



Restrictions on Political Campaigning by Public Employees

ORS 260.432 Training
Oregon Secretary of State
Elections Division

ORS 260.432

What will be covered in today's training?

- **What is ORS 260.432 and how it applies to:**
 - Candidates, Elected Officials & Public Employees
 - Definition of “On the Job” and “Official Capacity”
- **What our role is related to ORS 260.432**
 - Review service and how it works
 - What is Safe Harbor?
- **What we look at when reviewing materials**
- **Examples of common mistakes or issues we see**
- **How to submit documents for review**

What is ORS 260.432?

ORS 260.432 is the statute that prohibits Public Employees from engaging in political activities or advocacy while on the job, or directing Public Employees to do so.

260.432 Solicitation of public employees; activities of public employees during working hours.

- 1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.
- 2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

What does ORS 260.432 really say?

260.432 Solicitation of public employees; activities of public employees during working hours.

- 1) No person shall coerce, command or require a public employee to engage in political activities.
- 2) No public employee shall engage in political activities while on the job or acting in their official capacity.

Political Activates or Advocacy includes:

promoting or opposing a political committee, nomination or election of a candidate, or adoption of a measure, and gathering signatures for an initiative referendum or recall petition.

Attorney General Statement

An Attorney General letter dated October 5, 1993 states:

Public bodies may use public funds to inform voters of facts pertinent to a measure, **if** the information is not used to lead voters to support or oppose a particular position in the election.

However, we also have pointed out that ‘informational’ material may be found to ‘promote or oppose’ a measure **even if** it does not do so in so many words **if** the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure.

What this means:

Public bodies can produce informational material in relation to a bond measure.

However, even if the material is informational in nature it could be considered political advocacy **if** the information is presented in an impartial way that appears to favor or oppose a measure.

When does ORS 260.432 apply?

- for **initiative, referendum and recall petition** efforts, as soon as a prospective petition is filed with the appropriate elections filing officer (for a statewide initiative, this is the date the sponsorship prospective petition is filed);
- for a **ballot measure** referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- for a **candidate**, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- for **political committees**, whenever the political committee is active.

The prohibition ceases to apply at 8:00 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibition ceases to apply to a petition (initiative, referendum or recall) on the date the petition is withdrawn or becomes void.

Who does this apply to and how?

Public Employees

Public employees are subject to the statute any time they are on the job or acting in their official capacity. This includes government contractors during the terms of their contract.

Candidates

Can also be public employees, or elected officials. This statute applies as soon as a candidate files to run for office.

Elected Officials

Can also be candidates. Elected official's activities are not subject to ORS 260.432 unless they are directing public employees to take actions that violate the statute. A request made by an elected official is considered a command.

When is a Public Employee considered “On the Job”?

Hourly Employees

They are considered on the job any time they are being compensated, such as during their regular work hours, overtime and travel.

Salaried Employees

Salaried employees’ work time can be more difficult to define. They are considered on the job during regular work hours, overtime and travel. Also, if performing work that generally falls within their work duties, they may be considered to be working in their official capacity.



For both hourly and salary employees, a regular workday may not be definable for a position, or may not have a specific time period or schedule; it may be determined by the activities being worked on and whether the person is acting, or appears to be acting, in an official capacity.

When is a Public Employee considered “On the Job”?

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Official Capacity

Common activities that are always undertaken in an official capacity and are therefore always subject to the requirements of ORS 260.432 include:

- Drafting material for, or approving material, to be posted on an official website;
- Drafting or distributing an official publication from the public agency; and
- Appearing at an event as a representative of a public agency.

ex A public employee who, on their own computer on the weekend, drafts a press release about how a measure might affect their agency, and signs the document with their title, is acting in their official capacity.

ex A school superintendent is acting in their official capacity at all school board meetings and school functions. A salaried public employee may be acting in his or her official capacity even when using personal equipment and personal time, if the activity is related to work duties.

What is the Elections Division's role related to ORS 260.432?

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Complaints

The Elections Division investigates complaints alleging violations of ORS 260.432 filed with our office.

Reviews

Any covered materials produced by public employees while on the job during work hours must be balanced and impartial. The Elections Division is available to review documents prior to publication to ensure compliance with ORS 260.432.

If the document is submitted to the Elections Division and approved in writing it will be granted **safe harbor**.

