

**Guidelines
Use of School District or Charter School Resources
to Influence the Outcome of Elections**

**Arizona Attorney General's Office
2004**

I. Preamble

The Arizona Legislature, during the First Regular Session (2003), mandated that the Arizona Attorney General publish guidelines relating to the prohibition on the use of school district or charter school resources or personnel to influence the outcomes of elections. A.R.S. § 15-511(E) provides as follows:

By January 1, 2004, the Attorney General shall publish and distribute to school districts and charter schools a detailed guideline regarding activities prohibited under this section [A.R.S. § 15-511]. The Attorney General may distribute these guidelines through a website or electronically.

The following Guidelines are intended to address possible ambiguous situations (rather than the obvious applications of the plain statutory language). It is virtually impossible for these Guidelines to anticipate all of the factual scenarios that may arise in the course of an election. These Guidelines may, however, give some guidance about how pertinent questions should be analyzed.

Individual school board policies may be stricter than these Guidelines. School board policies are not supplanted by these Guidelines.

II. The Relevant Statutes

1. A.R.S. § 15-511

Use of school district or charter school resources or employees to influence elections; prohibition; civil penalty; definition

A. A person acting on behalf of a school district or a person who aids another person acting on behalf of a school district shall not use school district or charter school personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections. Notwithstanding this section, a school district may distribute informational reports on a proposed budget override election as provided

in section 15-481, subsections B and C or informational reports on a proposed bond election as provided in section 15-491, subsection D. Nothing in this section precludes a school district from reporting on official actions of the governing board.

B. An employee of a school district or charter school who is acting as an agent of or working in an official capacity for the school district or charter school may not give pupils written materials to influence the outcome of an election or to advocate support for or opposition to pending or proposed legislation.

C. Employees of a school district or charter school may not use the authority of their positions to influence the vote or political activities of any subordinate employee.

D. Nothing contained in this section shall be construed as denying the civil and political liberties of any person as guaranteed by the United States and Arizona Constitutions.

E. By January 1, 2004, the attorney general shall publish and distribute to school districts and charter schools a detailed guideline regarding activities prohibited under this section. The attorney general may distribute these guidelines through a web site or electronically.

F. The attorney general or the county attorney for the county in which an alleged violation of this section occurred may initiate a suit in the superior court in the county in which the school district or charter school is located for the purpose of complying with this section.

G. For each violation of this section, the court may impose a civil penalty not to exceed five hundred dollars plus any amount of misused funds subtracted from the school district budget against a person who knowingly violates or a person who knowingly aids another person in violating this section. The person determined to be out of compliance with this section shall be responsible for the payment of all penalties and misused funds. School district funds or insurance payments shall not be used to pay these penalties or misused funds. All misused funds collected pursuant to this section shall be returned to the school district or charter school whose funds were misused.

H. An attorney acting on behalf of a public school may request a legal opinion of the county attorney or attorney general as to whether a proposed use of school district resources would violate this section.

I. All penalties collected by the court for a suit initiated in superior court by the attorney general shall be paid to the office of the attorney

general for the use and reimbursement of costs of prosecution pursuant to this section. All penalties collected by the court for a suit initiated in superior court by a county attorney shall be paid to the county treasurer of the county in which the court is held for the use and reimbursement of costs of prosecution pursuant to this section.

J. For the purposes of this section, "misused funds" means school district monies or resources used pursuant to subsection A of this section.

2. A.R.S. § 15-481

Override election; budget increases; notice; ballot; effect

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B. The county school superintendent shall prepare an informational report on the proposed increase in the budget and a sample ballot and at least thirty-five days prior to the election shall transmit the report and the ballot to the governing board of the school district. For a school district located in a county with a population of two hundred thousand persons or more, the governing board, upon receipt of the report and the ballot, shall mail or distribute the report and the ballot to the households, in which qualified electors reside, within the school district at least thirty days prior to the election. For a school district located in a county with a population of less than two hundred thousand persons, the governing board, upon receipt of the report and the ballot, shall mail or distribute the report and the ballot to the households within the school district at least thirty days prior to the election. Any distribution of material concerning the proposed increase in the budget shall not be conducted by children enrolled in the school district. The report shall contain the following information:

1. The date of the election.
2. The polling places and times they are open.
3. The proposed total increase in the budget which exceeds the amount permitted pursuant to § 15-905.
4. The total amount of the current year's budget, the total amount of the proposed budget and the total amount of the alternate budget.
5. If the override is for a period of more than one year, a statement indicating the number of years the proposed increase in the budget would be in effect and the percentage of the school district's revenue control limit that the district is requesting for the future years.

