

THE DOs AND DON'Ts **OF POLITICAL ADVERTISING** **FOR A BOND ELECTION**

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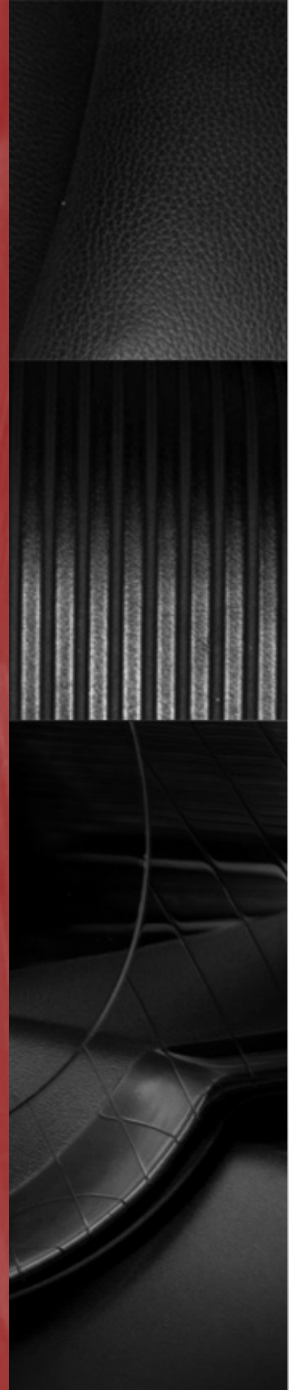
Presentation Based on These Authorities:

- Texas Election Code
- Texas Education Code
- Texas Ethics Commission Opinions
- Texas Ethics Commission Publication

“A Short Guide to the Prohibition Against Using School District Resources for Political Advertising in Connection with an Election”

- Authoritative Dictionaries

No matter how enthusiastic you are about an election, it is important to remember that the Texas Election Code prohibits the use of government resources to produce or distribute political advertising in connection with an election.





Section 255.003 of the Election Code provides as follows:

- An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure; but, even then, if the person knows that some part of the communication is false and it is important enough to reasonably influence a voter to vote for or against a bond election, it would be unlawful.
- A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor, which could mean up to a year in jail and up to a \$4000 fine.



Political Advertising for a Bond

Elect. Code § 251.001 (16), (17), and (19)

- “Political advertising” means a communication supporting or opposing . . . a measure that:
 - (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
 - (B) appears:
 - (i) In a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) On an Internet website.
- “Campaign communication” means a written or oral communication relating to . . . a campaign on a measure.”
- “Measure” means a question or proposal submitted in an election for an expression of the voters’ will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will.



Electioneering Also Prohibited

- “Notwithstanding any other law, the board of trustees of an ISD may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.” *See Educ. Code § 11.169*
- What is “Electioneering?” In simple terms it means:

“The things that are done and said . . . to help to win an election.”

See Merriam Webster, [LearnersDictionary.com](https://www.learnersdictionary.com) (2020)



WHAT IS ADVOCACY?

- Statements or information reasonably likely to influence a voter to vote a certain way.



When do Facts Advocate?

- Violations of the law often occur because someone finds it irresistible to wrap up a factual explanation with a motivational slogan such as:

GOOD SCHOOLS ARE THE FOUNDATION OF A GOOD COMMUNITY.

or

EVERY CHILD DESERVES A GOOD EDUCATION.

When these types of slogans are used in a flyer giving information on a Bond election, they become advocacy for the measure, which is prohibited.

A common misstep is to include “calls to action” such as:

PUT CHILDREN FIRST.

Or

SHOW THAT YOU CARE ABOUT EDUCATION.

Another mistake is to provide information on who is in support of the measure:

The Mayor of San Antonio has voiced his support

Or

The measure is supported by the San Antonio Chamber of Commerce, Local Police Officers Associations, etc.

No matter how factual you believe a statement is, if it is reasonably likely that the statement would influence a voter to vote a certain way, **it is advocacy**. The Texas Ethics Commission has emphasized *that any amount of advocacy* is impermissible.



No Advocacy Using District Resources

No matter how much factual information about the purposes of an election is in a communication, *any amount* of advocacy that is financed, directly or indirectly by the District is impermissible.

The prohibition applies to any “**officer or employee of a political subdivision.**” In other words, if a school district employee makes a decision to use or authorize district resources in violation of the prohibition, the employee could be fined by the Ethics Commission or held criminally liable. School board members, as “officers” of a school district, are also subject to the prohibition.