If a complaint is filed against a document approved by the Elections Division there will be no violation of ORS 260.432 as long as what is printed does not deviate from the approved version.

What types of materials do we review?

Some of the common document types we review includes:

- Flyers or mailers
- Web pages and content
- Video scripts and finished videos
- Audio materials or scripts
- Informational Sheets
- Social media posts



We only review documents that are previously unpublished.

We **do not** review explanatory statements, ballot titles and administrative documents.

We **do not** review documents to determine if information is factual, language translation accuracy, spelling, punctuation or grammar.

What do we look for when reviewing a document?

When reviewing any document, the Elections Division is looking to determine if the document is impartial.

In order to be impartial for the purposes of ORS 260.432, a document must meet **three requirements**:

- 1) Documents must not explicitly urge a yes or no vote;
- 2) Documents must be factually balanced;
- 3) Any document that talks about what a measure would pay for must also fully describe how much it would cost.

Information that is entirely factual can still be considered advocacy if presented in a way that is not impartial.

What do we look for when reviewing a document?

(1) Documents must not explicitly urge a yes or no vote

The document should not include phrases such as:

- “Vote Yes on Measure 99,”
- “Support for Measure 99 is encouraged,”
- “The County is asking voters to approve,”
- “Voters are asked to support Measure 99,”
- “Please support our Mr. Candidate.”
- "On May 15, 2012, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57,"

Even if the remainder of the document is impartial, explicitly urging someone to vote in a particular manner would be a violation of ORS 260.432.

What do we look for when reviewing a document?

(2) Documents must be factually balanced

Documents produced by governing bodies must not be one-sided.

They must include a balance of factual information.

ex For example, if a document indicates what would happen if a bond measure were to pass, it must also include information on what would happen if it did not pass.

Only including one side would be considered a violation of ORS 260.432 as it urges someone to vote in a particular manner.

What do we look for when reviewing a document?

(3) Description of Cost

If a measure proposes to affect taxes or fees, the cost of the measure to an individual taxpayer or consumer must be included.

In the context of a bond levy, this is generally the cost per \$1,000 of assessed value. The cost must not be worded in a way to minimize it.



If the measure passes, it would **only** raise property taxes by \$0.10 per \$1,000 of assessed value.

It would be advocacy to describe the cost as “less than”, “merely”, or “only” \$X.



If the measure passes, it would increase property taxes by \$0.10 per \$1,000 of assessed value.

It is allowable to include an estimate if the exact cost is not known.

What are the common issues or mistakes we see?

- Using persuasive language
- Using persuasive fonts, text colors or graphics
Language, fonts, text or graphics meant to elicit an emotional response and urge a voter to vote in a particular manner
- Using minimizing language
- Using minimizing fonts, text colors or graphics
Language, fonts, text or graphics meant to minimize a particular fact while emphasizing another in order to urge a voter to vote in a particular manner
- Providing unbalanced information
Providing one sided information that serves to persuade voters to vote in a particular manner, such as only highlighting the positive effects of a measure passing to encourage a vote in favor of the measure.

EXAMPLES: Persuasive & Minimizing Language



The bond would **only** increase taxes by \$0.10 per \$1,000 of assessed value.

The word “**only**” minimizes the potential cost and encourages a vote for the passage.



If the bond passes, it would result in a tax increase of \$0.10 per \$1,000 of assessed value.

“If the bond passes” and “would result in” are more neutral and do not imply certainty.

EXAMPLES: Persuasive & Minimizing Language



The bond will increase the number of police in City of Anytown.

Using the word “**will**” implies that passage of the bond is a certainty, which is a form of persuasion. The sentence is vague and does not provide detail, what does increase mean? It is important to provide neutral, factual details and avoid vague and subjective statements.



If the bond measure passes, it would increase the number of police officers by 5.

Removing “will” and replacing with “would” removes the assumption that the bond will pass. Including the number of officers it would allow to be hired provides detailed and factual information for voters.

EXAMPLES: Persuasive & Minimizing Language



To maintain the excellent level of service currently provided by City Police.

The word “excellent” is persuasive in the context of political advocacy materials and encourages voters to pass the measure. “Level of service” is subjective and does not explain what would be maintained (response time, number of officers, etc.).



If the bond measure passes, it would maintain current police staffing levels and call response time.

Removing “excellent” and rephrasing the sentence provides factual information to the voters with details of what the results would be of passing the bond measure.

