

Advocating for Political Issues. Usage of Library resources (including websites and social media, mailing lists, etc.)

## **1. Can a public library use library resources (such as copiers, mailing lists, webpage, etc.) to advocate for a public political issue?**

**It would seem that for a public library to use library resources (paid for by taxpayer dollars) to affirmatively advocate or lobby to the public may be risky, if not inappropriate**

First, it should be determined that Political Activities can be different from Lobbying.

**Political activities** generally refer to actions on behalf of a political candidate or campaign or election. This activity is usually what tends to be prohibited for government employees – at the state and federal levels.

**Lobbying** usually refers to activities that attempt to influence the form, passage, or defeat of legislation. This activity tends to be more permissible, but there are usually restrictions- especially for tax-exempt entities.

The Michigan Campaign Finance Act , [MCL 169.257\(1\)](#) prohibits public bodies from using government resources to support ballot measures and campaigns. - in other words, **Political Activity:**

*"(1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). "*

The Michigan Lobbyist, Lobbying Agents and Lobbying Activities Act [MCL 4.411 et. seq.](#) regulates lobbying activities for purposes of influencing legislation in Michigan – **Lobbying Activity**

**Neither** of these acts specifically seem to cover the activities of public entities wishing to advocate or lobby on behalf of – or against **Federal** legislation or policies.

There are Federal statutes that restrict Federal employees from political activity – called “The Hatch Act” This act covers lobbying and political activities. A subsection of this act does discuss entities that receive federal funding, but largely pertains to **Political activities:**

*“(a) A State or local officer or employee may not- **(2)** directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or...[5 U.S.C.A. § 1502 \(2017\)](#)”*

There are other federal acts which may restrict the use of funds obtained through programs created or administered by the particular act. For example, certain federal grants may have restrictions on the use of grant money for lobbying or political activities. Before determining a lobbying plan, libraries with federal grants will want to be sure they are in compliance with any grant requirements. This would include programs such as LSTA and e-rate funds.

There is some legal support for the position that Government entities should remain neutral with respect to matters of political importance.

Public libraries in Michigan are Constitutionally for the use of all Michigan citizens ([Mi Const. Art. VIII §9](#)). Public Libraries are largely funded with taxpayer monies through millages and State Aid. Not every Michigan citizen shares the same opinion on issues of political importance, and therefore any position a government entity (such as a public library) may take on an issue will invariably be in opposition to the opinion of at least some of the public that is funding the entity. The U.S. Court of Appeals for the 6<sup>th</sup> Circuit cited a Michigan Attorney General Opinion that supports this:

*“Indeed, several courts have recognized the interest of a governmental entity in preserving the appearance of impartiality. See e.g., United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 565, 93 S.Ct. 2880, 2890, 37 L.Ed.2d 796 (1973) (“[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.”); Paulos v. Breier, 507 F.2d 1383, 1386 (7th Cir.1974) (recognizing and protecting interest of municipality in preserving nonpartisan police force and appearance thereof);”****Thomas v. Whalen*, [51 F.3d 1285, 1292 \(6th Cir. 1995\)](#)**

Lastly, If a library is also a 501(c)3 entity, additional information on certain IRS restrictions should be reviewed. Although lobbying is permitted by 501(c)3 tax exempt entities, there are limits to how much lobbying an entity can perform, and, to a certain extent, what types of lobbying.

Below is a link to the IRS website discussing lobbying by non-profit/charitable organizations:

<https://www.irs.gov/charities-non-profits/lobbying>

in the end, although it would seem that libraries likely could undertake certain lobbying activities, using taxpayer money to affirmatively lobby on one side of a political issue is probably risky. Libraries can certainly provide information on the issue (including how to support or oppose the issue) in order to assist patrons in forming their opinions on the issue.

