

**City Council  
Business Retention &  
Development Committee**

**Meeting Agenda**

**August 2, 2010**

**8:00 AM – 9:30 AM**

**Library Meeting Room**

**951 Spruce Street**

***(entry on the north side of building)***

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of July 6, 2010 Minutes
- V. Public Comments on Items Not on the Agenda
- VI. Developer's Roundtable Discussion – emphasis on Colorado Tech Center
  - Jim Vasbinder – Etkin Johnson Group
  - Steve Meyer – Stephen Meyer and Associates
  - Jon Lee - Community Development Group
- VII. Retention Meetings
  - Balfour – Malcolm, Michael, Scott R
  - American Zephyr – Bonnie and Mayor
  - Alem – Chris Pritchard and John Benedetti
  - Huawei – Rob and Shelley(Phil)
- VIII. July Economic Development Briefing, including an update on Sam's, Safeway
- IX. Distribution of Fair Campaign Practices memo
- X. Reports from committee members
- XI. Discussion Items for Next Meeting **Tuesday**, September 7, 2010 –
- XII. Adjourn

***City Council***  
***Business Retention & Development Committee***

**DRAFT Meeting Minutes**  
**July 6, 2010**  
**Library Meeting Room**  
**951 Spruce Street**  
**8:00 AM to 9:30 AM**

BRaD of the City of Louisville met in session at 8:00 a.m. in the 1<sup>st</sup> Floor Meeting room at the Louisville Library, 951 Spruce Street, Louisville, Colorado. The following individuals were present -

BRaD Members Present:            Ron Sackett, Chair (Councilor)  
   Hank Dalton (Councilor)  
   Rob Lathrop, Vice Chair, LRC  
   Michael Menaker, Alternate for LRC  
   Shelley Angell, Chamber  
   Scott Reichenberg, CTC  
   Phil Barton, Chamber

BRaD Members Absent:            Bob Muckle (Councilor)  
   Chris Pritchard, Planning Commission  
   Jill Midgely, DBA

Staff Present:                        Bonnie Star, Economic Development Director  
   Malcolm Fleming, City Manager  
   Rhonda Welborn, Executive Assistant  
   Troy Russ, Planning and Building Safety Director  
   Gavin McMillan, Planner II

**APPROVAL OF AGENDA**

**APPROVAL OF MINUTES**

**PUBLIC COMMENTS NOT ON AGENDA – None**

**DISCUSSION – PROPOSED MODIFICATIONS TO DOWNTOWN SIGN CODE**

Troy Russ and Gavin McMillan presented a power point highlighting the following topics:

1. Landmarked Signs
2. Special Review Use (No fee)

3. Streamlined review
4. Various Sign designs
5. Void Spaces

Committee members and staff discussed the different exceptions that might arise in signage, such as signs above fascia, multi-tenant buildings, and prohibiting moving and flashing signs. The Planning Department will take the various suggestions into consideration when presenting the sign code information to other committees and boards, and incorporating appropriate changes into the proposed sign code to City Council.

### **UPDATE ON POTENTIAL CONSUMER USE TAX BALLOT ISSUE**

Malcolm Fleming informed the committee that the fall ballot will propose a 3.5% use tax on purchases outside the City of Louisville for use within the City. There are challenges to the wording and phrasing of the use tax. The committee and staff discussed the consequences of the use tax not passing. BRaD unanimously endorsed the Use Tax measure to Council.

### **DISCUSSION – PROPOSAL BY ROB LATHROP TO CHARGE SALES TAX ON RENTAL STORAGE SPACE AND RV/BOAT STORAGE**

Committee members and staff discussed the sales tax proposal and concluded that now is not the right time to pursue this issue. Additional comments addressed the need to diversify the tax base.

### **RETENTION VISIT OVERVIEW**

Rob and Troy visited with Vaisala. Vaisala is a Finnish company that works in meteorological scientific equipment. The company has acquired other similar companies and is re-locating employees to the Louisville office.

Malcolm and Hank visited with Sundrop Fuels. Sundrop has an office in CTC and an interesting future. The company also has operations in Broomfield. Sundrop converts rice straw into liquid fuels and works in other bio-fuels. A concern for this company is rail transportation and the lack of high end condos.

