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# RESTRICTIONS ON POLITICAL CAMPAIGNING BY PUBLIC EMPLOYEES ORS 260.432

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September 2012

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## GETTING STARTED

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### INTRODUCTION

The purpose of this rule is to interpret ORS 260.432. Violations of this rule are to be enforced as violations of ORS 260.432. We also provide prior review and advice to public agencies and individuals on allowable actions.

#### *Contact*

*Oregon Secretary of State, Elections Division*

*Phone: 503-986-1518*

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An Attorney General letter dated October 5, 1993 states “public bodies may use public funds to inform voters of facts pertinent to a measure, if the information is not used to lead voters to support or oppose a particular position in the election. However, we also have pointed out that ‘informational’ material may be found to ‘promote or oppose’ a measure even if it does not do so in so many words if the information presented to the public clearly favors or opposes the measure and, taken as a whole, clearly is intended to generate votes for or against a measure.” This manual details allowable and restricted activities, consistent with ORS 260.432 and the Attorney General’s advice.

### ORS 260.432 STATUTORY PROVISIONS

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Essentially, public employees may not engage in political activity while on the job. This manual will go into detail about what it means to promote or oppose, and when a public employee is “on the job during work hours.”

ORS 260.432(1) states that a person - including public employers and elected officials - may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.

ORS 260.432(2) states that public employees (including school administrators, city managers, police chiefs, etc.) may not be involved in **promoting or opposing** any political committee or any initiative, referendum or recall petition, measure or candidate **“while on the job during working hours.”**

ORS 260.432(3) states that each public employer must have posted - in all appropriate places where public employees work - a notice about the prohibitions of ORS 260.432. See the final page of this manual for more information about this requirement.

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## WHEN DOES 260.432 APPLY?

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- for initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer;
- for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- for a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- for political committees, whenever the political committee is active.

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## OVERVIEW OF RESTRICTIONS AND ALLOWABLE ACTIVITIES

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The overriding principle is that public employees may not use their work time to support or oppose measures, candidates, recalls, political committees or petitions. Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a public employee may be found in violation even though they used a minimal amount of work time.

An elected official or any other employer of a public employee may not require or direct public employees to prepare or distribute advocacy materials.

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## WHO IS COVERED?

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As a general rule, all non-elected public employees are covered by 260.432. Elected officials are covered insofar as they direct other public employees to engage in political activities. See *Candidates and Elected Officials*, page 8.

Until June 30, 2013, directors of the pilot education service district board are not considered public employees.

Federal employees, including persons principally employed by state or local executive agencies in connection with programs financed in whole or in part by federal loans or grants, are covered by the federal Hatch Act. Contact the U.S. Office of Special Counsel (800-854-2824; [www.osc.gov](http://www.osc.gov)) for more information.

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## APPOINTED BOARDS AND COMMISSIONS,

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ORS 260.432 applies to appointed board and commission members when they are acting in their official capacity. Appointed board or commission members are acting in their official capacity when, for example, they are at a meeting of the board or commission, working on a duty assigned by the board or commission, working on official publications (including website materials) for the board or commission, or when appearing at an event in an official capacity.

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## SALARIED VS. HOURLY: “ON THE JOB”

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Salaried employees’ work time is not as easily measured as hourly workers. If the work performed falls generally within the job duties of the public employee, the work is performed in an official capacity regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function, they are considered “on duty.”

A “regular workday” may not be definable for a position, or may not have a specific time period. It is based on the activities and whether the person is acting, or appears to be acting, in an official capacity.

Personal note-keeping by salaried employees is suggested to record when the employee is on or off duty. During public appearances, the employee should specifically announce to the audience that they are not acting in their official capacity if they are engaging in political advocacy. Such an announcement would not negate a subsequent statement or action in circumstances that show the public employee is acting in his or her official capacity.

***Example***

*If a salaried police officer attends a meeting about a bond measure on his own time (i.e. while not “on duty”) and advocates for the measure, he should announce to the audience that he is there in his capacity as a citizen, and is not representing the police department.*

*However, if the police officer went on to say “As a long standing member of your police department, I can tell you we need this money,” or handed out official publications from the jurisdiction, the police officer would be acting in his or her official capacity (despite their previous announcement) and would be subject to the requirements of ORS 260.432.*

***Example***

*A school superintendent would be acting in his or her official capacity at all school board meetings and school functions.*

A salaried public employee may be acting in their official capacity even when using personal equipment and personal time, if the activity is related to work duties.

