



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION

by

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ATTORNEY GENERAL

May 4, 2015

No. I15-002
(R15-002)

Re: Use of public funds to influence the
outcomes of elections

To: Sheila Polk, Yavapai County Attorney
Bill Montgomery, Maricopa County Attorney

Questions Presented

You have asked what constitutes the use of public resources to influence the outcomes of elections and when the prohibition arises under Arizona Revised Statutes Section 11-410.

Summary Answer

The prohibition arises when the official becomes aware of the prospect of an election. Public funds are “used to influence the outcomes of elections” when they are expended in a manner that unambiguously urges the support or defeat of a candidate, initiative, or referendum.

Background

The Arizona Revised Statutes prohibit cities (§ 9-500.14), counties (§ 11-410), state and public agencies (§ 16-192), school districts and charter schools (§ 15-511), community colleges (§ 15-1408), and universities (§ 15-1633) from using public resources for the purpose of

influencing the outcome of elections. These prohibitions were interpreted by Attorney General's Opinion I07-008 (2007) as taking effect prior to a measure gaining ballot access but the opinion does not otherwise define when the statute becomes operative.

Analysis

In *Kromko v. Tucson*, 202 Ariz. 499 (App. 2002), the Arizona Court of Appeals ruled that an expenditure of public funds to influence the outcome of an election does not occur if reasonable minds can differ as to whether the communication was made to influence the outcome of an election. It follows that public officials cannot violate this statute before they become aware of a prospective election and that their awareness therefore triggers operation of the statute.

In *Kromko*, the City of Tucson used official resources to publish pamphlets, display a website, and broadcast a televised public service announcement regarding two initiatives. *Id.* at 501. The plaintiff in *Kromko* objected to the one-sided nature of these communications in favor of the initiatives and sought injunctive relief in the form of an order compelling the city to "present the information in a fair and impartial manner." *Id.* The Court of Appeals rejected this argument. Rather, the court held that if a reasonable person could conclude that the government entity was educating the public on the issues, albeit in a one-sided manner, then it has not used public resources to influence the outcome of an election. *Id.* at 503.

The same significant issues that elicit communications by public officials are likely to become the subjects of initiatives, referenda, and candidate campaigns. The Legislature did not design the statute to silence public officials from weighing in on issues of public importance, even when those issues become the subjects of political campaigns. It is designed to and does prohibit the use of public resources to influence the outcomes of elections at every stage of the

electoral process. *Kromko* makes clear that a violation of the statute requires an unambiguous urging of the electorate to act one way or the other. The City of Tucson's public education efforts in that case, despite their one-sided nature, did not violate the prohibition on using public resources.

You have specifically referenced the prospective marijuana initiative and your efforts at public education on the marijuana issue. To the extent you use public resources to communicate, your efforts may lawfully continue under A.R.S. § 11-410 and *Kromko* throughout the election, so long as they do not unambiguously urge the electorate to cast a vote for or against the measure.

Conclusion

Public officials are bound by A.R.S. § 11-410 when they become aware of a prospective election. A public official does not "use public resources to influence the outcomes of elections" by continuing to educate the public on the issues throughout the electoral process.