District May Not Hire Consultants For Pre-Election Bond Campaign Services If Those Services Are Considered Campaign Activity.

On January 26, 2016, the Attorney General's Office issued an opinion that K-12 and community college districts may not contract with an entity to perform bond campaign pre-election services if those services are considered campaign activity. Many districts hire private consultants for pre-election services, such as conducting surveys to gauge voter attitude toward a bond issue, drafting documents needed to place a bond measure on the ballot, and conducting informational workshops. Consultants often provide these pre-election services at little or no cost, in exchange for the district's promise to use the consultant for post-election bond services if the bonds are approved.

Districts are statutorily prohibited from using public funds to influence the outcome of an election, including advocating or campaigning for the passage of a bond measure. Districts may not hire a private consultant to conduct pre-election services if those services may be fairly characterized as campaign activity. Consultant services constitute campaign activity when they, for example, develop a strategy to build support for the measure, or solicit contributions or support from the public. Districts will violate applicable law if the district induces the consultant to:

• financially contribute to or support the bond-election campaign; or,

• offer free or discounted services in connection with the bond-election campaign.

Consultants will violate applicable law if they inflate their post-election bond-sale services to account for its pre-election services. Districts must take reasonable steps, such as hiring an independent financial advisor, to ensure the post-election services fee is not inflated. Districts also may not pay consultants for pre-election campaign services out of bond-sale proceeds, even if those services are not itemized on the Consultant's invoice.

Consultant services fall outside the definition of campaign activity if they only assess voter support for a measure, or determine the feasibility of developing a bond measure. Districts may hire consultants to research the need for bond measures, investigate potential problems with proposals, and provide a fair presentation of information to the public. Districts may also hire consultants to perform both pre-election services and post-election bond issuance services, as long as the consultant does not advocate or campaign for the passage of the bond measure.

Districts may only use bond sale proceeds to pay consultants for post-election services that are either integral, or unavoidable, to the sale of the voter-approved bonds.

Lastly, consultants who provide uncompensated consulting services valued at over $10,000 to a bond-measure campaign must report the value of those services as a contribution to the campaign in accordance with state law.

Office of the Attorney General Opinion No. 13-304; January 26, 2016. (attached)

Note:

The Attorney General Opinion is advisory and not binding, but it can be considered persuasive authority by courts. The Attorney General Opinion provides reason for districts to carefully consider the services pre-election campaign consultants will provide and to ensure that the consultant's post-election services fee is not inflated and that the district is not entering into the agreement to induce the consultant's campaign support.