

REVISED
ELECTION GUIDELINES
FOR
MUNICIPALITIES¹

(September 2013)

THE NEW LAW

The Arizona legislature recently amended the law pertaining to restrictions on the use of city and town resources for election purposes. Arizona Revised Statutes Section 9-500.14 prohibits a city or town from using or spending "its *resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, webpages*, personnel, equipment, materials, buildings or *any other thing of value of the city or town*, for the purpose of influencing the outcomes of elections." The new law institutes four main changes or clarifications:

1. Resources. The new law describes more resources and activities that are prohibited from use to influence the outcome of the election, including "any other thing of value" as a catch-all. See italicized language above. This is more of a clarification of the prior law, rather than a change.

2. Forums. The new law allows the municipality to sponsor and participate in government-sponsored forums or debates "if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints." See Arizona Revised Statutes Section 9-500.14(B).

3. Influencing the Outcome of Elections The new law provides a definition of "influencing the outcome of the election." That phrase is defined as "supporting or opposing a candidate for nomination or election to public office or the recall of the public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition **in any manner that is not impartial or neutral**" (A.R.S. Section 9-500.14(G)(2)) (emphasis added).

Before the statute was amended, the Arizona Attorney General issued an opinion that referenced the *Kromko*² standard as the standard for determining whether communication is for the purpose of influencing the outcome of city, town, county and school elections.³ Under the

¹ These Guidelines address only State law and not any additional restrictions that may be set forth in local codes.

² *Kromko v. City of Tucson*, 202 Ariz. 499, 502-03, 47 P.3d 1137, 1140-41 (App. 2002).

³ Op. Ariz. Att'y Gen. I07-008.

Kromko standard, the communication “must clearly and unmistakably present a plea for action and identify the advocated action” to constitute a violation. It is not clear whether the new law constitutes a change in the standard from the Arizona Attorney General interpretation and case law, but the opportunity for scrutiny has been heightened.

Under all definitions of the law, however, it is clear that the "style, tenor and timing" of the communication are important, but "no hard and fast rule governs every case." *See* Op. Ariz. Att’y Gen. I00-020; *Stanson v. Mott*, 551 P.2d 1, 12 (Cal. 1976). Even if the communication itself is wholly factual, if presented in a certain style, in a certain tenor, and at a certain time that may be viewed as urging the voters to vote in a certain way on a ballot measure, the communication may be deemed an attempt to influence the outcome of an election and may run afoul of the prohibitions under the statute. For example, a publication was found to be designed primarily for the purpose of influencing voters when it stated that "[a] classroom emergency exists" and listed reasons why additional funds were needed, although it did not explicitly urge voters to "vote yes." *Stanson v. Mott*, 551 P.2d at 12, note 8. It should be noted that the prohibition against influencing the outcome of an election applies even before the governing body calls the election. *See* Op. Ariz. Att’y Gen. I00-020.

4. Penalty. Finally, the new law allows the Arizona Attorney General or the County Attorney to bring suit to enforce the statute, with a maximum civil penalty of \$5,000 for each violation of Section 9-500.14, plus any amount of "misused funds" from the city or town budget. This penalty is to be imposed on any person who knowingly violates the statute, or any person who knowingly aids another person in violating the provisions of the statute, and the person in violation of Section 9-500.14 is personally responsible for the payment of all penalties and misused funds. Municipal funds may not be used to pay any penalty.

PERMITTED ACTIVITIES:

By Statute:

- Reporting on official actions of the city or town council so long as it is done in an impartial and neutral manner. However, according to an Attorney General opinion, "a local 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." Op. Ariz. Att’y Gen. I00-020.
- Distributing the informational reports (regarding bond elections) required by law to be mailed to all voters. The municipality will provide neutral factual information concerning the election in the form of the informational pamphlet required by Arizona Revised Statutes Section 35-454 (in the case of bond elections). Excerpts of the type of information contained in the pamphlet may be placed in municipality-produced materials that answer frequently asked questions or describe the financial impact of the ballot measures. Spanish translation of such materials is required. Accordingly, we recommend only the finance office prepare and distribute the educational materials required by law after review by the municipality's election counsel.

- Civil and political liberties guaranteed by the United States and Arizona constitutions.
- Municipalities may conduct, provide resources for, or participate in forums or debates, as long as the municipality remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints.

By Attorney General Guidelines:

- Advocacy as a Private Citizen. Municipal employees may act as advocates, but only as private citizens, on their own time and using their own (or other private) resources. When acting independently, it is recommended that employees do not wear municipal attire or uniforms and that they make it clear when speaking or writing that they are acting as private citizens and not as representatives of or for the municipality.

