

***Stanson* Warning, Notice, and Demand To Treasurers Expending Public Moneys Not Authorized by Law.**

To:

Justin Birtwhistle, Tuolumne County Treasurer-Tax Collector

From:

Richard Michael, Chief Cook & Bottle Washer, California School Bonds
Clearinghouse (bigbadbonds.com)

Date:

August 13, 2024

Subject:

Stanson Warning, Notice, and Demand To Treasurers Expending Public Moneys
Not Authorized by Law.

Via:

E-mail

Deadline:

Day November ballots are finalized for printing.

Notice to principal is notice to agent*. Notice to agent is notice to principal.

* Agents include third-party vendors who provide services to the county, such as mailing and printing services, including the United States Postal Service, should you pay postage for mailing ballots directly.

Dear Mr. Birtwhistle,

Did either the registrar or the board of supervisors alert you to the *Stanson* Notice that they received on August 9, 2024? You can view the notice at this [link](#).

This is your *Stanson* notice. See *Stanson v. Mott* (1976) [17 Cal.3d 206](#).

Duty of County Treasurer (or equivalent)

You are a member of the California Treasurers and Tax Collectors Association (CATTCA). Unlike many of these associations of government employees, we found it relevant that yours has a code of ethics. Article XVI (Standard of Ethics, Professional Conduct and Discipline) of your bylaws sets out a code of ethics. You have not only subscribed to your oath, but also subscribed to that code.

While several of the nine rules apply in this situation, the sixth rule is particularly relevant to this.

6. Not knowingly be a party to or condone any illegal or improper activity.

County treasurers, who have the highest fiduciary duty with respect to public moneys, are the final check against improper, and it goes without saying illegal, expenditures from the public treasury.

We demand that you perform your fiduciary duty to protect the public treasury (public moneys) and refuse to expend public moneys for printing and circulating ballots that contain ballot labels that take the side of government in an election. (More on this below.)

We would hope that the treasurer, being a much less politically influenced position than the registrar or the board of supervisors, would look more objectively at the purposes for which public moneys are expended. Nevertheless, we couch this as a demand.

Governmental Use of Public Moneys to Take Sides in an Election

Since nine county registrars are participating in a particularly egregious example of expending public moneys for purposes not authorized by law, we will refer to Santa Clara County as an exemplar of the statewide problem that the registrar and board of supervisors have allowed to fester for decades.

They have now been warned four times. The link to the just delivered notice is above. Here is the [second notice](#) from July to August 2018.

Partisan Ballot Labels Are Expressly Prohibited, Unconstitutional, and Criminal

The purpose of a ballot is to record the voter's choice. The county voter information guide, as its name implies, is to provide the voter with official information. The campaign committees and the press may provide further information.

Elections Code section 13119 applies to all local measures submitted to the voters. It limits the language on the ballot label to "Shall the measure (stating the nature thereof) be adopted?" (Quotes in the statute.) For tax measures, three additional disclosures are required by subdivision (b) -- the amount to be raised annually and the rate and duration of the tax.

For election matters, "the nature thereof" has been considered very narrowly. *Boyd v. Jordan* (1934) [1 Cal.2d 468](#). The dictionary defines the "nature of" something as its essence, "the inherent character or basic constitution of a person or thing."

There is no statutory authority for any other language to appear on the ballot, except for the "letter" designation and, if the county has not opted out, the names of supporters and opponents.

We have selected the BAHFA \$48 billion ad valorem property tax on residential and business property owners as an example because it has been filed with nine county offices. Many more measures, perhaps up to 700, have been filed around the state. No one knows how many yet. Evidence suggests that is intentional. This notice applies to all measures until the statutes are repealed by the Legislature.

Partisan ballot label submitted by BAHFA board.

BAY AREA AFFORDABILITY PLAN. To address housing affordability and reduce homelessness by:

- providing an estimated 70,000 affordable apartments/ homes;
 - creating homes near transit, jobs, and stores;
 - converting vacant lots/ blighted properties into affordable housing; and
 - providing first-time homebuyer assistance;
- shall the measure issuing \$20,000,000,000 in bonds at legal rates, levying an estimated \$19 per \$100,000 of assessed valuation generating \$670,000,000 annually while bonds are outstanding, and requiring public reporting, independent audits/ citizen oversight, be adopted?

