

October 9, 1997

**Advisory Opinion 1997 - No. 8
Newsletter Ballot Information**

The Board issues this advisory opinion on its own motion to further clarify the extent of permissible comment on ballot measures in legislative newsletters. This issue is important to legislators because a violation is an improper use of facilities for a campaign purpose, which could result in a penalty up to \$5000 plus the cost of the newsletter and postage.

QUESTION

Would it be a violation of RCW 42.52.180 to include an indirect appeal for votes in a newsletter comment about a pending ballot measure? Such indirect appeals might take one of the following forms:

"You will have an opportunity to vote on this measure in November. I am confident that you will reject it."

"Be sure to vote in November on this ballot measure . . ." [the merits of the measure are then summarized in a paragraph]

OPINION

Indirect appeals such as those described in this opinion have the same effect as direct appeals. Inclusion of such language could be a violation of RCW 42.52.180, depending on the context.

ANALYSIS

In **Advisory Opinion 1995 - No. 18** the Board stated the basis for its interpretation of the exceptions to the general prohibition against use of state facilities to assist a ballot measure campaign. The opinion included the following guidelines for newsletter comments:

Explanatory material would be part of the normal and regular exemption, but extensive direct comment on the merits of a ballot proposition, which would be permitted in response to an inquiry, is not permissible in a newsletter, unless the subject matter of the ballot measure was before the legislature in the immediately preceding session. If it was before the legislature, it may be discussed in the newsletter to the same extent as the legislator may comment on any other legislation in a newsletter. (Refer also to the answer to question 8.)

Advocacy statements within an otherwise permissible newsletter are considered to be "initiated" by the legislator, within the meaning of the exception in RCW 42.52.180(2)(d). Therefore "de minimis" use (so small as to be insignificant) is permitted. A short sentence or paragraph within a long newsletter is allowable, as long as it does not include a direct appeal for a specific vote or campaign assistance.

The opinion gives as examples of prohibited appeals these statements: "Support our children and do

not vote for Referendum 6" or "Vote for Referendum 5." As noted in the opinion, the purpose of the exception is to allow legislators "to express their views or opinions on ballot propositions." When the newsletter includes an appeal for specific voting or campaign action by the constituents, it has gone beyond the permitted expression of opinion.

The Board is concerned that the use of indirect appeal language such as the possibilities mentioned in this question have the same result as the direct appeals discussed in the Board's earlier advice. When any statement which goes beyond the mere fact that a legislative bill is now a ballot measure is situated with advocacy statements about the merits or demerits of a ballot measure, the language has gone beyond the permitted exception. Newsletter authors are encouraged to make a choice between: (1) encouraging voting and including only a balanced objective description of a measure; and (2) including direct comment on the merits of the proposal with no reference to voting on it, other than the fact that the bill is now a ballot measure.

The Board will continue to rely on the Senate and the House administrations to enforce their own restrictive policies. The Senate and the House are asked to limit newsletter content so that even the appearance of a violation is avoided.

Consistent with the principle set forth in **Advisory Opinion 1995 - No. 17**, that in interpretations where the provisions of the Act are unclear absent the Board's opinion, the advice given in this opinion will be applied prospectively only.