

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95811-6549
(916) 445-8752
HTTP://WWW.CCCCO.EDU



July 16, 2008

Frances E. Rogers
Interim General Counsel
State Center Community College District
1525 East Weldon Avenue
Fresno, CA 93704-6398z

Re: Request for Legal Opinion on Education Code Section 82537: The Civic Center Act and
Partisan Political Activities
Political Activities on Community College Campuses
Legal Opinion 08-02

Dear Interim General Counsel Frances E. Rogers:

On May 8, 2008, we received an inquiry from you requesting for our legal opinion on Education Code Section (ECS) 82537. Specifically you asked:

1. Notwithstanding ECS 7050-7058, does ECS 82537 permit the governing board of a community college district to grant the use of college facilities or grounds for partisan political activities, such as political candidate rallies?
2. Does allowing a partisan political activity to occur in or on community college district facilities or grounds constitute a "monopoly" as described in ECS 82537(c)?
3. Is there a manner in which partisan political activities can legally take place when public funds and equipment are not used for the activity?

We apologize for not getting back with you sooner, but staffing losses in the Legal Affairs Division have hindered our ability to both timely review the detailed letters sent on behalf of the District and to respond.

Before attempting to answer your questions, it must be noted that the Chancellor's Office does not have enforcement authority over ECS 82537. We can advise as to our interpretation of the statute, but our interpretation may not be in agreement with those of the enforcing government entities. We recommend consulting the appropriate government entities and/or your local legal counsel before proceeding on any definitive course of action.

We will attempt to answer each of your questions in turn.

1. Notwithstanding ECS 7050-7058, does ECS 82537 permit the governing board of a community college district to grant the use of college facilities or grounds for partisan political activities, such as political candidate rallies?

Notwithstanding ECS 7050-7058, ECS 82537 does appear to permit the governing board of a community college district to grant the use of college facilities or grounds for partisan political activities, such as political candidate rallies. We have based this conclusion on the following analysis.

ECS 82537 grants the governing board of community college districts the authority to grant use of its facilities for various purposes. According to ECS 82537(b) these purposes include, “public, literary, scientific, recreational, educational, or public agency meetings, or for the discussion of matters of general or public interest.” Based on this initial list, there is no explicit allowance for partisan political rallies made in this section. It may be arguable that a partisan political activity falls under the categories of public, educational, or public agency meetings. However, the potentially more convincing language for allowing partisan political activities to be held on college grounds are that they constitute a “discussion of matters of general or public interest”.

According to case law, the term “public interest” is defined as:

Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. (*State v. Crockett*, S6 Okl. 124, 206 P. 816, 817.)

Partisan political activities such as political candidate rallies appear to fall squarely within this definition. Elections involve numerous issues which have an impact on the public’s legal and pecuniary interests. Discussions of those elections, therefore, should be allowable under ECS 82537.

Additionally, ECS 82537(a) references “supervised recreational activities” as another subgroup of allowable activities at community college civic centers. According to this section these “supervised recreational activities” must appertain to the “educational, political, economic, artistic, and moral interests of the citizens of the communities which they reside.” Thus at community college civic centers, politically based activities are expressly allowed by statute.

2. Does allowing a partisan political activity to occur in or on community college district facilities or grounds constitute a “monopoly” as described in ECS 82537(c)?

ECS 82537(c) states that “no use shall be granted in a manner that constitutes a monopoly for the benefit of any person or organization.” We feel that this condition of the ECS is moot due to due to constitutional protections for speech governing limited public forums.

Once a community college district chooses to open its facilities for partisan political activities, those facilities become a limited public forum. Limited public forums are nonpublic forums specifically designated as open to certain groups or topics. Aside from demonstrating a

compelling governmental interest, these forums can only be regulated by time, place, and manner restrictions. Thus, once it is decided that partisan political activities can be held on a particular community college district's facilities, that college is not allowed to constrain other political speech in those facilities based on content or viewpoint. As a result, no monopoly can ever legally take place when a community college opens its facilities for public speech.

3. Is there a manner in which partisan political activities can legally take place when public funds and equipment are not used for the activity?

On September 16, 2004, the Chancellor's Office issued advisory A 04-05 which outlines the general principles to be observed in this area. Copies of our advisories can be found online at: <http://www.cccco.edu/SystemOffice/Divisions/Legal/LegalAdvisories/tabid/410/Default.aspx>. Please take the time to review our analysis from that advisory to provide some guidance in this area. As in that advisory, we suggest you consult your own local counsel to deal with any specific situations that may arise in your district.

Conclusion

Notwithstanding ECS 7050-7058, ECS 82537 appears to allow community college facilities to be used for partisan political activities. This allowance is purely discretionary, and if it exercised by a particular community college, then that college needs to provide access to other competing political parties in order to avoid creating a "monopoly". Ultimately, the use of campus facilities for political activities requires close review of each specific individual situation. We recommend that you consult your local legal counsel to make determinations on the best course of action to be taken for your particular circumstances.

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

SB /JL/FR/ME