

LEGAL DO'S AND DON'TS OF POLITICAL ACTIVITY AND SPEECH

OVERVIEW

There are four sets of laws governing public employee political activity.

1. **Article 1, section 8 of the Oregon Constitution and the First Amendment of the U.S. Constitution.** Public employees, like all other citizens, have a right to express their own personal political views. Those free speech rights, however, may be restricted on work time, or when expressed in a manner suggesting that the public employer endorses the political view.
2. **ORS 260.432 - Oregon's "Little Hatch Act."** This law generally states that a public employee may not, while on the job during working hours, promote or oppose election petitions, candidates, political committee or ballot measures. Additionally, no person (including elected officials) may threaten or coerce a public employee into doing so.
3. **ORS 243.650 et seq - Oregon's Public Employee Collective Bargaining Act.** This law gives public employee labor organizations and their members certain rights relating to Association activity, including the right to bargain for access to members and the use of school equipment for Association activities.
4. **ORS 244.040 -- Oregon's Government Ethics Law.** This law prohibits "public officials" (including public employees and volunteers) from using their position to their personal benefit or detriment. This law is relevant to the personal use of email and other public resources.

The line between protected and prohibited political activity can be difficult to draw. Below, we will identify the parameters or permissible activity and answer some common questions. The Secretary of State also has helpful publications posted on its web site addressing public employee political activity. www.sos.state.or.us/elections/Publications

Because there could be both political and financial consequences to violating these laws, members and Association leaders should contact their UniServ Consultant or the OEA Government Relations department with any questions.

WHEN IS POLITICAL ACTIVITY PROHIBITED?

The statute prohibits political activity of any sort while "on the job, during working hours." What does "on the job" and "working hours" mean when you are a salaried employee who often works more than 40 hours per week?

WORK DAY

For salaried employees, it is often difficult to identify exactly when the work day starts and ends. However, most collective bargaining agreements provide for an eight-hour work day, with the start time depending on the school schedule. Time outside those hours would generally be considered your own time, in which you are free to engage in political activity.

PAID BREAKS AND DUTY-FREE LUNCH

You may engage in political activities during your duty-free lunch and other breaks, even though you are being paid for that time. However, you should be careful that you do not interfere with or interrupt other employees who are working.

OTHER ASSIGNMENTS

If you are "on duty" for some school-sponsored activity, such as parent-teacher conferences or extracurricular activities, then you are still "on the job" and subject to the restrictions set out in ORS 260.432.

PREPARATION TIME

Preparation time is "work" time, not "break" time, even when teachers are given wide latitude in how they use that time. This means that you may not engage in political activities during your prep time.

ASSOCIATION MEETINGS DURING CONTRACT WORK DAY

Many collective bargaining agreements allow the Association to hold Association meetings prior to the end of the official work day or at the end of a faculty meeting. This raises the question of whether the Association can promote a ballot measure, bond measure or candidate during those meetings. While the law on this question is murky, to be safe, we recommend that this kind of political activity be saved for after the end of the work day.

UNPAID TIME AT SCHOOL-SPONSORED ACTIVITIES

Education employees often volunteer or attend a variety of school-sponsored events. This is generally your own "non-work" time during which you can engage in political activity. For example, you might want to leaflet for a bond measure at a sporting event. This kind of activity is generally permissible (so long as you do not have a formal assigned duty at the event). Nonetheless, the District may be concerned that your activity could be seen as an official endorsement of a particular position. To avoid this issue, we recommend that the activity be coordinated through the Association and then clearly identified as an Association activity.

DISTRIBUTING POLITICAL INFORMATION AT SCHOOL

Can we use the school email, staff mailboxes, Association bulletin boards and inter-school mail to distribute materials that might contain political information?

SCHOOL DISTRICT EMAIL AND COMPUTERS

Email is one of the most widely used methods of communication, with "web activism" one of the newest and best tools available to political organizers. However, the use of school email systems for any purpose other than official school business raises a number of questions. Therefore, we encourage the Association to use personal (home) email addresses whenever possible. Likewise, we encourage members to use their home computers for political activities and communication. However, school email is not entirely off limits. Here are a few rules:

- (1) School email systems should not routinely be used to make or receive personal messages or for any other non work-related purpose. This includes accessing your own personal email using school equipment, even if it is during non-work time. The concern is that the Oregon Government Ethics Commission (the agency responsible for enforcing the government ethics law, ORS 244.040 and formerly known as the "Government Ethics and Practices Commission") generally considers the personal use of school equipment to be a "personal benefit," with some exceptions. While we disagree with this interpretation, particularly when the District has either explicitly or implicitly allowed employees to use school computers for their own personal use, we encourage members to use their own computer whenever possible.
- (2) The Association may have bargained for the right to use school district equipment, including the email system, for communication on union-related matters. This is still considered "work-related." To avoid any conflict with ORS 260.432, we recommend that the Association's email communications not include political information or advocacy. However, the Association can send emails pointing members to an outside link containing political information. For example, the subject line of the email could read: Political Action Alert - Open Only During Non-Work Time. In the message, the member could be directed to a separate web-site link containing the political information.
- (3) Members should not send political emails, such as OEA-Cyberlobby letters, using their school computer system.
- (4) Members should not expect school email communications to be private. Rather, they should assume that anything accessed or downloaded on a school district computer, whether it is retrieved from a school or private home email account, may be accessed or reviewed by the school district.

