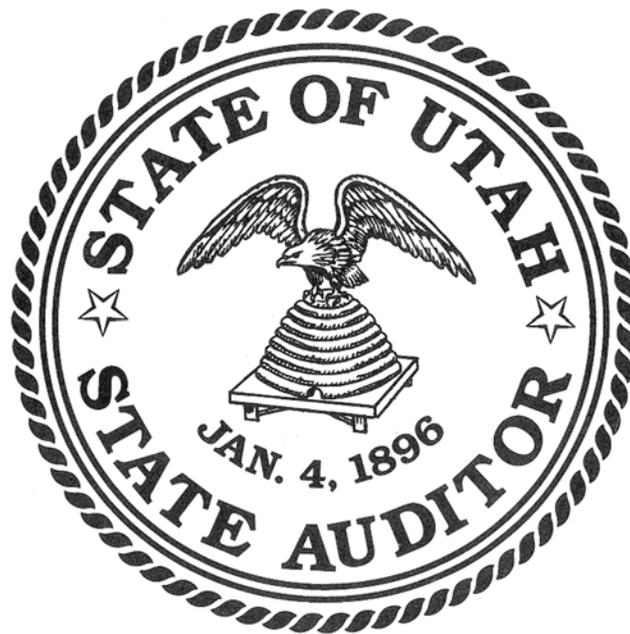


OGDEN SCHOOL DISTRICT

Report on 2017 Bond Proposition

Special Project
For the Period August 17, 2017 through November 7, 2017

Report No. GOL-18-SPa



OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor

Tyson Plastow, MBA, CIA, Special Projects Audit Supervisor

Aaron Burgoyne, CPA, CFE, Special Projects Auditor

OGDEN SCHOOL DISTRICT
FOR THE PERIOD AUGUST 17, 2017 THROUGH NOVEMBER 7, 2017

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OFFICE OF THE
STATE AUDITOR

REPORT NO. GOL-18-SPa

November 19, 2018

Jeffrey Heiner, President
Ogden School District Board of Education
1950 Monroe Blvd.
Ogden, Utah 84401

Dear Mr. Heiner:

The Office of the State Auditor (Office) received a request from the Lt. Governor's Office to review activities of the Ogden School District (District) related to the District's 2017 bond proposition. The Office performed the procedures described below to determine the District's compliance in accordance with *Utah Code 67-3-1(4)*. We performed the following procedures at the District:

1. We reviewed the District's cash receipts and disbursements related to the bond proposition.
2. We reviewed emails related to the bond proposition sent by members of the District's Board of Education (Board) and the District's business administrator and communications director.
3. We reviewed other District documents related to the bond proposition.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of the District's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of the District's internal control, other matters might have come to our attention that would have been reported to you.

Our finding resulting from the above procedures is included in this report.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of the District during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please call Aaron Burgoyne, Special Projects Auditor, at 801-318-1048.

Sincerely,

Tyson Plastow, MBA, CIA
Special Projects Audit Supervisor

BACKGROUND

Ogden School District (District) is governed by a seven member board (Board). The District has 21 schools and serves approximately 11,500 students.

In August 2017, the Board voted to place a bond proposition on the November 2017 general election ballot. Then in September 2017, a political issues committee, as defined by *Utah Code* 20A-11-101 (37)(a), was organized to support the District's bond proposition. The statement of organization for the Friends of Ogden School Political Issues Committee (PIC) listed the seven members of the Board and the District's business administrator as the primary officers and governing board members of the PIC.

Once the District's bond proposition was placed on the ballot, the District's activities regarding the bond proposition became subject to the Political Activities of Public Entities Act (*Utah Code* 20A-11, Part 12) (Act). The Act prohibits public entities from influencing a ballot proposition or votes regarding any candidate for public office or judge standing for retention (Ballot-related Advocacy) by expending public funds or using public email.

In November 2017, we received a request from the Lt. Governor's Office to determine the District's compliance with the Act. We reviewed District activities and certain expenditures related to the request, as well as bond-related emails, occurring between August 17, 2017 and November 7, 2017, the date of the election.

FINDING AND RECOMMENDATION

IMPROPER USE OF PUBLIC RESOURCES FOR BALLOT-RELATED ADVOCACY

It appears the District improperly used public resources for Ballot-related Advocacy activities. Public resources should only be used to facilitate and encourage political discussion and participation. *Utah Code* 20A-11-1206 allows members of the Board and District employees to serve as primary officers and governing board members of a political issues committee; however, participation must be done in an individual capacity. The overlap of roles increases the risk of District resources being improperly used for Ballot-related Advocacy. It appears the Board did not sufficiently recognize and address this risk and failed to establish a strong tone at the top with regards to compliance with the Act.

We noted the following issues:

a. Improper Expenditure of Public Funds for Ballot-related Advocacy

- The District's business administrator used \$4,000 in District funds to pay an election consultant for the PIC, which the PIC reimbursed that same day. The business administrator, who was also the chief financial officer for the PIC, stated he did this so the PIC didn't have to prepare a 1099 tax form.

- The District paid more than \$1,600 for flyers, banners, and other signs which the Lt. Governor's Office determined demonstrated Ballot-related Advocacy because they used the word "benefit," in phrases such as schools "will benefit from this bond." The District considered the word "benefit" to be a factual description allowed by the Act (see *Utah Code* 20A-11-1206(2)).

