



InvestInEd, Prop. 305 and Advocacy

As of the writing of this FAQ, there appear to be two ballot measures on the General Election ballot directly dealing with education. The first is Prop. 305 which is a referendum on the bill passed in the 2017 legislative session (SB1431) which would greatly expand Empowerment Scholarship Accounts or school vouchers. (A yes vote would have the effect of allowing that bill to go into law and the no vote would repeal the bill.) The other is the InvestInEd initiative, which currently is being challenged in court and does not have a proposition number from the Arizona Secretary of State. School officials and advocates are asking questions about how they can discuss the impact of each of these measures and how they can advocate for them without violating the law. This updated FAQ on Arizona Revised Statutes Section 15-511 is intended to give that guidance. It is guidance that is also applicable to bonds, overrides and candidate elections.

Campaigning and Advocacy Do's and Don'ts

It is imperative that campaigning and advocacy efforts of ballot measures by school board members and school employees stay within the bounds of the law. Arizona Revised Statutes section 15-511 (A.R.S. §15-511) prohibits school districts from using school resources to influence the outcome of an election.

This is what A.R.S. §15-511 prohibits:

- It prohibits school boards (collectively, as a board) from making statements or passing resolutions in favor of, or in opposition to, a ballot measure or candidate.
- It prohibits school employees, when on school time, from activities that would influence the outcome of a ballot measure or candidate.
- It prohibits the use of school property including equipment, paper, copiers, buildings, computers, etc., from being used to influence the outcome of a ballot measure or candidate.
- It prohibits Arizona school districts from expending funds for membership in an organization that attempts to influence the outcome of an election. This includes associations like ASBA, AASBO, ASA and chambers of commerce if these organizations attempt to influence the outcome of elections through endorsements or contributions.
- It prohibits students being given campaign material intended to influence the outcome of an election or outcome of legislation. Because this is an area of the law with special emphasis, and the only area that includes legislation influencing,

the best practice is to avoid children taking home any material that might be deemed political.

A.R.S. §15-511 does not completely tie the hands of individual school board members or school employees, however. This is what the law DOES NOT prohibit:

- Individual board members or school employees not on school time MAY exercise their free speech rights and get involved in elections campaigns.
- School district employees MAY receive campaign information in school district e-mail accounts and mailboxes from an outside (non-school) sender; however, in the case of school e-mail accounts, such information cannot be passed on to others – including outside recipients.
- Outside groups, including PTOs, MAY organize and use school buildings to have meetings in support of a campaign providing those groups lease the facilities in the manner any other group would be allowed to lease.
- Individuals MAY exercise their free speech rights (politicking, including flyer distribution) at an event in which the public at-large is welcome (not a parent-student only event), providing that all groups are welcome to engage in such activity and it is consistent with district policy for such activity.
- School districts MAY remind their patrons that there is an election coming up and ask them to vote – so long there is no attempt to say HOW to vote.
- Board members and school employees on school time MAY answer questions from a factual perspective on the impact to the school district depending on a ballot measure's outcome. (However, be careful here! If facts can be viewed as being overly speculative, skewed or selectively used to further a particular viewpoint, the law may be triggered.)

Frequently Asked Questions about A.R.S. §15-511 and the Use of School Resources to Influence an Election

Q1: Can a person use their title in support of an issue – say a letter to the editor signed by the superintendent or board president?

A1: Yes, though best practice is to state that the letter is not being written on behalf of the district. For the superintendent, the letter should obviously not be written during duty time and for both the superintendent and board president, no school resources should be used – computers, paper, e-mails, staff support, etc. – in its production.

Q2: Can you post election information on school marquees? Can school employees wear “Remember in November” shirts to school without violating 15-511?

A2: Yes, you can put the November 6 election date and ask people to vote on a school marquee. You cannot tell them or suggest to them HOW to vote. School employees can wear shirts stating “Remember in November” without reference to how to vote or to

any particular ballot measure – so long as the school’s staff dress code allows for it (school districts as employers have wide discretion to determine what appropriate dress will be in the workplace).

Q3: Can school employees receive election-related material in school mailboxes or on school computers or in school-provided e-mail accounts?