Jill and Phil visited with Streets Fitness. This company is growing. Streets Fitness stated that promoting their business was an issue.

Bonnie visited with the DaVinci Institute, owners of The Vault. This company is a coworking environment that offers varied levels of leased office space. The company is non profit and has a one-year lease. If the business does well they might consider purchasing the building.

Rob and Shelley visited with Samnina-Sci. This company has a niche in STC circuitry board repair, testing, and re-programming. The company has approximately 15 employees and is located in CTC. A future contract with Level 3 is possible.

## **JULY ECONOMIC DEVELOPMENT BRIEFING**

Bonnie indicated that there are offers into Walmart, although there are challenges with purchase restrictions; sales contract and restricted uses and covenants. She also provided an update on the ICSC conference in May.

There are 4 ownerships in the Village Square Shopping Center (Safeway) for sale. This allows for the possibility of re-developing the site for other uses.

Bonnie provided an update on the business assistance agreements for LuckyPie and Sweet Cow. The Rocky Mountain Tennis Center closed on the purchase of property June 1.

### **Reports from Committee members**

Rob Lathrop discussed the Firecracker Softball Tournament in town that brought in thousands of participants. There was a missed opportunity for downtown retail businesses, as there is poor access from the ball fields. Rob suggested an underpass or a guide/map located at the ball fields to direct people to businesses.

Troy Russ indicated that there will be a downtown parking advisory board formed that will hold three meetings sometime between July and September. He asked for volunteers.

Next Meeting – Tuesday, August 2, 2010

Agenda items proposed;

1. Possible Roundtables with CTC, Centennial Valley, and Downtown with S.W.O.T. analysis.  
The Round Tables would be to solicit recommendations towards Policy.
2. Statewide Ballot Issues

Meeting Adjourned at 9:35 a.m.

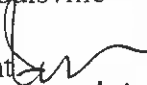

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**MEMORANDUM**

TO: Heather A. Balsler, Deputy City Manager  
City of Louisville

FROM: Sam Light   
Laura Heinrich 

DATE: June 28, 2010

SUBJECT: Fair Campaign Practices Act

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The purpose of this memo is to provide you with an overview of the Colorado Fair Campaign Practices Act ("FCPA") and guidance regarding prohibited and allowable activities under the FCPA in regards to state-wide and local ballot issues.

Attached to this memo is a copy of Colorado Revised Statutes § 1-45-117 ("Section 117"), which is the primary statute discussed in this memo.<sup>1</sup> We have also attached a copy of an article entitled "Guidance for Colorado Governments in Complying with the Fair Campaign Practices Act," written by the law firm of Sherman and Howard LLC, which may also be helpful to you.

**I. PROHIBITED/ ALLOWABLE ACTIVITIES AND EXPENDITURES UNDER THE FCPA**

The purpose of the FCPA is to prohibit public entities in Colorado and the employees and officials thereof from spending funds to influence the outcome of campaigns for political office or ballot issues.

The FCPA states that no covered entity shall "expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against any" state-wide ballot issue or local ballot issue. C.R.S. § 1-45-117(1)(a)(I)(A) and (B).<sup>2</sup> This prohibition applies to state and local ballot issues that have been submitted for the purpose of having a ballot title fixed, or that have had a title fixed. *Id.* The prohibitions are not in effect prior to this point in time in the title setting process; the titles for Amendments 60 and 61 and Proposition 101 have been set.

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<sup>1</sup> C.R.S. § 1-45-117 was amended by S.B. 10-203, which went into effect on May 25, 2010. S.B. 10-203 removes language that had restricted the prohibition on political involvement by the state or political subdivisions to the use of public moneys so that the prohibition will now apply to all moneys. This clarifies that all monies in the hands of the public entity, however received, are monies subject to the FCPA restrictions. A copy of the applicable portion of S.B. 10-203 is also attached for your review.

<sup>2</sup> Based on the definitions of "contribution" under Colorado law (C.R.S. § 1-45-103 and Article XXVIII of Colo. Const., Section 2(5)(a)), no funds, supplies, equipment, or "in kind" services should be used for such purpose. Further, no employee should be allowed (or required) to work for or against a ballot issue during working hours, or use any public facility or equipment for such purpose. Even the use of the City's telephone should be avoided because it has been the subject of public scrutiny and criticism.