Neutral ballot label conforming to Elections Code section 13119.

Shall the measure to authorize the issuance of up to \$20,000,000,000 in bonds and to impose a tax on real property in the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma at an

estimated rate of \$19.00 per \$100,000 assessed value, collecting an estimated \$670,000,000 annually, until 2078 be adopted?

BAHFA's ballot label is written like a title and summary. Section 13119 does not authorize or permit a title and summary. Titles and summaries are specified for statewide measures only and are written by the attorney general.

The act of writing a title and summary, by its very nature creates bias. The writer must choose elements from the language of the measure. That choice is viewpoint discrimination and compelled speech, violating the First Amendment rights of everyone who has a different viewpoint. When the government does it, it also violates the Fourteenth Amendment (equal protection). Section 13119 eliminates viewpoint discrimination and other chicanery by prohibiting anything other than the nature of the measure. It's been the law for over 110 years.

By the act of writing a description or summary or whatever, rather than stating the nature of the measure, the government is taking its point-of-view and forcing it down the people's throats.

Criminal Provisions

Failing to perform your fiduciary duty has criminal consequences. The registrar, the board of supervisors, and others, having duties in connection with elections, are subject to penal provisions in the Elections Code: sections 18002, 18370, 18371, and 18401 (offenses against the elective franchise). Yours is a derivative liability, as their "improper or illegal activity" requires that you fund it from the public treasury.

There are no existing statutes that authorize any county official to expend public moneys to print and circulate ballots that are bald-faced government campaign arguments. Consequently, Penal Code 424 sanctions expenditures of public moneys "not authorized by law." You should take note of the criminal case cited in *Stanson* that involved the conviction of a county finance official under that section. The appeal was denied and the conviction stood.

Court Decisions

The California Supreme Court has held repeatedly that the government is constitutionally prohibited from using public moneys to take sides in an election. *Mines v. Del Valle* (1927) [201 Cal. 273](#), *Stanson v. Mott* (1976) [17 Cal.3d 206](#), and *Vargas v. City of Salinas* (2009) [46 Cal. 4th 1](#). In *Stanson*, the court further held that government officials who use public moneys to take sides in an election are subject to criminal liability under Penal Code section 424.

The BAHFA example is far from rare. Every school district bond measure and every sales tax measure paints the government's viewpoint of why the measures are needed. The courts have repeatedly held that ballot labels must be neutral. The registrar intentionally refuses to reject ballot labels that don't conform to the law. When you receive the warrant to pay for it, and do pay it, your liability accrues.

That can't be true, can it? Here's the [list](#) of all 100 school bond measures from the November 8, 2024 election from around the state. Notice a pattern? They are all arguments favoring a yes vote. They also all meticulously avoid the three dirty words (all mandatory by statutes) - tax, maximum interest rate (12%), and duration (the estimated end year from the tax rate statement). Check out the San Diego Unified \$7.3 billion tax with the bullets.

Appellate court decisions have treated ballot labels like that submitted by BAHFA and the school districts to be partisan and unconstitutional. *Citizens for Responsible Govt. v. City of Albany* (1997) [56 Cal.App.4th 1199](#) [city gaming measure], *Huntington Beach v. Superior Court* (2002) [94 Cal.App.4th 1417](#) [utility tax measure], and *McDonough v. Superior Court* (2012) [204 Cal.App.4th 1169](#) [city pension reform].

It doesn't require a judge to determine the partisan nature of a ballot label. The burden of proof for statutory conformance is not on the people. It is on those submitting the measures. Can the local governments or the registrar or board of supervisors site any statutory authority for the partisan language they allow to be printed on the ballot? They rely on you to be none the wiser for their scheme. If you don't know about it, you'll just pay the bills. This notice serves to alert you as to what those with elections duties are doing. Now you must perform your fiduciary duty to protect the county treasury.

The *McDonough* case was necessary only because the former Santa Clara county registrar, who was the respondent, failed to perform her mandatory ministerial duty to reject partisan ballot labels.

