

MEMORANDUM

DATE: August 1, 2016

TO: Members of the Santa Clara County Board of Education,
SCCOE Employees, and Charter School Operators

FROM: Jon R. Gundry, Santa Clara County Superintendent of Schools

RE: **Notice: Political Activities**

The Santa Clara County Office of Education (“SCCOE”) periodically provides reminders and notices to employees regarding certain policies and regulations. The topic of this memorandum is Political Activities. It is a summary of the rules that govern involvement in political activities and the laws that restrict use of SCCOE resources for political activities.

This memorandum addresses three foundational concepts: (1) the law prohibits the use of public funds, services, supplies or equipment to support or defeat any ballot measure or candidate; (2) even though Santa Clara County Board of Education members and SCCOE employees are free to engage in political activities while off-duty, there are limitations on those activities; and (3) additionally, the potential effect of proposed or qualified ballot measures, including any resolution referencing a proposed or qualified ballot measure, may be agendaized for an open public meeting of the Santa Clara County Board of Education, and may be discussed at such meeting. Please note that compliance with these basic tenets is required by the SCCOE’s Board Policy (“BP”) 1160.

A determination regarding whether specific actions are legally appropriate is fact and situation specific. For this reason, this memorandum is intended to serve as a general reference, rather than a substitute for the advice of legal counsel.

A. Prohibition against Use of Public Resources and On-Duty Personnel

It is unlawful for Santa Clara County Board of Education members and SCCOE employees to use SCCOE resources or personnel for any political activity. This prohibition applies to the governing board of a county office of education or charter school or any individual member of the governing board. Examples of prohibited activities include (but are not limited to) the following: using SCCOE email, telephones, photocopiers, fax machines, computers, office supplies, circulating petitions, addressing envelopes, or engaging in any other activities that use public resources or divert public employees from their assigned duties.

The law prohibits any misuse of public resources or personnel, no matter how small. A county office of education officer or employee need not intend to misuse public resources for a violation to be found, nor are violations limited to theft. The law covers all Santa Clara County Board of Education members and SCCOE employees. It does not require that the officer or employee have actual possession of public monies, or primary duties related to such monies. The

prohibition against using SCCOE resources for political purposes is prohibited even if it is done during non-work time, including but not limited to, lunchtime.

Additionally, Santa Clara County Board of Education members and SCCOE employees may not use their official positions to influence candidates' campaigns, ballot measures, or other contested elections. Santa Clara County Board of Education members and employees may, however, lawfully use public resources (where budgeted for such a purpose) to investigate and objectively evaluate the potential impact of a bond issue, parcel tax or other measure on public operations, so long as the style, tenor and timing of this information preserves its fair and impartial nature. Santa Clara County Board of Education members and employees may then make that analysis available to the public. Santa Clara County Board of Education members and employees may also respond to public requests for information, including requests to participate in public discussions about bond issue, parcel tax measure, or other measure if the officer's or employee's statements are limited to balanced and objective assessments of the measures.

Courts will evaluate such communications in terms of whether they make a balanced presentation of facts designed to enhance the ability of the voters to intelligently exercise their right to vote or whether the communications promote a particular position for or against the bond issue, parcel tax or other measure.

B. Limitations on Off-Duty Political Activities by Santa Clara County Board of Education Members and Employees

Santa Clara County Board of Education members and SCCOE employees have a Constitutional right to engage in political activities while off-duty. However, with very limited exceptions, Santa Clara County Board of Education members and SCCOE employees may not participate in political activities of any kind during working hours, using SCCOE resources, or on SCCOE premises. However, under the California Civic Center Act, it is permissible for an off-duty SCCOE employee to participate as a private citizen in a political activity on SCCOE premises as long as the discourse is open to all viewpoints. The SCCOE Board of Education may restrict such a public forum in its time, place, or manner, in order to serve a significant government interest, such as protecting the primary purpose of school premises, which is education (BP 1160).

As discussed above, Santa Clara County Board of Education members and SCCOE employees may not use their official positions to influence candidates' campaigns, ballot measures, or other contested elections. However, this prohibition does not affect the ability of individual officers and SCCOE employees to take a public position as private citizens in a contested election. A question that frequently arises during election season is whether Santa Clara County Board of Education members or SCCOE employees may use their official titles in campaign communications. As long as they do not use SCCOE resources to do so, Santa Clara County Board of Education and SCCOE employees may use their official titles in campaign communications. However that communication must make clear that it is made in the officer's or employee's personal, not official, capacity and that the person's title is provided for identification purposes only.

Santa Clara County Board of Education and SCCOE employees may not directly or indirectly solicit campaign contributions from other Santa Clara County Board of Education members or SCCOE employees. An SCCOE officer or employee may request campaign contributions from other Santa

Clara County Board of Education members or SCCOE employees only if the request is part of a solicitation made to a significant segment of the public that may include Santa Clara County Board of Education members or SCCOE employees and the request does not use SCCOE resources in making the solicitation.

