



DANNIS WOLIVER KELLEY

COUNTDOWN TO THE BOND Are You Planning a 2016 Bond Election?

**Now is the Time to Get Your Bond
Election Planning Team on Board**

Countdown to the Bond is a multi-part series of advisories designed to help school and community college districts navigate their way to a successful November 2016 bond election and capital program, beginning about a year ahead. In Part 1, we focus on identifying and bringing together the team of experts a district will need to help assess the feasibility of a November 2016 bond election. Initial questions usually include the following:

- Is a bond measure feasible?
- Will our voters support one?
- What are our facilities needs?
- How are debt structure, bond authorization and tax amounts determined?
- How do we best communicate our needs to the public?

WHO SHOULD YOUR TEAM INCLUDE?

Community expectations for district accountability have grown as the number of bond measures has increased in California. Voters want to know that their agencies have done their homework, and have a thoughtful construction plan, before they will support a bond measure. An expert planning team retained early in the process helps districts lay the foundation for a successful bond measure.

The consultants districts need initially include: Election Consultant, Architect/Master Planning Consultant, Bond Counsel, and Financial Consultant.

ELECTION CONSULTANT

An election consultant helps the district determine the feasibility of a bond measure, the likelihood that it will pass, and the parameters for a measure that voters may support. An election consultant typically provides information regarding demographics and voting behavior of registered voters in the district. An election consultant can also perform initial voter surveys, develop an election plan using the results of the survey and develop a plan to cultivate community involvement and interest in the election campaign. The election consultant can craft strategic communications from the district including ballot measure arguments. An election consultant may be retained on a fixed fee or hourly basis. A district may not pay an election consultant to advise a campaign committee, and election consultants should be retained on a basis that clearly distinguishes planning services from campaign-related services. The line between permissible communication and impermissible advocacy is frequently not clear, so caution is warranted in structuring these contracts.

ARCHITECT/MASTER PLANNING CONSULTANT

An architect or master planning consultant may be retained during the initial phase of planning for a bond election to help develop a master facilities plan and/or to help the district distill a bond project list from an existing facilities master plan. This consultant may analyze current facilities, perform enrollment projections, develop preliminary project budgets and help draft the initial bond project list that will be part of the bond measure. The architect or master planning consultant may be retained on a fixed fee or hourly basis.

BOND COUNSEL (LAW FIRM)

Bond counsel assists the district both before and after a bond election. Before the election, bond counsel assists with identifying and complying with the legal requirements to call an election and place a bond measure on the ballot. During the bond campaign, bond counsel advises the district regarding the legality of its communications and activities. If a bond measure passes, bond counsel drafts the legal documents needed for the issuance of the bonds. Bond counsel provides the required legal opinion confirming that the bonds are valid and binding district obligations and that interest on the bonds earned by bondholders is exempt from federal and state income taxes. Bond Counsel can provide support for the formation of a citizens' bond oversight committee and answer questions that arise after the bonds are issued. DWK's Bond Counsel practice offers the distinct advantage of a seamless transition from the financing of a capital program to legal support on the construction program. Bond Counsel typically works on a contingent fee basis, with the fee payable from bond proceeds.



FINANCIAL CONSULTANT

The district retains a financial consultant to help formulate a debt financing plan that accomplishes the district's financing goals. The goal is timely construction of the facilities on the bond project list, within statutory parameters and a program budget derived from limits on property taxation and voter tolerances. A financial consultant reviews the financial feasibility of the proposed capital projects, assesses the available sources of revenue, recommends a bond authorization amount, and prepares a tax rate statement and debt service schedule that meet statutory requirements. After a successful election, the financial consultant prepares the bond issue for sale into the municipal bond market.

Both investment banking institutions (also called "bond underwriters") as well as independent financial advisory firms are qualified to assist districts with pre-election planning. However, if bonds will be sold by negotiated sale to the bond underwriting firm, then after the election a district should also retain an independent financial advisor to assist in the bond issuance process. Financial advisors are usually compensated on a fixed fee basis for work in connection with the issuance of bonds, and the fee is paid from the bond proceeds. Underwriters are also compensated from the bond pricing. Fees for a financial advisor are often contingent on the passage of the bond measure.

SELECTING TEAM MEMBERS

The bond election planning team provides professional services for which a competitive selection process is not legally required. However, the district may choose to select bond planning team members via a Request for Proposals (RFP) or Request for Qualifications (RFQ) process.

RFPs or RFQs provide comparative information on qualifications, experience and price, and the process can validate the selection to your community. While education agencies are accustomed to seeking consultants via a proposal process, the technical nature of the work can cause confusion about what types of firms are needed for what tasks and what kinds of qualifications they should demonstrate. The California Debt and Investment Advisory Commission (CDIAC) publishes unbiased guidance on preparing requests for proposals for bond professionals. You can find CDIAC at <http://www.treasurer.ca.gov/cdiac/>. Your local County Treasurer may also have some helpful advice.



DWK is a full-service education and Bond Counsel law firm with experts in all areas of education facilities finance, planning and construction. If you need advice regarding a bond election or debt financing, feel free to contact any of our experts.



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Look for Part 2 of Countdown to the Bond, coming in February, 2016:
"Preparing Your Ballot Measure"

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