



The Fair Campaign Practices Act (FCPA), in combination with the Colorado Constitution, make up Colorado's campaign finance laws. The FCPA restricts the school district's ability to spend public money to encourage electors to vote for or against Amendment 73. The FCPA also restricts school district employees and school board members from spending public money (subject to the \$50 exception discussed below) to create or distribute campaign materials designed to increase support for or against Amendment 73.

The purpose of this memo is to generally outline what is permitted and not permitted under the FCPA, address frequently asked questions and provide samples for school districts. It is provided for resource purposes only and does not constitute legal advice. Specific questions should be referred to the school district's own legal counsel.

PERMITTED: Adopt a board resolution in support of Amendment 73.

The FCPA allows the local board of education to pass a resolution in support of Amendment 73. It is also permissible:

- to allow district personnel to assist the board in drafting the resolution and to perform other incidental tasks related to its passage;
- to report the passage of the board resolution; and
- to distribute the resolution through established, customary means by which information about board resolutions is regularly provided to the public (e.g. post on district's website).

[\[sample board resolution\]](#)

PERMITTED: Distribute a factual summary regarding Amendment 73.

The FCPA allows the school district to spend public money (no limit on amount) or make a contribution in kind to dispense a factual summary on Amendment 73. The factual summary must include arguments for and against Amendment 73 and may not state a conclusion or opinion in favor of or against the measure.

[\[sample factual summary\]](#)

PERMITTED: Express personal opinions and advocate for Amendment 73. The superintendent is considered a “policymaker” under the FCPA and can express his/her opinion during work time, so long as it’s pursuant to an invitation. Other district employees may not express opinions and advocate unless the employee is “off duty.”

Board members and the superintendent may express a personal opinion on Amendment 73. State law also allows the board and the superintendent to spend up to \$50 of public money in the form of letters, telephone calls or other activities incidental to expressing an opinion on the measure. This provision does not allow the board or district to make a direct contribution of public funds to the Amendment 73 campaign. It is simply to cover incidental expenses that might occur and should not be used otherwise or “pooled” to cover a larger expenditure.

District employees may:

- use personal funds and personal time to urge electors to vote in favor of Amendment 73; and
- respond to unsolicited questions about Amendment 73.

District employees may not:

- work on the Amendment 73 campaign during working hours;
- use district facilities, equipment or supplies on behalf of the Amendment 73 campaign; or
- use district mail, delivery service, email, or equipment to develop or disseminate Amendment 73 campaign materials.

PERMITTED: Form a campaign committee in support of Amendment 73.

Forming a campaign committee is an effective way for local supporters in a school district to provide information to the public about Amendment 73 and also encourage a favorable response from the voters. Any campaign committee formed must register as an “issue committee” online with the Secretary of State.

A “small scale issue committee” is an issue committee that does not accept contributions or make expenditures exceeding \$5,000 during an election cycle. Small scale issue committees, like issue committees, must register with the appropriate jurisdiction but are not required to file disclosure reports until the small scale committee accepts or makes contributions exceeding \$5,000 in an election cycle. More information about campaign committees is provided in the Secretary of State’s “Colorado Campaign and Political Finance Manual” available on its website, <http://www.sos.state.co.us/pubs/elections/CampaignFinance/files/CPFManual.pdf>

PERMITTED: Allow the Amendment 73 campaign committee to use district facilities for community forums, etc., if consistent with board policy.

As long as both supporters and opponents of Amendment 73 have equal access to the use of district facilities on the same terms and conditions and consistent with the board’s policy on community use of district facilities, the district does not violate the FCPA.

PERMITTED: Allow the Amendment 73 campaign committee to distribute campaign materials, if consistent with board policy.

Again, as long as both supporters and opponents of Amendment 73 are allowed to distribute campaign materials on the same terms and conditions and consistent with the board's policy on distribution of noncurricular materials (or campaign materials, if the board has such a specific policy), then the district does not violate the FCPA.

If the board's policy allows campaign materials to be distributed at back-to-school night or similar forums, then it is permissible for the district to allow campaign materials supporting and opposing Amendment 73 to be distributed at back-to-school night. In most cases, districts simply provide a table on which interested persons may place campaign materials. There should be nothing in the campaign literature that implies that the district endorses or takes any position on Amendment 73, unless the board has adopted a resolution regarding the measure.

Frequently asked questions

Question: What if the local Chamber of Commerce invites the superintendent and a board member to speak at a Chamber meeting to discuss Amendment 73 and there is a lunch charge of \$20 per person? Does this violate the FCPA?

Answer: No, because as "policymakers," the superintendent and board member are permitted to express their personal opinion and expend up to \$50 for activities incidental to expressing their opinions. C.R.S. 1-45-117(1)(a)(II).

Question: What if a local campaign committee supporting Amendment 73 isn't formed? Can the district hold community meetings to discuss Amendment 73?

Answer: Yes, but the district will need to proceed carefully to ensure compliance with the FCPA.

Any presentation at a district-sponsored meeting must be factually based and include a discussion of both the pros and cons of Amendment 73, similar to the factual summary. If it doesn't, the district may violate the FCPA. If the presentation involves district employees or district employees plan to attend the meeting, it must be held during non-working hours.

Question: May the local parent-teacher organization use district facilities to convene a meeting discussing Amendment 73?

Answer: Yes, as long as such use is consistent with the board's policy on community use of district facilities.

To allow district staff to attend a PTO-sponsored meeting on Amendment 73, the meeting must be held during non-working hours.

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