***Example***

*A public employee who, on their own computer on the weekend, drafts a press release about how a measure might affect their agency, and signs the document with their title, would be acting in their official capacity.*

Salaried employees have the right to participate in political activity on their own time. An employee would not be on the job solely because they may be subject to a call back to duty at any time.

Common activities that are always undertaken in an official capacity (regardless of time of day or location) and are therefore subject to the requirements of ORS 260.432 include:

- posting material to an official website (and approving material to be posted to an official website)
- drafting or distributing an official publication from the jurisdiction
- Appearing at an event as a representative of a jurisdiction

See *Use of Public Employee Title* on page 10 for more information.

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#### VOLUNTEER PERSONNEL AT A PUBLIC AGENCY

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Volunteers (other than members of appointed boards or commissions) receiving no compensation are not considered public employees and therefore are not restricted by ORS 260.432. Workers compensation coverage is not considered compensation.

These volunteers may be bound by the policies of the jurisdiction. The policies may include limits on political advocacy during their volunteer activities as well as limits on access to agency resources for advocacy purposes. While a volunteer will not be liable under ORS 260.432, a public employee may have exposure if the public employee directs a political activity by a volunteer.

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#### NATIONAL VOTER REGISTRATION ACT (NVRA) AND ORS 247.208(3)

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While the restrictions imposed under ORS 260.432 apply generally to all public employees, ORS 247.208(3) imposes a separate, rigorous set of restrictions that apply only to persons who provide voter registration services required under the National Voter Registration Act (NVRA). NVRA is a federal Act enacted by Congress in 1993.

Public employees or other persons providing NVRA-required voter registration services on behalf of a designated public agency may not:

- seek to influence the political preference or party registration of a person registering to vote;
- attempt to discourage a customer from registering to vote;
- display any indications of political preference or party allegiance (including the choice of candidates for partisan political office);
- make any statement or take any action towards a person registering to vote that would lead the person to believe the voter registration has any bearing on the availability of services or benefits;
- seek to induce any person to register to vote or to vote in any particular manner.

These restrictions prohibit public employees from wearing political buttons while performing NVRA services, which is more restrictive than the general rule that is explained on page 6. See OAR 165-005-0070 for detailed guidelines.

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## PERSONAL EXPRESSION BY PUBLIC EMPLOYEES

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### SIGNS AND POSTED INFORMATION

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#### CAMPAIGN SIGNS

Oregon election law does not address the size, location or timing of political campaign signs. Many local jurisdictions (cities and counties) have ordinances or policies that address campaign signs.

***Alert***

*Exception: ORS 260.695(2) prohibits campaign signs inside or within 100 feet of any entrance to a state or local government elections office building designated as a ballot drop site.*

#### UNION BULLETIN BOARDS

Public employee unions may have a designated bulletin board to post information. The location and contents of those bulletin boards are regulated by collective bargaining agreements and are not subject to the requirements of ORS 260.432.

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#### DISTRIBUTION OF POLITICAL MATERIAL WITHIN A GOVERNMENT AGENCY

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Public employees may not distribute material that contains political advocacy while on the job during work hours, except public employees may, as part of their job duties, process and distribute incoming mail addressed to specific employees that contains political advocacy.

Political material may be distributed in public jurisdictions if the person doing the distribution is not on the job, if other people would be granted equal access, and if it does not violate the jurisdiction's policies.

***Example***

*A teacher, while not on the job (before or after work or during lunch), may place information about his candidacy for a local office in the boxes of the other teachers at the school so long as any other candidate who asked would be allowed to distribute materials into the boxes.*

Unions may distribute political materials to their members pursuant to their contract.

See *Email* on page 13 regarding responding to or forwarding political emails.

## VERBAL COMMUNICATION

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ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. However, it does restrict some verbal communication while on the job during working hours (or while acting in an “official capacity”).

A public employee cannot promote or oppose a political position while they are on the job during work hours.

Public employers may add additional policies.

### PUBLIC PRESENTATIONS AND SPEECHES

A public employee cannot give a speech or presentation advocating a political position if they are on the job or acting in their official capacity. An elected official may give political presentations and speeches, so long as no public employee work time is utilized.

When making a presentation that contains political advocacy during non-work time, the public employee should announce that they are acting in their capacity as a private citizen. The employee should also document that they were not on the job.