6. The proposed total amount of revenues which will fund the increase in the budget and the amount which will be obtained from a levy of taxes upon the taxable property within the school district for the first year for which the budget increase was adopted.
7. The proposed amount of revenues which will fund the increase in the budget and which will be obtained from other than a levy of taxes upon the taxable property within the school district for the first year for which the budget increase was adopted.
8. The dollar amount and the purpose for which the proposed increase in the budget is to be expended for the first year for which the budget increase was adopted.
9. At least two arguments, if submitted, but no more than ten arguments for and two arguments, if submitted, but no more than ten arguments against the proposed increase in the budget. The arguments shall be in a form prescribed by the county school superintendent and each argument shall not exceed two hundred words. Arguments for the proposed increase in the budget shall be provided in writing and signed by the governing board. If submitted, additional arguments in favor of the proposed increase in the budget shall be provided in writing and signed by those in favor. Arguments against the proposed increase in the budget shall be provided in writing and signed by those in opposition. The names of those persons other than the governing board or superintendent submitting written arguments shall not be included in the report without their specific permission, but shall be made available only upon request to the county school superintendent. The county school superintendent shall review all factual statements contained in the written arguments and correct any inaccurate statements of fact. The superintendent shall not review and correct any portion of the written arguments which are identified as statements of the author's opinion. The county school superintendent shall make the written arguments available to the public as provided in title 39, chapter 1, article 2. A deadline for submitting arguments to be included in the informational report shall be set by the county school superintendent.
10. A statement that the alternate budget shall be adopted by the governing board if the proposed budget is not adopted by the qualified electors of the school district.
11. The full cash value, the assessed valuation and the estimated amount of the secondary tax bill if the proposed budget is adopted for each of the following:

(a) An owner-occupied residence whose assessed valuation is the average assessed valuation of property classified as class three, as prescribed by > § 42-12003 for the current year in the school district.

(b) An owner-occupied residence whose assessed valuation is one-half of the assessed valuation of the residence in subdivision (a) of this paragraph.

(c) An owner-occupied residence whose assessed valuation is twice the assessed valuation of the residence in subdivision (a) of this paragraph.

(d) A business whose assessed valuation is the average of the assessed valuation of property classified as class one, as prescribed by > § 42-12001, paragraphs 12 and 13 for the current year in the school district.

12. If the election is conducted pursuant to subsection L or M of this section, the following information:

(a) An executive summary of the school district's most recent capital improvement plan submitted to the school facilities board.

(b) A complete list of each proposed capital improvement that will be funded with the budget increase and a description of the proposed cost of each improvement, including a separate aggregation of capital improvements for administrative purposes as defined by the school facilities board.

(c) The tax rate associated with each of the proposed capital improvements and the estimated cost of each capital improvement for the owner of a single family home that is valued at eighty thousand dollars.

C. For the purpose of this section, the school district may use its staff, equipment, materials, buildings or other resources only to distribute the informational report at the school district office or at public hearings and to produce such information as required in subsection B of this section, provided that nothing in this subsection shall preclude school districts from holding or participating in any public hearings at which testimony is given by at least one person for the proposed increase and one person against the proposed increase.

3. A.R.S. § 15-1105

Lease of school property; civic center school fund; reversion to school plant fund; definitions

A. The governing board, or the superintendent or chief administrative officer with the approval of the governing board, may lease school property, including school buildings, grounds, buses and equipment to any person, group or organization for any lawful purpose, including recreational, educational, political, economic, artistic, moral, scientific, social, religious or other civic or governmental purpose in the interest of the community, including extended day resource programs. The governing board, superintendent or chief administrative officer shall charge a reasonable use fee for the lease of the school property, which fee may include goods contributed or services rendered by the person, group or organization to the school district.

B. The governing board, or the superintendent or chief administrative officer with the approval of the governing board, may permit the uncompensated use of school buildings, grounds, buses, equipment and other school property by any school related group, including student political organizations or by any organization whose membership is open to the public and whose activities promote the educational function of the school district as determined in good faith by the school district's governing board, or the superintendent or chief administrative officer with the approval of the governing board, including extended day resource programs, except as provided in section 15-511.

