

III) ULCT RECOMMENDATION: WHAT CITIES, TOWNS, & PUBLIC ENTITIES MAY DO PER BOTH ACTS

PAPEA allows for a “brief statement” and “factual information” so long as the public entity provides “equal access.” Even though TBPA does not apply to cities, towns, and other public entities in this context because counties will impose the tax, the TBPA does provide a parallel framework for public entities (like cities and towns) to provide the PAPEA-allowed “factual information” with “equal access.”

A) BRIEF STATEMENT

A public entity may provide a “brief statement” explaining their position on the ballot proposition and the reason for that position. PAPEA and case law are silent as to what a “brief statement” is. For example, ULCT believes that cities and towns (and public officials) can reference the resolutions that they passed that demonstrate the official municipal position on the local option.

B) FACTUAL INFORMATION AND EQUAL ACCESS

PAPEA allows but does not require a public entity to provide “factual information” to the public about the ballot proposition so long as the public entity provides “equal access” to opponents. PAPEA does not provide guidance for “factual information” and “equal access.” However, TBPA allows an imposing public entity (in this case counties) up to a 500 word public argument and 250 word rebuttal to express support for the ballot proposition. TBPA also outlines how the public entity should provide equal access to opponents by providing an opportunity to a registered voter in the county to submit counter arguments that would be publicly shared in the same manner as the public entity argument.²⁵

Since PAPEA does not require a city, town, or other public entities to provide “factual information,” then a city, town, and other public entities need not provide “factual information.” If a city or town decides not to provide “factual information,” then the city or town need not provide “equal access” to opponents to respond. The city or town could still offer a “brief statement” though the line separating a “brief statement” and “factual information” with “equal access” is unclear.

If a city or town elects, however, to provide “factual information” to demonstrate support of the local option, then ULCT recommends that the city or town follow the same framework in the TBPA: 500 word argument and counter argument, 250 word rebuttal and counter rebuttal, and post all arguments on the municipal website. Since PAPEA is silent about how to provide “equal access” to opponents, ULCT recommends that the city or town could use the same counter argument and counter rebuttal that the county clerk has designated for the county per TBPA. The city or town may choose to have an open meeting to discuss the local option as TBPA requires of counties but that meeting is not mandatory to satisfy the “equal access” requirement.

In conclusion, if a city or town elects to provide “factual information” about the ballot proposition, the city or town should follow the TBPA “equal access,” argument, and counter argument framework.

C) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CANNOT DO—EMAIL

A “public official” has a different legal framework than a “public entity.” A “public official” includes both elected and appointed government officials who have authority to make public policy. A “public official” also includes any person with “supervisory authority over the personnel and affairs of a public entity and approves the expenditures of funds.” As such, a “public official” does not include public employees who do not have authority to make public policy nor does it include public employees who do not have supervisory authority over the public entity’s personnel AND do not have the authority to approve expenditures.²⁶

²⁵ Utah Code Ann. § 59-1-1604; see section I(a) above

²⁶ Utah Code Ann. § 20A-11-1202(12)

Public officials may not use public funds to influence a ballot proposition. Specifically, the legislature in 2015 enacted a provision that now also restricts a person—public official, public employee, or anyone—from using the email of a public entity to send an email to advocate for or against a ballot proposition.²⁷ The county clerk may impose a civil fine of \$250 for the first violation and then \$1000 for each subsequent violation multiplied by the number of violations that the person commits.²⁸ The violation is the act of sending the email from the public account, regardless of the quantity of recipients.²⁹ Receiving an email on your public account, however, is not a violation. The law does provide for a safe harbor if the lieutenant governor determines that the email was inadvertently sent as a reply.³⁰

Consequently, anyone—public official, public employee, etc.—with access to an email of a public entity may not send an email from the public account to advocate for or against the ballot proposition.

D) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CAN DO

A public official may advocate for or against a ballot proposition and may speak, contribute personal money, or otherwise exercise his/her First Amendment rights independent of the public entity and without using public funds or resources.³¹ For example, a public official may post on his/her personal Facebook page but he/she may not send an email from the email of a public entity or face a civil fine. Public officials and public employees may use their own personal email accounts and other modes of communication to exercise their First Amendment rights so long as they do not use public funds.

IV) ELECTION CONSOLIDATION

Previous ULCT analysis determined that state law encourages but does not require counties and municipalities to consolidate elections.³² As of July 2015, many municipalities still intend to conduct their own election in November. If the county in which those municipalities reside puts the ballot proposition to voters, then the voters in that county could receive one ballot from the city/town with the city/town council candidates and another ballot from the county with the ballot proposition. Voters receiving two ballots may be confused about which ballot to submit and may result in low turnout. Consequently, ULCT recommends that counties and municipalities consider election consolidation.

²⁷ Utah Code Ann. § 20A-11-1205(1) (note: though the word “influence” is not used in this statute, the definition herein is consistent with “influence” within PAPEA)

²⁸ Utah Code Ann. § 20A-11-1205(2)

²⁹ Utah Code Ann. § 20A-11-1205(5)

³⁰ Utah Code Ann. § 20A-11-1205(5)

³¹ Utah Code Ann. § 20A-11-1206(1)

³² Utah Code Ann. §20A-1-204(2)(a),(b)