

MEMORANDUM

TO: City Employees

FROM: Jane S. Brautigam, City Manager
Jerry P. Gordon, City Attorney

SUBJECT: Participation in Election Campaigns

DATE: August 31, 2009

The Colorado Fair Campaign Practices Act, Section 1-45-117, C.R.S., places significant limitations on the campaign activities in which cities, city officials and city employees may engage. The law is superseded under the text of Chapter 13-3 of the Boulder Revised Code for City of Boulder elections. However, state law still requires careful attention because of its clear applicability to State elections and its potential applicability to city elections. Also, the city has adopted policies applicable to all employees that reflect many policies of the state law.

FIFTY DOLLAR EXCEPTION

State law and city policy both prohibit expenditure of more than fifty dollars of public monies to urge electors to vote in favor of or against any issue before the electorate. However, with the exception of the city manager, and others specifically authorized by the city manager, **no employee of the City of Boulder should expend any public money whatsoever, directly or indirectly, on the election.** Also, city employees should never engage in campaign activities during their work time or use equipment or materials for campaign purposes.

CAMPAIGN MATERIALS

Wearing campaign buttons is not prohibited by the Colorado Fair Campaign Practices Act and there are First Amendment implications to any prohibition on their use. However, political buttons may not be worn on uniforms. Also, non-uniformed employees should refrain from wearing campaign buttons while on duty. This is particularly important for employees who have substantial contact with the public. The reason for these rules is that it is not appropriate to suggest or imply that a personal political view of an employee is somehow endorsed by the city.

Similar rules apply with regard to campaign literature, and particularly to literature dealing with city issues. The city is prohibited from expending more than fifty dollars to publicize an issue. The exception (under the law) is an expenditure on a brochure that contains a factual summary of an issue and that includes arguments both for and against the proposal. This objective type document must contain no conclusion in favor of or against a proposal. As a result, no department or city employee may expend any public money on campaign-related literature without an explicit authorization from the city manager.

RE: Participation in Election Campaigns

City Council is allowed to pass a resolution endorsing a political position. However, even for the council, only “established means” may be used to distribute that resolution. Therefore, no special or unusual distribution of materials containing political conclusions (even if council endorses a political position) may occur in city buildings.

EMPLOYEE FIRST AMENDMENT RIGHTS

The law recognizes the

...right for individuals to express their own positions and to expend personal funds, make contributions in kind, or use personal time to urge electors to vote in favor of or against any issue before the electorate.

1-45-117(1)(b)(III) (C), C.R.S.

City employees are free to volunteer their time outside of office hours to work on a political campaign. As long as it is on their own time (and not using city equipment, or wearing city uniforms), city employees may sign petitions, participate in elections, donate funds and engage in all other manner of political activity. However, as employees engage in political activity on their own time, they should not suggest or imply that they represent the city. For that reason, the city’s Conflict of Interests Policy provides:

Individually or together with other City employees, employees may not identify their position or title or use their uniform while campaigning for or in support of any candidate for any public office, or knowingly permit themselves to be so used.

QUESTIONS FROM THE PUBLIC

The Fair Campaign Practices Act allows employees to respond to questions from members of the public about a local political issue so long as the “...employee has not solicited the question.” However, it is prudent for public employees to exercise caution in such circumstances. A member of the public may become confused about an employee’s support of a particular candidate or initiative, and this may bring into question the ability of the employee to carry out his or her duties in an impartial and effective manner as a public employee.

If any employee has questions with regard to this topic, both the city manager or the city attorney are available to respond to inquiries.