- This is not to say that a District trustee, or the Superintendent, or any other District employee may not advocate **on his or her own time**, but the person may not use or authorize the use of District funds or District resources to do it.
 - **When is a Superintendent on his/her own time?** *(Best practice: speak only on factual purposes for the election or limit expression of personal viewpoints to times and places clearly not associated with the superintendent's job.)*
- What about at Board meetings for advocating for or against a proposed bond referendum?
 - ✓ The Ethics Commission has ruled that political advertising at restricted areas by public officials is prohibited by the Election Code. Thus, we would conclude that it is not permissible by Board members in the Board room during a Board meeting. However, the Election Code does not prohibit a public officer from using government resources that are equally accessible to the public for political advertising. Thus, we might conclude that it is okay outside at a location not under control of the officer or Board. The Ethics Commission holds that, at such times, officers should relocate to publicly accessible areas when creating photographs, videos, or other communications for political advertising. *See Advisory Opinion No. 550 (2019).*
 - ✓ District Employees, addressing the Board during “Citizens’ Presentations” must be off duty.



No Spending of Public Funds

- A political subdivision board member or employee may not spend or authorize the spending of public funds for political advertising.
- Not only does this mean that the political subdivision may not purchase or authorize the purchase of new materials or retain consultants for use in promoting a measure or creating political advertising, it also means that using existing paper and machinery to generate, display, or distribute political advertising is prohibited.



Indirect Use of Funds

- It is not permissible to authorize the use of the paid time of school district employees to create or distribute political advertising. For example, school district staff may not copy, staple, or distribute political advertising on work time; may not place the advertisements in the teachers' lounge; and may not distribute it electronically through email or on an Internet website. Nor is it permissible to have school children work on political advertising during school time.

- It is likewise unlawful to use or authorize use of the District's internal mail system to distribute political advertisements unless it was delivered by the U.S. Postal System. *See Elec. Code § 255.0031*
- The Ethics Commission has ruled that officers and employees of a political subdivision may not use letterhead stationary that is created by the entity's staff or resources and that contain the entity's logo and the entity's slogan that were designed with the entity's funds, to write and distribute political advertising. *See Ethics Advisory Op. No. 532.*



What Can a Public School District Do?

- The prohibition does not apply to “**a communication that factually describes the purposes**” of a measure election.
- In other words, it is permissible to use political subdivision resources to produce explanatory material about what the measure proposes to do, such as build new schools, renovate schools, build a sports complex, etc.. However, the communication may not contain information that an officer or employee of a political subdivision knows is false and reasonably likely to influence a voter to vote in favor of (or against) a bond.




Factual Statements vs. Advocacy

- **ADVOCACY STATEMENT:**

“The bond will allow the District to renovate schools to provide for the safety of students and vastly increase the students’ knowledge and opportunities to succeed. The bond is essential to providing a comprehensive education for our children.”

- **FACTUAL STATEMENT:**


“The bond will provide funding for the renovation of schools to bring them into compliance with all current laws and codes. The bond will also be used to provide the infrastructure to increase access to new digital technology.”



Can the following sign or billboard be placed in front of a school?


“Future site of elementary school proposed to be paid with bond proceeds”

Yes. As long as the information on the sign is factual in nature and does not promote the passage or defeat of the bond issue.




Can a school board adopt a resolution refuting “false” information being disseminated by opposing groups regarding the bond election?

Yes. As long as the resolution is factual and not promoting (or opposing) the bonds, the resolution may be adopted at a board meeting.




Can a flyer printed without public funds be circulated in the “internal” mailing system of the district to promote the bonds?

No. Texas Ethics Commission Advisory Opinion # 45 held that any method of distribution involving the use of school personnel or equipment violated the Election Code provisions prohibiting political advertising.



If asked at work, can a teacher *privately* tell a parent or another teacher that they support (or oppose) the bond election?


No. If a teacher or other employee is **on District time** that person should not speak in favor or against the bond election. Factual information that does not advocate the passage or defeat of the bonds would be permissible.



Can school employees join a political action committee to raise money and advocate for the passage (or defeat) of the bonds?


Yes, but not if “working”. District employees have a constitutional right of free speech and can join PACs, *but only on their own time and not on the “District watch”*.

School Board members are not paid and are therefore not school employees and are not prohibited from expressing their views. Superintendents are a different story.