#### *Example*

*Employees may document that they are not on the job by keeping: a log, payroll records that indicate when they were on the job, time off slips, etc.*

### MEETINGS

Public employees may attend meetings at which political issues are discussed, so long as they do not engage in political advocacy themselves while on the job or acting in their official capacity.

Public employees cannot be compelled to attend political presentations. If a public agency has a mandatory staff meeting and a political group is making a presentation, the agency must make it clear that attendance at the political presentation is optional. Public employees who do attend the political presentation must do so during non-work time. Political advocacy presentations should not occur in close proximity to events requiring public employee attendance.

### BUTTONS, T-SHIRTS, AND UNIFORMS

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#### POLITICAL BUTTONS AND CLOTHING

Public employees may wear political buttons or clothing at work so long as it does not violate their employer’s policy.

A public employer may not request or require that public employees wear political clothing, buttons, etc.



***Example***

*It would not be a violation for a teacher, on their own, to choose to wear a “Vote Yes on Measure 1234” button to school (so long as that did not violate school policy). It would be a violation for school administration to give out “Vote Yes on Measure 1234” buttons and email to encourage teachers to wear them to school on Election Day.*

UNIFORMS

Wearing a uniform to a political event, or while giving a political presentation, is not necessarily a violation of ORS 260.432, unless other elements of the presentation violate other requirements of this rule. A uniform may give the audience the impression that the public employee is acting in their official capacity. Public employees who wear uniforms and intend to engage in advocacy must notify the audience that they are not acting in their official capacity.

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LOBBYING AND LEGAL CHALLENGES

LEGAL CHALLENGES BY PUBLIC JURISDICTIONS

Public employee's work involvement in legal court challenges as part of their regular job duties would not be a violation of ORS 260.432.

***Example***

*Examples of legal challenges include whether an initiative petition meets constitutional requirements, whether a ballot title complies with statutory standards, etc.*

LEGISLATION AND LOBBYING

Legislative bills are not covered by ORS 260.432. Therefore it is allowable, under election law, for public employees to lobby governing bodies. Once a referral has been certified to the ballot, political advocacy is restricted by ORS 260.432.

## PUBLIC PROPERTY

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If a governing body makes their property available for advocacy activities, they must grant equal access for all political groups to use public property. This includes charging the same fee or requiring the same permit.

Public agencies may have policies that regulate the use of public property. The policy may be more restrictive than the requirements of ORS 260.432.

ORS 294.100 provides a limited remedy for possible inappropriate use of public resources. That statute is not in the jurisdiction of the Elections Division, and therefore we cannot give advice about compliance with that statute.

An elected official is not required to grant equal access to their office or equipment, even if it is in a public building.

## CONTACT LISTS

If lists are available to the public, a public employee must grant equal access to anyone who requests the list. This includes any list that the public body administers. The public body must charge the same fee, if any.

A candidate may not use any list administered by a public body that is not available to all other candidates. Candidates may use contact lists that they created (including constituent contacts) without granting equal access to other candidates.

### *Example*

*This issue commonly arises with the use of personnel lists, public utility lists, email lists, voter lists, etc. Public bodies must allow equal access to these lists.*

## CANDIDATES AND ELECTED OFFICIALS

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An elected official may engage in political activity during work time. Elected officials are not considered public employees for the purposes of ORS 260.432.

A person appointed to fill a vacancy in an elective public office is considered an elected official for purposes of this statute.

Elected officials cannot command public employees to engage in political advocacy. A request made by an elected official is considered a command.

An elected official's opinion piece, letter or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees. See *Material Produced by Governing Bodies*, page 10.

### ***Example***

*Public employees may not prepare the text for a speech, a press release, constituent mail that advocates a vote, candidate filing forms, voters' pamphlet filing forms, file contribution and expenditure (C&E) transactions online, etc. during their work time.*

An elected official, as part of a governing body, may vote to support or oppose a measure put before the body. The elected official may publicly discuss the vote. Elected officials may not use public employee staff time, except for ministerial functions. See *Material Produced by Governing Body*, page 10.

An elected official may only solicit volunteer help from public employees during employee breaks or other personal time.

### CANDIDATE FORUMS

A governing body may sponsor a candidate forum if it is open to all candidates. Not all candidates must attend.

Public employees may use work time to arrange the forum. The public employee may perform ministerial functions in conjunction with the forum and may attend on work time.

