



Campaign Speech During Elections

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This article answers frequently asked questions about campaign speech rights of school districts, board members, candidates, community members, employees, and students.

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Applicable Laws

1. **What laws apply to campaigning, electioneering, and political advertising?**

Several statutes apply to campaigning, electioneering, and political advertising. Each statute specifies the persons or entities to which it applies. The statutes do not apply equally to everyone. It is important to read the statute to understand its application to particular circumstances.

- **Texas Election Code**

Political Advertising: Texas Election Code section 255.003(a) prohibits an **officer or employee** of a political subdivision, including a school district, from knowingly spending or authorizing the spending of public funds **for political advertising**.

Political advertising is a communication that supports or opposes a candidate or a measure that:

1. is published in a newspaper or other periodical in return for consideration;
2. is broadcast by radio or television in return for consideration;
3. appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
4. appears on a website.

1 Tex. Admin. Code § 20.1(11)(A); Tex. Elec. Code § 251.001(16).

Political advertising does not include an individual communication made by email or text message but does include mass emails and text messages involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. 1 Tex. Admin. Code § 20.1(11)(B).

The prohibition in Section 255.003(a) 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. Tex. Elec. Code § 255.003(b). *Measure* means a question or proposal submitted in an election for an expression of the voters' will, such as a bond or tax rate proposition. Tex. Elec. Code § 251.001(19).

According to the Texas Ethics Commission, "the critical issue in determining whether an advertisement is 'political advertising' is whether it is a communication supporting or opposing a candidate or a public officer [or measure]." Whether a particular communication supports or opposes a candidate or measure is a fact question. Tex. Ethics Comm'n Op. No. 476. However, in 2007, the U. S. Supreme Court held that an advertisement includes express advocacy for a candidate "if the ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007).

Section 255.003(b-1) also prohibits an **officer or employee** from spending or authorizing the spending of public funds for a communication describing a measure if the communication contains information that the officer or employee knows is false and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

A violation of Section 255.003 is a Class A misdemeanor. It is an affirmative defense to prosecution or to the imposition of a civil penalty that a person reasonably relied on a court order or an interpretation of the statute in a written opinion of a court, the attorney general, or the Texas Ethics Commission. Tex. Elec. Code § 255.003(c), (d).

Texas Election Code section 255.0031 prohibits an **officer or employee** of a political subdivision, including a school district, from knowingly using or authorizing the use of an internal mail system for the distribution of political advertising. A violation is a Class A misdemeanor. *Internal mail system* means a system operated by a political subdivision to deliver written documents to officers or employees. Section 255.0031 does not prohibit using the internal mail system to distribute political advertising delivered to the premises through the U.S. Postal Service.

- **Texas Education Code**

Texas Education Code section 11.169 prohibits a **school board** from using state or local funds or other district resources **to electioneer** for or against any candidate, measure, or political party. The Education Code does not define electioneer.

- **Texas Penal Code**

Texas Penal Code section 39.02(a)(2) addresses abuse of official capacity. A **public servant** commits an offense if, with intent to obtain a benefit or to harm or defraud another, the public servant intentionally or knowingly **misuses government property**, services, personnel, or any other thing of value in the public servant's custody or possession as a result of the public servant's office or employment. The severity of the offense depends on the value of the thing misused.

- **Texas Constitution**

Texas Constitution article 3, section 52(a) prohibits school districts (and other political subdivisions) from using public funds for private purposes. The attorney general applies a three-part test to determine if an expenditure of public funds is constitutional: (1) the expenditure's predominant purpose must be to accomplish a public purpose of the public entity; (2) the public entity must retain sufficient control to ensure that the purpose is accomplished; and (3) the public entity must receive a return benefit. Tex. Att'y Gen Op. No. KP-0204 (2018).

- **Local Board Policies**

Local board policies may affect campaign speech in areas such as nonschool use of facilities (TASB Policy GKD) and distribution of nonschool literature (TASB Policy GKDA).

2. Who enforces these laws?

The Texas Ethics Commission (TEC) is responsible for enforcing the Texas Election Code provisions regarding campaigning and political advertising. TEC is authorized to initiate civil enforcement actions in response to a sworn complaint, hold enforcement hearings, issue orders, impose civil penalties, and refer matters for criminal prosecution. In addition, the TEC board may vote to issue an ethics advisory opinion in response to a written request that satisfies legal requirements. Tex. Gov't Code ch. 571.

