

As election season approaches, this week's legal brief includes the DOs and DON'Ts related to use of public funds for political advertising during elections.



REMINDER

District employees and trustees may not knowingly use public funds, directly or indirectly, for political advertising to advocate for or against *a candidate or measure that will appear on a ballot.*

WHAT IS "POLITICAL ADVERTISING"?

Any communication that advocates for a particular **outcome** in an election.

The most important question when determining whether any material is political advertising is whether, when viewed as a whole and in the proper context, [the article]:

- (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 public office or office of a political party, a political party, or a public officer.¹

SELF-PROMOTION FACTORS

The Ethics Commission takes a broad view of what is "self-promotion" and will consider the following factors:

- The timing of the publication
- Any pictures taking up more than half the page
- The reason why the [article] is being published
- Any eliciting of positive responses regarding a public official's (or candidates) key attributes/qualities
- Any implications of an election in the publication
- Inclusion of personally phrased references that highlight qualifications are all factors to consider

[1] 1 Tex. Admin Code §26.2(3).

Election Reminders for Trustees and Staff

ACCORDING TO THE ETHICS COMMISSION AND ATTORNEY GENERAL OPINIONS:

✓ YOU CAN

Share purely informational material (including explanatory material about what is at stake in a bond or tax election, as well as specific information about the election, i.e. date or polling locations.)

Tex. Elec. Code § 255.003(b)

Note: Communications with primarily factual information can violate Section 255.003 if they include persuasive slogans or calls to action like “Do the Right Thing for Our Kids.”

Advocate for the interests of Texas public education, as long as the advocacy does not use public resources or time to campaign for a specific candidate, political party or ballot measure.

Register voters, hold nonpartisan candidate forums, and ensure staff and students have time to vote.

Use personal time and money to campaign for candidates and causes.

✗ YOU CANNOT

Advertise, in district newsletter or publication, the name of a public officer by using bold print or larger print than main text and pictures covering more than 50% of the advertising.

Tex. Ethics Comm’n Op. No. 476 (2007)

Circulate a district mailer (or similar correspondence) that contains large pictures of public officers, who are identified by name and “tout” their accomplishments one month before an election.

Tex. Ethics Comm’n Sworn Complaint Order No. SC-31804181

Publish a district “School Board Spotlight,” highlighting a board member before an election.

Tex. Ethics Comm’n Sworn Complaint Order No. SC-32009186 (2021).

Publish a district advertisement congratulating a district event/activity/team that identifies the candidate or public officer as the purchaser of the advertisement.

Tex. Ethics Comm’n Op. No. 102 (1992)

Use school district staff, facilities, or other resources to electronically distribute links to Internet websites that are partisan in nature.

AG No. KP-177 (2018)

Use employee time to hang/distribute flyers (or similar correspondence.)

Tex. Ethic’s Comm’s Op. No. 443 (2002)

Use an internal district email system to distribute campaign materials.

Tex. Ethics Comm’n Op. No. 45 (1992)

TO FIND A VIOLATION, THE ETHICS COMMISSION MUST DETERMINE:

1. The alleged violator was an officer or employee of a political subdivision, including a school district;
2. The alleged violator knowingly spent or authorized the spending of public funds (or the use of public resources) for the article; and
3. The article contained political advertising.

HAVE QUESTIONS ABOUT WHAT CONSTITUTES POLITICAL ADVERTISING?
GIVE US A CALL (512.637.4244).