

**Guidelines
Use of University Resources
to Influence the Outcome of Elections
Arizona Attorney General's Office
2006**

I. Preamble

The Arizona Legislature, during the First Regular Session (2005), mandated that the Arizona Attorney General publish guidelines relating to the prohibition on the use of university resources or personnel to influence the outcomes of elections. A.R.S. § 15-1633(E) provides as follows:

By January 1, 2006, the attorney general shall publish and distribute to the Arizona board of regents a detailed guideline regarding activities prohibited under this section. The attorney general may distribute these guidelines through a website or electronically.

The following Guidelines are intended to address possible ambiguous situations (rather than the obvious applications of the plain statutory language). It is virtually impossible for these Guidelines to anticipate all of the factual scenarios that may arise in the course of an election. These Guidelines may, however, give some guidance about how pertinent questions should be analyzed.

Board of Regents and individual university policies may be stricter than these Guidelines. Such stricter policies are not supplanted by these Guidelines. For areas not covered by these Guidelines, please refer to existing university policies and procedures.

II. The Relevant Statutes

A.R.S. § 15-1633

Use of university resources or employees to influence elections; prohibition; civil penalty; definition

A. A person acting on behalf of a university or a person who aids another person acting on behalf of a university shall not use university personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections. Notwithstanding this section, a university may distribute informational pamphlets on a proposed bond election as provided in A.R.S. § 35-454. Nothing in this section precludes a university from reporting on official actions of the university or the Arizona board of regents.

B. Employees of a university may not use the authority of their positions to influence the vote or political activities of any subordinate employee.

C. This section does not prohibit universities from permitting student political organizations of political parties, including those that are recognized pursuant to A.R.S. §§ 16-801, 16-802 and 16-803, to conduct lawful meetings in university buildings or on university grounds, except as prescribed in subsection A of this section. Each student political organization that is allowed to conduct lawful meetings on university property shall have equal access as any other student political organization that is allowed to conduct lawful meetings on university property.

D. Nothing contained in this section shall be construed as denying the civil and political liberties of any person as guaranteed by the United States and Arizona Constitutions.

E. By January 1, 2006, the attorney general shall publish and distribute to the Arizona board of regents a detailed guideline regarding activities prohibited under this section. The attorney general may distribute these guidelines through a Web site or electronically.

F. The attorney general or the county attorney for the county in which an alleged violation of this section occurred may serve on the person an order requiring compliance with this section and may assess a civil penalty of not more than five hundred dollars per violation, plus any amount of misused funds subtracted from the university budget against a person who violates or a person who aids another person in violating this section. The person determined to be out of compliance with this section shall be responsible for the payment of all penalties and misused funds. University funds or insurance payments shall not be used to pay these penalties or misused funds. All misused funds collected pursuant to this section shall be returned to the university whose funds were misused.

G. An attorney acting on behalf of a university may request a legal opinion of the attorney general as to whether a proposed use of university resources would violate this section.

H. All penalties collected by the court for a suit initiated in superior court by the attorney general shall be paid to the office of the attorney general for the use and reimbursement of costs of prosecution pursuant to this section. All penalties collected by the court for a suit initiated in superior court by a county attorney shall be paid to the county treasurer of the county in which the court is held for the use and reimbursement of costs of prosecution pursuant to this section.

I. For the purposes of this section, "misused funds" means university monies or resources used pursuant to subsection A of this section.

III. Terminology Used in A.R.S. § 15-1633 and the Guidelines

1. “Person acting on behalf of” or “aids a person acting on behalf of” a university means that the person is acting with the express or implied consent or assent of the university or is aiding such a person. *Restatement (Third) of Agency* § 1.01 (Tentative Draft).

2. “Influencing the outcomes of” means using university resources to engage in any activity that is an attempt to persuade persons to vote for or against a particular candidate, party, position or ballot measure. The test for determining whether activities using university resources are designed to influence the outcome of an election is whether the activities further a communication that, taken as a whole, unambiguously urges a person to vote in a particular manner. The communication “must clearly and unmistakably present a plea for action, and identify the advocated action; it is not express advocacy if reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action.” *Kromko v. City of Tucson*, 202 Ariz. 499, 503, 47 P.3d 1137, 1141 (App. 2002), quoting *Schroeder v. Irvine City Council*, 97 Cal.App.4th 174, 118 Cal.Rptr.2d 330, 339 (2002).

The phrase also applies to activities leading up to qualifying or attempting to qualify ballot measures and candidates for the ballot, including fundraising and circulating petitions relating to candidates or ballot measures, including recall petitions. The phrase covers engaging in any activity that is an attempt to persuade persons to sign, circulate or refrain from signing or circulating a petition or contributing to or refraining from contributing to any political committee.

3. “Election” means any election for any initiative, referendum, recall or other ballot measure or proposition or a primary, general, recall, special or runoff election for any elected office of political subdivisions of the State, the State or federal government. “Election” as used in these Guidelines does not include any election for student government office or office in a recognized university club or organization; these elections may be regulated by Arizona Board of Regents or university policies.

