

**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

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<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>May 10, 2007</p>	<p>No. I07-009 (R06-017)</p> <p>Re: Guest Speakers at School-Sponsored Assemblies and the Limitations of A.R.S. § 15-511</p>
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To: The Honorable Phil Lopes  
Arizona House of Representatives

**Questions Presented**

You have asked a number of questions concerning legal issues that may arise when a school district or charter school invites a person to speak to a class or at a school-sponsored assembly. Specifically, you have asked:

1. whether a public school may invite a person to speak to a group of students, either in a classroom setting or at an assembly other than a nonpartisan public forum, if that person has announced his or her candidacy for elected office in an upcoming election;
2. whether a public school may invite a well-known public figure who can give students a historical perspective on past and current events if the person is not a candidate for public office even if those issues relate to a pending ballot measure;

3. what corrective action a school must take if an invited speaker encourages the students to take some form of political action; and
4. whether, in analyzing these issues, it makes a difference if student participation in the assembly was voluntary.

### **Summary Answers**

1. A public school may invite an elected official or candidate for public office to address students, but candidates may not advocate their election or the defeat of their opponents in violation of Arizona Revised Statutes (“A.R.S.”) § 15-511.
2. A public school may invite a well-known public figure who can give students a historical perspective on past and current events even if those issues relate to a pending ballot measure, but the address must not advocate the election or defeat of the ballot measure.
3. School districts should consider advising speakers at school-sponsored assemblies of the prohibitions in A.R.S. § 15-511 against using school resources to influence elections. If a speaker unambiguously advocates voting in a particular manner, school officials are responsible for determining if corrective action is appropriate to make clear that the school is not endorsing the speaker’s political view.
4. The analysis of A.R.S. § 15-511 does not change if participation at the student assembly is voluntary.

### **Background**

A.R.S. § 15-511 prohibits the use of school-district or charter-school resources to influence the outcome of elections. Specifically, the statute provides, in part:

- 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. . . .
- 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.

A person who knowingly violates these requirements or knowingly aids another who violates these requirements is subject to a \$500 civil penalty in addition to the amount of misused funds. A.R.S. § 15-511(G).

The Legislature required the Attorney General to prepare guidelines regarding the use of school district or charter school resources. *See* A.R.S. § 15-511(E) (“[T]he attorney general shall publish and distribute to school districts and charter schools a detailed guideline regarding activities prohibited under this section.”) These guidelines are available on the Attorney General’s Office website. *See* <http://www.azag.gov/SchoolGuidelines/> (“Guidelines”).

### Analysis

#### **A. Candidates May Speak to Students in a Classroom Setting or at an Assembly Other than a Nonpartisan Public Forum.**

As noted above, A.R.S. § 15-511(A) prohibits “[a] person acting on behalf of a school district or a person who aids another person acting on behalf of a school district” from using public resources for the purpose of influencing the outcomes of elections.<sup>1</sup> The test for determining whether a communication is designed to influence the outcome of an election is set

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<sup>1</sup> The terms “person acting on behalf of” or “aids a person acting on behalf of” mean 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. *See Barlage v. Valentine*, 210 Ariz. 270, 275, ¶ 16, 110 P.3d 371, 376 (App. 2005); *Restatement (Third) of Agency* § 1.01 (2006).

forth in *Kromko v. City of Tucson*, 202 Ariz. 499, 47 P.3d 1137 (App. 2002). In that case, the plaintiff filed suit seeking a declaration that the city of Tucson was violating A.R.S. § 9-500.14(A) by disseminating information through various media regarding two propositions that were on a special referendum ballot. *Id.* at 500-01, ¶ 2, 47 P.3d at 1138-39. Much like A.R.S. § 15-511, A.R.S. § 9-500.14(A) prohibits cities and towns from using public resources “for the purpose of influencing the outcomes of elections.”<sup>2</sup> The plaintiff contended that the city’s communications presented the propositions only in a positive light and ignored their negative aspects, and, thus, effectively advocated for their passage. *Id.* at 501-02, ¶ 7, 47 P.3d at 1139-40. In holding that the communications did not violate A.R.S. § 9-500.14(A), the court set forth a test for determining whether a communication is designed to influence the outcome of an election:

[E]xpress advocacy may be based on communication that “taken as a whole[,] unambiguously urge[s]” 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*, 202 Ariz. at 503, ¶ 10, 47 P.3d at 1141 (citations omitted).<sup>3</sup> Because reasonable minds could differ as to whether the city’s communications regarding the propositions advocated voting for their passage, the court held that the city had not violated A.R.S. § 9-500.14(A).

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<sup>2</sup> A.R.S. § 9-500.14(A) states:

A city or town shall not use its personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections. Notwithstanding this section, a city or town may distribute informational reports on a proposed bond election as provided in § 35-454. Nothing in this section precludes a city or town from reporting on official actions of the governing body.

<sup>3</sup> Before the *Kromko* decision, this Office issued an Opinion regarding the statutes prohibiting the use of public resources to influence elections. *See* Ariz. Att’y Gen. Op. I00-020. To the extent that the analysis in *Kromko* differs from the earlier Attorney General Opinion, *Kromko* controls. *See also* Angela C. Poliquin, *Kromko v. City of Tucson: Use of Public Funds to Influence the Outcomes of Elections*, 46 Ariz. L. Rev. 423 (2004).

Merely inviting a candidate for public office to speak to a group of students, either in a classroom setting or at an assembly, does not violate A.R.S. § 15-511. The fact that a person speaking to students is a candidate for public office does not unambiguously urge a person to vote in a particular matter. However, although nothing prohibits a person who is a candidate for public office from speaking to students in a classroom setting or at an assembly, a candidate cannot use that forum to attempt to influence the outcome of an election. As the Guidelines advise:

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.<sup>4</sup>

Guidelines at 13, ¶ 10.