C. A person, group or organization that is otherwise eligible to lease school property shall not be denied use of or charged differentiated fees for school property on the basis of the person, group or organization's beliefs, expression of beliefs or exercise of the rights of association that are protected under the laws of this state, the Constitution of Arizona, the laws of the United States or the United States Constitution.

D. The governing board shall annually approve a fee schedule for the lease of school property. The fee schedule shall include a designation of the persons, groups or organizations that shall have uncompensated use of the school property, and a procedure for determining the value of goods and services being provided as compensation for the use of school property. The governing board, superintendent or chief administrative officer shall require proof of liability insurance for such use or lease of school property.

E. Except as provided in § 15-1102, monies received for and derived from the use or lease of school property under this section shall be promptly deposited with the county treasurer who shall credit the

deposits to the civic center school fund of the respective school district. Monies placed to the credit of a civic center school fund may be expended for civic center school purposes by warrants drawn upon order of the school district governing board, or the superintendent or chief administrative officer with the approval of the governing board. The civic center school fund of a school district or multiple school district civic center school program is a continuing fund not subject to reversion, except upon termination of a civic center school program. Upon termination of a civic center school program any remaining funds shall revert to the school plant fund of the school district or districts.

F. For the purposes of this section:

1. "Educational function" means uses that are directly related to the educational mission of the school district as adopted by the school district governing board and includes parent-teacher organizations, youth organizations and school employee organizations.

2. "Extended day resource programs" means activities offered on school property before or after school or at times when school is not customarily in session for children who are of the age required for kindergarten programs and grades one through eight. The program may be offered for children who are of the age required for a kindergarten program or for one grade or for any combination of kindergarten programs and grades. Activities may include physical conditioning, tutoring, supervised homework or arts activities.

3. "Reasonable use fee" means an amount that is at least equal to the school district's cost for utilities, services, supplies or personnel that the school provides to the lessee pursuant to the terms of the lease.

III. Terminology Used in A.R.S. § 15-511

1. **“Person acting on behalf of” or “aids a person acting on behalf of”** a school district or charter school means that the person is acting with the express or implied consent or assent of the school district or the charter school or is aiding such a person. *Restatement (Third) of Agency § 1.01* (Tentative Draft).
2. **“Influencing the outcomes of”** means using school resources to engage in any activity that is an attempt to persuade persons to vote for or against a particular candidate, party, position or ballot measure. The test for determining whether activities using school resources are designed to influence the outcome of an election is whether the communication taken as a whole, unambiguously urges a person to vote in a particular manner. The communication “must clearly and unmistakably present a plea for action, and identify the advocated action; it is not express advocacy if

reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action.” *Kromko v. City of Tucson*, 202 Ariz. 499, 503 47 P.3d 1137, 1141 (App. 2002), quoting *Schroeder v. Irvine City Council*, 97 Cal.App.4th 174, 118 Cal.Rptr.2d 330, 339 (2002).

The phrase also applies to activities leading up to qualifying ballot measures and candidates for the ballot, including fundraising and attempts to qualify a measure for the ballot and to circulation of petitions relating to candidates or ballot measures, including recall petitions. The phrase covers engaging in any activity that is an attempt to persuade persons to sign, circulate or refrain from signing or circulating a petition or contributing to or refraining from contributing to any political committee.

3. **“Election”** means any election for any initiative, referendum, recall or other ballot measure or proposition or a primary, general, recall, special or runoff election for any elected office of political subdivisions of the State, the State or federal government. It includes any election called pursuant to the provisions of Title 15, Chapter 4, Arizona Revised Statutes (including but not limited to election or recall of board members; purchase, sale or lease of property; bond overrides; change of boundaries; and change of number of board members).
4. **“Personnel, equipment, materials, buildings or other resources”** mean the following:
 - a. **“Personnel”** means persons employed by the school district or charter school whether they are salaried employees or non-salaried volunteers.
 - b. **“Equipment”** includes, but is not necessarily limited to, copiers, bulletin boards, telephones, automatic dialing devices, facsimile machines, computers, mailboxes, furniture, vehicles, postage meters, and internet connections. The term also includes any district communication networks, such as school newsletters, public announcement systems or devices, web pages and advertising space in student newspapers.
 - c. **“Materials”** means supplies or tools, including but not limited to paper, labels, facsimile paper, pens, pencils, markers, paints, art supplies, food, cafeteria supplies, and postage.
 - d. **“Buildings”** means buildings owned or leased by the school district or charter school. This term also includes real or personal property owned or leased by a school district or charter school,

including but not limited to playing fields, parking lots, walls and fencing.