The following is a general summary of activities permitted by Section 117(1)(a) and (b); other uses of public funds or resources related to urging a position on a ballot issue are prohibited by the FCPA.

**The City Council as a whole may:**

- Adopt a resolution supporting or opposing a ballot issue.<sup>3</sup>

**The City as an entity can:**

- Report the passage of or distribute any resolution supporting or opposing a ballot issue through normal distribution methods (but not through extra distribution methods).
- Expend money to dispense a factual summary regarding a ballot issue that will appear on the ballot of the City. This summary must include arguments both for and against the proposal, but cannot include a conclusion or opinion in favor or against any particular issue.
- Allow public groups to use its facilities, including proponents and opponents of ballot issues, for a debate, election forum or similar activity if such uses are allowed and so long as the facilities are made available on an evenhanded basis to parties on any side of the issue. The City is not required to allow such use, but must allow evenhanded use if it allows any at all. Allowing such use is not without risk, and care must be taken to ensure equal access and fairness.

**The City Council Members individually may:**

- Respond to unsolicited questions about a ballot issue.
- Express a personal opinion on any issue.<sup>4</sup> The FCPA does provide that a member of a City Council may expend not more than \$50 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on an election issue; however, this should be viewed not as an affirmative grant of power, but rather as a “safe harbor” for cases involving unintended technical violations.
- Expend personal funds and use personal time for electioneering, subject to applicable campaign laws. The expenditure of personal money and resources to support or oppose a ballot issue may result in the formation of an “issue committee” under Colorado law.<sup>5</sup>

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<sup>3</sup> Although not addressed by the FCPA, the passage of the resolution presumably contemplates staff work to research and prepare the resolution. This time should be specifically tracked and kept to the minimum amount necessary. Additionally, it should be noted that work that is not on a resolution or factual summary, or otherwise permitted, will be deemed a prohibited “in kind” contribution. See *Coffman v. Colorado Common Cause*, 102 P.3d 999, 1012-1013 (Colo. 2004) (staff time to prepare press releases that urged defeat of Amendment 23, which time was directed by treasurer and paid for by state, was impermissible contribution in kind).

<sup>4</sup> However, as noted in *Colorado Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), the FCPA does not authorize the expenditure of public funds for the expression of such personal opinions.

<sup>5</sup> An issue committee is defined as “any person, other than a natural person, or any group of two or more persons, including natural persons... [t]hat has a major purpose of supporting or opposing any ballot issue or ballot question” or “[t]hat has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.” Colo. Const. Art. XXVIII, Sec. 2(10)(a)(II).

Issue committees are required to be registered with the Colorado Secretary of State and follow other rules, a discussion of which is beyond the scope of this memo.

**Appointed officials such as board and commission members may:**

- Expend personal funds and use personal time for electioneering, subject to applicable campaign laws.
- Express a personal opinion on ballot issues, so long as not expending public money from any source to do so.

**Individual employees may:**

- Respond to unsolicited questions about ballot issues.
- Expend personal funds and use personal time for electioneering, subject to applicable campaign laws. Such activities should not be conducted during the employee's working time or in the offices of the City. Employees cannot give the impression, however, that the issue is endorsed by the City.

**II. ENFORCEMENT/PENALTIES**

The Secretary of State has jurisdiction over a complaint of an FCPA violation. A complaint may be filed by any person who believes that a violation has occurred, and a hearing before an administrative law judge (ALJ) is held. Any violation of C.R.S. § 1-45-117 is "subject to the provisions of sections 9(2) and 10(1)<sup>6</sup> of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation." CRS § 1-45-117(1)(b)(III)(4).

**III. ADDITIONAL LIMITATIONS TO CONSIDER**

Beyond the scope of the FCPA, courts have long recognized that there are constitutional restrictions on the use of public funds for campaign purposes. One judge observed, in connection with a Colorado public entity's campaign expenditures on a proposed constitutional amendment, that:

[E]very court which has addressed the issue to date has found the use of public funds for partisan campaign purposes improper, either on the ground that such use was not explicitly authorized . . . or on the broader ground that such expenditures are never appropriate. . . . A fundamental precept of this nation's democratic electoral process is that the government may not "take sides" in election contests or bestow an unfair advantage on one of several competing factions.