### ***Alert***

*All public employee involvement in the forum must be impartial. Public employees may not draft or select questions for the candidates.*

### SCHEDULING POLITICAL APPEARANCES

Public employees may maintain the schedule of candidates. Public employees may not solicit political scheduling opportunities for an elected official, but may respond to scheduling requests. Prohibited activities include organizing campaign events, communicating on political matters with the press or constituents, or initiating any other political activity on behalf of the official.

As discussed in the measure section, incoming calls about measures must be answered in a strictly factual manner.

### VISITS BY CANDIDATE OR CANDIDATE REPRESENTATIVE

A candidate may request to visit a government agency work site. The public agency must grant equal access to all candidates. The government agency should not initiate candidate visits, except for candidate forums.

Public employees involved in the arrangements for the visit may perform ministerial duties.

No public employee may take any actions to promote or oppose the candidate before or during the visit. This includes taking a political position when announcing the event, holding a campaign sign during the event or assisting the candidate in distributing campaign materials.

## INFORMATION IN THE MEDIA

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### USE OF PUBLIC EMPLOYEE TITLE

Use of a public employee's working title tends to indicate that he or she is acting in their official capacity. Even if the material is produced on the employee's personal time, use of their title may indicate to the public that they are speaking on behalf of their agency. Using a title is one factor the Elections Division would consider to determine if a public employee was on the job or acting in their official capacity when they engaged in political advocacy. See *Salaried v. Hourly: "On the Job"* on page 2.

### GUEST OPINIONS OR LETTERS TO THE EDITOR BY PUBLIC EMPLOYEES

If a public employee is asked in their official capacity to produce a guest opinion related to a ballot measure or candidate, the content must be impartial.

A public employee may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity. As discussed in the "Use of Public Employee Title" section above, use of a title is one factor that would be considered to show that a public employee was acting in their official capacity.

### AGENCY INTERACTION WITH MEDIA

A spokesperson for an agency may respond to media inquiries about the possible effects of a measure or petition so long as the information they provide is impartial. The public employee must not state or imply support or opposition.

A public employee may draft and distribute an impartial news release, except for a news release regarding a resolution advocating a political position on a measure.

See *Resolutions (Vote Taken) by an Elected Governing Body*, page 15.

Information that is entirely factual may nonetheless be considered advocacy (for example, by omitting required cost information). See *Determining Impartiality for Documents*, page 17.

## MATERIAL PRODUCED BY GOVERNING BODIES

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Any materials produced by public employees while on the job during work hours must be impartial. The Elections Division is available to review documents prior to publication to ensure compliance with ORS 260.432. If the document is submitted to the Elections Division and approved in writing, there will be no violation of ORS 260.432 as long as what is printed does not deviate from the approved version. This review process will be completed within five business days of the submission of the document.

### ***Contact***

*Oregon Secretary of State, Elections Division*

*Phone: 503-986-1518*

*Fax: 503-373-7414*

*Email: [elections.sos@state.or.us](mailto:elections.sos@state.or.us)*

When the Elections Division receives a document for prior review (usually submitted by fax or email), it will review it utilizing the impartiality requirements on page 17 of this manual. It will then reply to the jurisdiction, usually by email, with a statement that the document as submitted is acceptable, or with notes about how to make the document more impartial. Those notes will reference the requirements on page 17 of this manual. The jurisdiction may re-submit the material incorporating the suggested changes as many times as necessary.

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## WHO IS LIABLE FOR ADVOCACY MATERIAL

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Any public employee who authors or drafts material that contains advocacy may be in violation of ORS 260.432. This includes any public employee who creates material for inclusion in an advocacy document.

A supervisor who requests that an advocacy document be created, or oversees the project, may also be in violation of ORS 260.432, even if they are not the author of the document.

A public employee may edit material that is subsequently found to not be impartial if they only edit for grammar, spelling and other clerical issues. A public employee may not edit advocacy materials if they make or suggest substantive changes. It is not a violation for a public employee to design materials that are subsequently found to contain advocacy so long as they are not involved in the content of the document.

It is not a violation of ORS 260.432 for a public employee, at the direction of a supervisor, to post advocacy materials to a website or otherwise distribute them. The supervisor who decided to distribute the materials may be in violation of ORS 260.432.

See *Impartial Ballot Measure Information*, page 14.

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## LETTERHEAD AND STATE SEAL

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### GOVERNMENT LETTERHEAD

Election law does not regulate the use of government letterhead.

Agencies should have policies in place governing letterhead that incorporate the requirements of ORS 260.432.