The election judge for each polling place enforces provisions related to polling places. Tex. Elec. Code § 32.075. The local county or district attorney enforces penal statutes. A court determines whether an expenditure is an unconstitutional gift of public funds. The school board enforces its local policies.

School District

3. May a school district take a position in an election?

No. Texas Election Code section 255.003(a) prohibits school district employees and officials from using public resources for political advertising to advocate for or against a candidate or ballot measure.

TEC interprets this prohibition broadly to prohibit the use of district equipment, supplies, employee time, or students to create or distribute political advertising. Board members and

school employees who violate this prohibition could face fines or criminal penalties. See TEC's [Short Guide to the Prohibition against Using School District Resources for Political Advertising](#).

When faced with an alleged violation of Section 255.003, TEC must determine the following:

1. the person involved was an officer or employee of a political subdivision;
2. the person knowingly spent or authorized the spending of public funds (or the use of public resources) for the communication involved; and
3. the communication constituted or contained political advertising.

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

In addition to Section 255.003, Texas Education Code section 11.169 prohibits the board from using district resources to electioneer for or against any candidate, measure, or political party.

4. **May districts use public funds to communicate anything about an election?**

Yes, public funds may be used to disseminate purely factual information. The prohibition in Section 255.003 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. Tex. Elec. Code § 255.003(b). Factual information includes explanatory materials about the potential consequences of a bond or tax election, as well as specific information about the election such as the date or polling locations.

In considering a political subdivision's written communications about a bond election, including a brochure, posters, and social media posts, TEC found the communications were not political advertisements under Section 255.003 because they were entirely informational and did not include any advocacy. For example, the brochure contained ballot language and a detailed description of each bond measure, including the amount, planned uses of the money, and the process by which the political subdivision determined how to use the money. The brochure also described the tax implications of approving the bonds. TEC acknowledged that some of the factual information would affect how voters voted, but there is a difference between advocacy and education. According to TEC, the Texas Election Code does not prohibit political subdivisions from using public funds to enable voters to make informed decisions. Tex. Ethics Comm'n Op. No. 559 (2021).

TEC warns, however, that 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." For example, TEC fined a superintendent for violating Section 255.003 by using district funds to pay for a brochure containing factual descriptions of the purpose of a bond election but also advocating a vote for the bonds. Tex. Ethics Comm'n Sworn Complaint Order No. SC-230205 (2003). TEC emphasizes that *no amount* of advocacy is permitted. For examples of phrases that TEC has determined advocate passage or defeat of a measure, see [Advocating Passage or Defeat of a Measure](#). In addition, an express disclaimer of support or opposition is not determinative. Tex. Ethics Comm'n Op. No. 559 (2021).

When considering whether a communication violates Section 255.003(a), TEC first considers the communication as a whole. Tex. Ethics Comm’n Op. No. 559 (2021). According to TEC, “The critical question in determining whether [an advertisement] constitutes ‘political advertising’ is whether the information 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.” Tex. Ethics Comm’n Op. No. 538 (2016) (citing Tex. Ethics Comm’n Op. No. 476 (2007)); *see also* Tex. Ethics Comm’n Sworn Complaint Order No. SC-31804181 (2018) (considering “support or oppose” as it applies to candidates and citing ethics advisory opinions and examples). TEC’s order and agreed resolution of sworn complaint SC-3170599 provides a detailed discussion and analysis of a school district’s videos and emails in support of the district’s tax ratification election. Tex. Ethics Comm’n Sworn Complaint Order No. SC-3170599 (2019).

5. May a district create a special logo for its bond election?

The answer to this question depends on the particular facts and circumstances in the district. A district may *not* create a logo containing any advocacy whatsoever; thus, logos that contain slogans should be avoided. A district wanting to create a logo for its bond campaign or election to approve a tax rate must consult its attorney for guidance. [See Question 25 regarding a candidate’s use of the district’s logo in campaign materials.]