All the opinions that have addressed the government taking sides in an election using public moneys cite the First Amendment ("compelled speech") and the Fourteenth Amendment ("equal protection"), and the California Constitution counterparts, as the constitutional violations.

An election where the government takes sides using public moneys is "plainly illegal". *Rideout v. City of Los Angeles* (1921) 185 Cal. 426!--- [185 Cal. 426](#) ---. Plainly illegal elections are vitiated.

Grand Jury Reports

The recent whitewash by the 2023-2024 Sonoma County Grand Jury, is quite a contrast

to the Alameda, Santa Clara, and Santa Cruz county grand jury reports about partisan ballot labels over the last three years.

The question that the Sonoma jury purported to answer was: "The essential question of this investigation is straightforward: are County elections free of bias, undue influence, corruption, or other irregularities that could or potentially have altered the outcomes of our elections?"

The report falsely states that 1) "County elections are executed with a high degree of integrity."; and, expressly regarding measures, 2) "Ballot creation and distribution: ROV validates that all requirements for appearing on a ballot have been met by a candidate or a measure."

Here is just one example of the dozens of partisan measure ballot labels that the Sonoma jury allegedly reviewed.

To improve the quality of educational facilities; repair or replace deteriorating roofs, plumbing and sewer systems; modernize, renovate and construct classrooms, restrooms and school facilities; make health and safety improvements; and provide systems addressing power outages; shall Kenwood School District s measure to issue \$17,000,000 in bonds at legal interest rates be adopted, raising approximately \$995,000 annually while bonds are outstanding averaging 3 ¢ per \$100 of assessed value, with oversight, annual audits and all funds improving local schools? *Sonoma County, Measure F, November 8, 2022.*

No bias there. Nothing to see here. Just move along. Did the Sonoma jury have an agenda? Should the members of the Sonoma jury, county counsel, and the supervising judge be investigated for the criminal act of filing a false report?

Statutory Filing Deadline

We have now passed the statutory filing deadline (E-88) for the November election. That deadline is for filing by local government agencies. There is no deadline for rejecting non-conforming ballot labels. In fact, the local agencies have up until Wednesday, August 14, 2024 to make changes to any filed materials. They are likely personally civilly and criminally liable too.

Up until now, the public moneys expended are in the category of overhead, such as salaries and systems used by the registrar and the board of supervisors. When the ballots are printed, however, and subsequently, when they are circulated, there are direct costs associated with those activities that can be directly attributed to the "improper or illegal activity." The registrar and the board of supervisors will be requesting you to pay for

those extraordinary (not overhead) expenditures.

The Kicker

These are crimes people! Did you know that you can be removed from office for expending public moneys that are "not authorized by law."

Criminal liability, personal civil liability, removal from office. Is that personal enough for you?

The removal from office also includes a permanent lifetime ban of employment by the government. It bypasses a corrupt district attorney who might be inclined to use discretion to shield you. It requires a jury, not a potentially biased judge. It just requires an accusation. Check out Government Code section 3060 et seq.

But ..., but ..., county counsel said it was ok. Do you think a jury is going to accept that? Has county counsel put it writing? Does county counsel cite any statutes or court opinions? Is county counsel going to defend you in a criminal trial?

Don't lose any sleep over this. You have until Wednesday, the 14th, to put the registrar and board of supervisors on notice that will you will not pay the bills that include direct expenditures for ballots on which the government has taken sides. Actually, as a county treasurer, the E-83 deadline is not that significant. See below.

What If the Registrars Rejected All the Ballot Labels?

First, every resolution grants authority to a single person who can, believe it or not, change anything he or she wants with regard to the materials filed by the August 9th deadline. The law provides that any of those materials can be changed, on the request of that person up until end of business on August 14th. As we already pointed out, there is no statute preventing the a registrar from rejecting materials at any time, up to and including election day.

Second, the changes required do not require a brilliant copywriter. (See the Shasta County story below.) Anyone with a high school education can look up "nature" in a dictionary (if they know what a dictionary is) and come up with something that describes the essence of the measure. It can be done, literally, in a few minutes. The designated person can courier it himself or hire a courier to get it over to the registrar's office lickety-split.