4. “Personnel, equipment, materials, buildings or other resources” mean the following:

a. “Personnel” means compensated employees and authorized volunteers while acting on behalf of the university.

b. “Equipment” includes, but is not necessarily limited to, copiers, bulletin boards, telephones, automatic dialing devices, facsimile machines, computers, mailboxes, furniture, vehicles, postage meters and internet connections. The term also includes any university communication networks, such as university newsletters, public announcement systems or devices and web pages. This term does not include student-run newspapers or websites.

c. **“Materials”** means supplies or tools, including but not limited to, paper, labels, facsimile paper, pens, pencils, markers, paints, art supplies, food, cafeteria supplies and postage.

d. **“Buildings”** means a roofed and walled structure used for university business purposes.

e. **“Resources”** means university credit, money or accounts.

5. **“Outcomes of elections”** means the results of an election.

6. **“On-duty”** means time that university personnel and others affiliated with the university spend working for the university, engaged in university business or acting on behalf of the university. On-duty time includes time spent supervising or organizing, or assisting in the supervision or organization of a university-sponsored extracurricular event, such as an athletic event.

7. **“Off-duty”** means time that university personnel and others affiliated with a university are not working for the university, engaged in university business or acting on behalf of the university.

8. **“Classroom or other instructional setting”** means a university classroom or time spent instructing university students.

IV. Permitted Activities

1. Advocacy in Private Capacity: Officers and personnel of a university under the jurisdiction of the Arizona Board of Regents may act as advocates, circulate petitions, and distribute election literature but only as private citizens, during off-duty time outside the classroom or other instructional setting, using their own or other private resources. Officers and personnel of a university under the jurisdiction of the Arizona Board of Regents may engage in these activities at university-sponsored extracurricular activities, such as athletic events, only if officers and personnel of a university under the jurisdiction of the Arizona Board of Regents are not on-duty or supervising or assisting with supervision or organization of the extracurricular activities. Officers and personnel must not represent that they are acting on behalf of the university while engaged in activities to influence the outcomes of elections.

2. Expression of Opinions: Officers and personnel of a university under the jurisdiction of the Arizona Board of Regents may express their opinions or preferences on elections, including but not limited to, wearing buttons, placing bumper stickers on their cars, wearing clothing with political messages, distributing flyers or information, making contributions, talking with neighbors, friends and members of the community, putting up or displaying signs, making speeches and speaking to community or civic groups or engaging in any other political activity they choose, while off-duty, as long as such expression does not occur within a classroom

or other instructional setting. Officers, personnel and others affiliated with a university under the jurisdiction of the Arizona Board of Regents may also express their opinions or preferences on elections during on-duty time when such expression is made through verbal communication outside a classroom or other instructional setting. Officers, personnel and others affiliated with a university under the jurisdiction of the Arizona Board of Regents shall refrain from expressing their opinions or preferences on elections in a manner that would suggest that they are acting on behalf of the university. See Prohibited Activities ¶2.

A university student may express that student's opinions or preferences on elections in an article, editorial, letter to the editor or advertisement authored by that student and published in a university student newspaper, if and only if the opinions or preferences in the article are not influenced by university officers, personnel or others affiliated with the university.

3. Private Vehicles: Private vehicles with bumper stickers and other electioneering signs or materials relating to an election may be parked on university property by regents, personnel, students, parents and visitors to the university for university-related activities or for voting when the university is used as a polling place. For example, students, parents, faculty, staff and others visiting the university on university business or to vote on election day could park vehicles with bumper stickers in the university lot. On the other hand, the university may not permit the university parking lot to be used to permanently park a vehicle displaying a candidate's signs in the lot during an election cycle, when the owner of the vehicle is not visiting the university for university business or other permitted activities at the university. On election day, if the university is a polling place, a vehicle displaying electioneering messages may not be parked within the 75 foot limit designated by election officials pursuant to State law.

4. Reporting on Official Actions: A university may prepare and disseminate reports on official actions of the university or the Arizona Board of Regents. Note, however, that a "governing body may not adopt a resolution supporting or opposing an initiative or referendum and then under the guise of 'reporting on official actions' mail brochures to all residents." Ariz. Att'y Gen. Op. 100-020. A university may not, under the guise of "reporting on official actions," issue a public statement or press release supporting or opposing a candidate.

5. Polling Places: A university may permit election officials to use university premises for election polling places.

6. Receipt of Election Information in Mailboxes, E-mail and Telephones: If the university permits private use of university mailboxes, telephones and e-mail accounts, then personnel and students do not violate state law by receiving information, e-mail messages or literature advocating a position on an election matter. But see Prohibited Activities ¶ 5 relating to sending messages.

7. Voter Registration: A university may conduct nonpartisan activity designed to encourage individuals to register to vote and make voter registration forms available on university property if it regularly does so throughout the year.

8. Publicity Pamphlets and Other Official Election Publications: A university may make publicity pamphlets, early ballot request forms and other election materials published and distributed by government election officials available on university property. Early ballot request forms must be those prepared by a public election official and may not be those prepared by candidates or political committees.