- e. **“Resources”** means school district or charter school credit, money or accounts.

- 5. **“Outcomes of Elections”** means the results of an election and includes activities leading up to placement of measures, issues or candidates on the ballot. Ariz. Att’y Gen. Op. 100-020.

IV. **Permitted Activities**

1. **Advocacy in Private Capacity:**

Board members, personnel or others acting on behalf of a school district may act as advocates, circulate petitions, and distribute election literature but only as private citizens, during non-duty time outside the classroom or other instructional settings, using their own or other private resources. Board members, personnel or others acting on behalf of a school district may engage in these activities at school-sponsored extracurricular activities, such as athletic events, only if they are not on duty or supervising or assisting with supervision or organization of the event. Personnel must not represent that they are acting on behalf of the school district or charter school while engaged in activities to influence the outcomes of elections.

2. **Expression of Opinions:**

Board members, personnel and others acting on behalf of a school district, should feel free to express their opinions or preferences on elections outside the classroom or other instructional settings, or at school-sponsored extracurricular events, such as athletic events, if they are not on duty or supervising or assisting with supervision or organization of the event . They may wear buttons, place bumper stickers on their cars, wear clothing with political messages, distribute flyers or information, make contributions, talk with neighbors, friends and members of the community, put up or display signs, make speeches and speak to community or civic groups or engage in any other political activity they choose to in non-instructional settings during non-duty time, as long as they are not using school district or charter school personnel, equipment, materials, buildings or other resources. Board members, personnel and others acting on behalf of a school district or charter school shall refrain from taking any action or making any statement that would suggest that they are acting on behalf of the school district or charter school. See Prohibited Activities ¶ 2.

3. **Private Vehicles:** Private vehicles with bumper stickers and other electioneering signs or materials relating to an election may be parked on school district or charter school property by personnel, board members, parents, and visitors to the school for school-related activities or for voting when the school is used as a polling place. For example, parents, teachers and others visiting the school on school business or to vote on election day could park vehicles with bumper stickers in the school lot. On the other hand, the school may not permit the school parking lot to be used to permanently park a vehicle displaying a candidate's signs in the lot during an election cycle, when the owner of the vehicle is not visiting the school for school business or other permitted activities at the school. On election day, if the school is a polling place, a vehicle displaying electioneering messages may not be parked within the 75 foot limit designated by election officials.
4. **Reporting on Official Actions:** A school district or charter school may prepare and disseminate reports on official actions of the governing board. Note, however, that a "governing body may not adopt a resolution supporting or opposing an initiative or referendum and then under the guise of 'reporting on official actions' mail brochures to all residents." Ariz. Att'y Gen. Op. 100-020; see Prohibited Activities ¶ 9.
5. **Polling Places:** A school district and charter school may permit election officials to use school premises for election polling places.
6. **Receipt of Election Information in Mailboxes, E-mail and Telephones:** If the school district or charter school permits private use of school district mailboxes, telephones, and e-mail accounts, employees and governing board members do not violate state law by receiving information or literature advocating a position on an election matter. But see Prohibited Activities ¶ 5 relating to sending messages.
7. **Voter Registration:** A school district or charter school may conduct non-partisan activity designed to encourage individuals to register to vote and make voter registration forms available on school district or charter school property if it regularly does so throughout the year.
8. **Publicity Pamphlets and other Official Election Publications:** A school district or charter school may make publicity pamphlets, early ballot request forms and other election materials published and distributed by government election officials available on school property. Early ballot request forms must be those prepared by a public election official and may not be those prepared by candidates or political committees.