### STATE SEAL

ORS 186.023 governs the use of the Oregon State Seal. Elected officials may use the state seal in an official capacity, but not as a candidate for public office.

### ***Contact***

*For questions about the use of the Oregon State Seal, contact the Secretary of State, Executive Office at 503-986-1523.*

## SPECIFIC KINDS OF MATERIALS

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### VOTERS' PAMPHLET

A public employee's duties may include producing an official voters' pamphlet. Public employees may not prepare measure arguments or candidate statements for inclusion in the voters' pamphlet while on the job during work hours.

See page 16 for information about ballot titles and explanatory statements.

### POSTCARDS

Postcards produced or distributed by public employees must be impartial. The postcards must meet the impartiality requirements, described on page 17.

When a public employee is involved in the production of a series of small mailers, each piece must be individually impartial. Read together, the series of mailers must also be impartial. For ballot measure material, any discussion of the measure's effects must be balanced with the amount of taxes or fees.

Public employees may produce "don't forget to vote" materials as long as they are impartial.

### PREVIOUSLY PUBLISHED MATERIALS

Public employees may respond to public records requests with information that contains advocacy, but may not proactively distribute advocacy material.

See *Websites*, page 13, for information about links to previously published materials.

### VIDEO AND AUDIO PRODUCTIONS

Video and Audio productions created or distributed by public employees must be impartial. The words, tone of voice and any visual elements will be reviewed together for impartiality.

Public employees who record video of public meetings may do so even if non-public employees (or public employees who are not on the job or acting in their official capacity) engage in advocacy on the video. Public employees may not make recordings where the purpose of the video or audio production is advocacy. Public employees may not edit a video so that the resulting product is advocacy.

Public employees may broadcast videos of meetings for public access channels and post the videos on government websites, even if the videos contain advocacy. Posting only excerpts of the meeting where there is advocacy with an intent to advocate would be a violation.

WEBSITES

No advocacy material may be posted on any government website or blog unless it is part of an official function of the agency.

***Examples***

*An elections website may contain voters' pamphlet information.*

*Any public body may post information that is a record of a public meeting, even if it contains advocacy.*

Candidates and other political groups may link to government websites, but government websites may not contain links to advocacy material. Even if a public employee posts advocacy material on the government website during their personal time or on their personal equipment, the public employee would be acting in their official capacity and therefore would violate ORS 260.432.

Government websites may contain public records about measures or candidates. Those public records must be treated the same as other public records, which do not contain advocacy.

Government agencies should have a policy in place for their website that incorporates the requirements of ORS 260.432.

E-MAIL

Public employees may open and read emails that contain political advocacy. They may not, while on the job during work hours, send or forward emails that contain advocacy, except as outlined below.

A public employee may forward an email containing advocacy to their personal email, so long as this does not violate the employer's policies.

A public employee may forward an email containing links to advocacy material only when that material is germane to the government agency and the public employee does not provide commentary.

***Example***

*A wildlife official may forward emails to other public employees that contain a link to an article about an upcoming measure that would change the way the state regulates the wolf population. They may not include commentary that endorses or opposes the article or issue. The wildlife official may not forward an advocacy article about a measure that would impose a public school bond (or any other issue not related to the Agency).*

Agencies are advised to have a policy on use of government email that incorporates the requirements of ORS 260.432.

#### NEW MEDIA (TWITTER, FACEBOOK, ETC.)

Public employees may not post to government twitter, facebook, etc. material that contains political advocacy.

If a government agency interacts with candidates in new media (i.e., if a candidate left a comment on an agency facebook post), the agency must ensure that they treat all candidates equally and that any agency interaction remains impartial.

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#### IMPARTIAL BALLOT MEASURE INFORMATION

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When does ORS 260.432 apply:

- for initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer;
- for a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A district or city measure is certified to the ballot when the elections official files the referral with the county election office.

The actions taken by a governing body and its public employees in the planning stages of a proposed measure are not subject to ORS 260.432.

Public employees may produce and distribute advocacy material about referrals prior to the measure being certified to the ballot. Any public employee work time used to change, amend, edit, distribute, etc. a document found to be supporting or opposing a referral between the date it is certified to the ballot until the date of the pertinent election could be a violation of ORS 260.432.

#### *Example*

*A city manager may produce a memorandum to the City Council about the need for a possible future bond levy. If the City Council refers the levy, then that memorandum cannot be proactively distributed after the measure is certified. The city could respond to a public records request for the memorandum.*

Public employees may respond to public records requests for documents that contain advocacy, even if the measure has been certified. They may not proactively distribute those materials after the measure is certified.

