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June 16, 2006

Kathy G. Lehner  
Superintendent  
Mendocino-Lake Community College District  
1000 Hensley Creek Road  
Ukiah, CA 95482

Re: District Board and Employee Conduct During A Bond Campaign

Dear Kathy:

I am pleased to provide you with some guidance on the general rules of conduct of District employees and Board of Trustee members during a general obligation bond campaign.

There is one general rule of law that must be followed: A community college district may not spend its assets – cash or in-kind assets, such as use of a District copier, computer or staff-time – advocating for the passage or defeat of a bond measure. A district may, however, spend its assets providing information to the community about its facility needs and the reason for the bond election as long as such communication does not constitute “advocacy.”

The basic rule originates with State law and is supported by the California Supreme Court. Education Code Section 7050 states: “The Legislature finds that political activities of school employees are of significant statewide concern” and therefore is a legitimate subject of State regulation which could supercede any District policy or local law. Further, Education Code Section 7054(a) provides: “No school district or community college district funds, services, supplies or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.” In the event of a violation, Section 7054(c) provides: “A violation of this section (Section 7054) shall be a misdemeanor or felony punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding One Thousand Dollars (\$1,000), or both, or imprisonment in a state prison for sixteen months, or two or three years.”

The common areas in which this rule is applied are (i) fund-raising, (ii) student activities on campus, (iii) employees working as both campaign volunteers and as employees of the District, and (iv) activities of Board members.

### **Fund Raising**

Fund raising is an important aspect of any campaign strategy. Money frequently is donated by local citizens, educational foundations, employees and students.

It is common for associated student organizations to contribute funds to a campaign committee. They also can spend their own funds directly to encourage voter registration to educate the community with respect to the impact and benefits of a bond campaign. They can actively work for the passage of the bond.

One issue that is raised by such activities, however, is the source of funding for the associated student organizations. To the extent that the disposable assets of such student group are really District general funds which are being funneled through such organizations to accomplish the above-described political objectives, the District is likely to be subject to criticism. However, if the District allocates general fund moneys to campus organizations as a matter of routine, and upon distribution those organizations have expenditure control over the moneys, then the organizations can spend that money in any way the organization determines to be reasonable. This includes making a contribution to the bond campaign. The organizations' control over their funds will sever the nexus between those general moneys of the District and the limitation that such moneys cannot be used for advocating the passage of a bond.

Beyond District actions, most colleges look to their foundation to assist in the campaign effort. Educational foundations oftentimes play a vital role in the success of a community college bond campaign. They are a source of both financial support and volunteers. They also use their contact network to successfully communicate the needs of the college to the public. There are complex tax rules relating to the foundation, fund raising and the bond campaign which are beyond the scope of this letter. You have received a separate memo from me on that topic.

### **Campus and Employee Activities**

Free speech, protected by the Federal Constitution, will prevail as a guideline for how active the student organizations' work in the campaign can be conducted on campus. Students should be allowed to assemble on campus to support the bond, promote voter registration, hang banners, wear buttons, organize debates on the topic and post leaflets. They should not make supporting speeches in a class, since the District's facility is used as the forum. The scope of their allowable activities must be afforded to opponents of the bond on an equal basis.

District employees and administrators may ultimately need to contribute in-kind services for the effective implementation of a bond strategy. As private citizens they are unrestricted in this effort.

Prior to the time that a governing board adopts a resolution calling for a bond election, there are no limits with respect to what an administrator can do regarding the determination of a District's need for a bond and the purposes for which such bond moneys would be spent. Employees are permitted to interact with a variety of political, legal, and financial consultants toward structuring a financial model for the bonds which will satisfy the District's needs.

Once the governing board adopts a resolution calling for a bond election, the rules of the game change. Administrators, during working hours, can continue to provide information to any member of the college community or the world at-large with respect to the needs of the District, the reasons why the Board has adopted a resolution calling for a bond election, or answer questions regarding how bond moneys will be spent.

While on the job, an administrator cannot advocate for the passage or defeat of a bond measure during normal business hours. During normal working hours, in the administrator's office, he or she cannot make telephone calls or send emails toward the support or defeat of the bond measure or seeking to raise money for the bond campaign. It is the law that an employee of the District cannot use a District owned computer to send out emails, day or night, weekday or weekend, in which an employee urges the passage or defeat of the bond measure. An employee cannot use a District computer to send out an email providing notice of campaign meetings in support or opposition to the bond measure. An employee cannot use a District telephone to communicate his/her support or opposition to the bond measure. It is a violation of the Education Code, punishable by a fine and imprisonment, for a District employee to use District computers or other equipment of the District to send emails, or other form of communication, that involve the support or opposition to the bond measure.

Yet, an administrator may, during the lunch hour, go to campaign headquarters and join the advocacy effort for the bond. Employees may send emails or make telephone calls to wherever they choose from their home computers or home telephones.