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<sup>6</sup> Pursuant to Article XXVIII § 10(1), "any person who violates any provision of this article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent...."

Heather A. Balsler, Deputy City Manager

June 28, 2010

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*Mountain States Legal Foundation v. Denver School District No. 1*, 459 F. Supp. 357, 360 (D.Colo. 1978). The underlying principle is that public funds entrusted to a public entity belong equally to the proponents and opponents of a ballot measure. Hence, if those funds are used to urge or persuade the voters that only one side has merit, the free speech and petition rights of the other side are abridged. For these reasons, where the funds or facilities of the City are used for public outreach purposes concerning ballot issues, the best practice is to remain neutral and to limit use of City monies strictly in compliance with the limitations of the FCPA.

If you have any questions, please contact us.

West's Colorado Revised Statutes Annotated Currentness

Title 1. Elections (Refs & Annos)

Election Campaign Regulations

Article 45. Fair Campaign Practices Act (Refs & Annos)

→ § 1-45-117. State and political subdivisions—limitations on contributions

(1)(a)(I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106(1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104(34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b)(I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (1) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

- (a) An official residence furnished or paid for by the state or a political subdivision;
- (b) Security officers who are required to accompany a candidate or the candidate's family;
- (c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;
- (d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the provisions of sections 9(2) and 10(1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.

#### CREDIT(S)

~~Repealed and reenacted 1996, Initiated 1996, eff. Jan. 15, 1997. Amended by Laws 2002, Ch. 100, § 1, eff. Aug. 7, 2002; Laws 2008, Ch. 112, § 3, eff. Apr. 10, 2008.~~

#### HISTORICAL AND STATUTORY NOTES

2009 Main Volume

~~The reenactment of this section, proposed by initiative in 1996, was ratified by the electorate at the general election of Nov. 5, 1996, effective upon proclamation of the governor, Jan. 15, 1997.~~

Laws 2002, Ch. 100, § 1 added subsec. (4).

DATE OF THE MOST RECENT REQUIRED REPORT; OR

(III) FAILS TO SATISFY THE REQUIREMENTS OF SECTION 1-45-107.5  
(5) (a).

(4) AN AFFECTED MEDIA OUTLET MAY VOID A CONTRACT THAT IMPLICATES PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION IN THE SOLE DISCRETION OF THE MEDIA OUTLET.

**SECTION 8.** The introductory portion to 1-45-117 (1) (a) (I), Colorado Revised Statutes, is amended to read:

**1-45-117. State and political subdivisions - limitations on contributions.** (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof OF THE STATE shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, NOR SHALL ANY SUCH ENTITY MAKE ANY DONATION TO ANY OTHER PERSON FOR THE PURPOSE OF MAKING AN INDEPENDENT EXPENDITURE, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

**SECTION 9. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104 (3) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of state, for the fiscal year beginning July 1, 2010, the sum of one hundred one thousand six hundred sixty-two dollars (\$101,662) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2010, the sum of four thousand five hundred twenty-two dollars, or so much thereof as may be necessary, for the provision of legal services to the department of state related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of state out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby

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**GUIDANCE FOR COLORADO GOVERNMENTS  
IN COMPLYING WITH THE FAIR CAMPAIGN PRACTICES ACT**

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*February 2010*

In most situations, the use of government money or resources to influence an election in Colorado is against the law. The Fair Campaign Practices Act, Colorado Revised Statutes, Section 1-45-101, *et seq.* (the "FCPA") and Article XXVIII of the Colorado Constitution govern, among other things, the use of public moneys in a campaign involving the election of any person to any public office or involving any election question. The purpose of this memorandum is to help explain the types of conduct that are allowed and not allowed under the FCPA. This memorandum does not address every situation that might occur, but it covers many of the questions that arise most frequently.

The FCPA's restrictions apply to any agency, department, board, division, bureau, commission, or council of the State of Colorado. The same restrictions also apply to any political subdivision of the State, including counties, cities, towns, school districts and special districts. Throughout this memorandum, the term "Government" includes all the governments covered by the FCPA.

