Restrictions on Political Campaigning by Public Officials: ORS 260.432

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Maja K. Haium, Senior Deputy City Attorney

CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY ATTORNEY

When Does ORS 260.432 Apply?

- Ballot Measure
  - City measure is certified when it is filed with the county elections officer
- Political Committees
  - Whenever committee is active
- Candidates
  - Whenever candidate is active (no official declaration of candidacy required)

ORS 260.432: Basic Rule

Public officials may not engage in political activity while on the job.

Official Capacity ("on the job")

Committee Members act in official capacity when:

- At a Committee meeting
- Working on duty assigned by Committee
- Appearing at event in official capacity

Use of Title - Caution

Committee Members may use their title (including endorsing measure) if they are not acting in an official capacity when authorizing use of their title

- Allowable
  - On personal time, a Committee Member is approached and asked for their endorsement of the measure, using their title.
- Not Allowable
  - During a Committee meeting, Committee Members are asked for their endorsement of the measure, using their titles.

Use of Title – Caution

Use of title in political advocacy must be the only indication that the Committee Member is acting in an official capacity

- No Violation
  - Write a letter to the editor on personal time that contains political advocacy with title.
  - Document when acting in official capacity and when on personal time.
- Violation
  - Write a letter to the editor on personal time that contains political advocacy with title, references position as a Committee Member (e.g. "during my time on the Committee, we carefully considered this ballot measure").

Public Officials: Prohibited Activities

- May not prepare or distribute material advocating a political position.
- May not post website information, transmit emails, or make a presentation advocating a political position.
- May not collect funds or correspondence on behalf of political committees.
- May not produce or distribute a news release or letter announcing an elected official's political position.

Public Officials: Allowable Activities

- May prepare and distribute impartial written material or make an impartial presentation discussing election subjects.
- May perform standard job duties:
  - Take minutes at a public meeting
  - Maintain public records

Public Officials: Personal Expression of Political Views

- ORS 260.432 does not directly address the personal expression of a public official's political views:
  - Example: Officials may discuss gubernatorial candidates
- Public employers may regulate the time, place and manner of personal expression:
  - Example: A city council may impose restrictions on police officers wearing political buttons while in uniform
  - **HRAR 4.06: Salaried and hourly workers may express their personal views about candidates in casual, personal conversations with co-workers <u>as long as it does not interfere with the job</u>.**

Resolutions by City Councils

- City councils may take a position on:
  - Ballot measures
  - Initiatives
  - Referendums
  - Recall petitions
- City councils may not request that a public employee use work time to advocate the council's position

Determining Document Impartiality

- Elections Division will review documents before publication or distribution.
- Safe Harbor:
  - Publication is exactly what was submitted for review AND
  - All recommended changes were made.
- Can include disclaimer:
  - "This information was reviewed by the Oregon Secretary of State's Office."

Impartiality Requirements

- Timing of publication
- Personalized documents or use of personalizing pronouns
- Use of the word “will” to describe the results of passage of the measure
- Use of graphics, checkmarks or formatting to emphasize or de-emphasize certain information
- Overly emotional photographs
- Use of phrases similar to campaign slogans