A public employee may not distribute prior measure materials that contain advocacy where the same or similar issue is currently on the ballot.



**Example**

*If a school district has a recurring bond levy, district employees may not distribute any materials from the previous levies (even though those elections have passed) during the period between certification and the current election.*

**RESOLUTIONS (VOTE TAKEN) BY AN ELECTED GOVERNING BODY**

Elected boards of governing bodies may take a position on a ballot measure (or initiative, referendum or recall petition) provided there is no use of public employee work time to advocate that position.

With regard to a governing body’s resolution that advocates a political position on a ballot measure, initiative, referendum or recall, a public employee:

<b>May</b>	<b>May Not</b>
Edit the jurisdiction’s name and board member names to conform it to the requirements for the resolution	Draft, type, or edit the resolution
Prepare neutral, factual information for the board to use in taking a position on the measure, including impartial information on how the measure could affect the jurisdiction.	Recommend how to vote on the resolution
Be available at the board meeting to offer impartial information upon request.	Sign a resolution, unless the public employee’s signature is ministerial and included only to attest that the board took the vote
Respond to direct questions from the media about the resolution, if their response is impartial.	Prepare a news release or other announcement of the resolution.
If the jurisdiction has a history of listing all action items from meetings in a regularly published publication, they may include the vote in an impartial manner.	Include the vote or position of the governing body in a jurisdiction newsletter or other publication.
Use work time to record the vote if that is part of the employee’s work duties.	
Use work time for regular job duties, such as responding to public records requests, taking minutes, retyping the resolution to conform to the required format, etc.	

## BALLOT TITLES

Public employees may use work time to draft impartial ballot titles. A public employee may also defend a challenged ballot title.

Because the impartiality requirements and ballot title challenge process in ORS chapter 250 are distinct from the requirements of ORS 260.432, this office will not review ballot titles for impartiality. Public employees who draft ballot titles as part of their job duties will not be found in violation of ORS 260.432 for drafting a ballot title.

See *Legal Challenges by Public Jurisdictions*, page 7.

## EXPLANATORY STATEMENTS

Public employees may use work time to draft impartial explanatory statements.

Because the impartiality requirements and explanatory statement challenge process in ORS chapter 250 are distinct from the requirements of ORS 260.432, this office will not review explanatory statements for impartiality. Public employees who draft explanatory statements as part of their job duties will not be found in violation of ORS 260.432 for drafting an explanatory statement.

See *Legal Challenges by Public Jurisdictions*, page 7.

## PUBLIC EMPLOYERS DISCUSSING POSSIBLE EFFECTS OF A MEASURE WITH PUBLIC EMPLOYEES

A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure.

### ***Alert***

*Pursuant to ORS 260.665, it is a crime to threaten loss of employment (or other loss) or offer a thing of value to induce someone to vote in a particular manner.*

## MEASURE DEBATES

A forum to allow political proponents and opponents to debate ballot measures may be held using public employee work time as long as equal access is granted.

Measure forums are governed by the same principles as candidate forums. See *Candidate Forums*, page 9.

## DETERMINING IMPARTIALITY FOR DOCUMENTS

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### ELECTIONS DIVISION REVIEW OF DOCUMENTS

The Elections Division offers a review service to give advice on whether a document complies with the requirements of ORS 260.432.

*To submit a document for review, you may:*

*Email it to: [elections.sos@state.or.us](mailto:elections.sos@state.or.us)*

*Fax it to: 503-373-7414*

*Mail it to: 255 Capitol Street NE, Suite 501, Salem, OR 97301*

Any Elections Division review of a document must occur before publication or distribution of the document. The Elections Division does not review documents for accuracy, only for impartiality.

Approval by the Elections Division provides a safe harbor for compliance with ORS 260.432. Should the Elections Division receive a complaint, it will be rejected as long as what was published is exactly what was submitted for review and all recommended changes were made.

When governing bodies receive Elections Division advice, they may choose to make some or all of the changes. If a complaint is received, the governing body will only be provided a safe harbor if they:

1. Accepted and made all of the changes
2. Did not otherwise alter the document

Once a document has been reviewed and all of the changes are made, a governing body may include a disclaimer that reads: "This information was reviewed by the Oregon Secretary of State's Office." This is the only acceptable disclaimer.

