



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 45

September 9, 1992

Whether section 255.003 of the Election Code prohibits the use of a school district's internal mail system for the distribution of political advertising. (AOR-39)

The Texas Ethics Commission has been asked to consider whether section 255.003 of the Election Code prohibits the use of a school district's internal mail system for the distribution of political advertising. Section 255.003 provides:

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

A school district is a political subdivision, so the officers and employees of the district are prohibited from spending or authorizing the spending of public funds for "political advertising." *See* Elec. Code § 1.005(13) (defining "political subdivision"). "Political advertising" is defined as follows:

"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 in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

Id. § 251.001(16). Thus, for example, a circular advocating a particular position on a bond election would be political advertising. An officer or employee of a school district is prohibited from spending public funds "for" such a circular. Expenditures for *distribution* of a circular or other written materials are within that prohibition.

The specific issue raised by this request is whether the prohibition extends not only to direct expenditures of public funds for distribution of political advertising, but also to the use of an already existing internal mail system.¹ Any method of distribution that involved the use of school district employees on school district time or school district equipment would be within the prohibition. It is a fact question whether other uses of a school district's internal mail system would involve an expenditure of school district funds.

SUMMARY

An officer or employee of a school district may not use or authorize the use of school personnel or equipment for the distribution of political advertising.

¹ We note that there are circumstances in which federal law would prohibit the use of a school's internal mail system for non-school purposes. *See generally* 18 U.S.C. § § 1693-1699; Attorney General Opinion JM-1091 (1989).