A3: Yes, the law allows for the receipt of such material so long as the district has a policy allowing for receipt of outside, non-school related messages. However, school employees cannot forward such messages to anyone or print out such messages on district printers or district paper. A good practice for any messages going to school district accounts is to contain a tag that informs the receiver of the message of the law. Here is some suggested language: “Please note: If you are receiving this message on a school district computer or using a school district provided e-mail account you may not forward this message from your computer to another’s computer or copy the flyer and distribute under A.R.S. §15-511, which prohibits the use of school resources in influencing the outcome of an election.”

Q4: Can a parent or employee have an election-related bumper sticker or election-related writing on car windows on a car parked in a school parking lot?

A4: Yes, this is specifically allowed under the Attorney General guidelines.

Q5: Can teachers wear T-shirts or buttons to school in support of/opposition to a ballot measure or candidate? Can board members wear T-shirts or buttons in support of ballot measure to a board meeting?

A5: No and No. The line becomes a bit blurrier for on-duty employees when a shirt or button does not outright state support or opposition to a particular ballot measure but has an association with a cause or candidate. For instance, an expression of support for education generally – say by wearing a specific color shirt or a proclamation of support for public education – would not be a violation of 15-511 (but may still be subject to the school’s professional dress code). However, 15-511 may be invoked if the message is part of an organized, associative campaign of support for or opposition to a ballot measure. An example would be a social media campaign to wear a certain article of clothing in support of a ballot measure on a given day or during election season.

Q6: Can community members, parents or school employees pass out material in support or opposition to a ballot measure or candidate at school or at school-sponsored events?

A6: If it is an event where the public is not generally invited – like during the school day – parents or community members would have to stay off school premises to hand material out. (School employees could also participate if they were off duty.) If it is an extracurricular event where the public is invited, then the parents (and school

employees that are off duty and do not have supervisory responsibilities) are allowed to come on campus and pass material out – so long as the district has a policy allowing for flyer distribution and all sides are treated fairly.

Q7: Can the district distribute factual information about the impact of a ballot measure to the public?

A7: Yes, but facts should be presented fairly, completely and without bias. Materials should stick to the financial numbers closely and must avoid editorial comment.

Q8: Can schools send home factual information about a ballot measure with students for their parents to read?

A8: The law is very clear that students should never be used in an attempt to influence the outcome of an election. The law also prohibits students from bringing home material that attempts to influence legislation (no lobbying, the only place in the law where lobbying is invoked). For this reason, best practice is not to give any material to students related to a ballot measure or candidate election – even a “just the facts” flyer.

Q9: Can teachers, school staff and administrators discuss their support for/opposition to a ballot measure during the course of the school day or at official events?

A9: Teachers and other school employees do have the right of free speech but these rights are fewer in a work environment. During non-duty time, school employees should feel free to express their point of view and to gather with other like-minded school employees who are also off-duty. School employees should refrain from expressing their views about an election matter to students during the school day. If discussing an election matter before community groups, superintendents and principals should take time off from work if discussing the matter in anything but a factual manner. All school employees can take part in election activities if off duty and school resources are not utilized.

Q10: Can school buildings be used by outside groups for campaign-related events?

A10: Yes, as long as the facility is rented at the going rate under the district’s community use of facilities policy. This includes parent teacher organizations that normally get free use for their meetings; if the meeting is to discuss support or opposition to a candidate or ballot measure, rental fees must apply for that meeting.

Q11: Can the district/school have a ballot measure or candidate forum where all sides are represented?

A11: Yes, and if such a forum is held no rental charges would apply. Advocacy groups cannot rent school facilities for the purpose of advocating for or opposing a ballot measure or candidate at the same time as a campaign forum.

Q12: Can the band and cheerleaders perform at a ballot measure or candidate rally?

A12: Yes, but such a performance must be truly voluntary on behalf of the students and no district provided uniforms, instruments or transportation should be used.

Q13: Can teachers take parent e-mails and send a pro- or anti- election-related messages to them from their own computers at home, when not on school duty?

A13: Yes, if such e-mail addresses are obtained under a public records request, using the same protocols of other public records requests.

Q14: Can a school board adopt a resolution in favor or opposed to a ballot measure or candidate?

A14: No.