6. May a district use photos of school children in its bond materials?

Using photos of school children raises several concerns. If the children are depicted in deteriorating district facilities, this may be considered overly persuasive, and therefore advocacy, depending on how factual the depiction is and the context in which it is presented. Further, there may be privacy concerns related to the use of student photos based on the district’s designation of directory information and a parent’s release of the information. See TASB Policy FL. Finally, the use of stock photos of children who are not district students may be problematic because those photos convey no factual information about the district. For these reasons, TASB Legal Services advises against using photos of children or students in bond materials. A district wanting to do otherwise must consult its attorney for guidance.

7. May a district link from its website to other websites supporting its bond campaign?

No. The attorney general has opined that a court would likely find that the use of public funds to link to a website supporting a candidate or measure is a communication supporting or opposing a candidate or measure in violation of Texas Education Code section 11.169 and Texas Election Code section 255.003(a). Tex. Att’y Gen. Op. No. KP-0177 (2018).

8. How can a district be confident that its communications do not improperly advocate for passage of a measure?

Rely on a written legal opinion of a court, the attorney general, or TEC. A school official or employee has an affirmative defense to prosecution for knowingly using funds to send a

communication advocating passage of a measure if the official or employee reasonably relied on an interpretation of Section 255.003 in such a written opinion. Tex. Elec. Code § 255.003(d). On written request by a school district with a measure on a ballot, TEC will prepare an advance written advisory opinion addressing whether proposed school district communications would comply with the law. Tex. Elec. Code § 255.003(e). *See, e.g.,* Tex. Ethics Comm’n Op. No. 564 (2021) (concluding that a city’s written communications regarding a proposition were not political advertising because they were entirely informational and did not include any advocacy). The opinion of a school district’s attorney is not a legal opinion that creates an affirmative defense. Tex. Ethics Comm’n Sworn Complaint Order No. SC-3170599 (2019).

9. May the district hold a press conference to provide factual information about an election or a measure on the ballot?

Yes, and board members may attend. For the reasons previously discussed, a school district press conference cannot be used for political advertising, but it can be used to disseminate factual information about an election or a measure on the ballot. Further, the Texas Open Meetings Act (OMA) specifically states that the attendance of a quorum of the board at a press conference related to school business is not a *meeting* governed by the OMA, so long as any discussion of school business is incidental to the event. Tex. Gov’t Code § 551.001(4).

10. May the district feature board members in a newsletter?

Not if the newsletter uses public funds to support or oppose a candidate or public officer in violation of Section 255.003.

TEC has examined this issue and developed the following guiding principles:

1. Whether a particular communication supports or opposes a candidate or a public officer can only be answered when the communication is viewed as a whole; and
2. Self-promotional communications, especially those containing photographs and the name and title of the public officer in an unduly conspicuous way, will constitute political advertising.

Tex. Ethics Comm’n Sworn Complaint Order No. SC-32009186 (2021) (citing ethics advisory opinions); Tex. Ethics Comm’n Sworn Complaint Order No. SC-31804181 (2018) (citing ethics advisory opinions).

TEC rules specifically address when a newsletter of a public officer of a political subdivision is *not* political advertising for purposes of Section 255.003:

1. It contains no more than two pictures of a public officer per page and no more than 20 percent of the page covered by the pictures;
2. It includes no more than eight personally phrased references (the public officer’s name, “I,” “me,” “the board member”) on an 8 1/2” x 11” page or larger; and

3. When viewed as a whole and in the proper context, it
 - 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, political party, or public officer.

1 Tex. Admin. Code § 26.2.

TEC has identified section 26.2(3) as the most important criterion and has historically taken a broad view of what constitutes self-promotion or promotion of other candidates and officeholders. See Tex. Ethics Comm’n Sworn Complaint Order No. SC-31804181 (concluding that a city’s mailer that prominently featured photos of city council members and touted their accomplishments constituted political advertising in violation of Section 255.003).

