



## Resources Advertising

### A Short Guide to the Prohibition Against Using Political Subdivision Resources For Political Advertising in Connection with an Election (/data/resources/advertising/Bsub\_adv.pdf)



Revised October 12, 2017

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

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

New legislation effective September 1, 2009, further clarifies that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

- (1) the officer or employee knows is false; and

(2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

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”** means

(1) 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, 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; and

(2) a communication that advocates passage or defeat of a measure, and 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;

**Newsletter of Public Officer of a Political Subdivision.** The Ethics Commission adopted a rule 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 an officer or employee of a political subdivision makes a decision to use political subdivision resources in violation of the prohibition, the employee could be fined by the Ethics Commission or held criminally liable.

\* The prohibition applies to **“spending or authorizing the spending of public funds”** for political advertising. Not only does this mean that the political subdivision may not purchase or authorize the purchase of new materials for use in creating political advertising, it also means that an officer or employee of a political subdivision would violate the prohibition by using existing paper and machinery to generate, display, or distribute political advertising.

Also, it is not permissible to use or authorize the use of the paid time of an employee of a political subdivision to create or distribute political advertising.

\* 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 the resources of a political subdivision to produce explanatory material about what is at stake in a measure election. However, the communication may not contain information that an officer or employee of a political subdivision knows is false. The information

must not be sufficiently substantial and important, such that it would be reasonably likely to influence a voter to vote a certain way. Violations of the law often occur because someone finds it irresistible to wrap up a factual explanation with a motivational slogan such as:

**IT PAYS TO INVEST IN THE FUTURE.**

or

**IT'S TIME TO MOVE AHEAD.**

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

**LET'S BUILD A BETTER CITY.**

or

**SHOW THAT YOU CARE ABOUT OUR FUTURE.**

**Remember:** No matter how much factual information about the purposes of a measure 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 an officer or employee of a political subdivision 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 political subdivision to deliver written documents to its officers 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 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. 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 (512) 463-5800 or on the commission's web site at <https://www.ethics.state.tx.us>.

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