

September 21, 2018

VIA ELECTRONIC MAIL: melissa.polk@sos.state.co.us  
AND U.S. MAIL

Ms. Melissa Polk, Manager  
Internal Operations and Legal  
Colorado Secretary of State  
Campaign Finance  
1700 Broadway, Suite 200  
Denver, CO 80290

Re: Request for an Advisory Opinion concerning Application of the Fair  
Campaign Practices Act

Dear Ms. Polk:

The Colorado Association of School Boards (CASB) has provided guidance and resources to its member school boards, including the Limon School Board, regarding the Fair Campaign Practices Act (FCPA) and Amendment 73. This guidance takes the position that Amendment 73 is an "issue of official concern," based upon the FCPA's definition in C.R.S. 1-45-117(1)(b)(I). CASB has developed a sample board resolution that supports Amendment 73, declares Amendment 73 to be a matter of official concern, and authorizes the expenditure of district funds to distribute a factual summary about Amendment 73. CASB has also provided guidance that school districts may distribute factual summaries about Amendment 73, so long as they comply with C.R.S. 1-45-117(1)(b)(I). Finally, CASB has developed district-specific factual summaries about Amendment 73 for its member school districts, including Limon School District.

Relying upon CASB's guidance and sample board resolution, the Limon School Board passed a resolution in support of Amendment 73 on September 17, 2018. This resolution included the following language:

**"WHEREAS, the Board declares that Amendment 73 is a matter of official concern;**

**NOW THEREFORE, BE IT RESOLVED that the Limon Board of Education officially declares its support for Amendment 73 for the purpose of increasing funding of public education in the State of Colorado; and**

**The Board authorizes the expenditure of District funds to distribute a factual summary regarding Amendment 73, in accordance with the Fair Campaign Practices Act, C.R.S. 1-45-117."**

Some attorneys are questioning whether a school district may declare a statewide ballot issue to be a "matter of official concern," based upon federal caselaw interpreting the FCPA's predecessor, the Campaign Reform Act. *See, Mountain States Legal Foundation v. Denver School District #1*, 459 F.Supp. 357 (D. Colo. 1978); *Campbell v. Orr*, 704 F.2d 501 (10<sup>th</sup> Cir. 1983).

As a result, the Limon Public Schools is requesting an advisory opinion from the Secretary of State's office regarding whether Limon Public Schools is permitted to distribute a factual summary concerning Amendment 73 in accordance with C.R.S. 1-45-117(1)(b)(I).

Given that the election is fast approaching, Limon Public Schools respectfully requests that the Secretary of State's office issue an advisory opinion in response to this question in an expedited manner.

Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "John McCleary" followed by a stylized flourish or initials.

John McCleary  
Superintendent, Limon Public Schools

cc: Kathy Shannon, CASB