

The 2024 Election: What Public Officials and Staff Need to Know About Local Ballot Measures and Candidate Elections

THURSDAY, AUGUST 8, 2024 | 12:00 PM – 1:00 PM

THANK YOU FOR JOINING US!



Host & Moderator

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WEBINAR OVERVIEW

Welcome & Introductions

Presentation on Elections & Ballot Measures

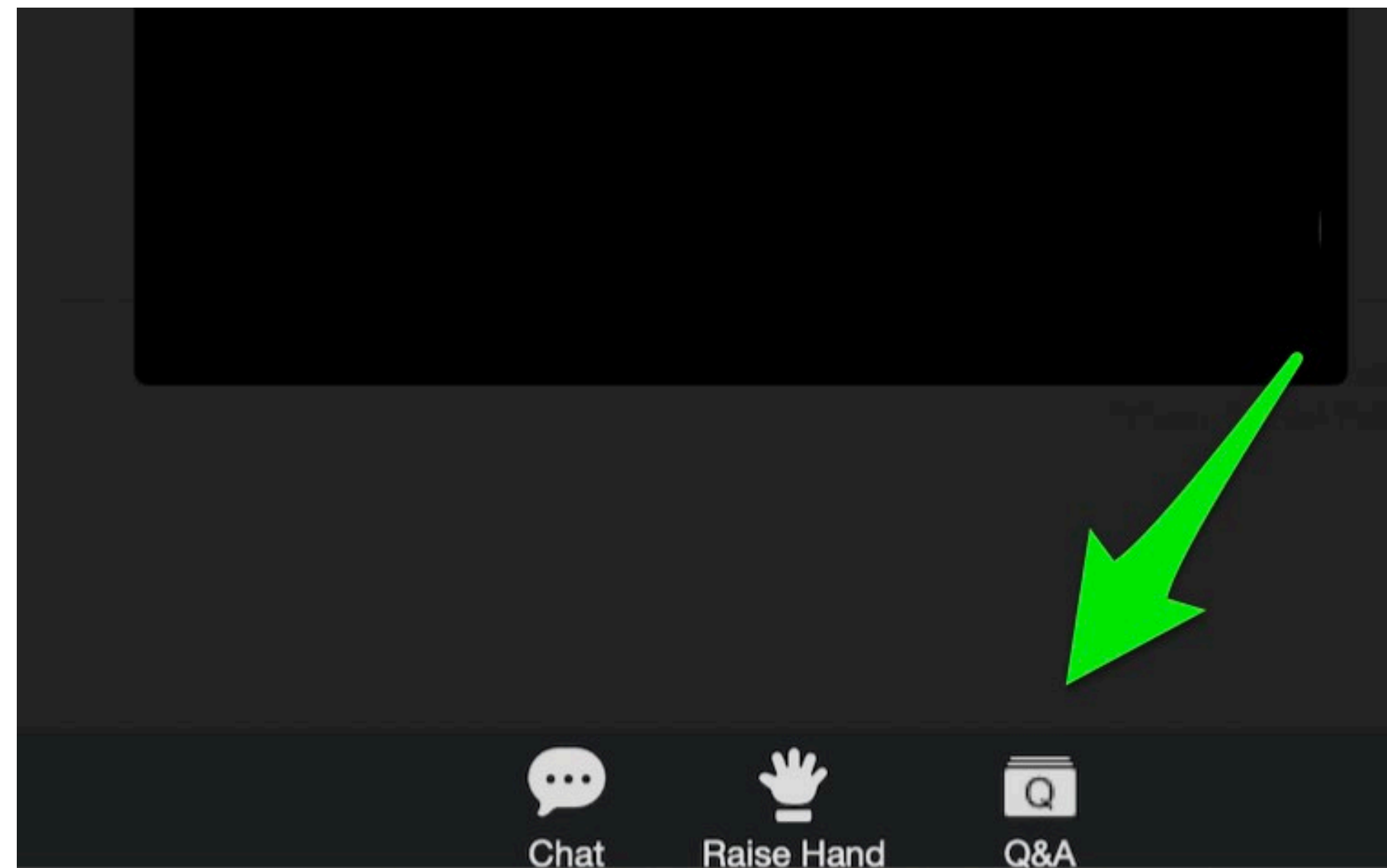
Audience Q&A

Wrap Up & Adjourn

We welcome your written questions and comments in the Q&A throughout the webinar

TECH OVERVIEW & HOUSEKEEPING

- All webinar participants will be on **MUTE** for the duration of the event.
- Please type any questions for into the **Q&A BOX** at any time during the session.



- A recording of the session will be available shortly after the webinar.