C. Examples of Prohibited Activities

The following are examples of political activities which are ***prohibited*** by law and by SCCOE policy.

- Use of SCCOE resources or “advocacy words” to urge a particular result in an election or to support or oppose a candidate or ballot measure – e.g., by disseminating campaign literature, purchasing advertisements, or conducting similar activities.
- Production and/or dissemination of materials purporting to give a fair presentation of the facts (that is, information, not promotional materials) but which, by their “style, tenor, and timing,” nonetheless constitute improper campaign literature.
- Use of public funds to purchase such items as bumper stickers, posters, advertising “floats,” or television and radio “spots.”
- Dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure.
- Use of SCCOE equipment for the preparation or reproduction of political campaign materials.
- Presentation of viewpoints on particular candidates or ballot measures in the classroom without giving equal time to the presentation of opposing views and without express approval by the Santa Clara County Board of Education of Education.
- Use of students in any capacity during school hours and on SCCOE school grounds to further a candidate’s political campaign. (This prohibition does not apply to ballot measures or legislative lobbying efforts.)
- Production or dissemination of one-sided materials, that is, materials that do not include the arguments from both sides of an issue.
- Use of on-duty government staff on election campaigns; i.e., to prepare campaign literature, obtain voter lists, work on fundraisers, and mail campaign brochures.
- All political activity related to ballot measures or issues are prohibited on SCCOE school grounds during school hours unless expressly approved by the SCCOE Board of Education.
- An SCCOE facility may be used for a public forum regarding a political issue as long as all sides have the opportunity to be heard.

- Wearing buttons or clothing that expresses a political opinion on a ballot measure or candidate during instructional time.

D. Examples of Acceptable Activities

The following are examples of political activities which are allowed by law and by SCCOE policy.

- The Board may discuss and study the potential effect of proposed or qualified ballot measures on SCCOE's schools at an open and agendaized Board meeting. The Board's discussion of the effect of such measures shall include an opportunity for staff and members of the public to speak on all sides of the issue. At that meeting, the Board may adopt a position or resolution in support of or in opposition to a ballot measure. The language in any resolution adopted by the Board shall not urge the public to take any action regarding the measure.
- Lobby state and federal legislators and governmental agencies in connection with legislation affecting the SCCOE, such as lobbying in relation to the state budget process. However, lobbying is not allowed in relation to contested elections such as a parcel tax measure, presidential elections, etc.
- Enter into associations that lobby legislators on the SCCOE's behalf; and research, develop and draft legislative proposals that serve the SCCOE's interests. As above, such associations and research are not allowed in relation to contested elections such as a parcel tax measure, presidential elections, etc.
- Disseminate information about a bond issue, parcel tax, or other measures as long as it provides the public with a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding such issue or initiative.
- Use of SCCOE funds to objectively analyze the impact on the SCCOE of a bond issue, parcel tax, or other measure and provide such information to the public.
- Individual SCCOE employees and officers have a right to speak out in partisan matters as long as there is no improper expenditure of public funds by such individuals (i.e., they may speak out during unpaid, non-work hours and must make it clear that they speak for themselves as individuals).
- Employees are permitted to wear political buttons when off-duty.

E. Penalties

Courts may impose very substantial penalties for violation of these rules. For example, the misappropriation of public funds is a felony, under Penal Code section 424, which may result in fines up to Ten Thousand Dollars (\$10,000) per violation and imprisonment. A person convicted of violating that statute is barred from holding public office, and his or her employment may be terminated. Other sanctions may also apply.

Conclusion

This memorandum is intended as a general guideline and is provided as a resource for staff. The SCCOE's policies and applicable state law recognize that SCCOE employees have a right to engage in protected political activity, but prohibit the use of SCCOE resources and forbid such activity during an employees working hours.

In summary, the following "Election Guidelines" may be useful to review.

1. Employees may not use SCCOE funds, services or supplies to urge support of a ballot measure or candidate.
2. Employees may not use SCCOE computers, copiers, fax machines, phones or other equipment to prepare or to transmit campaign materials or to urge support of a ballot measure or candidate.
3. Employees may not store campaign buttons or posters on SCCOE property.
4. Employees may not transmit campaign buttons or posters to others on SCCOE property, including the parking lot.
5. Administrators and teachers may not offer credit to students for participating in an election phone bank.
6. Administrators or Board members may provide information to the public about the possible effects of a bond measure if there is a fair and impartial presentation of relevant facts.
7. Administrators or Board members may appear before a citizens' group that requests their appearance to discuss the reasons a bond election may have been called.
8. Union members and officers may solicit funds for a bond measure or parcel tax election during non-working hours, including during their duty free lunch. They may never solicit during working time.
9. It is a criminal offense to violate Education Code section 7054. Violations are punishable by one year in county jail, a fine up to \$1,000, or state prison for 16 months up to three years.

Legal Authority:

Education Code section 7054

Education code section 7056

Political Reform Act: Gov't Code sections 810000-91014

Fair Political Practices Commission Regulations—Title 2 California Code of Regulations sections 18109—18997.