

## The DiQuisto Case—A Lesson in Campaign Finance

By: Mary M. Howell, Esq. & Ryan G. Rupe, Esq.

In 2004, three labor unions sponsored a ballot initiative to mandate binding arbitration as a means of resolving labor disputes with their employer, Santa Clara County. The County opposed the initiative, both by negotiating with the unions to withdraw the measure, and by conducting an email campaign asking voters to educate themselves about initiative measures and attaching a copy of a newspaper editorial urging certain votes on the measures.

Plaintiffs, residents of the County of Santa Clara who supported the initiative, sued the County asserting the County improperly spent public funds for partisan electoral purposes. The basis for the suit was the so-called *Stanson* rule, which holds that at least in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign. The prohibition does not apply to informational or educational expenditures.

The court held that the emails did not violate the prohibition against spending public monies to support a partisan campaign. The tone and content of the email was neutral and the email was one in a series of regular communications distributed as an e-mail blast to recipients in the database. However, the email attachment was found to be improper because it “expressly advocated” for a position. A communication “expressly advocates” when it contains words such as “vote for, elect, support, cast your ballot, vote against, defeat, reject, or sign petitions for”, in essence, words that unambiguously urge a particular result in an election.

The *DiQuisto* case [*DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236] is instructive in terms of what a Board of Directors may do in connection with a proposed CC&R or bylaw amendment sent to the members. It appears the Board of Directors may not expressly advocate the adoption or defeat of the measure, but it may give a balanced description of the effects of the amendment on association governance. It can urge its members to educate themselves. It can send out an email blast urging members to “get out the vote.” What it seemingly cannot do is conduct a mailing campaign, using Association funds, to urge owners to vote in favor of a board-sponsored amendment (or against an amendment proposed by an owner.)

### San Diego

9980 Carroll Canyon Rd., Suite 200  
San Diego, California 92131  
858.527.0111 • fax 858.527.1531

### Inland Empire

41870 Kalmia St., Suite 160  
Murrieta, California 92562  
951.461.1181 • fax 951.461.2916

### Coachella Valley

44-875 Deep Canyon Rd., Suite 3  
Palm Desert, California 92260  
760.836.1036 • fax 760.836.1040

If the directors feel strongly about campaigning for or against a proposed amendment (or candidate) the directors are free to send out their own comments, at their own cost and expense.