What is the nature of a measure that amends a charter? What is the nature of a measure that enacts an ordinance? What is the nature of a measure that authorizes the issuance of

bonds? What is the nature of a measure that imposes a tax on transactions and use? You get the idea? Asking the question generally provides the answer. That's the limit of what the law allows.

Third, almost all agencies who have submitted a measure will simply let the measure die upon the rejection of the ballot label. They'll howl and whimper and all that jazz, but ultimately, they will not submit a ballot label that complies with the law. Without the ballot label that the marketing team designed and poll-tested, they know they'll have a slim chance of any measure, but especially the 55% and two-thirds vote measures, passing. Doing so will serve the agencies self-interest -- money. It will save themselves from pouring a ton of their money - tens of thousands, hundreds of thousands, maybe a million or more -- down the drain. It will also save them the embarrassment of facing angry donors who contributed tens of thousands to millions of dollars to a ballot campaign committee or made independent expenditures and then watched the measure go down to defeat because it had a lawful ballot label.

The thing about number three, the most likely result, is that it will be a tacit admission that they are using public moneys to take sides in an election.

Fourth, you have to remember that there are other players in this scheme who will be mightily upset. For bond measures, most upset will be the bond counsel, the financial advisors, and the underwriters. They worked hard to get a pre-election contract from which they profit to the tune of hundreds of thousands of dollars. The bond counsel will bluster and threaten lawsuits. It will all be a lot of hot air. The law has been clear and unchanged for over 110 years. They can cite no statute or appellate opinion in support of their rants. They might tie up county counsel in court for a while, but in reality, any suit will be moot by September when the ballots are printed. No judge is going to have ballots and other materials reprinted. In this case, the ace-in-the-hole printing deadline works against them.

The Curious Case of Shasta County

We were shocked when we learned of this in late 2023. At first we thought, that the long-serving elected Shasta County registrar had had a breakdown.

Going against the grain and going against every local measure ballot reported in the California Election Data Archive as far back as 1995, the Shasta registrar, or so we thought, took a completely different approach to ballot labels.

More recently we learned that the long-serving county counsel had, previously, retired, so there was a new "sheriff" in town. This was relevant because all four measures were, more or less, written by county counsel -- two (November 2023) were local area formation commission measures and two (March 2024) were county charter measures.

Those four were the only local measures on the ballots in Shasta County for those two elections. There was no way to compare those ballot labels with ballot labels submitted to the registrar by other local governing bodies, since there were none.

Here is how they were printed on the ballot. This is the LAFCO example, but the others are presented in exactly the same manner.

Shall Measure A (Formation of Shasta Fire Protection District) be adopted?

This measure establishes a new fire protection district identified as the Shasta Fire Protection District. The new district will provide fire protection services and related services within the district's boundaries.

As you can see, the question is by the book and conforms to the law. It's the language after the question that makes the ballot label fail to conform. There is no statutory authority for a statement describing the measure. Section 13119 actually uses the phrase "statement of the measure" three times. The first use is appositive. It refers back to the quoted question immediately preceding it. It is not a separate statement or summary of the measure. That's the way it was written in 1912. (See below.) It appears today with slight change of language but without substantive amendment through the four iterations of the Elections Code since then. Each reorganization of the Elections Code was declared by the Legislature in section 2 to be "continuation" of and not a change to existing law.

The ballots used when voting upon said proposed ordinance shall have printed thereon the words "Shall the ordinance (stating the nature thereof) be adopted?" Opposite such proposition to be voted on, and to the right thereof, the words "Yes" and "No" shall be printed on separate lines, with voting squares. *Political Code section 4058 (1912)*

The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. *Elections Code section 2. (1939, 1961, 1976, 1994)*

Our point here is that, whoever wrote the language between the parentheses clearly read and understood "the nature thereof." They even took it more literally and included the parenthesis.

If as we suspect the new county counsel wrote these four ballot labels, he was likely intending to actually follow the law by reading what it says and then applying that to the measure at hand.

But Wait, There's More - Securities and Internal Revenue Fraud

We're just going to touch on this here.