Prohibited Uses of Government Money and Resources

The FCPA prohibits a Government from (1) making any contribution in a campaign involving the nomination, retention, or election of any person to any public office; and (2) expending any public moneys from any source to urge electors to vote for or against any state-wide ballot issue, local ballot issue, referred measure, or measure for the recall of any officer. See Section 1-45-117(1)(a)(I). Therefore, in most cases, the employees and officials of a Government must not use any Government money or resources to support a candidate's campaign or to attempt to convince voters to vote for or against an election question, including questions that have been placed on the ballot by the Government itself. For example, after calling for a bond election, a special district may not use district money to pay for fliers and visual aids that support the bond issue. See *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004). Likewise, a school district may not post information on its website advocating the passage of a bond issue that it has referred to voters. See *Wimsatt v. Jefferson County Public Schools, District R-1*, Agency Decision, Case No. OS 2004-018.

It is important to note that a Government may violate this law without specifically asking voters to "vote for" or "vote against" an election question. See *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004). Any communication

discussing an election subject to the FCPA that favors one position will violate the FCPA. *See Bruce v. School District 11*, Agency Decision, Case No. OS 2008-0030.

Also, the FCPA restrictions do not apply only to the use of Government money, but also to other Government resources such as the use of copiers, vehicles, computers, facilities, telephones or newsletters. In addition, the FCPA restrictions apply to Government employees' time during work hours. Therefore, if a city creates a flier that improperly urges voters to vote for or against an election question, it violates the FCPA not only by using city money to pay for postage for the flier, but also by using city letterhead and the staff time of city employees to prepare the flier. *Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023. Likewise, if a Government allows outside groups to use its facilities, it must treat groups that support all candidates or both sides of an election question equally in all significant respects, including facility scheduling and fees.

### Exceptions

The FCPA's prohibition on the use of Government money and resources described above does not apply in all cases. Some exceptions to the rule are described below.

#### 1. *Time Period*

The FCPA only restricts the use of Government money and resources during a certain time period leading up to an election. The restrictions do not begin with respect to a state or local ballot issue until the issue has been submitted to have a ballot title fixed or has had a ballot title fixed, and do not begin with respect to a referred measure until the measure has been referred to the voters. Thus, a school district can spend district money on a flier speaking positively about a potential bond issue before it refers the actual bond question to the voters. *See Coan v. Weld County School District Re-3J*, Agency Decision, Case No. OS 1996-006. Likewise, a special district will not violate the FCPA by distributing materials encouraging citizens to support the construction and financing of a new recreation center if the district never actually submits a bond or tax question to the voters. *See Serra v. Montrose Recreation District*, Agency Decision, Case No. OS 2006-022. However, it is important to note that once an issue has been submitted to have a ballot title fixed or has had a title fixed or a referred measure has been referred to the voters, the FCPA restrictions apply to any expenditure of public money or resources. This includes making payments for materials or services provided before the Government took official action to submit the question. For this reason, several metropolitan districts violated the FCPA by paying for materials promoting their bond issues after the district boards had passed resolutions submitting the bond questions, even though the materials themselves had been distributed before the resolutions were passed. *See Skruch v. Highlands Ranch Metropolitan Districts Nos. 1-5*, Agency Decision, Case No. OS 2002-019, which was upheld by the Colorado Court of Appeals in *Skruch v. Highlands Ranch Metropolitan Districts Nos. 3 and 4*, 107 P.3d 1140 (Colo. App. 2004).

#### 2. *Factual Summary*

Section 1-45-117(1)(b)(I) of the FCPA permits a Government to use Government money and resources to discuss an election if the Government is providing "a factual summary, which shall include arguments both for and against the proposal." The summary may not include a conclusion or opinion in favor of or against any particular issue, and a Government may only prepare a summary regarding an issue that will appear on the ballot within its jurisdiction.

It is important to note that a communication can fail to qualify for this exception even if it is called a “factual summary” and has an “arguments for” and “arguments against” section. A permitted factual summary must not express any opinion on an issue and its description of both sides of the issue must be balanced and even-handed. However, if a summary is balanced and even-handed, it will qualify for the exception even if the arguments against the proposal are not the most persuasive arguments or do not reflect opponents’ input. *See Bruce v. City of Colorado Springs*, Agency Decision, Case No. OS 2003-005.