TEC applied these principles to evaluate a school board member’s involvement in the publication of a board member spotlight article that was posted to the district’s website and Facebook and Twitter accounts. The article consisted of photos of the board member and his answers to 12 questions. TEC focused on several aspects of the article that were indicative of promotion and therefore advertising: proximity to the election, implications about the board member’s campaign for reelection, the board member’s qualifications, and personally phrased references. Despite the lack of express advocacy (words like “vote” or “elect”) and the article’s mention of issues facing the district, TEC found the article, when viewed as a whole, to be self-promotional and to support the board member as a candidate for reelection. Thus, the board member was fined for violating Section 255.003. Tex. Ethics Comm’n Sworn Complaint Order No. SC-32009186 (2021).

Board Members

11. May board members use personal time and money to campaign for candidates and causes?

Yes. Public officials who are acting independently, without the use of public funds, have a free speech right to engage in political advocacy, including advocacy for their reelection. In its [Short Guide to the Prohibition Against Using School Resource for Political Advertising](#), TEC states, “Although you may not use political subdivision resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources.” For example, a school board member may attend a community meeting and advocate for passage of a bond measure or write a letter to the newspaper editor in support of a voter-approval tax rate election.

When engaging in advocacy using personal time and resources, a trustee need not conceal the trustee’s position or claim to be acting as a private citizen. See, e.g., Tex. Ethics Comm’n Op. No. 321 (1996) (determining that a sitting judge did not violate the law by sending campaign solicitations on letterhead that she purchased but that identified her position).

12. May a school board member join a political action committee (PAC) to support a bond election?

Yes. Board members are free to join special purpose PACs organized under Texas Election Code chapter 252. Board members may attend PAC events; however, because bond issues are public business over which the board has supervision or control, OMA requirements may apply if a quorum is present at an event.

13. May a board member send an email from the board member's personal computer to the private email accounts of friends and family, urging them to vote for a certain candidate in the presidential election?

Yes. As stated, a board member may speak, write, or distribute political advertising, as long as school funds are not used directly or indirectly. This applies to emails campaigning for or against particular measures, such as bond or tax elections, and particular candidates in national, state, and local elections.

14. May the board member send a similar email from a school computer?

TASB advises against this. Emails on a school computer are typically governed by the district's acceptable use policy. See TASB Policy CQ(LOCAL). Such policies often permit limited personal use of the district's computer equipment and Internet service as long as the personal use does not incur an additional cost to the district. Nevertheless, it may be difficult to distinguish personal from official use of school equipment. Because so much is at stake when campaign speech is at issue, board members should avoid personal, election-related communications on school district equipment.

15. May a board member send an email from the board member's personal computer, urging members of the school community or school staff to support the board member for reelection or an upcoming bond election?

Maybe, but the board member should consider a few issues. As previously discussed, personal emails campaigning for election or for or against a candidate or measure are permitted. Even emails that might eventually be sent to district email addresses arguably are not an impermissible use of district funds. TEC rules define *political advertising* to exclude an individual communication by email or text message. 1 Tex. Admin. Code § 20.1(11)(B).

Nevertheless, a board member should use care before sending emails to all district staff. Emails can be printed and passed out, thereby becoming fliers; school district employee time spent writing or even reading email could be considered an indirect use of funds; and the Texas Education Code's prohibition on electioneering may prevent board members from sending such communications. Tex. Educ. Code § 11.169.

If a board member wants to send personal emails advocating for a particular outcome in an election, the board member might consider adding a short disclaimer stating that the email is personal, rather than official school district business, and was created using personal equipment and accounts.

16. During a reelection campaign, may a sitting board member use school resources to assist in their campaign?

No. Section 255.003 prohibits the use of public funds in a campaign for election or reelection to the school board. For example, TEC found that a teacher and school secretary violated the law when they distributed a campaign flier for school board candidates that they created in the computer lab and copied on the school's copier, even though they made and distributed the fliers before school and reimbursed the district for the costs. Tex. Ethics Comm'n Sworn Complaint Order No. SC-210101 (2001).

Under Section 255.003, any use of school district employee time is prohibited, as is any use of school district facilities, including the mail system. See, e.g., Tex. Ethics Comm'n Op. No. 443 (2002) (concluding that Section 255.003 would be violated by using a school employee to place a trustee's campaign fliers in the teachers' lounge).