9. **Public Forums:** A school district or charter school may host a non-partisan forum for the purpose of educating voters about issues or candidates at which speakers and/or members of the public discuss the pros and cons of a ballot measure or candidates appear, so long as there is an equal opportunity to present all viewpoints or all candidates in a particular race are given an equal opportunity to make presentations.
10. **Bond Election/ Budget Override Informational Reports:** School district resources may be used to prepare and distribute informational reports required by statute in connection with a bond election or a budget override election, including publicity pamphlet arguments permitted by A.R.S. § 15-481(B)(9).
11. **Responses to Questions About Ballot Measures:** School district resources may be used to respond to questions about ballot measures so long as the responses provide factual information in a neutral manner and do not present a clear and unmistakable plea to vote for or against the measures or encourage the person making the inquiry to take some other kind of action in support of or opposition to the measures.
12. **Use of Buildings and Facilities by Community Groups or Organizations:** School districts or charter schools may rent or lease its buildings and facilities to partisan and ballot measure groups on the same basis and conditions as other groups who are permitted to rent or lease school buildings or facilities. See A.R.S. § 15-1105 in section II of these Guidelines.
13. **Investigation of Fiscal Impact of Ballot Measure:** A school district or charter school may use its resources to investigate the fiscal impact of ballot measures on the district or school.

V. Prohibited Activities

1. **Campaign Signs:** No campaign signs, banners, stickers or any item that advocates for or against a candidate, recall, initiative, referendum, bond election, budget override or any ballot measure shall be placed in or on school district or charter school buildings (including but not limited to playing fields, parking lots, walls and fencing).
2. **Political Buttons, T-shirts, etc.:** Board members, personnel and others acting on behalf of a school district shall not wear political buttons, T-shirts, hats or other items displayed on their persons or apparel that are designed to influence the outcome of an election in a classroom, in any other instructional setting, or at a school-sponsored extracurricular event

at which they are supervising or assisting with supervision or organization of the extracurricular event.

3. **Use of Premises by Outside Groups:** In permitting use of school buildings by outside groups for meetings, the school district or charter school cannot favor proponents of one side over another, *i.e.* if access is allowed to a political party, a candidate or proponents of a ballot measure, equal access under the same terms and conditions must be allowed for all other political parties, candidates and opponents of ballot measures.
4. **Use of Authority or Position:** School district and charter school employees shall not use the authority of their positions when expressing an opinion either verbally or in writing or attempting in any other manner to influence the vote or political activities of any subordinate employee.
5. **Use of School Mailboxes, E-mail and Telephones:** Even if a school district or charter school permits private use of school mailboxes, telephones or e-mail accounts for some personal use, personnel and governing board members may not use these resources to distribute a communication for the purpose of influencing the outcomes of elections. School telephone systems shall not be used as telephone banks for the purpose of influencing the outcomes of elections. E-mails to influence the outcomes of elections may not be generated, distributed or forwarded via a school e-mail account.
6. **School Personnel and Students:** An employee of a school district or charter school who is acting as an agent of or working in an official capacity for the school district or charter school shall not give pupils written materials to influence an election or to advocate support for or opposition to pending or proposed legislation regardless of the fact that no school district personnel, equipment or resources were used to prepare the materials. This includes flyers prepared by a private citizen group supporting a candidate or passage of a ballot measure or materials urging citizens to call their legislators to support or oppose legislation.
7. **Petition Circulation:** Persons acting on behalf of a school district shall not use school district and charter school personnel, equipment, materials, buildings or other resources to circulate nomination, recall, or ballot measure petitions or petitions to qualify a political party for ballot status recognition. This does not prohibit individual employees from voluntarily exercising their rights to circulate petitions in their personal capacities on non-duty time 1.) outside the classroom, 2.) outside any other instructional setting, or 3.) at a school-sponsored extracurricular event as long as they are not supervising or assisting with supervision or organization of the extracurricular event.

8. **Solicitation of Contributions:** Persons acting on behalf of a school district shall not use school district and charter school personnel, equipment, materials, buildings or other school resources to solicit contributions to be used in support of or opposition to a candidate, recall, ballot measure or political party or committee of a political party. This does not prohibit individual employees from voluntarily exercising their rights to solicit contributions on non-duty time, outside the classroom or other instructional settings
9. **Governing Board Resolutions:** Other than publicity pamphlet arguments permitted by A.R.S. § 15-481(B)(9), school district and charter school governing boards are not permitted to adopt resolutions supporting or opposing ballot measures, endorsing candidates or taking official action on other positions to influence the outcomes of elections. Ariz. Att’y Gen. Op. 100-020.
10. **Candidates and Their Representatives:** Persons acting on behalf of a school district shall not permit candidates (including but not limited to candidates for the school district governing board) and their representatives to announce their candidacy or advocate their election or the defeat of their opponents in school buildings or on school property, except for times when they are participating in public forums. See Permitted Activities ¶ 9.

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