When Tax Money Is Used Against Taxpayers

Invited Testimony before the Kansas State Senate Local Government Committee
March 10, 2015
by the Hon. Chuck DeVore
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Chairman Pyle, members, thank you for this opportunity to testify before your committee. In addition to my written testimony, I have attached a bill I authored in 2008 to address a specific strain of government lobbying along with the analysis by the majority. Lastly, my short bio is included as well.

The issue of taxpayer-paid lobbyists is problematic.

When I served as an assemblyman in the California legislature, representing almost a half-million people from 2004 to 2010, I quickly noticed that a very large number of the lobbyists working the halls of Sacramento worked for various layers of government.

Lobbyists, powerful members of the so-called "third house," write bills, assemble coalitions, and pass or stop legislation. When they work for trade groups, unions, businesses, or other special interests, they are participating in a very specialized form of free speech—of "petition(ing) the Government for a redress of grievances" as the First Amendment says.

But, what if they're working for government itself and being paid with taxpayer dollars? How can one part of a representative government petition itself for a "redress of grievances" to another part of government?

During my time in office I represented a portion of a county, nine incorporated cities, and numerous school and special districts. If any elected member or staff member from one of these local elected bodies called me or wanted to meet to discuss a matter of public policy, I immediately accommodated them—they were important constituencies within the district I represented.

But, many of these public jurisdictions within my district and across the state also employed professional lobbyists. In fiscal year 2007, California counties and cities spent $40 million of taxpayer money on lobbyists to influence the state legislature. These expenditures included working for measures that appeared contrary to the interests of their own constituents, such as the City of Los Angeles lobbying against eminent domain restrictions in the wake of the Supreme Court's Kelo v. City of New London decision, or cities working to increase state taxes.

Of course, state taxes and the protection of property rights is properly the domain of the legislature, not local government. If a state representative's views on these matters are out of step with the district they represent, then they risk losing at reelection time.

Another form of professional lobbying by taxpayer-funded entities occurs via public agency associations. For instance, many states have an association of cities. In California, it's called the

AB 1992 by Assemblyman Chuck DeVore, introduced February 14, 2008 to prohibit lobbying by local government organizations.

http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1951-2000/ab_1992_bill_20080214_introduced.html

BILL NUMBER: AB 1992 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member DeVore

FEBRUARY 14, 2008

An act to amend Section 8314 of the Government Code, and to amend Section 424 of the Penal Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1992, as introduced, DeVore. Public resources: unauthorized use.

(1) Existing law makes it unlawful for any elected state or local officer, appointee, employee, or consultant to use, or permit others to use, state resources for a campaign activity, or personal or other purposes that are not authorized by law. Existing law also provides that the incidental and minimal use of state resources is not unlawful.

This bill would expand these provisions to prohibit any elected official, officer, director, appointee, employee, agent, or consultant of any state or local agency, or any organization or association that represents local agencies that is funded, in whole or in part, by dues or other voluntary payments made by local agencies from using, or permitting others to use, state resources for a campaign activity, or personal or other purposes that are not authorized by law.

(2) Existing law provides that each officer of the state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys who takes certain actions concerning those moneys is guilty of a felony.

This bill would expand these provisions to include a willful misuse of public resources for a campaign activity by an elected official, officer, director, appointee, employee, agent, or consultant of any state or local agency, or any organization or association that represents local agencies that is funded, in whole or in part, by dues or other voluntary payments made by local agencies, to use, or permit others to use, public resources for a campaign activity, or personal or other purposes that are not authorized. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

(c) (1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

(2) If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city.

(3) No civil action alleging a violation of this section may be commenced more than four years after the date the alleged violation occurred.

(d) Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(e) The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal Code.

SEC. 2. Section 424 of the Penal Code is amended to read:

424. (a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who ~~either~~ *does any of the following, is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state* :

~~1.~~

(1) Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another ~~; or,~~ .

~~2.~~

(2) Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law ~~; or,~~ .

~~3.~~

(3) Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to the same ~~; or,~~ .

~~4.~~

(4) Fraudulently alters, falsifies, conceals, destroys, or obliterates any account ~~; or~~ .

~~5.~~

Majority analysis of AB 1992 by Assemblyman Chuck DeVore, introduced February 14, 2008 to prohibit lobbying by local government organizations.

http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1951-2000/ab_1992_cfa_20080324_123638_asm_comm.html

BILL ANALYSIS

AB 1992

Date of Hearing: March 25, 2008

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Curren Price, Chair
AB 1992 (DeVore) - As Introduced: February 14, 2008

SUBJECT : Public resources: unauthorized use.

SUMMARY : Prohibits an organization or association that represents local agencies and that is funded in part by payments made by local agencies from using the organization's or association's resources, whether derived from public funds or not, for a campaign activity, or a personal or other purpose not authorized by law. Specifically, this bill :

1) Prohibits any organization or association that represents local agencies that is funded, in whole or in part, by dues or other voluntary payments made by local agencies, from using, or permitting others to use, public resources for a campaign activity, or personal or other purposes that are not authorized by law.

2) Expands the definition of "public resources," for the purposes of the prohibition against the use of public resources for a campaign activity, or personal or other purposes not authorized by law, to include the property and assets of any organization or association that represents local agencies that is funded, in whole or in part, by dues or other voluntary payments made by local agencies, including revenue derived by any organization or association from investments, or events or enterprises financed, in whole or in part, by dues or other voluntary payments made by any local agency. Provides that this provision shall not prohibit an organization or association from sponsoring a campaign committee funded by non-public resources.

