

Texas Association of School Administrators

Questions & Answers Related to Political Advertising and Elections

Disclaimer: This document is for information purposes only and is intended to provide superintendents with insight as to the provisions relating to political advertising and elections. This document is not intended to be a comprehensive overview of the Election Code, Texas Ethics Commission rules, or a substitute for legal advice. There are criminal and civil penalties associated with political advertising. Specific questions and circumstances regarding a person's activities should be discussed with the school district's attorney.

What is "political advertising"?

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or 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." See Texas Election Code §251.001(16)

Can public funds be authorized or spent for "political advertising"?

No. School districts, regional education service centers, and an officer or employee of a school district or regional education service center are prohibited from spending or authorizing the spending of public funds for political advertising.

What does the word "spending" of public funds mean?

The Texas Ethics Commission has interpreted the word "spending" to include the use of a school district employee's work time, the use of school district equipment, the use of facilities maintained by a political subdivision, and the use of an internal mail system. See Ethics Advisory Opinions No. 443 and No. 45

Do the political advertising restrictions apply to regional education service centers?

Yes. Regional education service centers are state agencies and are prohibited from spending or authorizing the spending of public funds for political advertising.

Can an officer or employee of a school district authorize or use school district resources for political advertising?

No.

Is an e-mail considered a political advertisement?

According to Texas Ethics Commission rules, a communication made by e-mail is not political advertising. However, out of an abundance of caution, school district officers or employees should not use school district resources to receive or generate political e-mails. The Penal Code prohibits the misuse of government resources that are under the custody or possession of an officer or employee.

Can an officer or employee access a private e-mail account on a school district computer to create or disseminate political advertisements?

No. Accessing a private e-mail account would require the use of school district resources (i.e. computer, server) for prohibited purposes.

Can school district resources be used for “electioneering”?

No. Section 11.169 of the Texas Education Code prohibits a school board of trustees from using state or local funds and school district resources to electioneer for or against any candidate, measure, or political party.

What is “electioneering”?

The term is not defined in the Texas Education Code. It has not been interpreted by a court of law or state agency.

Can school board candidates use school district employees and resources for political advertising?

No.

Can non-school board candidates use school district property and employees to distribute campaign materials?

No. Using employees, equipment, or school district facilities for political advertising is prohibited.

Can an internal mail system be used to distribute political advertising?

No. Section 255.0031 of the Election Code prohibits the use of an internal mail system for political advertising. An “internal mail system” means a system operated by a school district to deliver written documents to officers or employees.

Do the prohibitions against political advertising apply to bond elections?

Yes. However, school district resources may be used to produce explanatory material that factually describes the purposes of a measure or election. No amount of advocacy is permissible in the materials that are produced.

Can a school district use its facilities for a function involving all candidates running for school board?

Maybe. Whether the facilities in a school district function as a “public forum” is a fact question that requires additional information to determine its legality.

Can the teachers’ lounge be used to distribute political advertisements?

No. School facilities, including those that are not accessible to the public, cannot be used for political advertising.

Is a newsletter produced for a member of a political subdivision considered political advertising?

A newsletter is not considered 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.

Can employees of a school district engage in political advertising during working hours?

No.

Can employees of a school district engage in political advertising after working hours?

Yes.

Can employees use personal resources for political advertising?

Yes.

Is there a criminal or civil penalty for violating the prohibitions against political advertising?

Yes. It is a Class A misdemeanor. The Texas Ethics Commission may also impose civil fines.