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Memorandum

TO: Representative Kurt Olson
FROM: Tim Spengler, Legislative Analyst
DATE: March 9, 2012
RE: State Prohibitions on Spending Municipal Funds on Initiatives without Voter Approval
LRS Report 12.215

You asked if any states prohibit the use of municipal funds to support or oppose an initiative proposal without voter approval.

Briefly, we identified no states with specific statutory provisions prohibiting the use of municipal funds to support or oppose an initiative (or other political or electoral matter) *without* voter approval.¹ Most of the states we reviewed, however, prohibit municipalities from expending funds for such purposes *regardless* of whether municipal voters approve of such actions or not.

Fourteen of the 20 states we reviewed prohibit the use of public funds to support or oppose an initiative.² Those states are Arizona; California; Georgia; Florida; Idaho; Massachusetts; Montana; Nevada; New Mexico; North Dakota; Oregon; Utah; Washington; and Wyoming.³ It is interesting to note that none of the 11 Western States that we contacted (where initiatives are more commonly used) allow for the use of municipal funds to support or oppose an initiative. On the other hand, six of the nine states (excluding Florida, Georgia, and Massachusetts) that we contacted in the Northeast and South do not have such prohibitions.⁴

Below we provide an example of statutory language from the California Government Code 54964:

a) An officer, employee, or consultant of a local agency may not expend or authorize the expenditure of any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters. . . "Ballot measure" means an initiative, referendum, or recall measure certified to appear on a regular or special election ballot of the local agency, or other measure submitted to the voters by the governing body at a regular or special election of the local agency.

As previously noted, such state laws do not allow for the use of municipal funds for *any* political advocacy, not just advocacy pertaining to initiatives. Also, it appears that most or all of these states *do* allow municipalities to expend funds to provide *informational or educational* background materials regarding an initiative.

A few years ago, a wide-ranging effort was made in Alaska to prohibit public spending on political advocacy. The "Alaska Anti-Corruption Act," Ballot Measure 1, was on the primary election ballot in August of 2010. The Initiative would have banned the

¹ For this report, we reviewed numerous state statutes and election websites, communicated with personnel from the National Conference of State Legislatures, the Initiative and Referendum Institute, the Council of State Governments, Ballot Access News, National League of Cities, and spoke with officials from many state municipal leagues.

² It is likely that a number of other states also have provisions prohibiting the use of municipal funds to advocate for or against a ballot initiative.

³ In Idaho, Massachusetts and New Mexico, the prohibition is not codified in law but rather, pursuant to court rulings. (We were unable to identify the court case particulars in New Mexico.) Relevant statutory citations (or case law) are as follows: Arizona (ARS 9-500.14), California (CAL. Gov. Code 54964), Georgia (OCGA 21-5-30.2 and 21-5-3), Florida (FS 106.113), Idaho (pursuant to *Ameritel vs. Greater Boise Auditorium District*, 141 Idaho 849), Massachusetts (pursuant to *Anderson vs. City of Boston*, 367 Mass. 178), Montana (MCSA 2-2-121), Nevada (NRS 281A.520), New Mexico (pursuant to court decision), North Dakota (NDCC 16.1-10), Oregon (ORS 260.432), Utah (UCA 20A-11-1203), Washington (RCW 42.17A.555), and Wyoming (WSA 9-13-105(b) and 22-26-116).

⁴ The states we identified that do not have laws prohibiting the spending of municipal funds for such purposes are Alabama, Connecticut, Maine, New Hampshire, Rhode Island, and Virginia. Again, there were numerous states that we did not contact and likely a number of those also do not prohibit municipalities from expending funds on initiatives.

use of public funds for political campaigns and lobbying by state and local government agencies and school districts to support or oppose ballot measures, lobby to pass a law, or request public funding. The measure failed as nearly 61 percent of voters cast their ballots against it.

While Ballot Measure 1 had the support of a number of groups such as Alaskans for Open Government and the Committee to Stop Corruption, it was opposed by such entities as the Alaska Chamber of Commerce, the Resource Development Council, the Alaska Municipal League, the Anchorage School Board and Assembly, and the Alaska Democratic Party.

The *Fairbanks Daily News-Miner*, which also opposed the measure, stated the following in their editorial published on August 20, 2010:

Proponents of the measure say average voters should bring such troubles to the attention of legislators. The average voter might do so, but why cut out an authoritative source? We elect mayors, assembly members and school board members to represent us. And our local government officers shouldn't have to wait for a call from Juneau before they do that job. Alaskans should vote "no" on Ballot Measure 1.

We hope this is helpful. If you have questions or need additional information, please let us know.