ABOUT ILG

NON-PROFIT, NON-PARTISAN AND HERE TO HELP

- The Institute for Local Government is the non-profit training and education affiliate of three statewide local government associations
- Together with our affiliates, we serve over 2,500 local agencies – cities, counties and special districts
- We provide practical and easy-to-use resources so local agencies can effectively implement policies on the ground



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Our mission is to help local government leaders **navigate complexity, increase capacity & build trust** in their communities

TODAY'S PRESENTER



CRAIG STEELE
Shareholder
Richards Watson Gershon

The Legal Framework

- The authority for agencies to submit issues to the voters is constitutional, statutory and judge-made.
- The authority for public agencies to lobby the Legislature is statutory.
- There is NO legal authority for public agencies to “lobby” the voters.

“Money is the mother’s milk of politics.”
- Jesse M. Unruh

- **Election Issues: It’s All About the Money**
 - Candidates and Ballot Measures
 - Proper and improper use of public resources
- **Candidate Elections are More straightforward**
 - **NO** use of public resources
- **For ballot measures: Preparation vs. Campaign**
 - A very clear line
- **Information vs. Advocacy**
 - This line is not always so clear
 - Tell both sides or just one?

Stanson v. Mott

- Without statutory authorization, public agencies may not expend public funds to influence the voters for or against a measure.
- “The selective use of public funds in election campaigns, of course, raises the specter of an improper distortion of the electoral process.”

Stanson v. Mott

- Recognizes the “informational role” public agencies must play.
- Notes the possibility of personal liability for improper political expenditures “in the absence of due care.”
- The campaign activity/informational activity “dichotomy.”
- The envelope is large enough as it is; don’t push it.

It's all about the money

■ Government Code Section 8314

- A local agency officer, employee or consultant may not spend or authorize the expenditure of public funds to support or oppose a candidate or ballot measure.
 - EXCEPT: “fair, and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure” in communications otherwise permitted by law.
 - Possible individual liability for civil penalty of \$1,000 and up to 3X the value of resources illegally expended.
 - Intentional or negligent violations

It's all about the money

- **Government Code Section 54964**

- A state or local officer, employee or consultant may not expend or authorize the expenditure of public funds to support or oppose a ballot measure or a candidate.
 - Clearly defined measure or candidate
 - Express advocacy
 - Misdemeanor

It's all about the money

- **Penal Code Section 424**

- Misappropriation of public funds.
 - Can include use of funds for personal or political purposes
- Misdemeanor or felony

The Fine Line Between...

- **Express Advocacy**

- “Vote Yes/No”
- Result-oriented
- One-sided; emotional
- Targeted

- **Impartial Information**

- Factual - attribution
- Both sides of the story (although not always)
- Widely disseminated, not just voters
- Consistent style, tenor, timing

Express Advocacy

- “A communication **“expressly advocates”** the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as **“vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for”** or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, **unambiguously urges a particular result in an election.”**

Avoid Hidden Advocacy

- **Style**
 - Consistent with other communications
- **Tenor**
 - Moderate, unemotional
 - “If passed” not “when passed”
 - Explaining Process
 - Voter registration
- **Timing**
 - Before vs. after measure is identified
 - Normal communications cycles

Recent Enforcement Examples

- “Dear Neighbor” – inconsistent with normal communications
- Election information transmitted in utility bills
- Digital advertising
- Special appropriations related to an election
- Style that is intended to invoke emotion

Prohibited Uses of Public Resources

- Production/printing of campaign literature
- Digital Advertising
- Campaign use of public equipment, facilities, supplies, technology
- Distribution of campaign material
- Favoritism/discrimination against particular message
- Mass mailing at public expense

Permissible Uses of Public Resources

- Drafting a measure
- Pre-measure polling
- Impartial information
- Voter registration and GOTV
- Resolution of support/opposition
- Response to requests for information

Public Employees

- **May not work on campaign activities during compensated time.**
- **May not be coerced or directed into working on campaign in off hours.**
- **May not use District resources or technology for campaign activities.**
- **May not campaign in uniform.**

Public Employees

- **May not circulate petitions on official time.**
- **May not solicit, directly or indirectly, a political contribution from another employee or officer.**
- **May not promise employment action in exchange for a vote.**
 - Except union/organization activities
 - Misdemeanor

When in Doubt...

- **It's probably advocacy.**
- **The stakes are too high to push the envelope.**
 - Criminal Penalties
 - Financial Penalties
 - Disqualification
 - Discipline/Termination
- **Consult with the Agency Attorney IN ADVANCE.**

Getting the Message Out

- Use private resources through a campaign group.
- Inform the public about ballot issues in an impartial way.
- Make staff available to respond to requests for information.
- Do it on your own time.

Common Questions

- **Candidates' Forum**
- **Ballot Arguments**
- **Use of Photographs/Video**
- **Booths at Public Events**
- **Information on Public Websites**
- **“Town hall” Meetings**
- **Campaigning on Public Property**



Thank you!

Craig Steele
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AUDIENCE Q&A

What questions or comments do you have for us?



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RECORDING AVAILABLE SOON



The recorded presentation and materials will be shared electronically with all attendees a few days after the webinar.



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