In response to a complaint about a public officer's use of a political subdivision's Facebook page, TEC explained that "[s]elf-promotional communications, especially those containing the name and title of the public officer in an unduly conspicuous way, constitute political advertising" that may violate Section 255.003 if public resources, including a political subdivision's Facebook page or website, are involved. Tex. Ethics Comm'n Sworn Complaint Order No. SC-31712183 (2018). Communication from an individual's social media profile may also constitute impermissible political advertising if public resources were used in the production of the post. Tex. Ethics Comm'n Sworn Complaint Order No. SC-32204206 (2022).

17. May a board member take an active role in another person's campaign for public office?

Legally yes, but there may be practical concerns if a board member publicly chooses sides in a school board race. While a school board member acting independently, using solely personal time and resources, may participate in the political process like other citizens, school boards often expect board members to refrain from actively campaigning on behalf of other board candidates.

In campaigns for offices unrelated to the school board, board members may be involved as individual citizens in ways that do not involve school district resources or create conflicts of interest with board service. For example, a school board member could support a candidate for city council. The board member could distribute campaign literature using personal time and money. The board member could send emails or post on social media using private accounts and contact lists. The board member could even serve as campaign manager or treasurer. The board member should exercise caution, however, not to leverage their position on the school board to the candidate's advantage. Finally, if the board member having a prominent role in a city council campaign could disadvantage the school board in some way, the board member may need to consider the ethical implications of the potential conflict of interest.

18. May a board member include in campaign materials a photo of the board member taken in a district location or facility that is not open to the public?

Probably not. According to TEC, a public official, including a school board member, may not use a restricted location in a government facility to which the official has access by virtue of the office

to create a photo, video, or other communication for political advertising. See Tex. Ethics Comm’n Op. No. 550 (2019) (considering both Texas Election Code section 255.003 and Texas Penal Code section 39.02). [See Question 26 regarding photos taken in public areas.]

19. May the board discuss ballot measures, like a bond or tax rate, in a board meeting that is broadcast on the internet?

According to TEC, Section 255.003 was not intended to inhibit discussion of matters pending before a governmental body. When a governmental body considers whether to place an issue before voters, public officials and members of the public are likely to voice opinions on the issue. Section 255.003 does not prohibit broadcasting a meeting in accordance with a governmental body’s regular practices. As the board is deciding whether to place a measure on the ballot, public resources are not being used *for* political advertising even if an incidental effect would be to broadcast statements supporting or opposing a ballot measure. Tex. Ethics Comm’n Op. No. 456 (2004); see also *In re Turner*, 558 S.W.3d 796, 801 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (applying Tex. Ethics Comm’n Op. No. 456 (2004)).

This does not mean that a board or board member can *arrange* discussion of a matter not pending before the governmental body with the hope that a broadcast of the discussion will influence the election outcome. See Tex. Ethics Comm’n Sworn Complaint Order No. SC-32009176 (2021) (concluding that a public official who directed that recorded meeting excerpts related to contested elections be posted online authorized the spending of public funds for political advertising, both to upload the excerpts and through the use of the public entity’s website to host the excerpts.)

Candidates (including Incumbents) and Other Citizens

20. May a school district host an open forum opportunity for all school board candidates, like a “Meet the Candidates” event?

According to TEC, a forum at which all candidates, including incumbents, are given the same opportunity to appear and speak is not a forum in support of or opposition to any individual candidate; however, excluding candidates makes the forum a communication in support of those included. Tex. Ethics Comm’n Op. No. 343 (1996). TEC has also opined that Section 255.003(a) prohibits officers and employees from spending public funds to facilitate the distribution of political advertisements. Thus, a district’s production of an event deliberately designed to provide a platform for disseminating political advertising is prohibited by Section 255.003. Tex. Ethics Comm’n Op. No. 563 (2021).

Given these authorities and TEC’s position that the use of school facilities is an indirect use of public funds, the district should consider allowing another organization to host a candidate forum in order to avoid an inadvertent violation of the law or the appearance of impropriety. The forum could take place away from school property or on school property pursuant to the district’s facilities use policy. See TASB Policy GKD(LOCAL).

