**Guidance on Boards Taking a Position on Marijuana Ballot Issue**

From: Christina Shaynak-Diaz

September 2015

I am not concerned about the board taking a position on the marijuana ballot issue in the context of the federal prohibitions on lobbying. The disclosure of lobbying activities form that is part of your grant documents pertains to compensation paid to a “lobbying entity”.  Also, you are also not attempting to influence a government official or agency regarding legislation.  Lastly, you are not using the federal grant funds for anything related to the ballot issue.

State law is the bigger issue in the Board taking a position on the marijuana issue.  It is well established under Ohio law that public moneys cannot be expended to promote or oppose the passage of a ballot issue unless there is clear statutory authority for the expenditure (as there is in regards to an ADAMH Board’s levy).  The concept is that public funds entrusted to a public agency belong equally to the proponents and opponents of an issue and the use of those funds to finance arguments to persuade that only one side has merit would be using the funds of those on the other side against them.

That being said, it is generally accepted that the dissemination of information (factual and impartial) is a proper function of a public agency and that public money may be expended for that purpose.

So - disseminating information is okay but conducting a campaign/advocating to promote or oppose an issue is not. The distinction between the two is not really defined anywhere so what is okay may depend upon the facts of a particular activity.

In general, the Board CAN:

* Have its governing board adopt a resolution supporting or opposing a ballot measure (taking a position on a ballot measure in an open and public meeting where all perspectives may be shared is permissible).  The language of the resolution should be “simple, measured and informative”. (i.e. language that emphasizes facts and does not use inflammatory language or argumentative rhetoric).  Keep in mind there may be more scrutiny as to permissible and prohibited activities of the Board once an official position is taken.
* Present and disseminate factual information about the consequences that are expected to follow from the passage or defeat of an issue in a factual and informative manner (i.e. expected impact on Board, Board funds, BH system and addiction providers is probably acceptable.)
* Disseminate objective information in a manner that neither promotes nor opposes the passage of the ballot issue (i.e. facts and studies about marijuana use, impact on youth, etc.)
* Include information described above on the Board’s website.  In regards to linking to other websites for or against, keep in mind that linking to just one side of the debate would be impermissible and providing links to both sides also comes with risks so I would recommend either linking to nonpartisan analyses of the issue (i.e. Attorney General, the League of Women Voters’, etc.) or to factual information about marijuana use (i.e. SAMHSA, research studies, etc.) or the governing board's resolution/position.
* Permit employees and Board members to distribute biased info in their free time, not using Board resources or time.

In general, the Board CANNOT:

* Say “Vote No on Issue X”
* Conduct an educational campaign with the ultimate goal of insuring passage or defeat of the issue
* Specifically attempt to persuade voters to vote a particular way
* Compensate employees for time spent on any activity to influence the outcome of the ballot issue
* Encourage the public to adopt the Board’s position, vote one way or another, or take any other actions in support of or in opposition to the measure

Also, involvement with the opposition campaigns should be conducted outside the Board’s offices and without using Board resources.  Sitting in on meetings to learn information or where pros/cons discussed is probably okay.

A few standards to keep in mind:

* Any doubt as to the authority to expend public funds must be resolved in favor of the public trust and against the expenditure.
* All communications should be carefully reviewed to be certain that they do not intentionally influence a vote.
* Statements should be checked for accuracy and must be factually defensible.
* If there is any doubt about the meaning or accuracy of a message take a conservative approach and consider redrafting the statement.

Basically, ensure information produced and/or disseminated is unbiased and does not suggest or encourage support (“Enlighten, not proselytize” were the words used by one judge).

In regards to your anti-drug coalition, are they a division/committee of the board?  If so, the above applies to them as well. Any entity that campaigns against the measure must be a separate legal entity from the Board.

One last thought about all of this, because the Board is the “addiction authority” for the county, I would think that more leeway would be given in a determination of what is “information” and what is a “advocating” in regards to this particular ballot measure but the above guidelines should still be stuck with as much as possible since that particular issue does not have case law or official opinion behind it.

Christina Shaynak-Diaz  
Attorney at LawShaynak-Diaz Law  
Hilliard, Ohio (614) 832-9143  
[sdlaw@outlook.com](mailto:sdlaw@outlook.com)