Q15: Can civics educators discuss candidates or ballot measures as part of a Kids Voting program or other type program to teach students about the political process?

A15: Yes, so long as the instructor follows a curriculum that is neutral in its approach. While students are free to voice their positions about election matters during such a program, school employees should refrain from doing so.

Q16: Can voter registration material be given out by schools?

A16: Yes, but only if such material is available all the time and not just part of an advocacy effort related to an election.

Q17: If a school gives out space to an outside group for free – under the community use policy where the activity supports the school’s educational mission – can that outside group allow campaigning by a ballot measure advocacy group?

A17: No. If the school facility is being used without compensation being paid – because the activity is deemed to further the school’s educational mission – no campaign activity can occur since that is, by law, NOT part of the school’s educational mission.

Q18: Do the §15-511 restrictions apply to charter schools?

A18: Yes. Although charters are exempt from most of the laws pertaining to school districts, they must follow 15-511 and all of the answers here would equally apply to charters.

Q19: Can pro- or con- ballot measure signs or candidate signs be placed on school campuses on election day, if the campus is being used as a polling place?

A19: Yes. There the First Amendment would apply and signs could be placed on school grounds by outside individuals associated with those campaigns, as long as they are outside of the prescribed boundary limits of a polling place.

Q20: Can students attend election-related rallies held on school campuses?

A20: Yes, but only voluntarily and information about the rally cannot be distributed during the school day or using school resources. (Also, don't forget that the facility for the rally must be rented under the school's community use policy.)

Q21: Can districts have a ballot measure forum where only facts and local impact will be discussed regarding that ballot measure?

A21: Yes, but extra care should be taken to ensure that it is purely a "just the facts" presentation and discussion; neutral facts that favor both a pro and con side should be brought out in such a discussion. The safest thing to do is to have an issues forum and have the other side represented -- then those involved (not school employees on school time) need not worry if a discussion of the facts leads to an advocacy message.

Q22: Can education organizations endorse and support of candidates or ballot measures?

A22: Not if they have school districts as dues paying members or if school districts pay membership dues to the organization on behalf of an individual member. Education organizations – and other organizations -- which are not funded by school districts CAN endorse and support candidates and ballot measures.

Q23: Can school employees be expected to support a ballot measure or candidate on their free time?

A23: NO! Employees cannot be required to support a ballot measure or candidate through either expressed or implied directive and no reward or punishment can follow to employees for being involved or not being involved in a ballot measure or candidate campaign.

Q24: Can school employees give out information – such as directory information of students or lists of school vendors – to an outside group for election-related campaign purposes?

A24: Yes, so long as that information must be disclosed as a public record should a request for information be made. The request for information should follow all normal channels and go through standard legal review.

Q.25: Can a campaign or school district poll to determine message and targeting?

A.25: It depends on the type of poll. A school district can poll to find out what kinds of projects/expenditures/needs the public supports; the school district cannot conduct a “push poll” designed to move voters to support of a ballot measure.

Q.26: Can districts pass two budgets – one if an override measure passes and one if it fails – without violating 15-511?

A.26: Yes.

Q.27: Can material from an organization that has taken a position on a candidate or ballot measure be distributed by people acting on behalf of a school district without violating the law?

A. It depends on whether the message itself amounts to an attempt to influence the outcome of an election under the law. The law concerns itself with the message, not the messenger. However, the analysis might change if the organization’s name or logo was, itself, an attempt to influence – such as YES on Prop. XXX Committee, etc. Mere public knowledge that the organization has taken a position on Prop. XXX is not enough to deem neutral materials that contain the organization’s logo – save for the aforementioned stipulation – an attempt to influence the outcome of an election by those acting on behalf of a school district using school district resources.

Attorney General’s Guidelines on §15-511 and Attorney General Opinion I15-002

The Attorney General’s Office has published guidelines to give school officials practical advice on adhering to the law’s requirements. They are worth reading and getting acquainted with. View the guidelines at:

<https://www.azag.gov/document/school-use-guidelines-school-district-or-charter-school-resources>

Additionally, the Attorney General has issued an Opinion on the Use of Public Funds to Influence the Outcome of Elections that is worth reading. It can be found here:

<https://www.azag.gov/opinions/i15-002-r15-002>

Questions?

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