### 3. *Personal Opinions*

Section 1-45-117 (1)(b)(II) of the FCPA permits members of the governing body of a Government, such as a city council or board of directors, and other elected Government officials to publicly voice their personal opinion about an issue. The FCPA does not limit the right of public officials and employees to speak out on a matter before the voters. However, in expressing their personal opinions, officials and employees may not use Government money or resources. Government employees and officials may urge electors to vote in favor of or against any issue and may participate in political campaigns, however they must do so during their personal time, not during work hours. Likewise, Government employees and officials may spend money on materials that discuss elections covered by the FCPA, so long as that money is their personal money, and not Government money. For example, a city council member will not violate the FCPA by publishing a newsletter discussing a local ballot issue if she pays for the newsletter using her personal funds instead of using city funds. *See Tyler v. Boigon*, Agency Decision, Case No. OS 2007-001. Any Government employee or official who uses his or her personal time or money to participate in a campaign as described in this section should be sure to keep sufficient records to show that he or she did not use any Government time or money in the effort.

### 4. *Answering Questions*

Section 1-45-117(1)(a)(II) of the FCPA allows a Government employees and officials to respond to questions about a ballot issue or referred measure, so long as the question was not solicited by the Government.

### 5. *Fifty-Dollar Exception*

If a Government employee or official has policy-making responsibilities, then he or she may use not more than \$50 of Government money in the form of letters, telephone calls or other activities related to expressing his or her opinion on a ballot question. Section 1-45-117(1)(a)(II). It is important to note that this exception only applies to ballot issues, not to contributions made to a candidate campaign. Therefore, a city mayor will violate the FCPA by spending only \$2.35 on a letter supporting a candidate. *Muller v. Burkholder*, Agency Decision, Case No. OS 2002-012. In addition, the fifty-dollar exception is an individual exception only. So five members of a city council may not combine their \$50 exceptions to jointly spend \$250 of public moneys incidental to expressing their opinions on an issue. *See Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023.

### 6. *Resolutions.*

Section 1-45-117(1)(b)(III) of the FCPA authorizes the governing body of a Government to formally take a position with respect to an election question by passing a resolution

urging citizens to vote for or against the question. Passage of such a resolution may be reported or distributed through the established, customary means that the Government uses to inform the public of its proceedings. For example, if a Government regularly sends out a newsletter, the passage of the resolution may be reported in the newsletter. However, extraordinary methods of distribution, such as paid advertising or a one-time newsletter for this specific purpose, may not be used.

#### Enforcement

Any person who believes that a violation of the FCPA has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state is required to refer the complaint to an administrative law judge within 3 days of filing. If the judge determines that a violation has occurred, the judge may issue an order or sanction as authorized by the FCPA or Article XXVII of the Colorado Constitution. The judge's decision may be reviewed by the Colorado Court of Appeals.

#### Penalties

Any violation of the FCPA provisions relating to Government money or resources may be subject to the penalties set forth in Sections 9(2) and 10(1) of Article XXVIII of the Colorado Constitution or any appropriate order or relief, including an order directing the person making the prohibited contribution or expenditure to reimburse the Government fund from which the moneys were diverted, injunctive relief, or a restraining order to enjoin the continuance of the violation. Currently, there is no clear standard for determining the sanction that will be imposed. Section 10(1) of Article XXVIII authorizes a penalty anywhere between double and five times the amount of the violation. In one case, an ALJ concluded that it was appropriate to impose a penalty of double the amount spent by the Government, citing this section. *See Tippett v. Town of Snowmass Village*, Agency Decision, Case No. OS 2005-032. Another ALJ imposed a fine of \$500 for a violation involving \$157.85. The judge explained that even though the amount of Government money spent in the case was relatively insignificant, the violation of the FCPA was not. *See Brown v. City of Littleton*, Agency Decision, Case No. OS 2006-0023. However, in another case, the ALJ imposed a fine of \$1,000 for a violation involving over \$11,000 because the violation was not willful and the Government was under financial stress. *See Bruce v. City of Colorado Springs*, Agency Decision, Case No. OS 2008-030.

#### Campaign Permitted Activities for Public Entities

Appended to this Memorandum is a list of permissible activities for Governments, their officials and their employees based on recent decisions of ALJs.

