

Date: September 6, 2024

To: ULCT membership

From: ULCT staff

RE: Primer on the Political Activities of Public Entities Act (PAPEA)

The Political Activities of Public Entities Act (PAPEA) prohibits public entities and public officials from using public funds to influence ballot propositions.

I) Definitions

A) To whom does PAPEA apply?

PAPEA applies to all public entities and public officials.

Public entities are defined as the state, each state agency, each county, municipality, school district, special district, governmental interlocal cooperation agency, and each administrative subunit of each of them. Utah Code 20A-11-1202(13).

The Utah League of Cities and Towns (ULCT) is a public entity because it is a “governmental interlocal cooperation agency” formed under prior versions of the Interlocal Cooperation Act located in Title 11, Chapter 13.

Public officials are defined as any elected or appointed member of government with authority to make or determine public policy, which includes persons or groups that have supervisory authority over the personnel and affairs of a public entity and approves expenditures of funds for the public entity. UCA 20A-11-1202(15).

B) What are “public funds?”

Public funds means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment but does not include money donated to a public entity. See UCA 20A-11-1202(14).

C) What does “influence” mean?

Influence means to campaign or advocate for or against a ballot proposition. See UCA 20A-11-1202(8).

D) What is a ballot proposition?

Ballot proposition means a constitutional amendment, initiative, referendum, judicial retention question, opinion question, bond approval, or other question submitted to the voters for their approval or rejection.

It is important to recognize that each individual category has different meanings and implications under PAPEA. For example, initiatives and referenda are not the same thing as constitutional amendments, even though both are ballot propositions. Pay close attention to this document when certain actions apply only to certain categories of ballot propositions. See UCA 20A-11-1202(2).

II) Public entities dos and don'ts

A) What actions relating to a ballot proposition are permitted by a public entity (including employees acting as a representative of a public entity) under PAPEA?

1. Neutrality: stay neutral on the ballot proposition, though you can encourage people to vote.
2. Factual information: a public entity may provide factual information so long as the information grants equal access to both the opponents and proponents of the ballot proposition. A county or city may not provide any information about a ballot proposition beyond what state law authorizes but they can respond directly to a question from a person or group of people.
3. Research/info with equal access: Conduct research, collect and compile information, and provide arguments for and against a ballot proposition so long as the information gives equal access to both sides of the ballot proposition. See UCA 20A-11-1203(4)(a)
4. Public meetings with equal access: Hold public meetings to present an argument for or against a proposed referendum, referendum, initiative, proposed initiative, or bond, so long as:
 - a. The legislative body provides others a reasonable amount of time to present oral arguments for or against,
 - b. Holds the public meeting during the legislative body's normal meeting time or at any time beginning at 6 p.m. or after.

See UCA 20A-11-1206(5)(b); UCA 20A-11-1206(6)(c); UCA 20A-7-405(2); UCA 59-1-1605.

(Note: A constitutional amendment is not a referendum, initiative, or bond.)

5. Answer questions: Spend a reasonable amount of public funds to gather information for, and respond directly to, an individual's questions relating to a ballot proposition, proposed initiative, initiative, proposed referendum, or referendum. See UCA 20A-11-1203(3).
6. Website: Posting on the public entity's website, or any medium, a complete copy of the ballot proposition information pamphlet or a voter information pamphlet. See UCA 20A-11-1203(4)(d).
7. Website: Post a link to another website not owned by the public entity so long as the public entity takes certain steps in Utah Code 20A-11-1203(4)(c) before posting the link. See 20A-11-1203(4)(c).
8. Email: Sending email solely to the following individuals or groups of individuals (Note: There should be no mixing and matching of the following categories of individuals in the same email):
 - a. A person or group who asked a question for the purpose of providing them information in response to their question;
 - b. Any person if the content of the email only includes the information required to be included within a local voter information pamphlet authorized under 20A-7-402;
 - c. Any person at the same organization;
 - d. Any person of another public entity;
 - e. Any public entity's legal counsel;

- f. Sponsors of an initiative or referendum;
- g. Land developer for a project permitted by a local land use law that is challenged by a proposed referendum or referendum;
- h. A person involved in a business transaction directly relating to a development project challenged by a proposed referendum.

See UCA 20A-11-1205(5).

- 9. Publish an argument or rebuttal argument prepared in accordance with UCA 20A-7-401.5 or -402 so long as it relates to the proposed initiative, initiative, proposed referendum, or referendum. See UCA 20A-11-1206(6)(a) and (b).
- 10. Unique law around school districts: Any actions that are permitted under Title 53G, Chapter 3 as part of the process of creating a new school district. See UCA 20A-11-1203(5).

B) What actions are prohibited by a public entity under PAPEA relating to a ballot proposition?

- 1. Use of public funds: Use public funds to influence a ballot proposition, proposed initiative, or a proposed referendum unless otherwise permitted above.
- 2. Email: Send email using any public email address to anyone or for any reason that is not permitted above.
- 3. No other publishing: Publish an argument for or against a ballot proposition, a proposed initiative, or proposed referendum on the public entity's website unless otherwise permitted above.

III) Public officials dos and don'ts

A) What actions are public officials permitted to do under PAPEA relating to a ballot proposition?

- 1. First Amendment: Speak, campaign, contribute personal money, or otherwise exercise the public official's individual First Amendment rights for political purposes, including advocating for or against a ballot proposition, so long as you do not use public funds or resources.
- 2. Website: Use the research, information, or arguments that have been conducted or collected by the public entity for the purpose of advocating for or against a ballot proposition via a website or another medium, so long as the medium(s) used by the public official is not owned or controlled by the public entity.
- 3. Email: Use public email to engage in communication as further described solely within the public entity, communication solely with another public entity, communication solely with legal counsel, or communication solely with the sponsors of an initiative or referendum.

B) What actions are public officials prohibited from doing under PAPEA related to a ballot proposition?

- 1. Public funds: Use public resources to personally advocate for or against a ballot proposition.
- 2. Email: Send an email using the email of a public entity for a political purpose, to advocate for or against a ballot proposition, or to solicit a campaign contribution.

IV) What are the penalties for not abiding by PAPEA?

- A) These penalties apply to public officials and to persons that public entities employ.
1. Any person who violates PAPEA may be charged with a Class B misdemeanor, which means a fine of up to \$1,000 and up to 6 months in jail.
 2. Any person who sends an email in violation of UCA 20A-11-1205(1) must pay a violation of up to \$250 for the first violation and \$1,000 for any subsequent violation committed by the same person. A person who inadvertently sends an email in violation of UCA 20A-11-1205(1) will not be penalized under this restriction but may still be charged under #1 if the specific circumstances warrant such punishment.
 3. The calculation of the penalty is based on how often a person presses send. If person presses send once but the email goes to 100 people, it would still count as one email.

This document is not intended to cover all that you may need to know under PAPEA. This is not legal advice and does not create any attorney-client relationship. Before taking any action, we encourage you to review PAPEA and talk to your public entity's legal counsel.