STAFF MAILBOXES

If the Association has bargained the right to distribute Association newsletters and other materials through staff mailboxes, then it can distribute political information through those mailboxes as well. For example, the local Association newsletter may include political information, such as notices of political events and the Association's positions on candidates and ballot measure. The Association may also distribute flyers advertising an event. These materials can be distributed through staff mailboxes, so long as they are read during non-work time. In order to remind employees of this obligation and to keep the content of the notice from being seen by the public (which may concern the District), some Associations fold the document and put a note on the outside advising the member to "read on your own time."

ASSOCIATION BULLETIN BOARDS

The Association generally has the right to post information on its bulletin board – typically located in the faculty lounge – without first obtaining permission from the District. This would include notices of political events, requests for volunteers, and talking points on political issues, including ballot measures, bond levies and candidate races. The materials do not need to be produced by the Association, but it is probably a good practice to require that materials posted on the Association's bulletin board include some kind of Association endorsement or identifier in order to control what is posted. Notably, the Association does not need to give equal access to opposing viewpoints.

INTRA-SCHOOL MAIL

Many Associations use the District's "pony mail" to distribute Association materials to various buildings. Use of intra-school mail implicates U.S. Postal Service regulations. Therefore, our advice is to avoid distributing political materials through the inter-school mail.

PERSONAL POLITICAL EXPRESSION AT WORK

Can I wear political buttons, post signs and engage in conversation with colleagues where I am clearly supporting or opposing a candidate or ballot measure?

As a general rule, you are free to express your personal political views, even at the work site. However, the District may restrict that speech, if the speech is disruptive to the educational environment or where the public might believe that you are expressing the views of the public entity, and not yourself personally.

CAMPAIGN BUTTONS

This is the essence of political speech and is usually permissible. School employees may wear political buttons, including candidate buttons, except to the extent that they disrupt the educational environment. In addition, an employer may be able to prohibit the wearing of such buttons on a work

uniform, in order to avoid the appearance of the school's endorsement of the position.

BUMPER STICKERS AND SIGNS

Like buttons, employees can put signs on their cars and personal belongings, where it will be clear that they are expressing their own personal opinion. However, it may not be appropriate to put signs up in the classroom or other spaces open to the public.

ADVOCATING FOR CANDIDATE OR MEASURE AT SCHOOL

Educational employees can advocate on behalf of candidates or ballot measures with colleagues and others at school, so long as it is done during non-work time (both for the speaker and listener) and does not disrupt the educational environment. Of course, it is also important that you respect the views of others and do nothing that could be perceived as coercing others to agree with you or the Association.

EXPRESSING OWN POLITICAL VIEWS WITH STUDENTS

During certain elections, students may be interested in the political views of teachers and other staff. You have the right to express your personal political views, but it is important that you do so in an educationally appropriate manner. As with any other potentially controversial topic, you should consider whether the subject is relevant to the curriculum, the age of the students and the potential disruption to the classroom.

SPECIFIC POLITICAL ACTIVITY

Above, we have outlined the general parameters of how and when members can engage in political activity. Below, we will briefly address some common types of Association political activities. When contemplating specific political activity, it is also important to remember that state campaign finance laws and federal tax laws contain a variety of reporting requirements. Those requirements differ for ballot measure and candidate campaigns. Any questions should be directed to the OEA's Government Relations Department.

SOLICITING POLITICAL VOLUNTEERS

The Association can solicit volunteers for political activities that are sponsored by the Association, OEA-PIE and/or specific campaigns, by distributing flyers, posting notices on the Association bulletin board, and other methods of communication as outlined above. While the Association may not be able to use the district's equipment to publicize a specific political activity, it may be able to accomplish the same purpose by referring more generically to an "Association activity" (assuming that the District otherwise allows the Association to use the intercom for announcements). For example, it may be possible to use the school's intercom system to remind staff of an event without referencing the political purpose of the event. The message might be, "Don't forget the Association canvass this weekend. Meet at the Dairy Queen at 12:00. More details are on the Association bulletin board or call Sue."

FUNDRAISING

The Association cannot solicit financial support of OEA-PIE, ballot measure campaigns or other political committees during work time. However, it can direct members to web sites where donations can be made or solicit money in meetings held outside of work hours. Of course, the Association should be careful to respect the rights of those who disagree with the Association's positions or who do not want to make contributions.

STORING POLITICAL MATERIALS AT SCHOOL

Association activists often want to store partisan political materials at school, such as maps, voter lists and canvassing flyers. It is probably permissible to do so for a short period, to the same extent that employees are allowed to store other personal items. However, if there is a large amount of material that is stored for a significant period, the District may be accused of allowing public resources to be used to promote or oppose a candidate or ballot measure. It would be better practice to store the materials in a car, private home, private business or the UniServ office.

PHONE BANKS AT SCHOOL

Local Associations may want to run a phone bank at school, using school equipment and facilities. This is probably not permissible, even where the collective bargaining agreement gives the Association access to school equipment and facilities. This is because the Government Ethics law would treat the public employee's use of the equipment as being for his or her own personal benefit. In addition, the use of the school equipment could create the appearance of the school district taking a position on a political issue, which is not permitted.

INVITING POLITICAL CANDIDATES TO SPEAK

The Association is free to invite only OEA-PIE-recommended candidates to speak at an Association event, so long as the event is held outside of work hours. However, if teachers want to invite candidates to speak to their classes, they must extend the invitation to all viable candidates or both sides of an issue. Otherwise, they could be accused of promoting a particular candidate or issue.