe. Campaign signs should not be placed on public owned or leased property unless the opportunity exists for any and all candidates and committees. This practice extends to placing brochures in a public building. However, this practice is highly discouraged as it leads to complaints. It further puts the public body at risk of violating the MCFA inadvertently. It is recommended that the public body establish clear and written policies on the use of public facilities for campaign purposes.

On election day, can signs be placed on public property if the building is a polling place? Polling locations (including those on public property) on election day must allow campaigning outside of the 100 foot rule. This means that within 100 feet of any door to the building, campaigning and signs are not allowed. However, outside of 100 feet campaigning must be allowed. However, the public body has the authority to allow or disallow signs being left on the property as long as the decision is enforced equally during the hours the polls are open.

I see signs on public property, can I take them down? Only the owner or administrator with the authority to remove signs may do so. The members of the general public without permission do not have the authority to remove the signs.

Can a public facility be used for a candidate meet and greet or ballot question informational meeting?

Yes. Public facilities and resources can be used for public forums and public education on candidate elections and ballot questions provided the public resources are not used to influence the outcome of the election and views of all candidates and views of both supporters and opponents of a ballot question are treated equally.

I think a violation has occurred, can I file a complaint? Yes. If you believe a violation of any provision of the MCFA has occurred, the law provides for a specific process that can be followed to file a complaint. A Complaint Process Form has been created to assist you with filing a complaint.

Do I need evidence of the violation to file a complaint? Yes, a complaint that is not substantiated with evidence will be dismissed. Evidence can be in the form of pictures, videos, receipts or vouchers or anything else that substantiates the allegations.

ADDITIONAL RESOURCES

RULINGS AND INTERPRETIVE STATEMENTS

QUESTIONS?

Contact Us