



Oceano Community Services District

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Date: March 8, 2023

To: Board of Directors

From: Chase Martin, District Legal Counsel

Subject: Agenda Item #6Av: Board advocacy for projects or initiatives that may fall outside the District's established services.

Recommendation

Board advocacy for projects or initiatives that may fall outside the District's established services.

Discussion

Questions Presented:

Can the Board of Directors advocate for, or discourage, the activities of other organizations / individuals on matters that may not be directly related to the district's established services? If so, under what circumstances?

Short Answers:

Yes. Counsel's suggestion is to follow the adage that such advocacy should be done "on the director's own time, on the director's own dime." If the intent is to speak as a board, Counsel's proposed approach is to eliminate financial involvement from District staff by assigning board members themselves to draft letters or resolutions in favor of or against the subject activities. If the board seeks assistance from District staff, and if financially prudent, a portion of the district's general funds could be set aside in the budget to allow OCSD staff to assist the board with preparing letters and/or resolutions related to the activities in question.

Analysis:

I. General Concern

Special district boards taking time to address issues that do not directly relate to district's established purpose, raises issues concerning the board's use of public funds in support of those issues (I will refer to this concept via the shorthand term "Board Advocacy"). The two primary concerns are: (1) What is the source of



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funds being used in support of the Board Advocacy?; and (2) Is the use of the public's funds for the Board Advocacy a prudent expense?¹

All taxes imposed by special districts are considered "special taxes" because they are imposed for a specific purpose. Special purpose districts or agencies shall have no power to levy general taxes. (Cal. Const., art. 13C, § 2.) The revenues from any special tax shall be used only for the purpose or service for which it was imposed (i.e. collected), and for no other purpose whatsoever. (Gov. Code, § 53724(e).)

Referring to those public funds that are collected for a special district's *services*, those funds must be carefully traced and utilized only for purposes related to those services. As such, and for example, revenue generated from assessments for water service, cannot be used to support Board Advocacy unrelated to support community efforts to promote public art.

Public funds are expended when a board directs a district's staff to assist them. For Board Advocacy, this assistance would likely come in the form of drafting letters and resolutions, gathering data for the board, and working with those community members involved with the subject of the Board Advocacy. To the extent the district's staff is compensated from funds associated with special taxes for their work on Board Advocacy projects, those expenditures would likely be considered illegal.

Some special districts, Oceano CSD included, receive *general* property tax revenue from the County of San Luis Obispo. Taxes imposed for revenue purposes, not for specific purposes, can be utilized for any governmental purpose which would arguably include Board Advocacy. (Cal. Const., art. 13C, § 1.) If district staff time is utilized for Board Advocacy, compensation for that time must be made with the district's general tax revenues and would need to be accounted for with a budget line item to account for those funds.

The remaining question would be whether Board Advocacy, utilizing general tax revenues, is a prudent use of funds. Certainly, some causes for Board Advocacy could be worthy of the board's attention. Those determinations would be made by the board on a case-by-case basis. Other factors to consider in making the determination of whether the board should engage in Board Advocacy would be: (1) The amount of time the board is dedicating to Board Advocacy in meetings; (2) The amount of district staff time consumed by engaging in Board Advocacy; (3) The potential for board distraction from the established services being offered by the district; and (4) The potential political ramifications of the Board Advocacy.

II. A Useful Analogy Regarding Supporting Ballot Measures

¹ The use of *any* public funds in support of Board Advocacy assumes that those funds were accounted for in the district's budget, and approved by majority vote of the Directors.



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The concept of Board Advocacy resembles an area of law regarding board support of ballot measures. To the greatest extent possible, special district boards are obligated to avoid influencing issues that the California and federal Constitutions leave to the free election of the people. (Cal. Const., art. 2; *Stanson v. Mott* (1976) 17 Cal. 3d 206, 218.) Government Code section 54964 forbids the use of public funds to support or oppose ballot measures.

Although the law pertaining to ballot measures is distinguished from Board Advocacy, due to the intention to avoid governmental interference with elections, some of the lessons from this body of law are good guideposts for approaching Board Advocacy.

Public officials may support, contribute to, campaign for, and attend events for ballot measures *in their private capacities and on their own time while not engaged in the business of the district*. They cannot advocate for ballot measures in their capacity as a board member for the district or use public funds to support their position on the ballot measure. (Gov. Code, §§ 3205, 54964.)

Regarding action from the board in its entirety, boards can pass resolutions in support of or opposition to a ballot measure. The following conditions must be met:

- 1) No public funds of any kind can be spent in connection with the board's action;
- 2) The resolution must state the board's position without encouraging members of the public to cast "yes" or "no" votes for the ballot measure;
- 3) The language for the resolution should be informative, not inflammatory or persuasive (*Vargas v. City of Salinas* (2009) 46 Cal. 4th 1, 21-22.);
- 4) Discussion and adoption of the resolution should take place at a regularly scheduled meeting to allow the public to express their views (*Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 515.);
- 5) Publication of the board's resolution must be done in the same manner as any other adopted resolution (typically posted on the website) and should not be via special publications or press conferences.

III. Resolution No. 2008-07 Regarding Advocacy for Flood Control Programs

Director Varni asked Legal Counsel to include an analysis of whether the above resolution was "illegal" when adopted. The answer to that question depends on some factors that Counsel does not know. Therefore, we cannot say with certainty that this resolution was properly made.

Assuming for the sake of argument that general tax revenue funds were budgeted to allow the district's counsel to draft this resolution, or assuming the resolution was drafted by a board member volunteering their time, the resolution may not violate the law. Conversely, if the district did not have a budget reservation for Board Advocacy and if special tax revenue was utilized to execute the resolution, it *would* violate.



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The resolution itself appears to be effective insofar as Board Advocacy is concerned. It does not address a ballot measure, so the concerns regarding board interference with elections did not apply in that situation. Also, the resolution is written in clear terms and encourages action from the County of San Luis Obispo to address flooding issues in Oceano. Assuming controls were in place addressing the correct source of funds used to draft this resolution, that action from the board would otherwise be an effective form of Board Advocacy.

IV. Conclusion and Suggested Approach

It is important to note that Board Advocacy is an area of law that does not come with obvious “bright line” rules. Attorneys can and do disagree on where the boundaries are on these issues. As District Counsel, it is our job to provide the best advice we can in the best interest of the board and, by extension, the community of Oceano. With this in mind, we suggest that Board Advocacy proceed as follows (complications and potential for difficult legal problems increase with each step):

- 1) Individual directors should typically refrain from advocating as a board on matters that do not concern the district’s established services. They instead should follow the adage that advocacy on such matters should be on “their own time, and their own dime.”
- 2) If the board sets a Board Advocacy matter on the agenda and discusses supporting or opposing it with an opportunity for the public to provide input, District Counsel suggests assigning individual directors to draft any letters and/or resolutions resulting from those discussions. The intent being to limit the potential for use of public funds for Board Advocacy (especially if no allocation of funds has been made to support such advocacy).

If the board seeks, or will seek, the assistance of District staff on Board Advocacy items, a budget item will need to be created for that assistance, and care will need to be taken that special tax money is not utilized for any work done by District staff on those items.