## CAMPAIGN PERMITTED ACTIVITIES

### A. “Can Do’s”

1. The Board may adopt a resolution taking a position of advocacy on a state-wide ballot issue that has been submitted to the secretary of state for having a title fixed, any local ballot issue that has been submitted to the legislative body of the municipality for having a title fixed, a referred measure, or a recall measure. This resolution may include a recitation of the facts and/or arguments in favor of the Board’s position. As a resolution adopted by the Board, it is available for public inspection and becomes a part of the public minutes of the meeting. Distributing the resolution or reporting on its passage may be accomplished only through established, customary means. For example, if your Government regularly sends out a newsletter, the passage of the resolution may be reported in this newsletter. However, extraordinary methods of distribution or posting, such as paid advertising or distribution of a newsletter when such was not a prior practice, may not be used.

2. The Board may authorize the expenditure of public moneys and may make contributions to disseminate a “factual summary” on such issue, which must include arguments both for and against the proposal, on any issue of “official concern” before the electorate in the jurisdiction. The summary shall not contain a conclusion or opinion in favor of or against any particular issue. An issue of official concern shall be limited to issues that appear on an election ballot in the jurisdiction.

3. A Board member or Government employee may respond to questions about election issues during working time, so long as the Government has not solicited the question. The responses should not contain partial conclusions or otherwise tend to urge a favorable or unfavorable vote on the issue. Accordingly, employees should not volunteer opinions during work time speculating about the anticipated effects of passage or defeat of the ballot question. An ALJ opinion held that a Government employee could answer questions, posed at a public meeting where he was invited to speak, about how a proposed issue would affect his department so long as that employee did not expressly urge electors to vote one way or the other.

4. A Board member or Government employee with policy-making responsibilities may spend up to \$50 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on the issue.

5. Elected officials may express a personal opinion on an election issue at any time and place (so long as the time and place does not indirectly constitute a contribution by the Government or a use of Government resources). This includes an elected official expressing his or her opinion at a Board meeting, even if public money is used to broadcast the meeting, so long as the meeting, and its broadcast, are regularly scheduled and are not convened primarily to express the opinion.

6. A Government employee may “endorse” an election issue on his or her personal time. A Board member or Government employee may expend personal funds, make contributions, or use personal time to urge electors to vote for or against an election issue. All employees should be asked to keep records substantiating that any time spent campaigning for the

election issue was on personal or unpaid time, time outside of working hours, compensatory time, or vacation time.

7. The Board may allow interested groups, including proponents and opponents of candidates or of issues before the electorate, to rent space in its facilities as long as the opportunity is provided on an even-handed basis. The method of communicating the invitation, the access given, and the opportunity to disseminate information must be substantially the same for all interested groups.

8. Government employees may provide information to citizens that request it, even if the employees are aware that the information may be used in a candidate or ballot issue campaign. However, this information must be given on an equal basis to all citizens who request it, regardless of which campaign they may support, and should only be provided if it is the regular practice of the Government to do so.

B. “Can’t Do’s”

1. Public funds, facilities, supplies, equipment or bulk mail permits may not be expended or used by the public entity to urge a vote in favor of or against the issue, even when the cost is reimbursed.

2. The Government may not allow others who are advocating a position on any issue before the electorate to use these resources. Nevertheless, groups that have organized to discuss or otherwise to promote or urge defeat of the election issue may be allowed to rent facilities pursuant to an adopted policy, but all such groups must be treated even-handedly and must be allowed similar access. Preferential treatment in scheduling and fees charged must not be given.

3. Employees or paid members of the Government cannot work on a campaign during working hours and may not use public facilities or equipment for a campaign. During work time, the information that members or employees dispense to the community must be limited to providing copies of the “factual summary” and to responding to unsolicited questions. Employees must restrict their “campaigning” to personal time.

4. The Government may not require employees or other staff members to work for an election issue (other than on the “factual summary”).

5. The Board may not contribute to other organizations and political committees that may be organized to raise any funds and make any expenses concerning advocacy of the election issue.

6. The Government should not accept cash or any other contributions from citizens for use by the government in connection with any election.

7. The Government must not release the addresses or telephone numbers of employees, or past or present users of public utilities, public facilities, or recreational or cultural services which are owned and operated by the state or a political subdivision thereof, regardless of whether the group seeking the information supports or opposes the election, unless the employee, user or person has given express consent to the release of such information for purposes of the election or as part of a directory that is otherwise available to the public.