### IMPARTIALITY REQUIREMENTS

The overall inquiry for determining impartiality is whether the material "promotes or opposes" a candidate or measure. In order to be impartial for the purposes of ORS 260.432, a document must meet two requirements:

- Documents must not explicitly urge a yes or no vote.
- Any document that talks about what a measure would pay for or do must also fully describe how much it would cost.

The requirements are discussed in further detail below.

#### 1. VOTE YES/NO

The contents of the document must not urge a yes or no vote for the measure. There should be no "vote yes" or "vote no" language. The document must not include phrases such as:

- "Vote Yes on Measure 99,"
- "Support for Measure 99 is encouraged,"
- "The County is asking voters to approve,"
- "Why Should I Vote for Measure 99?"

- “Voters are asked to consider support for Measure 99,”
- "At election time, please support the Home Rule Charter,"
- "On May 15, 2012, Anytown voters are being asked to continue their support of the community youth by renewing the Youth Action Levy, Measure 57," and
- “Please support our incumbent mayor.”

Even if the remainder of the document is impartial, explicitly urging someone to vote in a particular manner would be a violation of ORS 260.432.

## 2. BALANCE OF FACTUAL INFORMATION AND DESCRIPTION OF COST

Documents produced by governing bodies must not be one sided. They must include a balance of information.

If a measure proposes to affect taxes or fees, the cost of the measure to an individual taxpayer or consumer must be included. In the context of a bond levy, this is generally the cost per \$1,000 of assessed value. The cost must not be worded in a way to minimize it.

### *Example*

*It would be advocacy to describe the cost as “less than” or “only \$5.00 per month” or “It’s merely the cost of a paperback a month”.*

It is allowable to indicate that a bond renewal would not “raise taxes” where the jurisdiction states that the bond, if renewed, would continue to cost \$X per \$1000 assessed value. It is also allowable to state how much the bond would raise taxes compared to the previous bond, as long as the full cost information (generally cost per \$1000) is also included.

### *Example*

*“The ABC Library bond will not raise taxes. If the bond is renewed it the rate will remain at \$1.23 per \$1000 assessed value.”*

*“The ABC School bond is an increase of \$.25 per \$1000 assessed value over the previous bond. The total rate if the bond is passed would be \$1.45 per \$1000 assessed value.”*

For measures that use funding mechanisms other than cost per \$1000 assessed value, the cost must be described in a way that clearly informs the public of how the measure would affect taxes.

The Oregon Department of Revenue produces a document entitled “Tax Election Ballot Measures” that describes Revenue requirements and advice for Tax Measures. It may be found at: <http://cms.oregon.gov/dor/ptd/docs/504-421.pdf>

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## ENFORCEMENT

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### COMPLAINTS (ORS 260.345)

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Any Oregon elector may file a signed, written complaint with the Secretary of State, Elections Division alleging that a violation of ORS 260.432 (or any other election law) has occurred. The Elections Division also has its own authority to initiate an investigation when it has reason to believe a violation has occurred.

When a complaint is received, the Secretary of State will acknowledge receipt of the complaint to the complainant and the subject of the complaint within 48 hours of receiving the complaint. When the complaint is against a jurisdiction and not any specific individuals, it will be acknowledged to someone the Elections Division believes has responsibility for the area where the public employees are alleged to have violated the statute. The acknowledgment will be in writing.

#### *Example*

*If a complaint is against a City and it is not clear who is responsible, it will be acknowledged to the City Manager.*

Because ORS 260.432 is a civil statute, the entire investigation is public information. The complaint and all correspondence are available for any person who makes a public records request.

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## INVESTIGATION

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Once a complaint is received, an investigation is conducted. The Elections Division will collect information and make inquiries. The subject of the complaint will be invited to respond to the allegations and provide any relevant information. As part of the investigation, the Elections Division may review materials not submitted with or mentioned in the complaint, and those materials may be the basis for a violation. The Elections Division may consider any information it considers relevant to the question of whether individuals in the jurisdiction violated ORS 260.432.

The investigation is independent of any election. The election will not dictate when a determination is made, and any determination will not change the outcome of the election.

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## DETERMINATION

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If the Elections Division determines there is insufficient evidence of a violation of ORS 260.432, it will issue a letter to the complainant and subject of the complaint closing the case.

