



# A GUIDE TO COMPLYING WITH TEXAS LAW DURING A BOND ELECTION

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## TEXAS LAW

- “An officer or employee of a political subdivision may not spend or authorize spending public funds for political advertising.”
- Violation of this portion of the Code is a Class A misdemeanor.

- *Texas Election Code § 255.003*

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## WHAT COUNTS AS “POLITICAL ADVERTISING”?

- Communication advocating a particular election outcome
  - Is the communication supporting or opposing a ballot measure? If so, it is communication advocating an outcome.
- Can be written, spoken, or broadcast
  - memo, newsletter, flyer, social media, poster, circular, sign, speech, e-mail, billboard, bumper sticker, refrigerator magnet, pamphlet, TV or radio ad, web site, etc.

## WHAT COUNTS AS “SPENDING PUBLIC FUNDS”?

- “Spending public funds” is more than just spending City money.
  - Any use of City employees during work hours
  - Any use of City equipment during or after work hours
    - Includes computers, fax machines, copiers, printers, office supplies, internal mail, e-mail, social-media accounts and websites.

**Rule of Thumb:**  
**If you are at a City facility, you are probably**  
***spending public funds.***

## WHAT CAN I SAY ABOUT THE BOND ELECTION?

- Employees and officers of the City may spend public funds on communications that are factual descriptions of the proposition.
- Factual information includes:
  - The amount of the bonds
  - The tax rate impact of the bonds
  - City demographics
  - A description of the projects and estimated amounts to be spent on each project
- Factual communications must be true.
  - It is illegal to include information that the officer or employee knows to be false.

## “WHAT ARE SOME THINGS I CAN’T SAY?”

### Communications which advocate passage or defeat of the proposition are prohibited

- *Voting yes means better communities*
- *Vote yes for a brighter future*
- *This bond will ensure future generations have access to the best facilities we can offer*
- *Let’s build a better city*
- *Show that you care about our community*
- *Please support our vision*
- *This bond is what’s best for our community*
- *This bond will allow us to better serve the community*
- *It pays to invest in the future*
- *It’s time to move ahead*
- *Our future depends on your commitment*
- *Position our city for the 21st century*

## IF YOU'RE AT WORK, YOU'RE PROBABLY SPENDING PUBLIC FUNDS.

- In 2005, a city manager received a draft of a political postcard from a city council member at her city e-mail address. The city manager forwarded the draft to the police chief (through city e-mail) who proposed changes.
  - Although the city manager intended for the police chief to check only for factual accuracy, the evidence supported a finding that she sought the assistance in order to make the post card more effective.

The Ethics Commission found a violation because the city e-mail and the paid time of the police chief were city resources. A \$200 penalty was imposed.

## IT DOESN'T TAKE MUCH.

- In 2004, a city mayor used a city credit card to purchase campaign T-shirts and other political advertisements.
  - Although the card displayed the city's name on its face, the mayor was personally responsible for payment of the account and timely reimbursed the city for all of the expenses related to the advertising.

The Ethics Commission found that city resources were used to handle the mayor's purchase of political advertising, regardless of whether the mayor himself paid the balance. A \$500 penalty was imposed.



## WHAT ARE SOME OTHER THINGS I CAN'T DO?

- Make *any* use of City facilities or equipment.
- Make *any* use of City employees' work time
- Provide consideration – money or any other kind of benefit – to a third party in exchange for materials advocating the passage of a bond measure.
- Use the City's website, social-media, internal mail or e-mail system to post or distribute favorable comments about a bond measure

# What Constitutes an Expenditure of Public Funds is Broadly Interpreted.

- Attorney General Opinion KP-0177 (2018)
  - Website Links
    - “[A] court would likely conclude that the use of public funds to link to an Internet website promoting a specific candidate or measure is itself a communication supporting a candidate or measure in violation of Section 11.69 of the Education Code and subsection 255.003(a) of the Election Code.”

## ANY ADVOCACY IS TOO MUCH

- In 2003, four county commissioners and a county judge authorized the use of public funds to create informational flyers on the progress of a road project.
  - Flyers highlighted replacement of “hazardous old bridges” and improved safety due to voters who “overwhelmingly approved” and supported previous bond measures.
  - The flyers were mailed just before the general election and only to residents who had voted in the previous election.

The Ethics commission found that the context and content of the flyer was credible evidence for an ethics violation. A \$400 penalty was imposed on each respondent.

## DON'T I GET A LITTLE BIT OF LEEWAY?

No -- Any amount of advocacy is impermissible.

- In 2004, a school district sent out a circular regarding their bond election that called the bond proposal “the best solution” to the district’s needs and “the right thing to do for the children of this community.”

The school board was fined \$100.

## THINK THAT'S TOUGH?

- In 2012, a city mayor spent public funds to include letters in the city's water billing statements in response to a local newspaper's criticism of city officials.
  - The letter stressed that the officials were *unpaid volunteers* and referenced challenges overcome by council members out of service to the community (traveling long distances for meetings, recovering from surgery, and other hardships).

The Ethics Commission found an ethics violation because the letter was promotional rather than informative. A penalty of \$200 was imposed.

## WHAT CAN I SAY DURING A CITY MEETING?

- The law is not intended to inhibit discussion of matters pending before the City Council.
- So long as it is the city's regular practice to broadcast its meetings on television, a city is not prohibited from broadcasting a meeting in which council members voice opinions supporting or opposing a ballot measure.
- However, it is possible that comments at a recorded meeting could be in violation if the comments are:
  - related to a matter not pending before the City Council and
  - were intended to influence the outcome of an election.

## WHAT ABOUT A CITY NEWSLETTER?

- If the City includes information about the bond proposition in a newsletter...
  - Must be informational rather than promotional
  - Cannot advocate for or against the proposition
- The Texas Ethics Commission has specific guidelines and limits to ensure that a newsletter is not political advertising

## HOW DO I MAKE SURE I'M NOT SAYING SOMETHING I SHOULDN'T?

- Don't use comparative terms:
  - Better, best, brighter, smarter, clearer, newer, cleaner, more, most, etc.
- The fewer adjectives a communication contains, the better
- Avoid words designed to create a positive impression

If you are ever in doubt about a particular statement, give us a call!



## CAN I ADVOCATE FOR A BOND PROPOSITION WITHOUT VIOLATING THE LAW?

- City officers and employees may campaign for the passage of a bond measure on their own time with their own resources.

## WHO CAN ADVOCATE FOR THE PASSAGE OF A BOND ELECTION?

- A Political Action Committee (PAC)
- A PAC is a privately funded campaign committee.
- PACs are not prohibited from using their funds for advocacy purposes.
- A PAC may prepare materials that highlight the City's achievements and goals and tout the benefits of passing the bond measure.
- For more information on forming a PAC, visit <http://www.ethics.state.tx.us/filinginfo/pacforms.htm>

## A WORD ABOUT “CONTRACT WITH THE VOTERS”

- A written communication from the City that is widely distributed and that includes specific promises about how bond proceeds will be used can create a binding and enforceable contract with the voters.
- To avoid creating a contract with the voters, use flexible language
  - “anticipate;” “expect;” “predict;” “plan to;” etc.
- Make it clear that the City Council retains discretion and flexibility in deciding how bond money will be used.
- Be aware of communications that could create a “Contract with the Voters.”

## CONCLUSION

- An officer or employee of a City may not spend or authorize spending public funds for political advertising.
- “Public funds” does not just mean cash
- Political Advertising is intended to advocate
- Be aware of communications that could create a “Contract with the Voters.”