



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 443

May 10, 2002

Whether a school district may allow candidates for election to the school district's board of trustees to have campaign flyers placed in an area of a school that is not accessible to the public. (AOR-495)

The Texas Ethics Commission has been asked about the application of section 255.003 of the Election Code to a situation in which a school district allows any candidate for election to the school district's board of trustees to have campaign flyers placed in a teachers' lounge that is not accessible to the public.

Section 255.003 of the Election Code prohibits an officer or employee of a political subdivision such as a school district from spending or authorizing the spending of public funds for political advertising. The question presented raises two separate issues: whether the situation described involves the "spending" of public funds and, if so, whether the public funds would be spent "for" political advertising.

In a 1992 advisory opinion, we concluded that the "spending" of public funds included the use of school district employees' work time as well as the use of existing school district equipment. [Ethics Advisory Opinion No. 45](#) (1992). Because the situation described in the request letter involves the placement of campaign flyers in an area of a school restricted to school employees, the placement presumably requires school district employees to transport the flyers to the restricted area on work time. Furthermore, in our opinion, for purposes of section 255.003, the "spending" of public funds includes the use of facilities maintained by a political subdivision. Therefore, the placement of campaign flyers in a teachers' lounge would involve the "spending" of public funds for purposes of section 255.003 of the Election Code.

The remaining question is whether, in the situation described in the request letter, public funds would be spent "for" political advertising. Individual campaign flyers are, in most circumstances, political advertising. *See* Elec. Code § 251.001(16) (defining "political advertising"). The use of school district resources to disseminate political advertising is a use "for" political advertising. The requestor argues, however, that the restriction in section 255.003 should not apply in a case in which any candidate has the same opportunity to make use of school district resources for the dissemination of political advertising.¹ That interpretation assumes that the only purpose of section 255.003 is to prevent a political subdivision from favoring one candidate or one political point of view over another. It is likely that prevention of such favoritism was at least one purpose of section 255.003. The broad language of section 255.003, however, applies to any use of a political subdivision's resources for political advertising, and there is no language 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.

We note that this opinion is not intended to address the use of the facilities of a political subdivision in a situation in which the facilities function as a "public forum." *See generally International Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992); *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788 (1985); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) (cases discussing permissible restrictions on use of public forum). Whether a particular area of a school or other public facility is a public forum is a fact question, but in this case it is clear from the request letter that the teachers' lounge in question is not a public forum.

SUMMARY

For purposes of section 255.003, the “spending” of public funds includes the use of facilities maintained by a political subdivision.

The prohibition in section 255.003 of the Election Code applies to any use of a political subdivision’s resources for political advertising.

This opinion does not apply to the use of the facilities of a political subdivision in a situation in which the facilities function as a public forum.

¹ In a 1996 opinion, we concluded that a broadcast on a city television station was not itself “political advertising” because all candidates in the relevant election were invited to participate. [Ethics Advisory Opinion No. 343](#) (1996). In that case, the fact that the opportunity to participate in the broadcast was available to all candidates led to the conclusion that the broadcast itself was not political advertising. In contrast, in this case, there is no question that the flyers are political advertising. Rather, the issue here is whether school resources may be used for political advertising if all candidates have the same opportunity to make use of school resources for political advertising.