

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

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No matter how enthusiastic you are about an election, it is important to remember that the Texas Election Code prohibits the use of school district resources to produce or distribute political advertising in connection with an election. Section 255.003 of the Election Code provides as follows:

- (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- (b) 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.
- (c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

To understand the practical significance of this prohibition, it is useful to look at some of the specific words and phrases used in the law.

- **"Political advertising"** is a communication that advocates a particular outcome in an election. It can be a communication in almost any written or broadcast form, such as a billboard, a flier, a newsletter, a poster, a television or radio ad, or an Internet site.

**Newsletter of Public Officer of a Political Subdivision.** The Ethics Commission adopted a rule effective January 3, 2008, providing guidelines for when a newsletter of a public officer of a political subdivision is not political advertising. Texas Ethics Commission Rule 26.2 provides as follows:

For purposes of section 255.003 of the Election Code, a newsletter of a public officer of a political subdivision is not political advertising if:

- (1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
- (2) It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 ½" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 ½" x 11"; and
- (3) When viewed as a whole and in the proper context:

(A) is informational rather than self-promotional;

(B) does not advocate passage or defeat of a measure; and

(C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

- 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 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.
- A school district board member or employee would violate the prohibition by **"spending or authorizing the spending of public funds"** for political advertising. Not only does this mean that the school district may not purchase or authorize the purchase of new materials for use in creating political advertising, it also means that a school district board member or employee would violate the prohibition by using existing paper and machinery to generate, display, or distribute political advertising.

Also, 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. Nor is it permissible to have school children work on political advertising during school time.

- 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 district resources to produce explanatory material about what is at stake in a measure election. Violations of the law often occur, however, 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.**

Another common misstep is to include "calls to action," such as:

**PUT CHILDREN FIRST.**

or

**SHOW THAT YOU CARE ABOUT EDUCATION.**

**Remember:** No matter how much factual information about the purposes of a bond election is in a communication, *any amount* of advocacy is impermissible.

- A violation of the prohibition is a **Class A misdemeanor**. This means that a violation could

lead to criminal prosecution. Also, the Ethics Commission has authority to impose fines for violations of section 255.003.

Another provision of the Texas Election Code prohibits a school district board member or employee from using or authorizing the use of an internal mail system to distribute political advertising. An internal mail system is a system operated by a school district to deliver written documents to its board members or employees. A violation of this prohibition could also lead to the imposition of fines by the Ethics Commission or to criminal prosecution.

Although you may not use *school district resources* for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources. If you do plan to become involved in a campaign, you should educate yourself about filing requirements and about the rules regarding disclosures on political advertising.

Information is available from the Texas Ethics Commission by phone at (800) 325-8506 or (512) 463-5800.