TEC considered several questions arising from candidate debates and forums conducted by third party sponsors in a city-owned building. The sponsors rented city facilities for events open to all

candidates and the public. The candidates and their supporters wanted to display or distribute political advertising materials to members of the public present in the rented meeting room, in a corridor outside the room, or in the parking lot of the city facility where the event was held. The city did not prepare or pay for any of the materials, sponsor or conduct the debates, invite or contact candidates, or endorse or oppose any candidates. No city employees participated on work time in the preparation, display, placement, or distribution of any political advertising materials. TEC reached the following conclusions:

1. A city employee does not violate Section 255.003(a) by allowing members of the public to display or distribute political advertising at a city facility in connection with a candidate debate or forum if the city facility is rented to and paid for by the event sponsor with non-public funds at the city's standard rental rate for the use of the facility.
2. A city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under Section 255.003(a) if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the event sponsor using non-public funds to pay the city's standard rental rate for the use of the city-owned room.
3. A city employee does not knowingly authorize the spending of public funds for political advertising if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the event sponsor or in the parking lot of the city facility where the event is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising. In reaching this conclusion, TEC opined that the legislature did not intend Section 255.003(a) to require an officer or employee of a political subdivision to prevent the display or distribution of political advertising by members of the public in this type of circumstance.

Tex. Ethics Comm'n Op. No. 552 (2020).

21. May a candidate speak to the PTA or booster clubs?

Yes, at the invitation of the club. PTAs and booster clubs are typically organized as separate, private groups. To the extent these groups are independent of the school district, the Texas Election Code prohibition on the use of public funds and other laws, including the First Amendment, may not apply. The groups may, however, have other legal obligations related to their tax-exempt status, which may prevent them from engaging in political advocacy during an election season. PTAs and booster clubs are permitted to invite candidates to a candidate forum or to visit the groups' meetings one by one, but such invitations should be extended to all candidates.

22. May a candidate come to school or school events and visit with staff, students, or parents? If so, may the candidate hand out campaign materials?

Perhaps, depending on local policy and practice. A candidate or other citizen may come on school property and hand out campaign literature only to the extent local school district policy

has created a limited public forum for such activity. Some school districts specifically prohibit campaigning on school property or at school events.

On school days or at school events: If school district policy designates a limited public forum for distribution of nonschool literature (including leafleting), the policy will often allow each campus to establish times and locations for distribution. For example, campus rules may designate a specific table or bulletin board where nonschool literature may be displayed or left for students, parents, and staff to pick up voluntarily. Local policy may also provide that nonschool materials must be submitted for administrative review before distribution if they are likely to fall into the hands of children. Unless district policy specifically provides otherwise, campaign materials may be distributed or displayed on the same terms as all other nonschool materials. See TASB Policy GKDA(LOCAL).

At a nonschool-sponsored event held on campus: Although school district policies frequently require that nonschool materials (like campaign fliers) be submitted for administrative review prior to distribution to or near students, most local policies contain an exception for materials distributed during a meeting that is not school sponsored but is held on school property pursuant to a facilities use policy, like TASB Policy GKD(LOCAL). Again, unless district policy specifically provides otherwise, campaign materials may be distributed or displayed on the same terms as all other nonschool materials at after-hours, nonschool-sponsored meetings on school property. See TASB Policy GKDA(LOCAL); *see also* Tex. Ethics Comm’n Op. No. 552 (2020) (considering distribution of political advertising material on city property at third-party sponsored candidate event) [discussed above].

In campus mailboxes: The Texas Election Code specifically prohibits a district officer or employee from knowingly using or authorizing the use of the district’s internal mail system for the distribution of political advertising. Tex. Elec. Code § 255.0031.

23. May a current public official or candidate come to school or a school-related event to visit with school officials or community members if the person is running for election or reelection?

Yes, but the event should not become a campaign opportunity. From time to time, elected officials may seek an opportunity to gather information about the school district or share information with members of the school community. Maintaining open communication with elected officials, such as state legislators, serves a public purpose and can be beneficial to school districts. For this reason, a school district may grant an elected official an opportunity to visit a campus, speak at a public event like a school board meeting, or meet directly with staff or parents.

When the elected official is running for reelection, however, the school district should avoid giving the incumbent access that another candidate would not have. For example, the district should not promote the event or gather an audience unless the gathering is a public forum to which all candidates are invited or the event is unrelated to the public official’s political purposes.