During normal working hours and during the campaign that administrator can, however, work with the District's financial and legal advisors to gather information regarding the bond so that the administrator is in a position to answer questions to the public regarding tax rates and other such matters. After hours, which can be artificially defined to be before 9:00 a.m. and after 5:00 p.m. Monday through Friday, there are no constraints on what an administrator can do with respect to his or her time. After hours, however, District computers, telephones, fax machines, and Xerox machines constitute District-owned equipment and cannot be used for campaign activities as such would be inappropriate in-kind contributions of the District's assets to an advocacy campaign. Once again, not only during the day, but after hours a District employee should not be sending out solicitation e-mails on the District's computer to persons whom he or she is attempting to influence to support the bond or contribute to the campaign.

During the course of a bond campaign, District employees can work weekends as campaign volunteers. In such capacity they may walk precincts, hand out literature, or sign letters soliciting funds for the campaign. It is allowable for an administrator to sign a letter identifying him or herself as an employee of the District, identifying the job which they hold at the district, and applying that signature to the letterhead of "Friends of Mendocino College" stationery.

There are similar constraints on academicians who have daily contact with students at the two colleges. Generally speaking, it is an employee's right to oppose or support a bond measure as an exercise of free speech. District employees generally have the right to speak on campus in support or

opposition of the bond. That speech should be protected under the United States Constitution. The District could sponsor a debate on the merits and demerits of a bond measure and the District could provide a forum for such a debate. However, a right of free speech as it relates to support or opposition to a bond measure does not extend to an academic class where the class is being conducted at a District owned and maintained facility during normal instruction times.

Education Code Section 7055 permits the District to establish rules regarding political activity of employees during working hours as well as on the premises of the District. CTA v. San Diego USD, 45 Cal.App.4<sup>th</sup> 1383 (1996) upheld a district's right to retain the power to disassociate themselves from political controversy by prohibiting district employees from engaging in political advocacy in instructional settings.

If the District allowed an instructor to express support or opposition to a bond measure in an academic class, the District would violate the Education Code Sections referenced above by providing facilities support or opposition to the bond measure. The District should not allow employees to use classroom time and classroom facilities to argue in favor of or in opposition to a bond measure. Outside the classroom, on campus, or in an organized forum where both sides of the argument were included should be permitted speech. Such a forum would be permitted under Education Code Section 7054(b) which provides:

“Nothing in this Section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

- (1) The informational activities or otherwise authorized by the Constitution or laws of this state.
- (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.”

### **Board Members**

Members of the Board of Trustees typically play an important role in the successful passage of a bond. There are fewer constraints on a Board member than on a District employee. Such additional freedoms are the result of Board members not being paid employees of the District. Consequently, it is common for Board members to be actively involved in the campaign effort. There is no jeopardy to the District of Board members, during the day or evening, speaking out on behalf of the bond measure. From many perspectives, members of the Board have a fiduciary obligation to the community to explain to the public why the Board determined to call for the election and why the District needs the bond money. In the context of speeches they give answering those questions, Board members would be expected to state the benefits to be derived from the passage of the bond measure and to advocate for its passage.

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There are two warnings, however, in connection with such activity. First, when speaking to civic groups or participating in campaign efforts, a Board member may not submit an expense reimbursement request to the District for any costs that were incurred by the member in campaign activity. For example, if a Board member rented a car to attend a rally at which he or she had been invited to speak in favor of the bond, the cost of the car rental must be either a campaign expense or a personal expense of the trustee. The District cannot reimburse the trustee for costs that he or she has incurred in carrying out their private civic duty of advocating for the bond.

Secondly, while all Board members typically work in support of the measure, and in doing so would attend campaign meetings, they must be wary not to inadvertently violate the Brown Act by having a majority of the Board members present at meetings and discussing District business without some form of public notice having been provided in advance. Notwithstanding that work on a campaign is in a Board member's private capacity, as elected official members are governed by the Brown Act and must be sensitive to its requirements.

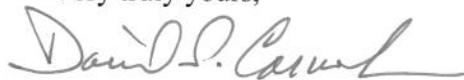
At Board meetings, Board members are entitled to express their opinions with respect to campaign activities and report feedback they have received from the community with respect to the bond and the facility needs of the District. For example, Board members may report in open session that they attended campaign rallies during the course of the preceding weeks since their last Board meeting and summarize campaign activities that they were involved in. In doing so they can report to the Board at-large on the level of enthusiasm and support for the measure in their community. Board members are entitled to the same rights of free speech as any other private citizen, and the only constraint on their voice during the campaign is that they cannot be reimbursed for any expenditures or paid any fees by the District while associating their activity with advocacy actions.

Finally, in the course of campaign activities, Board members may sign solicitations of support using their name and their status as a member of the Board. Merely lending their title for identification purposes does not violate any constraints associated with using District assets for supporting or opposing a bond measure.

In conclusion, the theme that runs through this letter is an attempt to apply our one general rule: public agencies cannot spend public funds advocating the passage or defeat of a bond measure. Expenditure of such funds can either be cash or in-kind contributions.

I would be happy to respond in writing to any other questions that you or members of the Mendocino-Lake Community College District might have on these topics.

Very truly yours,



David G. Casnocha

DGC/men