
IN THE MATTER OF LIMON PUBLIC SCHOOLS' PETITION FOR ADVISORY OPINION

ADVISORY OPINION

I, Suzanne Staiert, Deputy Secretary of State, have reviewed the request for Advisory Opinion filed by Limon Public Schools on September 21, 2018. The Secretary of State will issue an advisory opinion in this matter.

Procedural Facts

Limon Public Schools (the District) is a Colorado school district based in Limon, Colorado. On September 17, 2018, the District's school board passed a resolution regarding Amendment 73, a statewide ballot issue concerning funding for public schools. In the resolution, the board declared its support for Amendment 73, authorized the expenditure of District funds to distribute a factual summary regarding Amendment 73, and declared Amendment 73 to be an issue of official concern.¹

On September 21, 2018, the District filed a request for an advisory opinion under Campaign and Political Finance (CPF) Rule 18.2.10 asking the Secretary of State to determine whether Amendment 73 is an "issue of official concern" that would allow Limon Public Schools to distribute a factual summary regarding the Amendment in accordance with section 1-45-117(1)(b)(I), C.R.S.²

Having reviewed the District's request, and being fully advised in this matter, I issue the following advisory opinion under CPF Rule 18.2.10.³

The purpose of this advisory opinion is to provide written clarification regarding the Secretary's interpretation of current campaign finance laws. CPF Rule 18.2.10 permits "any person seeking guidance on the application of" CPF law to request that the Secretary of State issue an advisory

¹ Request, p. 1; *See* section 1-45-117(1)(b)(III), C.R.S.

² Request, p. 2.

³ 8 CCR 1505-6, Rule 18.2.10.

opinion regarding their specific activities.⁴ A person may rely on the advisory opinion as an affirmative defense to a CPF complaint.⁵

This advisory opinion is confined to the specific conduct proposed in the request for an opinion and is based solely on the facts provided.

Analysis

1. Under the plain language of the statute, Amendment 73 is an issue of official concern for the District.

Generally, political subdivisions of the state may not spend public money to support or oppose a statewide ballot measure.⁶ However, political subdivisions may distribute a factual summary, which includes arguments for and against a ballot measure, as long as the proposed ballot measure is an “issue of official concern.”⁷

The District does not intend to spend public money to support Amendment 73, but it does intend to distribute a factual summary in accordance with section 1-45-117(1)(b)(I), C.R.S. Therefore, the only question for the District is whether Amendment 73 is an issue of official concern. Section 1-45-117(1)(b)(I), C.R.S., defines that phrase: “as used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.”

Amendment 73 will appear on the ballot of every voter in the State of Colorado, including each voter within the Limon School District. As a result, Amendment 73 meets the statutory definition of an issue of official concern within the District.

2. Case law that predates the statutory definition of “issue of official concern” does not apply.

In 1996, voters approved an amendment to Colorado’s campaign finance law, which included among other things a definition of “issue of official concern” in section 1-45-117(1)(b)(I), C.R.S.⁸ Nearly two decades before that, when there was no statutory definition, two courts addressed whether statewide ballot measures were issues of official concern for local school districts.

⁴ *Id.*

⁵ *Id.*

⁶ Section 1-45-117 (1)(a)(I), C.R.S.

⁷ *Id.* at (b)(I).

⁸ Amendment 15 (1996).

In *Mountain States Legal Foundation v. Denver School Dist.*,⁹ and in *Campbell v. Joint Dist. 28-J*,¹⁰ both courts interpreted the phrase “official concern” narrowly and concluded that statewide ballot measures were not issues of official concern for school districts. But those courts lacked a statutory definition to rely on and instead interpreted the meaning of the phrase in the context of the statute’s purpose at the time.¹¹ Today, we are able to rely on the plain meaning of the statute’s bright-line definition to conclude that Amendment 73 is an issue of official concern within the District.

It is also not surprising that the *Mountain States Legal Foundation* and *Campbell* courts settled on a more narrow interpretation of “official concern” considering the type of conduct at issue in those cases. In both cases, the school districts spent public funds to *advocate against* particular statewide ballot measures.¹² The statute at the time explicitly allowed such conduct as long as the measures were issues of official concern for the school districts.¹³ Recognizing the “difference between using public resources for the fair presentation of relevant facts and the promotion of a particular point of view,”¹⁴ both courts narrowly interpreted “official concern” to encompass only local matters, such as school bond issues, where the districts had a clear interest.¹⁵

Today’s statute strictly prohibits using district funds to take sides,¹⁶ and would not have allowed the conduct in *Mountain States Legal Foundation* and *Campbell*—regardless of whether or not the measures were deemed issues of official concern. Moreover, Limon Public Schools does not propose to spend funds on anything other than a factual summary including arguments for and against Amendment 73. As the court in *Mountain States Legal Foundation* noted: “If it is assumed that the board of education has the power to spend public funds and use public facilities for the purpose of informing the electorate about this issue, there is strong precedent for requiring fairness and neutrality in that effort.”¹⁷ That is what today’s statute requires, and that is the conduct the District proposes.

⁹ 459 F. Supp. 357 (D. Colo. 1978).

¹⁰ 704 F.2d 501 (10th Cir. 1983).

¹¹ *Campbell*, 704 F. 2d at 504 (“[t]he statute does not contain any definition of official concern”); *Mountain States Legal Foundation*, 459 F. Supp. at 359 (the school board did not have unlimited authority to interpret what issues were of official concern when the statute was silent).

¹² *Campbell*, 704 F. 2d at 502; *Mountain States Legal Foundation*, 459 F. Supp. at 358.

¹³ Section 1-45-116(1), C.R.S. (1976) (“[political subdivisions] may, however, make contributions or contributions in kind in campaigns involving only issues in which they have an official concern.”).

¹⁴ *Mountain States Legal Foundation*, 459 F. Supp. at 360.

¹⁵ *Id.* at 359 – 60; *Campbell*, 704 F. 2d at 504.

¹⁶ Section 1-45-117 (1)(a)(I), C.R.S.

¹⁷ *Mountain States Legal Foundation*, 459 F. Supp. at 360.

Because the conduct at issue in *Mountain States Legal Foundation* and *Campbell* was different than what the District proposes here, and because section 1-45-117(1)(b)(I), C.R.S., has been amended to specifically define “issue of official concern,” we need not look further than the statute.

Finding

For the reasons set forth above, the Secretary of State finds that Amendment 73 is an issue of official concern for Limon Public Schools. Therefore the District may distribute a factual summary concerning that Amendment in accordance with section 1-45-117(1)(b)(I), C.R.S.

Dated October 9, 2018.



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