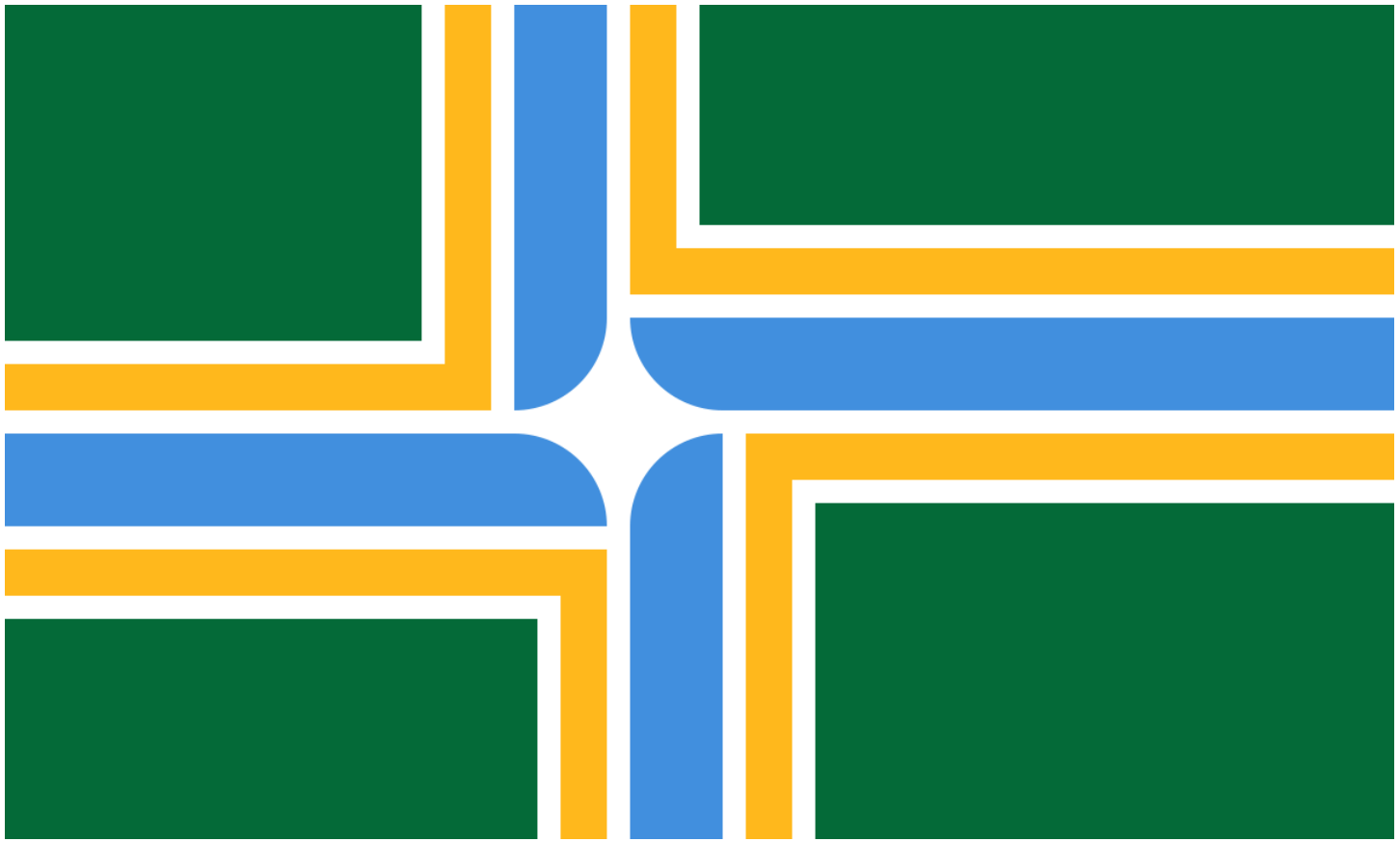
Enforcement: Complaints

- Any Oregon elector may file a complaint
- Elections Division may initiate its own investigation
- Effect on election:
  - None, date of election will not dictate when the Elections Division makes its determination and any determination will not change the outcome of the election.

Enforcement: Remedies

- Civil penalty:
  - $75-$1,000
    - OAR 165-013-0020
    - Potential mitigating circumstances:
      - Public employee voiced objection to the official who requested the employee perform prohibited campaign advocacy during work time
  - Letter of education
- Public opinion:
  - Reduce credibility among residents

Additional Statutes: Personal Liability

- ORS 294.100:
  - Makes public officials responsible for unlawful expenditures of public money personally liable
  - Not an elections statute, but has been applied in the election context in private litigation
  - *Burt v. Blumenauer*, 299 Or 55 (1985) (holding that county officials responsible for a public information campaign to publicize fluoridation effects during a measure election on the subject could be sued personally)

Questions?