If the Elections Division determines there is sufficient evidence to indicate individual(s) violated ORS 260.432, it will issue a Notice of Proposed Civil Penalty (PPN). The PPN will lay out the basis for the violation. When the person subject to the penalty receives the notice, they may:

- Choose to pay the penalty, or
- Contest the charges by requesting a hearing

If the person does not contest the penalty, the Elections Division will issue a default final order imposing the civil penalty. If the committee chooses to pay the penalty, payment may be submitted by check made payable to the Secretary of State or paid by credit card over the phone. Payment may be mailed to the Elections Division at any time after the PPN is issued, but must be received not later than 60 calendar days after the default final order is issued.

If the person chooses to contest the charges, they must submit a hearing request form (which will be included with the PPN) and an answer, explaining their reasons for contesting the charges and including any relevant mitigating circumstances.

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## MITIGATING CIRCUMSTANCES

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The following are the mitigating circumstances that may be considered in reducing, in whole or in part, the civil penalty. The burden is on the person alleged to have committed the violation to show that a mitigating circumstance exists and caused the election law violation.

- (a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;
- (b) The violation is the direct result of an error by an elections officer;
- (c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. (“Calamitous event” means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care and foresight); or
- (d) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated 260.432(2).

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## HEARING PROCESS

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Hearings are conducted by an administrative law judge with the Office of Administrative Hearings (OAH) in Salem. On the hearing request form, the person subject to the civil penalty will choose whether they prefer to have a hearing in-person or by telephone.

When the Elections Division receives the hearing request and answer, they will forward this information, as well as the PPN and exhibits, to OAH. OAH will schedule a hearing not later than 45 calendar days after the deadline for requesting a hearing and notify the parties of the hearing date. A 15 calendar day extension may be granted if requested in writing by the person subject to the civil penalty.

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## SUBMITTING EXHIBITS

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Not less than five business days prior to the commencement of the hearing, each party, including the Elections Division, must deliver copies of the exhibits it intends to offer into evidence at the hearing. Exhibits must be delivered to the administrative law judge, all parties, and the Elections Division.

Any documentary evidence submitted after the deadline may be admitted only if the administrative law judge finds that inclusion of the evidence in the record is necessary to conduct a full and fair hearing.

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## CONDUCT OF IN-PERSON OR TELEPHONE HEARING

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If the hearing is in-person, it will be held in a hearing room at the Office of Administrative Hearings in Salem. If the hearing is by telephone, the parties will call the phone number provided in the Notice of Hearing sent by the Office of Administrative Hearings. The hearing will be presided over by an administrative law judge. The administrative law judge will describe the hearing process at the beginning of each hearing. The parties will then be given the opportunity to give opening statements, present and examine witnesses, and give closing statements.

If the party that requested the hearing does not appear within 15 minutes of the time set for a hearing, the administrative law judge will declare the party in default unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance.

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## OPPORTUNITY TO OPT OUT OF IN-PERSON OR TELEPHONE HEARING

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A person that requests a hearing may decide that he or she does not want to appear at the hearing, but still wants to contest the penalty. The person may submit notarized testimony and other evidence for entry into the hearing record before the administrative law judge in lieu of attending the hearing. The Elections Division must receive the testimony no later than three business days before the day of the scheduled hearing.

The Elections Division may also submit notarized testimony. The Elections Division testimony must be received by OAH not later than 5:00 p.m. on the scheduled date of the hearing. If the Elections Division fails to submit notarized testimony, the Elections Division exhibits become part of the case file and may establish the basis for liability.

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## PROPOSED AND FINAL ORDERS

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### PROPOSED ORDER

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Not later than 30 calendar days after the hearing is closed, OAH sends the administrative law judge's proposed order to the parties. The proposed order will provide a deadline to file written exceptions to the proposed order. If the Elections Division chooses to amend the proposed order issued by the administrative law judge, the Elections Division will send an amended proposed order to the parties, which will provide a deadline to file written exceptions to the amended proposed order.

### FINAL ORDER

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After reviewing and considering the written exceptions, if any, the Elections Division will issue a final order no later than 90 calendar days after the hearing is closed. If the final order imposes a civil penalty, the party has 60 calendar days to pay the penalty or file an appeal.

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### JUDICIAL REVIEW

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After the issuance of a final order or default final order, the person subject to the civil penalty is entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 calendar days of the service date of the order.



# **ATTENTION ALL PUBLIC EMPLOYEES:**

**The restrictions imposed by the law of the State of Oregon on your political activities are that “No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.”**

**It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours. (ORS 260.432)**