9. Public Forums: A university may host nonpartisan forums and public candidate debates for the purpose of educating voters about issues or candidates at which speakers and/or members of the public discuss the pros and cons of a ballot measure or particular candidates and their platforms. For contested candidate debates, there must be at least two candidates invited; the debate must not be structured to promote or advance one candidate over the other(s); and the university must use pre-established viewpoint neutral objective criteria to determine which candidates may participate. A university may use its own funds to defray costs incurred in staging candidate debates.

10. Use of Buildings by Community Groups or Organizations: Universities may rent or lease their buildings to partisan and ballot measure groups on the same basis and conditions as other groups who are permitted to rent or lease university buildings.

11. Investigation of Fiscal Impact of Ballot Measure: A university may use its resources to investigate the fiscal impact of ballot measures on the university.

12. Student Organizations and Their Advisors: Student organizations, including those student political organizations recognized by A.R.S. § 15-1633(C), which are recognized by a university shall have the right to conduct lawful meetings in university buildings and on university grounds. University personnel appointed or selected to serve as advisors to these student organizations are permitted to participate in discussions and provide advice at meetings and other authorized activities of such organizations. Notwithstanding Prohibited Activities ¶ 5, advisors and members of such organizations may use university mailboxes, e-mail accounts and telephones to send information to members of the organization regarding organization meetings or other activities of such organizations. Neither members of a student organization nor its advisors may represent themselves as spokespersons on behalf of the Arizona Board of Regents or a university under its jurisdiction.

V. Prohibited Activities

1. Campaign Signs: No campaign signs, banners, stickers or any item that advocates for or against a candidate, recall, initiative, referendum, bond election, budget override or any ballot measure shall be placed in or on university buildings,

with the sole exception of residence hall room walls, doors and windows when that room is regularly occupied by one or more persons renting that room and enrolled at the university.

2. Political Buttons, T-shirts, etc.: Officers, personnel and others affiliated with a university shall not wear political buttons, t-shirts, hats or other items displayed on their persons or apparel that are designed to influence the outcome of an election during 1) on-duty time, or 2) off-duty time while in a classroom or other instructional setting.

3. Use of Buildings and Facilities by Outside Groups: In permitting use of university buildings by outside groups for meetings, the university cannot favor proponents of one side over another, *i.e.* if access is allowed to a political party, a candidate or proponents of a ballot measure, then equal access under the same terms and conditions must be allowed for all other political parties, candidates and opponents of ballot measures.

4. Use of Authority or Position: University personnel shall not use the authority of their positions to influence or attempt to influence the vote or political activities of any subordinate employee by expressing an opinion either verbally or in writing to the subordinate employee, or in any other manner.

5. Use of University Mailboxes, E-mail and Telephones: Even if a university permits private use of university mailboxes, telephones or e-mail accounts for some personal use, university personnel may not use these resources to distribute a communication for the purpose of influencing the outcomes of elections. University telephone systems shall not be used as telephone banks for the purpose of influencing the outcomes of elections. University personnel shall not use the university's e-mail system to create, distribute or forward communications designed to influence the outcomes of elections.

6. University Personnel and Students: University personnel shall not give students written materials to influence an election regardless of the fact that no university personnel, equipment or resources were used to prepare the materials. This includes flyers prepared by a private citizen group supporting a candidate or passage of a ballot measure. Nothing in this paragraph is intended to prohibit university faculty from teaching students about political issues and current affairs, including pending or potential ballot initiatives, as long as such faculty members do not at the same time advocate for a particular outcome related to any pending election issue or advocate for a vote for or against any pending election issue.

7. Petition Circulation: Officers, personnel and others affiliated with a university shall not use university personnel, equipment, materials, buildings or other resources to circulate nomination, recall, ballot measure petitions or petitions to qualify a political party for ballot status recognition. Officers, personnel and others affiliated

with a university also shall not circulate nomination, recall, ballot measure petitions or petitions to qualify a political party for ballot status recognition while on-duty. This does not prohibit individual employees from voluntarily exercising their rights to circulate petitions in their personal capacities while off-duty, as long as such petition circulation does not occur inside a classroom or other instructional setting.

8. Solicitation of Contributions: Officers, personnel and others affiliated with a university shall not use university personnel, equipment, materials, buildings or other resources to solicit contributions to be used in support of or opposition to a candidate, recall, ballot measure, political party or committee of a political party. Officers, personnel and others affiliated with a university also shall not solicit contributions to be used in support of or opposition to a candidate, recall, ballot measure, political party or committee of a political party while on-duty. This does not prohibit individual employees from voluntarily exercising their rights to solicit contributions while off-duty, as long as such solicitation does not occur in a classroom or other instructional setting.

9. Candidates and Their Representatives: Persons acting on behalf of a university shall not permit candidates and their representatives to announce their candidacy or advocate their election or the defeat of their opponents in university buildings or on university property, except for times when they are participating in public forums or appearing without university sponsorship at a traditional public forum open to any public communication (e.g. a “speaker’s area” at an open campus site). See Permitted Activities ¶ 9.