

ELECTION LAW FOR ELECTED OFFICIALS

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MERCER ISLAND CITY COUNCIL
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Election Season



Relevant legal authority:

- RCW 42.17A.555
- WAC 390-05-271
- WAC 390-05-273
- PDC Interpretation No. 04-02
(Guidelines for Local Government
Agencies in Election Campaigns)



Setting the Table: RCW 42.17A.555





RCW 42.17A.555

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the ***facilities*** of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition....



RCW 42.17A.555

Facilities include, but are not limited to use of stationery, postage, machines, and equipment, use of public employees during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.

Includes things like laptops, legal research subscriptions, printers, even public comment at public meetings.



Exceptions

Action taken at an open public meeting by members of an ***elected*** legislative body or by an elected board, council, or commission to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as certain procedural requirements are met.





Exceptions

- Statements by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- Activities which are part of the “normal and regular conduct” of the office or agency.



Normal and Regular Conduct (Per the PDC)

WAC 390-05-273 Definition—Normal and regular conduct

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

See also **WAC 390-05-271**



Normal and Regular Conduct (per the PDC)

- Very fact specific inquiry – no bright line rule here
- Lawful and usual/customary
- Think about both the tone and timing of activities
- Totality of activities examined
- Marketing and sales efforts never qualify as normal and regular



Resolutions Supporting/Opposing

Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district, so long as:

- a) required meeting notice includes title and number of the ballot proposition, and
- b) members of the legislative body, the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view.



Mays/May Nots for Ballot Measures

MAY

- Prepare a fair and objective fact sheet with information regarding a ballot measure if normal, regular, and customary
- Allow ballot campaign materials to be placed in a government building *if* there is a policy setting aside an area for such materials and if routinely allowed

MAY NOT

- Allow speakers to address a ballot measure at a public meeting, including during public comment
- Allow placement of campaign materials that would give a particular ballot position an advantage
- Spend public funds to challenge a proposed ballot measure in court



Cans – Public Officials

- ✓ Participate in campaign-related activities.
- ✓ Use their title for identification purposes in endorsements supporting or opposing a candidate or an initiative or referendum.
 - ✓ Be clear that it is their personal view.
- ✓ Place on their individual agency calendar basic information if they are scheduled to be out of the office to attend campaign events.
- ✓ Encourage staff and members of the public to vote, as long as such encouragement routinely occurs for other elections.



Can'ts – Public Officials

- Promote or oppose a candidate or ballot measure during work hours. This includes gathering signatures, distributing materials, coordinating speakers/fundraising/phone banks, etc. It does not include elected official statements on ballot measures in response to a specific media inquiry.
- Maintain individual campaign-related events on agency-wide distributed calendars.
- Post signs advocating for or against candidates or ballot measures on any city property.
- Pressure employees to participate in campaign activities for a ballot measure or candidate, take a position, donate, or coordinate informational activities with campaign work.



Public Service Announcements

RCW 42.17A.575

No state elected official or municipal officer may speak or appear in a public service announcement that is broadcast, shown, or distributed in any form whatsoever during the period beginning January 1st and continuing through the general election if that official or officer is a candidate...



Public Service Announcements

RCW 42.17A.575

...This section does not apply to public service announcements that are part of the regular duties of the office that only mention or visually display the office or office seal or logo and do not mention or visually display the name of the official or officer in the announcement.



Social Media

- Official public agency accounts cannot support/oppose candidates or ballot measures.
- Officials using their private social media can express views on candidates or ballot measures. However, if the official has a connection to a public agency, they should be clear that their views are personal, and not reflective of their public agency or governing body.
- Public officials using their *private* social media accounts retain their civil rights, they can be involved in political campaigns or express their support of a candidate or ballot measure in their private capacity.

Questions?

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