STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL May 10, 2007	No. I07-008 (R06-007) Re: Use of Official Titles by Elected Officials in Connection with Political Advocacy

To: The Honorable Barbara LaWall
Pima County Attorney

Question Presented

You have asked whether county elected officials may use their official titles on letters, publicity pamphlet statements, or political advertisements that advocate the success or defeat of ballot measures.

Summary Answer

County elected officials may use their official titles on materials that advocate the success or defeat of ballot measures, but they may not use county public resources to fund such communications.

Analysis

The Legislature has prohibited the use of city, town, county, and school district resources or employees to influence the outcome of elections. *See* A.R.S. §§ 9-500.14 (cities and towns), 11-410 (counties), 15-511 (school districts and charter schools); *see*

also Kronko v. City of Tucson, 202 Ariz. 499, 502-03, ¶ 10, 47 P.3d 1137, 1140-41 (App. 2002) (analyzing whether materials disseminated in city election violated prohibition in A.R.S. § 9-500.14); Ariz. Att'y Gen. Op. I00-020 (analyzing statutes prohibiting use of public resources to influence elections). The statute governing counties provides that they "shall not use [their] personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections," and that county employees "shall not use the authority of their positions to influence the vote or political activities of any subordinate employee." A.R.S. § 11-410(A) & (B). The statute, however, does not prohibit counties from reporting on the official actions of the county board of supervisors, A.R.S. § 11-410(A), and directs that "[n]othing contained in this section shall be construed as denying the civil and political liberties of any employee as guaranteed by the United States and Arizona Constitutions," A.R.S. § 11-410(C).

In 2000, this Office issued a formal opinion regarding a city or county's permissible use of funds to educate citizens on the impact of ballot measures. Ariz. Att'y Gen. Op. I00-020. The Opinion stated that "A.R.S. §§ 9-500.14 and 11-410 do *not* prohibit elected officials from speaking out individually regarding measures on the ballot." *Id.* It further recognized that "'the effective discharge of an elected official's duty would necessarily include the communication of one's considered judgment of . . .[a] proposal to the community which he or she serves,'" and that "elected officials 'acting in their official capacity shed no First Amendment rights in their advocacy of policies.'" *Id.* (quoting *Smith v. Dorsey*, 599 So. 2d 529, 541 (Miss. 1992)).

The Supreme Court has recognized that "the manifest function of the First Amendment in a representative government requires that legislators be given the widest

latitude to express their view on issues of policy." *Bond v. Floyd,* 385 U.S. 116, 135-36 (1966). Citing *Bond*, the First Circuit concluded that the Supreme Court rejected a differing First Amendment standard for publicly-elected officials. *Miller v. Town of Hull, Mass.*, 878 F.2d 523, 532 (1st Cir. 1989).

These principles support the conclusion that elected officials may communicate their views on pending ballot measures and may use their official titles when doing so. Indeed, in order to fulfill their official duties, elected officials must be able to share their "considered judgment of the proposal [with] the community which [they] serve[]." *Smith,* 599 So. 2d at 541 (citation omitted); *see also Anderson v. City of Boston,* 380 N.E.2d 628, 641 (Mass. 1978) (indicating that "persons in relevant policy-making positions in city government are free to act and to speak out in support of" ballot measures). Knowing not only the person's name, but also that the person holds a particular local office may be helpful to voters, and the elected official's authority to communicate this information is consistent with First Amendment principles. Therefore, county elected officials may sign letters or have their names and official titles appear on publicity pamphlets and political advertisements that communicate their views on the merits, or lack thereof, of ballot measures before the voters.

Although county officials may sign their names and use their official titles in such communications, they may not use public resources or funds for the purpose of expressing these views. A.R.S. § 11-410(A) unambiguously prohibits the use of county resources "for the purpose of influencing the outcomes of elections."[1] While merely using an official title does not constitute an improper use of public resources, no county

[1] *See Kromko*, 202 Ariz. at 502-03, ¶ 10, 47 P.3d at 1140-41 (stating test for determining whether communication is for the purpose of influencing the outcome of an election).

funds, equipment, or personnel may be used in communications intended to influence elections. If county elected officials engage in advocacy related to ballot measures, the communications must be supported with private funds.

Conclusion

County elected officials may sign letters or have their names and official titles appear when supporting or opposing ballot measures that will go before the voters. Regardless of whether county elected officials use their official titles, they may not use county public resources to fund, facilitate, or support such communications.

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