**If a library wishes to engage in more proactive activities, using taxpayer funds, I would recommend that they consult their attorney in order to determine the best course of action for their situation.**

## 2. Can a Public Library use its patron e-mail list for purposes of advocacy?

**This would also seem to be inappropriate.**

The closest legal authority I located involves the Michigan Bar association wishing to use its membership mailing list for political activism. While not a government entity, per se, the Bar association is a quasi-public entity in that ALL attorneys wishing to practice MUST be a member. Attorneys are not able to opt out of membership because they disapprove of the association's permission. The Bar is also governed by the Michigan Supreme Court.

The court in its opinion on this issue states:

*“this Court concludes that the use of the annual membership dues form of the State Bar (or any other mailing by the State Bar) to solicit or collect financial contributions for any political action committee is inconsistent with the State Bar's public role.*

*The State Bar is an organization established under state law to which all attorneys who wish to practice law in Michigan must belong. The State Bar is a “public body corporate.”... Given the mandatory nature of attorney membership in the bar, the solicitation on membership dues forms for funds for LAWPAC or any other PAC selected by the bar for inclusion on the forms involves the bar in appearing to endorse or promote partisan candidates and political positions that may be opposed by individual members of the Bar”. State Bar Solicitation for Political Action Committees, [612 N.W.2d 401](#) (Mich. 2000)*

The court seems to indicate that it is not appropriate to use mailing lists of public corporate bodies for purposes of political advocacy. It would seem that this is analogous to public libraries' use of mailing lists for political advocacy (since public libraries are also public bodies corporate, and also are public institutions), and so, seemingly, it would seem to be risky to utilize public library mailing lists for this purpose.

Additionally, unless your library has some sort of notification or language (say as part of the library card application), where patrons are notified and have given permission for their e-mail addresses to be used for purposes other than official library business (such as overdue notices) there may be a Library Privacy Act issue.

This information on the East Lansing Public Library's Facebook page with regards to the current presidential proposed budget cuts to library funding is a good example of providing information without advocating:

### 3. Can a public employee spend personal time and funds advocating for political issues?

YES! The regulations and statutes governing the actions of public employees are specifically for their actions while they are acting in the capacity of their positions as public employees. On their own time, public employees enjoy the same First Amendment rights as everyone else.

As long as the employee is on their own time and using personal resources, they are free to advocate as they wish in accordance with the United States and Michigan Constitutions.

For example, [MCL 169.257](#) (the Michigan Campaign Finance Act), which is discussed at the beginning of this information sheet, contains a provision specifically exempting public officials' activities on their personal time:

*“(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.”*

In addition, the Federal laws governing Federal employees (ie: The Hatch Act )also currently exempts the private activities of public officials, as well as the personal views of public

employees while they are on duty. The Hatch Act, however, does not endorse a Federal employee advocating on behalf of a particular issue, or encouraging other employees to agree.

For more information on the Federal Hatch Act, see

<https://osc.gov/Pages/Advisory-Opinions.aspx>

So, a library employee could go home at the end of the workday, and post messages on social media advocating for action on whatever matter they choose – just like any other citizen.

The research would suggest that a good rule of thumb for questions concerning political activism in a public employment context is to consider that the overall intent of most campaign finance regulations, or advocacy rules is that government (local, state & federal), as representative of ALL of their constituents should be neutral with respect to matters of politics since the people they serve each may have differing views. Therefore public employees, while representing the government, should also maintain the neutrality, despite their personal views.

#### **4. In Sum:**

- Depending on a library's individual situation, it may be risky to encourage patrons to lobby for or against a particular issue, and research suggests that it may not be acceptable to use public funds (especially certain grant or federal funding) for this purpose. **HOWEVER**, Public libraries CAN expend public funds to provide information on a particular issue to help the public form their opinion of the issue. This information can include information on what members of the public can do to support or oppose the issue, and where the public can get additional information.
- It does not appear to be appropriate to utilize Library mailing lists or e-mail lists to proactively send information about political issues.
- It would appear that public library employees CAN advocate and be politically active on their own time with their own resources.

**NOTE: Issues surrounding political speech and public employment can be complex. Anyone with concerns over this issue with relation to their situation should consult with their attorney in order to determine the correct action for their situation.**

**The research and resources above are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.**