Your position as treasurer also involves you in things subsequent to an election, specifically bond issuance.

Municipal bonds involve two federal agencies -- the Securities and Exchange Commission and the Internal Revenue Service.

Every "official statement" (the offering statement) issued for school bonds under Proposition 39 (2000), and also likely every one issued for local bonds under Proposition 46 (1996) contain what we contend are fraudulent statements.

The gist of the fraud is that the bond counsel, when describing uses of the proceeds of the sale of bonds quotes the language in the California Constitution in Article XIII C, Sec. 1(b) and Sec. 1(c). The fraud is that the actual measures permit every manner of use under the sun. By quoting the law, rather than disclosing the language of the measure itself, both investors and the IRS are deceived into believing the proceeds will be used only for the purposes allowed under the constitution. These are material statements. The omission of the reality is fraud.

Take the Jefferson Union High School (San Mateo County) bond in 2018. It was expressly for workforce housing. Under no reading of Sec. 1(c), which restricts usage to school facilities, is workforce housing a school facility. It may have been allowable under Sec. 1(b), but that would require have required a two-thirds vote.

Take the Pleasanton Unified (Alameda County) bond of 2018. It expressly provided, as does every 55% bond measure, that the proceeds can be used to extinguish existing debt. This is plainly illegal. Pleasanton Unified had COPS of about \$8 million that were costing its general fund about a million a year. With the first issuance of bonds under that measure, the criminals involved in this had the trustee pay off the COPS directly from the proceeds. The \$8 million was never delivered to the county treasury.

Take the Mountain Valley Unified (Trinity County) bond in 2017. An election contest was filed in December 2017. On February 14, 2018, the district superintendent announced to the board that the bonds had been sold that day. CDIAC (you should know what that is) had the official statement in its computer system, but it had not been made public. Alarms were raised to many public officials and all the private parties involved in the offering. The "official statement" did not disclose the pending litigation. By some unknown mechanism, that sale was never reported publicly by CDIAC. The state treasurers office was complicit in suppressing the fraud.

Despite the express list of proceeds uses and the express exclusion of all other uses,

including salaries, every school bond measure (55% and two-thirds) includes express language that proceeds will be used to "reimburse" the district for salaries. It can amount to almost 10% of the total proceeds. This is fraud, plain and simple. The so-called "citizens' oversight committees" are a joke and part of the fraud. The "independent" auditors love the annual money and even if they disclose the use of bond proceeds, they make no negative findings, but do draw specious legal conclusions. This gives the district and the oversight committee cover for claiming all proceeds were used in accordance with law.

There's much more. Think lease-lease-back and new terms for the same fraud. This is your notice. An independent public official needs to scrutinize every warrant requesting expenditure of voter-approved bond proceeds by every local agency.

Conclusion

This is your first direct notice. You are now warned that expending public moneys for any ballot that includes local measures is using public moneys in furtherance of the government taking sides in an election. There is no statute authorizing that so it is expending public moneys for a purpose "not authorized by law."

Violating the law has consequences. Use of public moneys for purposes "not authorized by law" has consequences.

In *Stanson*, the Supreme Court redefined the elements for a prosecution for misuse of public moneys in connection with elections. One of those elements is notice. This is your notice under *Stanson*.

Remember, however, that the county is using the United States Postal Service and in some instances the Internet to perpetrate the fraud on the voters. So, you should not be shocked that you may also be liable for federal crimes like honest services fraud (18 U.S.C. 1341) and wire fraud (18 U.S.C. 1343). There are only two elements necessary to prove honest services fraud.

The county's long-standing pattern of offenses against the elective franchise in connection with printing and circulating government campaign arguments on ballots using public moneys are all public record. The statute of limitations has not yet run on many of the prior offenses.

We demand that you act in accordance with and as required by the law. We demand that you honor the oath that you took when you accepted your office, and your conscience, should you find that you have one.

It takes only a determination to not expend public moneys to take sides in an election. Let

the other county officials know that you will not pay the bills. It takes the burden of proof off of your shoulders and puts it on your principals. It really is that easy. You could even send them a copy of this letter.

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