#### **B. Educational Programs May Relate to a Current Ballot Measure.**

Public education “serves vital national interests in preparing the Nation’s youth for life in our increasingly complex society and for the duties of citizenship in our democratic Republic.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 278 (1988) (Brennan, J., dissenting) (citing *Brown v. Bd. of Educ.* 347 U.S. 483, 493 (1954)). “It also inculcates in tomorrow’s leaders the ‘fundamental values necessary to the maintenance of a democratic political system. . . .’” *Id.* (quoting *Ambach v. Norwick*, 441 U.S. 68, 77 (1979)). Age-appropriate education about issues that may be the subject of political debate is a legitimate topic in public schools. However, the

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<sup>4</sup> Regarding public forums, the Guidelines advise: “A school district or charter school may host a nonpartisan 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.” Guidelines at 11, ¶ 9.

issues must be presented in a manner that does not run afoul of A.R.S. § 15-511 by using school resources to influence the outcome of an election.

The specific example you cite is inviting a former Supreme Court Justice to address the role of the judiciary when there is a pending ballot measure that may impact judicial independence. Schools may invite officials to address issues of public importance, even if they relate to matters that may be the subject of an upcoming election. The presentation, however, must not attempt to influence the outcome of an election, as that phrase is explained in *Kromko*. See 202 Ariz. at 503, ¶ 10, 47 P.3d at 1141. Obviously, understanding the roles of the various branches of government is an important part of our children’s education and speeches about the roles of the judiciary, as well as the other branches, are appropriate in a school setting.

**C. School Officials Are Responsible for Determining What Corrective Action Is Appropriate If an Invited Speaker Encourages the Students to Take Some Form of Political Action.**

Your next question concerns a school district’s responsibilities when a speaker “encourages the students to take some form of political action.” Such a statement may be an effort by the speaker to influence the outcome of an election.<sup>5</sup> Cf. *Kromko* 202 Ariz. at 503, ¶ 10, 47 P.2d at 1141. Courts have long recognized that schools may exercise supervisory authority over school-sponsored speech. See *Hazelwood Sch. Dist.*, 484 U.S. at 271. *Hazelwood* addressed school district authority over a high school student newspaper.<sup>6</sup> The Court noted that

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<sup>5</sup> Of course, if a speaker merely urges students to become involved in the political process, such a statement would not be considered express advocacy and, thus, would not violate A.R.S. § 15-511.

<sup>6</sup> Although the facts in *Hazelwood* related to student expression, the holding and rationale of *Hazelwood* was not limited to student speech. See *Planned Parenthood v. Clark County Sch. Dist.*, 941 F.2d 817, 827 (9<sup>th</sup> Cir. 1991); *Seidman v. Paradise Valley Unified Sch. Dist.*, 327 F. Supp. 2d 1098, 1106 (D. Ariz. 2004). As the Ninth Circuit recognized, the Supreme Court in *Hazelwood* “remarked on a school’s ability to regulate reasonably the speech not only of students, but also ‘teachers, and other members of the school community.’” *Planned Parenthood*, 941 F.2d at 827 (quoting *Hazelwood*, 484 U.S. at 269). Whatever the source of the speech—whether from inside or outside the school, paid or free—the audience is still the students, and “the school has the same pedagogical concerns, such as respecting audience maturity, disassociating itself from speech inconsistent with its educational mission and avoiding the appearance of endorsing views, no matter who the speaker is.” *Id.* (emphasis added).

school-sponsored publications, theatrical productions, and other expressive activities “may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.” *Id.* The Court concluded that the First Amendment did not prevent educators from “exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” *Id.* at 273. The Court also recognized that a school retains “the authority to refuse . . . to associate the school with any position other than neutrality on matters of political controversy.” *Id.*

You specifically ask whether school officials must stop a speaker and expressly disassociate the school from a speaker’s inappropriate political comments, even if the speaker has already moved on to a different topic. Fact-specific judgments regarding how best to respond if a speaker makes inappropriate comments at a school assembly are best left to the local education officials. In general, schools must take appropriate steps to ensure compliance with the prohibitions against using school resources to influence elections, which may include advising speakers at school-sponsored events of these restrictions. State law does not, however, require school officials to take remedial action if a speaker makes comments that attempt to influence the outcome of an election. School officials may communicate to the listeners information to reinforce that the school is neutral on election issues and to disassociate the school from comments that suggest otherwise. Such action could ameliorate the perception that the comments “bear the imprimatur of the school.” *Cf. Hazelwood*, 484 U.S. at 281 (Brennan, J., dissenting).

**D. Whether Student Participation at an Assembly Is Voluntary Does Not Affect the Analysis.**

The analysis of the use of school resources to influence elections under A.R.S. § 15-511 does not turn on whether attendance at a school-sponsored event is voluntary. Under section 15-511 “a person acting on behalf of a school district or a person who aids another person acting on behalf of a school shall not use school district or charter school personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections.” Although under some circumstances schools may be used for non-partisan public forums, Guidelines at 11, ¶ 9, a school assembly, whether student attendance is voluntary or mandatory, must be conducted in compliance with A.R.S. § 15-511.

**Conclusion**

School districts should take steps to ensure that speakers at school-sponsored events comply with the requirements of A.R.S. § 15-511, which prohibit the use of school resources to influence the outcome of elections. This statute does not, however, prohibit schools from inviting elected officials to address students or from addressing issues relevant to the curriculum that may be related to matters that are on the ballot. If a speaker at a school-sponsored event makes statements that attempt to influence an election, school officials are responsible for determining whether corrective action is appropriate to make clear that the school is not endorsing the speaker’s political view.

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