Visits by public officials or candidates should be for substantive reasons, not mere photo opportunities. Photography, videography, and media coverage of such events should be in accord with school district policies regarding student privacy.

24. May a candidate post a campaign sign on a school campus or buy advertising in a school publication?

Before election day: Although it is a matter of local policy and practice, most schools do not permit campaign signage to be placed on their campuses unless and until the campus is in use as a polling place. Given TEC’s concern that the use of school facilities for campaign speech could be an indirect use of public funds for political advertising, permitting signage at times and places other than polling places on election day may not be advisable. Any district that chooses to allow posting of campaign materials must provide an equal opportunity for all candidates to post signage.

Paid advertising: Many districts accept paid advertising to be placed on school signage and in a variety of school district media, including event programs, school publications, and online. In order to maintain editorial control over these various publications, TASB recommends that school boards adopt a local policy indicating that advertising is accepted to raise money for the school, not to open a public forum for communication. See TASB Policy GKB(LOCAL).

Because paid advertising at a school district is generally not a public forum, and again in light of TEC’s concern that use of school facilities (including signage and publications) could be an indirect use of public funds for political advertising, TASB Legal Services discourages districts from accepting paid political advertising.

25. May a candidate use the district logo in campaign materials?

Probably not. When asked whether a city officeholder could distribute political advertising on city letterhead containing a logo and slogan, TEC assumed that the letterhead was created by city staff to be used for official purposes; that the letterhead, logo, and slogan were paid for with city funds; and that the logo and slogan were the city’s intellectual property, and as such, a city resource. Thus, the officeholder could not use the letterhead, logo, and slogan for political advertising. Tex. Ethics Comm’n Op. No. 532 (2015). See TASB Policy CY(LOCAL) regarding use of the district’s logo. [See Question 5 regarding creation of a logo for an election.]

26. May a candidate include a photo of the candidate in front of a school district building or sign?

Yes. In concluding that a public official violates Section 255.003 by using restricted areas of government facilities in political advertising (see Question 18), TEC noted that the statute does not prohibit a public official, or by extension a candidate, from using government facilities that are equally accessible to the public for political advertising. Tex. Ethics Comm’n Op. No. 550 (2019).

27. May a parent wear a campaign t-shirt while attending a school district athletic event or picking up a child at school?

Yes. School districts and school employees are subject to restrictions on free speech in order to prevent the use of public funds for political advertising, but parents and community members are free to express themselves with campaign messages on their own clothing or bumper stickers on their cars. Unless a message is disruptive to the conduct of school activities or violates school rules for some other reason (e.g., because it is profane), personal campaign messages displayed by parents and community members should not be restricted.

Employees

28. May school employees advocate for or against candidates or ballot measures?

Not on work time or using district resources, including office supplies and computer equipment. As discussed previously, school district employees may not use public resources for political advertising to advocate for or against a candidate or ballot measure. TEC interprets the prohibition broadly to include any employee time and all school district resources like copy and fax machines, supplies, facilities, email, and computer equipment. See TEC's [Short Guide to the Prohibition against Using School District Resources for Political Advertising](#). School employees who violate this prohibition could face fines or criminal penalties.

29. May school employees advocate for or against candidates or ballot measures on personal time with personal resources?

Yes. School employees retain their First Amendment right to campaign for or against a candidate or election measure in their non-work time, using their personal resources.

30. Is the superintendent ever “off the clock” and free to advocate as a private citizen?

Because superintendents' duties often include appearing as a district representative at after-school community gatherings, superintendents may have more difficulty than other district employees separating their official speech from their private speech. See *Gonzalez v. Johnson*, 04-20-00516-CV, 2021 WL 4976562 (Tex. App.—San Antonio Oct. 27, 2021, no pet. h.) (considering the scope of a superintendent's duties). Advocacy by a superintendent on a school district election matter may appear to others to be an official statement by the district and thus a use of district funds. A superintendent should either speak only about the factual purposes of an election measure so as not to encourage, promote, or imply that listeners should vote for or against the measure, or limit expression of personal viewpoints to times and places that are clearly not associated with the superintendent's job.

31. May a school employee send an email saying “Vote for Bob” from the employee's personal computer to the employee's coworkers at their school email addresses?