3) Defines "local agency," for the purposes of this bill, as a city, county, city and county, district, redevelopment agency, school district, community college district, joint powers authority, or any other political subdivision or public corporation of California, or an entity created thereby.

4) Provides that any officer of the state, or of any county, city, town, or district of the state, and any other person charged with the safekeeping, transfer, or disbursement of public moneys, who willfully uses or permits others to use

organization, whether from public or private sources, would be considered "public resources" under the provisions of this bill.

The definition of "public resources" proposed by this bill seems to conflict with the generally understood meaning of the term. Under the provisions of this bill, if a private individual used millions of dollars of his or her own personal funds to start an organization to represent the interests of local agencies, all of the property, assets, and revenues of that organization would become "public resources" subject to numerous legal restrictions if the organization received even a de minimis voluntary payment from a local government agency. Even if dues or voluntary payments by local governments accounted for only 0.1 percent of the organization's total revenue, 100 percent of that organization's revenue and assets would be considered "public resources" that cannot be used for campaign purposes or for any other purpose that is not authorized by state law. The organization would, in effect, lose the ability to communicate with voters on issues of importance to the organization in the context of a campaign even though the organization did not intend to use any funds that were originally derived from public funds for such communications.

In fact, this bill could be construed to violate the Fifth Amendment of the United States Constitution, which prohibits the taking of "private property . . . without just compensation." The United States Supreme Court has held that "while [private] property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking" that is subject to the requirement that just compensation be paid. Pennsylvania Coal Co. v. Mahon (1922), 260 U.S. 393. Under the provisions of this bill, an organization that represents local agencies will have all of its existing resources, including resources derived entirely from private funds, deemed to be "public resources" which can only be used for a purpose that is "authorized by law" if the organization receives or has received any dues or other voluntary payments from a local agency. Because this bill would restrict such an organization's use of its own private resources (property) to purposes that are authorized by law, it is possible that a court could find that this bill constitutes a regulatory taking of the organization's private property, for which just compensation must be paid.

3) Why Restrict This Bill Only To Organizations that Represent Local Agencies ? The provisions of this bill apply not to any organization or association that is funded by local agencies, but only to organizations or associations that represent local agencies and that are funded by local agencies. The reason for this policy distinction is unclear. If the author's concern is that taxpayer funds are being used for political purposes by non-governmental organizations, it would seem to make more sense to have this bill apply to all organizations and associations that are funded, in whole or in part, by local agencies. For instance, local chambers of commerce

been financing political activities through anonymous campaign accounts. These "non-public funded" accounts do not need to disclose the source of their financing or contributions. AB 1992 represents this first step towards accountability, as it would prohibit local government associations from using or investing public funds to finance political campaigning, and would impose a penalty of fines and/or imprisonment for a violation of this provision. Currently, local agency associations are not included in the list of agencies and officials who are prohibited from using public funds for political advocacy.

Since 2006, when Proposition 90 (eminent domain reform) was placed on the ballot, it has become clear that these taxpayer financed organizations clearly are not working in the best interests of taxpayers. These groups have used these anonymous accounts to contribute more than $8.5 million to ballot measure campaigns over the past two years, according to data gathered from the Secretary of State's office. Where do these taxpayer financed organizations get such funds? Some, like the League of California Cities, claim they receive financial support from vendor advertising through their magazine Western Cities. This assertion comes despite the fact that one cannot find a copy of this magazine on any news-stand in the state. We find it unlikely that a magazine sent out to local government officials collects anywhere near the revenue it would take to run a successful initiative campaign.

Lastly, it must be reiterated that we in no way want to keep these organizations from lobbying on behalf of their clients. Our intent is to highlight First Amendment provisions which protect taxpayers from "compelled speech," where tax dollars are used to promote only one side of a policy debate. No matter which side taxpayer financed organizations take on ballot campaigns, they should not be using money extracted from some taxpayers in order to advance a position on which those taxpayers may disagree.

7) Arguments in Opposition : In a joint-letter in opposition to this bill, the League of California Cities, the California State Association of Counties, and the California Redevelopment Association write:

We view the provisions of this measure as a direct assault on the free speech rights of our private corporations and the local officials they represent. Furthermore, a close reading of this constitutionally flawed measure reveals that its sweeping provisions will likely affect the political speech and association rights of a wide range of individuals and groups that interact with governmental agencies in California.

Our organizations are fully cognizant of all laws relating to campaign activity and closely adhere to all requirements governing the prohibition on the use of public funds for

The Hon. Chuck DeVore Biography

Since 2011, Chuck DeVore has been with the Texas Public Policy Foundation, and it its vice president for Policy.

From 2004 to 2010, Chuck DeVore represented almost 500,000 people in the California State Assembly in coastal Orange County. He was the Vice Chairman of the Assembly Committee on Revenue and Taxation and served on the Budget Committee as well.

In 2010, Chuck competed for the Republican nomination for U.S. Senate in California, earning more than 450,000 votes and raising more than $2.6 million.

Chuck worked in the aerospace industry for 13 years as an executive where he analyzed technology and corporate capabilities and worked in business development. At the time of his election to the Assembly in 2004, he was a corporate vice president.

Chuck served as a Reagan White House appointee in the Pentagon from 1986 to 1988. As Special Assistant for Foreign Affairs his duties included working with Congress to advance the President's foreign and military policy. He later served on staff of a U.S. Congressman. From 1991 to 1996, he served as a City Commissioner for the City of Irvine.

Chuck served in the Army National Guard from 1983 to 2007 as an intelligence officer and is a lieutenant colonel in the U.S. Army (retired) Reserve.

Chuck has been married since 1988 to Diane. They have two daughters.