Can a school circular containing information regarding a bond election state that “the best solution to the school district’s needs” would be the passage of the bond?

- **No.** The use of “best solution” advocates the passage of the bond election and is a violation of section 255.003 of the Election Code.



Can an informational booklet or other publication about a bond election that is paid for by the District include a quote from the school board president saying, “This bond is the right thing to do for the children of this community”?

- **No.** This statement, paid by the District in a booklet, would be seen as advocating passage of the bond measure and would be prohibited. Keep in mind that a sworn complaint can be filed with the Ethics Commission. The Commission is authorized to undertake civil enforcement actions, issue orders, **impose civil penalties**, and refer matters for criminal prosecution.



Can a publication (e.g., a brochure or newsletter) that is factual be created and distributed by the governmental entity?

■ YES

- The critical question in determining whether a communication constitutes “political advertising” is whether the communication supports or opposes a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure. *Ethics Advisory Opinion No. 476 (2007)*.
- Example: Here is a case involving a newsletter by a city that was considering an election to reauthorize a Crime Control & Prevention District (“CCP District”). The communication at issue consisted of one page and included a brief history of the CCP District, a list of services that had been accomplished with funding generated by the CCP District, the sources that fund the CCP District, and a statement that continuation of the funding would allow the city to continue providing the same level of law enforcement service without raising other fees and taxes. It also contained a statement that community meetings to provide further information would take place. HELD: the newsletter did not constitute political advertising. *Ethics Advisory Op. No. 488*



What if the facts might influence the voter?

- **Yes – as long as the person authorizing the brochure is not aware that any information is false.**
- The remaining question in the previous example in determining compliance under section 255.003 is whether using public funds to distribute the communication was permissible under section 255.003(b-1).
- When information provided in a communication (e.g., in a brochure, newsletter, or other such publication) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against a measure, an officer or employee of the governmental entity authorizing it may not do so knowing that the brochure contains information that is false. In such an event, a violation of section 255.003 (b-1) would likely occur.

Groups file suit over VIA rail ads; Taxpayer funds' use is protested

by Adolfo Pesquera Express-News Staff Writer

04/05/00 Wednesday Metro / South Texas 01B News - Local Metro

- Two groups from opposite sides of the political spectrum had joined forces to seek a restraining order against VIA Metropolitan Transit's use of taxpayer funds related to light rail advertising for an election in year 2000.

In the petition for a restraining order that was filed, the Texas Justice Foundation and the League of United Latin American Citizens alleged that VIA was "using public funds to advocate passage of the ballot measure on the referendum."



San Antonio Express-News

Middleton calls ethics ruling political stunt

- *by Cecilia Balli* Express-News Staff Writer
- 07/14/99 Wednesday Metro / South Texas 03BNews – LocalMetro
- **Setting it straight - A headline in the newspaper incorrectly said that former North East Superintendent Richard Middleton had called a Texas Ethics Committee ruling against the District a political stunt. Middleton said the case brought before the Ethics Committee a partisan political issue but the ruling by the Commission went against the North East School District and a civil penalty was assessed.**



Examples of a Newsletter, Poster, & Website that do not violate the law.

- An ISD newsletter consists of four pages. The first page provides information about a proposed measure, the estimated costs for each project, and provides the address of the District's website for additional information. The second page contains various questions and answers regarding the measure, such as the rate of the proposed property tax increase, the current property tax rates of comparable ISDs, the operation and administration of property tax collection, and projected revenue from the property tax increase. The third and fourth pages included translations from English to Spanish and includes the dates, times, and locations for voting in the election, in both English and Spanish.



Newsletter does not violate law

- The newsletter includes information beyond a factual description of a measure. However, in our opinion, the newsletter provides information and discussion of a measure without promoting the outcome of the measure and does not constitute political advertising as the term is defined in section 251.001(16) of the Election Code. Therefore, the use of public funds for the newsletter would not violate section 255.003(a) of the Election Code.



Poster and Website Communication do not violate the law

- A poster's content is substantively identical to the first page of the newsletter, and also includes the dates, times, and locations for voting in the election. The proposed communication for the ISD's website is also substantively identical to the first page of the newsletter, but also provides specific directions for using the district's website to obtain additional information about the election. - In our opinion, the communications do not advocate passage or defeat of the measure and do not constitute political advertising. Therefore, the use of public funds for such communications would not violate section 255.003(a).

Questions?

