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## COMPLYING WITH THE FAIR CAMPAIGN PRACTICES ACT (FCPA)

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### In general

- The FCPA is a state law that governs campaign finance
  - Found at Title 1, Article 45, Part 1 of the Colorado Revised Statutes and in Article XXVIII of the Colorado Constitution (Amendment 27)
- Section 1-45-117 of the FCPA restricts the use of **public** money in most campaigns
  - Restricts a **public entity's** ability to spend public money
  - Restricts the ability of **elected officials** and **employees of the public entity** to spend public money
  - Prohibits any spending of public money on candidate campaigns.
- Applies to initiated or referred measures (including ballot questions or ballot issues – ie, TABOR questions), director candidate elections, and director recall elections
- The restriction on spending public money on ballot issues applies starting at the time when a ballot issue has been submitted to have a ballot title fixed, or when a referred a measure is formally submitted to the voters (via a resolution calling the election)

### Things a library CANNOT do

- A library **can't expend public moneys from any source, or make contributions, to urge electors to vote in favor of or against certain ballot issues or measures** (but see \$50 Exception, below)
  - Public moneys include:
    - Copiers, computers, other library supplies
    - Staff time
    - Library vehicles and other facilities
  - Contribution means:
    - Money (whether it's given directly or loaned, or a loan guarantee)
    - Things (gifts or loans of property)Anything else of value given for the purpose of promoting the ballot issue or measure
  - “Urge” is defined by the courts:
    - Present, advocate or demand earnestly or pressingly
    - Taking a position favorable or opposed to
    - Conveying the message that the ballot issue or measure should be approved
- A library **may not make a donation in a campaign** involving the nomination, retention, or election of any candidate
- A library **may not make a contribution for the purpose of making an independent expenditure**
  - Independent expenditure is an expenditure that is not controlled by or coordinated with a candidate

### Things a library CAN do

- A library **can expend public moneys** to distribute a **factual** summary of a ballot issue or measure, but the summary must include arguments both **for and against** the proposal.
  - The summary must not contain a conclusion in favor of or against the proposal (ie, must not urge a vote one way or another)
- A library **can adopt a resolution supporting or opposing ballot issues or measures**
  - News of resolution can be disseminated through regular, established means (other than paid advertising), like a monthly newsletter or regular email update

### Things library board members and library employees CAN do

- Library employees and board members can respond to **unsolicited questions** about ballot issues or measures
- \$50 Exception: library employees with policy making responsibilities (executive director, for example) and board members **can spend no more than \$50 of public moneys** in the form of letters, telephone calls, or other activities incidental to expressing **opinions** on a ballot issue or measure
  - Note that the \$50 exception **ONLY** applies to ballot issues and measures, **NOT** to candidate campaigns; can't spend ANY public moneys on candidate campaigns
- Board members may express a **personal opinion** on a ballot issue or measure or candidate campaign in their official capacity
- Library employees and board members may expend **personal funds** or use **personal time** to urge electors to vote one way or another on a ballot issue or measure or candidate campaign

### Things library employees CANNOT do

- Library employees **can't express a personal opinion on a ballot issue or measure or candidate campaign during work time!**
- Library employees can't work on a ballot issue or measure or candidate campaign during work time (unless the work is done on a ballot issue or measure pursuant to the \$50 Exception)

### So.... (some real life examples)

- Don't call a bond election, and then use public money to pay for fliers supporting the bond issue
- Don't post information on the library website advocating for the passage of a bond issue
- It's okay for a library district board member to publish a newsletter discussing a local ballot issue if she does so with her personal funds
- Make sure your factual summary is balanced and even-handed and that you have about the same amount of both pro and con material; a factual summary may not express any opinion
- If you're an elected official, don't spend any amount of public money (even \$2.35!) on a letter supporting a candidate
- Don't try to aggregate your \$50 exception; you can't pool your own exception with 4 other city council members to spend \$250 of public moneys on a ballot issue or measure
- DO call your attorney if you have questions!