Although the District was reimbursed by the PIC for these expenditures, the Act specifies that "a public entity may not *make an expenditure from public funds* for political purposes or to influence a ballot proposition" (emphasis added) (*Utah Code* 20A-11-1203). Influence, as defined by *Utah Code* 20A-11-1202, "does not mean providing a brief statement about a public entity's position..." The actions taken by the District went beyond a brief statement. *Utah Code* 20A-11-1204 states that a violation of section 1203 is subject to criminal penalties. As such, it is improper for the District to expend any public funds for Ballot-related Advocacy, even if reimbursed from another party.

b. Improper Use of Public Email Accounts

We reviewed the public email accounts of the Board, the business administrator, and the communications director from October 16 through November 7, 2017. We found that District email accounts were improperly used as follows:

- On October 16, 2017, the District's communications director sent, and a principal forwarded to parents, an email which the Lt. Governor's Office determined advocates for a ballot proposition. The Weber County Clerk/Auditor fined the communications director \$200 and the principal \$10.
- On October 30-31, 2017, a District Board member, the District communications director, and another District employee contributed to an email thread to discuss acquiring and publicizing another organization's support for the bond proposition. This ballot-related discussion may have been improper. No one who participated in this email thread has paid or been assessed a fine.

According to the Act, "a person may not send an email using the email of a public entity: (a) for a political purpose; (b) to advocate for or against a ballot proposition; or (c) to solicit a campaign contribution," and that a person would be fined up to \$250 for a first violation and \$1,000 for each subsequent violation (*Utah Code* 20A-11-1205). The improper use of the communications director's public email is particularly concerning, as the communications director should be responsible for the District's awareness of and compliance with laws relating to communication within the District.

c. Improper Use of District Time and Equipment for Ballot-related Advocacy

During regular District work hours and using District equipment, employees were involved in the following activities that constitute improper Ballot-related Advocacy:

- Activities were performed related to the production and distribution of the banners and fliers mentioned in a. above.

- The business administrator used District resources to create a 1099 tax form on behalf of the PIC.
- We discovered a document that suggests District resources were used to identify individuals who might be willing to advocate for the bond.

Recommendations:

We recommend the District:

- **Establish a strong tone at the top in regard to compliance with the Act, which includes the following:**
 - **Prohibit the use of public resources for Ballot-related Advocacy.**
 - **Enforce a no-tolerance policy for employees who violate the Act by disciplining individuals up to and including termination and withholding a day's pay for each work day they engaged in improper Ballot-related Advocacy.**
 - **Refer the unaddressed improper use of public email to the Weber County Clerk for possible penalties.**
 - **Refer the improper use of public funds to the Weber County Attorney for possible penalties.**
 - **Clearly differentiate between individual political advocacy and District facilitation and encouragement of political participation.**
- **Ensure officers and employees receive adequate training and understand what constitutes Ballot-related advocacy.**



Board of Education
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Superintendent Rich K. Nye, PhD
Business Administrator Zane K. Woolstenhulme

To: The Office of the Utah State Auditor, John Dougall
Tyson Plastow, Special Projects Audit Supervisor
Aaron Burgoyne, Special Projects Auditor

Dear Mr. Dougall,

Ogden City School District and the Board of Education appreciate the efforts of the State Auditor's Office to inquire into the activities of District personnel related to the District's 2017 school bond ballot proposition. It is understood that the efforts, findings and recommendations of the audit are aimed at ensuring proper use of public tax funds.

The District also appreciates the opportunity that was granted to conduct dialogue with the project auditors and to provide additional information and context in response to the initial findings. The District and the Board understand the findings of the audit in the context of Utah Code. In that context, we accept the findings and we will take action in consideration of the recommendations in the audit.

While the District and the Board accept the findings of the audit, we maintain that no actions were done with malintent. We also wish to express our desire to work with the State to provide further clarity of *Utah Code 20A-11*, specifically in regard to school bond elections. The audit refers to the *Code* in pointing out that a public entity (the District) may provide a brief statement about the public entity's position. We believe it is reasonable that a school district and its board of education should be allowed to voice the position that new and renovated school buildings will benefit the students who attend those school buildings to receive a public education; particularly when replacing or updating buildings more than half a century old which do not meet current building codes or satisfy the needs of modern educators, or to alleviate overcrowding in schools when applicable.

However, the Lt. Governor's Office deemed use of the word "benefit" to be advocacy and thus, a violation. When the issue was raised, District legal counsel felt we would prevail if the District wanted to appeal to the courts for a remedy. Of course, it was less expensive and more expedient to have the political issues committee (PIC) reimburse the District, as referenced in the audit findings, rather than using taxpayer money by turning to litigation.

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The ruling of the Lt. Governor's office regarding the use of the word "benefit", which we consider to be a statement of fact, seems to call into question the very justification of public school buildings. For if students will not benefit from the most safe and most capable schools that we can provide, why do we build public schools at all?

In closing, Ogden City School District and the Board of Education are committed to the adherence of all applicable Utah Code and have already taken measures to ensure compliance in areas found by this audit to be in violation in 2017. We appreciate the continued opportunity to work with the State to ensure that all school districts in Utah have clear and logical guidelines to follow in this regard.

Sincerely,



Jeffrey Heiner
Ogden City School District Board of Education President

Oct. 22, 2018

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