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Steve Hole
Deputy Commissioner
Department of Education

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Legality of spending
school district money to
oppose recall of board
members; use of public
funds to bring

Marjorie L. Odland
lawsuit Assistant Attorney General
challenging recall effort
Governmental Affairs-Juneau

This will confirm our earlier oral advice regarding whether a school district may use public funds to: (1) advocate a position in an election to recall members of a school board; or (2) bring a lawsuit challenging a recall effort on behalf of the board members. The answer to both of these questions is no.

Under article XI, section 6, of the Alaska Constitution, "no appropriation of public money [may be] made, or public property transferred . . . except for a public purpose." With respect to elections, this office has in past opinions narrowly construed the power of state officials to expend public money or use public property in support of a partisan position in an election campaign. In 1980 we wrote, "The first [barrier to the expenditure of public money or property] is that there must be clear and explicit statutory authority to expend public money in support of a partisan position The second barrier is the rule that public funds may be expended on political activities only if the government's involvement is fair and neutral." 1980 Inf. Op. Att'y Gen. (June 11; Pegues) (citations omitted), cited in 1986 Inf. Op. Att'y Gen. (Apr. 15; 663-86-0443).

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While the Alaska Supreme Court has not specifically addressed the issue of expenditure of public money by school districts to advocate a position in an election (e.g., bond issue, recall), other states' courts has addressed similar issues. The following cases hold that the government, including school boards, may not, in the absence of clear and explicit legislative authorization, expend public funds to promote a partisan position in an election campaign. */ Stanson v. Mott, 551 P.2d 1 (Cal. 1976) (expenditure of public money to promote passage of park bond issue not authorized by statute); Burt v. Blumenauer, 699 P.2d 168 (Or. 1985) (assuming governments may engage in some forms of speech, they are still prohibited from advocating a position in an election); Anderson v. City of Boston, 380 N.E.2d 628 (Mass. 1978) (municipality had no authority to appropriate funds for the purpose of taking action to influence result of referendum); Citizens to Protect Public Funds v. Board of Education, 98 A.2d 673 (N.J. 1953) (school board has implied power to expend funds to publish an informational booklet about bond issue, but must present both sides of issue). But see Mountain States Legal Foundation v. Denver School District, 459 F. Supp. 357 (D. Colo. 1978) (under Colorado Campaign Reform Act of 1974, school districts may make contributions or contributions in kind in campaigns but only for issues in which they have an official concern).

In sum, the legal authorities we have located uniformly hold that, unless state law clearly and explicitly authorizes the government (and its agencies or political subdivisions) to spend public money to advocate a position in an election campaign, the government is prohibited from using public money for such purpose regardless of the issues involved in the campaign. We want to point out, however, that even though a school district may be condemned for using public money to advocate only one side of an election issue, it has been emphatically affirmed that a school board has implicit power to make reasonable expenditures for the purpose of giving voters relevant facts to aid them in reaching an informed judgment when voting on the proposal. Stanson v. Mott, 551 P.2d at 10 (citing Citizens to Protect Pub. Funds v. Board of Education, 98 A.2d at 676). This is in accord with the constitutional requirement that, when a government provides a public forum for political expression, equal access must be

*/ It is our opinion that expenditure of public funds to provide legal counsel for a school district or the board members challenging a recall of school board members is equivalent to an expenditure of public money advocating a position in an election campaign.

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provided to all competing factions. Stanson v. Mott, 551 P.2d at 10.

Since rendering our earlier oral advice regarding this matter, the State Board of Education has proposed a regulation, 4 AAC 06.135 (our file no. 993-91-0087), to clarify the proper use of school board money in election campaigns.

If you have additional questions regarding this matter, please do not hesitate to contact me.

MLO:ck

cc: LuAnn Bailey Weyhrauch
Assistant Attorney General