EXAMPLES: Persuasive & Minimizing Language



If the bond measure does not pass, the City would see significant cuts to the budget which would reduce the services the City is able to provide.

The word “**significant**” could be seen as persuasive, as it emphasizes the negative effects of not passing the measure and encourages voters to vote in support of the measure. This sentence does not provide sufficient factual information.



If the bond measure does not pass, the City’s budget would decrease by 15%.

Remove words and phrases that are meant, or tend to, illicit an emotional response, such as “significant cuts to the budget” and “significantly reduce the services the City is able to provide” in order to provide a neutral and balanced document. Stating the facts in a neutral tone- i.e. that the budget would decrease by a set amount or percent - the voter is informed of the possible outcome without attempting to persuade them to vote a certain way.

EXAMPLES: Font, Text sizing and colors

Text should be consistent in size and colors to avoid emphasizing specific words or phrases.

2020 BOND MEASURE 20-123

If passed, the bond would provide **5** additional staff members to ensure continued services for our community.



If passed, the bond would cost taxpayers \$0.59 per \$1,000 of assessed value.

If the bond does not pass, staffing levels would decrease and service levels would not remain at their current level.

EXAMPLES: Unbalanced Information

The material published or otherwise provided to voters should not be one-sided. It must include a balance of factual information and the information should fairly and neutrally explain the effect of the measure.



-  If the bond passes, it would allow city police to hire five new officers.
-  If the bond passes, it would allow city police to hire five new officers. If the bond does not pass, staffing would remain at the current level.

EXAMPLES: Graphics, Images and Graphs

With images, the positioning and size of the image can impact whether it would be acceptable.



Logos and images associated with an organization or governing body are acceptable, even if they would be viewed as persuasive, if they can be verified as commonly used by the organization or group.

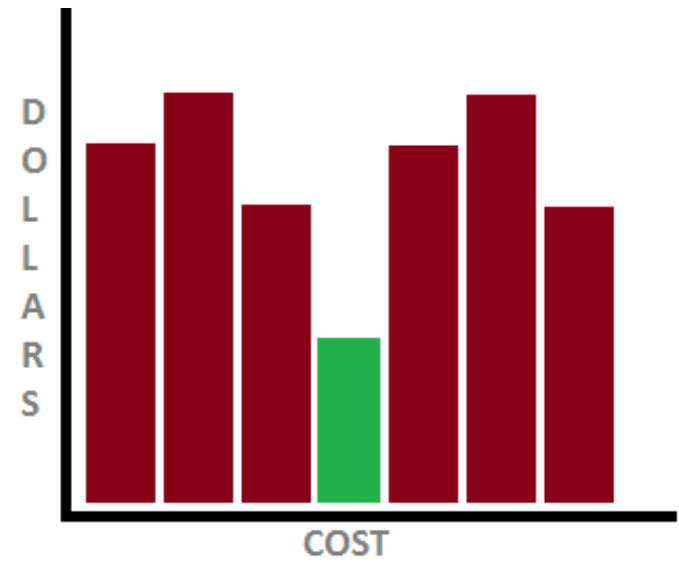


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Example Document



ANYTOWN School District

2019 Bond Measure 19-123

Vote
For Our School's
Future!!

3

What will the bond pay for?

The bond will fund new equipment, more teachers and safer schools.

4

What if the bond doesn't pass?

Failing to vote for the bond would lower Anytown's school budget and prevent vital school updates.

5

What will the bond cost for taxpayers?

The bond will only cost taxpayers a few cents per \$1,000 of assessed value.

6

Why are you asking for taxpayer funding?

The current budget for Anytown's schools only covers general operating costs and does not allow for any improvements or additional staffing. With your support we can improve the quality of our schools and our student's education.

7

Ensure our student's future success by passing Measure 19-123!

> Modern, top of the line equipment

> Improved security for our students and staff

> New schools for our growing population

> Minimal tax increase to ensure future funding for our schools!

Key Take Aways

What are some important pieces of information to remember from today's training?

- Public Employees cannot engage in political activities or advocacy while on the job.
- No one can direct employees to engage in political activities or advocacy while on the job.
- Materials produced by a governing body must be balanced and impartial, even if informational.
- The Elections Division offers a review service for materials prior to publication to ensure compliance with ORS 260.432.

Thank you!

For the full procedural and legal details please see our manual available on our website.

www.oregonvotes.gov

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