The Attorney General's Guidelines suggest that city or town council members, municipal personnel or others acting on behalf of the municipality may act as advocates, circulate petitions and distribute election literature, as private citizens, at municipality-sponsored events, only if they are not on duty or supervising or assisting in the supervision or organization of the event. We urge caution in this context because a person could very easily be seen as being in their official capacity, "on-duty" at such an event.

- Rental of Facilities. The municipality, on the same basis as any other public use, may rent municipal facilities for election meetings; however, such rental may not occur at the same time and place as a municipality-sponsored forum or debate. The municipality may not provide outside groups with support.
- Additional Information. Municipalities may respond to questions about ballot measures in a content neutral, factual manner. The municipality may also investigate the fiscal impact of ballot measures on the municipality. No advocacy, adjectives or adverbs may be used. All material must be in both English and Spanish.
- Distribution of Voter Registration Forms. A municipality may make voter registration forms available on municipal property if it regularly does so throughout the year.
- Distribution of Official Election Materials. A municipality may make informational reports (for bond elections), early ballot request forms and other election materials published and distributed by government election officials available on municipal property.
- Private Groups. Private organizations, not sponsored or created by the municipality, may engage in any advocacy at their own expense. If the organization is too closely associated with the municipality or if it receives municipal support, its actions may be imputed to the municipality and violate these rules.

PROHIBITED ACTIVITIES:

- Do not spend or use municipal money, accounts or credit on promoting the outcome of the election.
- Do not use municipal equipment or communication networks (such as facilities, vehicles, copiers, computer hardware and software, printers, telephones, mailboxes, postage, webpages, electronic mail, newsletters or newspapers) for influencing the outcome of the election.
- Do not use municipal resources to produce independent publications or newsletters to influence the outcome of the election.
- Do not use municipal secretarial/support staff to prepare promotional materials or to organize promotional events.
- Employees of a municipality may not use the authority of their position to influence the vote of any subordinate employee.
- Avoid the appearance of municipal partiality for a certain election position or outcome. The emphasis is on off-duty time, and municipal personnel should always be very clear about their presence and capacity as a private citizen at such events, and if at events in their official or employment capacity, to avoid any appearance of partiality. This means no buttons, signs, placards, etc., if the person is at such an event in their official or employment capacity, i.e. "on duty."
- No campaign signs, banners, stickers or any item of advocacy may be placed in or on municipal property. Private vehicles on municipal property may contain bumper stickers and/or other election materials, as long as the vehicle is not permanently parked on municipal property.

FREQUENTLY ASKED QUESTIONS:

Q: Does the prohibition on the use of municipal resources relate to all elections?

A: The statute relates to all elections, whether they are elections involving a candidate for public office, the recall of a public officer, or supporting or opposing a ballot measure, question or proposition, including any bond or other municipal election (e.g., home rule), whether involving the municipality or not.

Q: Can a municipal employee present information about the election to a meeting in support of or in opposition to the election?

A: An employee, acting in his or her capacity as a municipal employee, can present, in a manner that is impartial and neutral, factual information about the election to such a meeting, but cannot present opinions or information designed to influence the outcome of the election. An employee, during non-duty time and acting as a private citizen, may freely participate in such meetings and freely express his or her opinions or preferences on the election. Any employee

doing so should make clear they are not speaking on behalf of the municipality. We also caution against combining municipal informational meetings with campaign events.

Q: Can the municipality allow groups in support of or in opposition to the election to meet in municipal facilities?

A: The municipality may rent or lease its buildings and facilities, or permit the uncompensated use of buildings or facilities, to partisan and ballot measure groups on the same basis and conditions as other groups. However, such use may not occur at the same time and place as a municipality-sponsored forum or debate. The municipality shall not deny the use, or charge differentiated fees, to a person, group or organization that is otherwise eligible to use the municipal facilities 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 the State of Arizona, the Constitution of Arizona, the laws of the United States or the United States Constitution.

Q: What if I am asked if I support the election or asked how I will vote?

A: An employee, acting in his or her capacity as a municipal employee, can factually answer whether he or she supports the election and how he or she intends to vote. However, an employee, acting in his or her capacity as a municipal employee, should not attempt to influence how anyone else should vote. An employee, during non-duty time and acting as a private citizen, may freely express his or her opinions or preferences on elections outside the classroom or other instructional settings.

Q: If I receive an e-mail on my municipality computer advocating support of the election, what should I do?

A: An employee is not prohibited from receiving such an e-mail. However, you cannot generate, distribute or forward such materials via municipal e-mail. The best practice would be to delete the e-mail without replying or forwarding it to anyone. Likewise, if such advocacy appears on a municipality's Facebook page or other social media forum, the best practice would be to remove such comments.

Q: Can I make a contribution to a Political Action Committee (PAC) in support of or in opposition to the election?

A: Yes, an employee, during non-duty time and acting as a private citizen, may make a contribution to any PAC.