For the reasons previously discussed, personal emails campaigning for or against a measure or candidate are permitted. Even emails sent to district email addresses arguably are not an impermissible use of district funds. See 1 Tex. Admin. Code § 20.1(11)(B) (exempting email and

text messages from the definition of political advertising). Nevertheless, employees should use caution because emails may be printed and passed out, thereby becoming fliers. For employees' own protection, employees should avoid political advocacy in favor of a particular candidate or measure in ways that involve school equipment.

32. May an employee wear a button that says "Vote for the ISD Bond"?

Not during work hours if the district's dress code does not permit it. Although school employees maintain their First Amendment rights at school, the school district, as a public employer, has the authority to regulate employee dress with reasonable, viewpoint-neutral guidelines. Many school districts prohibit employees from wearing campaign t-shirts and buttons during work time. This regulation may be based on the Texas Election Code prohibition on using employee time to advocate for a candidate or measure. It may also be based on a concern that employees, who are viewed as representatives of the district while in their instructional and other roles, should not use their influence over students' political views. As with any dress code regulation, the guidance should be specific enough to give employees a clear understanding of what is expected, and the guidance should be provided to employees before any attempt is made to enforce the dress code.

In enforcing any limits on campaign items or expression, remember that not all the time employees spend on district property is work time. Non-work time, like breaks or lunchtime, may offer employees the opportunity for free expression on any topic, including politics, among themselves (but not with students).

33. May a high school employee wear a "Vote for Bob" t-shirt to the high school football game?

Yes, unless the employee is there to work. Legally, the answer depends on whether the employee's attendance at the football game is considered work time for that employee. As a practical matter, however, even off-duty employees are likely to be viewed as representatives of the district while at a school-sponsored event. As a result, teachers and other employees should exercise good judgment regarding their attire.

34. May an employee (or other person) park in the school parking lot with a bumper sticker that says "Vote for Bob"?

Unless the expression an employee (or other person) has affixed to their personal vehicle as a bumper sticker or other sign is obscene or otherwise in violation of district rules, districts should avoid interfering with this form of personal expression.

35. May a school employee arrive early for work and place fliers for a candidate in the teachers' lounge or in teachers' mailboxes?

Political advertising may not be placed in an area of the school that is not part of the campus' limited public forum. TEC specifically concluded that placement of campaign fliers in a teachers' lounge that is not accessible to the public would involve "spending" public funds under Section 255.003 because "spending" of public funds includes not only the use of district employees' work time but also the use of district facilities. This conclusion does not change if all candidates

are allowed to place fliers in an area that is not accessible to the public. According to TEC, “there is no language [in section 255.003] to suggest that a political subdivision may use public resources for political advertising if the political subdivision itself does not show a preference for political advertising from a particular source.” Tex. Ethics Comm’n Op. No. 443 (2002).

As discussed previously, special prohibitions apply to the use of school mail systems, like teachers’ mailboxes. An officer or employee of a school district may not knowingly use or authorize the use of the district’s internal mail system for the distribution of political advertising. Tex. Elec. Code § 255.0031.

Students

36. May a student wear a campaign t-shirt to school?

Like employees, students maintain their First Amendment rights while at school. Nevertheless, the district has the authority to regulate student dress with reasonable, viewpoint-neutral guidelines. Some districts prohibit t-shirts with slogans in their dress codes, but many allow them. T-shirts with political messages should be permitted on the same basis as t-shirts with other messages. As with any dress code regulation, the guidance should be specific enough to give students and parents a clear understanding of what is expected, and the guidance should be provided before any attempt is made to enforce the dress code.

37. May a student hand out fliers for a candidate to other students between classes?

As discussed, political advertising may not be placed in areas of a school that are not part of the campus’ limited public forum; however, under local policy and practice, students may have the opportunity to distribute nonschool literature, including campaign materials, to fellow students. See TASB Policy FNAAL(LOCAL).

Campaign speech issues can be complex. If you have questions about these issues, consult your school district’s attorney or call TASB Legal Services at 800.580.5345. TASB Legal Services provides additional resources on First Amendment rights of board members, employees, and students; student dress and appearance; student protests; legislative advocacy; and other election issues at [TASB School Law eSource](#).

This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.

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