

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum

TO: Mayor and City Council
Marcus Jones, City Manager

FROM: Robert E. Hagemann, City Attorney *REH*

DATE: September 11, 2018

RE: City Activity regarding the Bond Referendums

As we approach the November election, I thought it would be helpful to outline the legal framework that governs City activities regarding the bond referendums. Specifically I will address: (i) public expenditures; (ii) City employee activity; and (iii) Mayor and Councilmember activity.

Public Expenditures – “Information” v. “Advocacy”

State law prohibits city employees from using “city funds, supplies, or equipment for ... political purposes except where such political uses are otherwise permitted by law.” G.S. 160A-169(e).

Despite this limitation, the North Carolina Court of Appeals has held that a local government may lawfully spend public funds to “inform” the public about a referendum issue, but may not spend public funds in a manner that “advocates” or “promotes” a particular viewpoint or outcome.

Significantly, the Court noted that “[i]t is not necessary for the advertisement to urge voters to vote ‘yes’ or ‘no’ or ‘for’ or ‘against’ a particular issue or candidate in order for the advertising to be promotional.” Instead, “the style, tenor, and timing” of an advertisement that may on its face appear to be simply “informative” may demand the conclusion that it is, in fact, prohibited “advocacy.”

While historically Charlotte’s bond campaigns have been privately run and privately funded, if the City intends to expend public funds to either purchase advertisements or to produce materials regarding the referendums, care must be taken to ensure that the advertisements and materials are informative, and not advocacy.

City Employee Activity

State law provides that:

No [city] employee while on duty or in the workplace may:

- (1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or
- (2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

G.S. 160A-169(c).

So even if public funds are not expended, city employees should not engage in advocacy while on the job or in the workplace, or engage in the development or implementation of referendum/campaign strategy.

That said, city employees may engage in political activities during non-work hours, so long as they do not: (1) use city resources (i.e. computers, telephones, supplies, etc.); or (2) use their position or behave in a manner that suggests they are representing the city in an official capacity.

In addition, employees continue to have a legal obligation to respond to public records requests. For that reason, employees may answer questions and provide records and information to the Mayor and City Council, residents, and the media in normal and appropriate ways.

Mayor and City Councilmember Activity

The statutory restriction on city employees does not apply to elected officials. And I am unaware of any case law or legal principle that suggests that the Mayor and Councilmembers may not publicly speak or advocate a particular point of view or result on a ballot measure, so long as public funds are not expended in doing so. As a result, the Mayor and Councilmembers are free to engage in advocacy, and to urge their constituents to vote a certain way.