



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 476

August 21, 2007

Whether section 255.003 of the Election Code prohibits the spending of city funds for a city council member's newsletter. (AOR – 539)

The Texas Ethics Commission has been asked to consider whether a city council member's newsletter is political advertising that may not be paid for with public funds.¹

Section 255.003 of the Election Code provides as follows:

- (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.

Political advertising is defined by section 251.001(16) of the Election Code 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:
 - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) on an Internet website.

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. [Ethics Advisory Opinion No. 102](#) (1992). Whether a particular communication supports or opposes a candidate or a public officer is a fact question.

In a previous opinion, we considered whether a brochure that merely describes the duties of a justice of the peace court constituted political advertising. [Ethics Advisory Opinion No. 211](#) (1994). In that instance, the name of the incumbent justice of the peace appeared only on the letterhead and was not done in an unduly conspicuous way or in a way that would lead one to believe that the purpose of the brochure was to support the

incumbent, nor were there any facts that led us to believe the distribution of the brochure was campaign related. On those bases, we determined that the brochure was not political advertising as defined by section 251.001(16) of the Election Code.

A factor in determining whether a particular communication supports or opposes a public officer is whether the communication provides information and discussion of official activities without promotion of the public officer. The mere fact that the name of a public officer or the picture of a public officer appears in a newsletter would not determine whether the communication constitutes political advertising. However, the context and frequency with which the name or picture appears are relevant to making that determination.

The newsletter at issue consists of four pages. It includes one individual picture of a public officer and 22 other pictures in which the public officer appears with other persons. The area covered by the pictures is almost 50 percent of the newsletter. Additionally, the name of the public officer appears 22 times in print type that is bolded or larger than the main text. In our opinion, the newsletter is a self-promotion of the public officer and thus, when viewed as a whole, constitutes support of a public officer for purposes of “political advertising” as defined in section 251.001(16) of the Election Code. Consequently, public funds may not be used to pay for the newsletter.

We stress that whether a particular communication supports or opposes a candidate or a public officer is a fact question that can be answered only when the communication is viewed as a whole. However, a public officer’s newsletter that excessively uses pictures in which the public officer appears will almost always be political advertising. In our opinion, a public officer’s newsletter that contains no more than two pictures of the public officer per page is not excessive use if the total amount of area covered by the pictures is no more than 20 percent of any page on which the pictures appear. Additionally, we caution on the use of personally phrased references, such as the use of the public officer’s name, in particular when those references are set apart from other text.

SUMMARY

The attached newsletter is “political advertising” as defined in section 251.001(16) of the Election Code, and therefore public funds may not be used to pay for the newsletter.

¹ A copy of the newsletter is attached to this opinion as an appendix.



Jarvis JOHNSON

LEADING BY EXAMPLE

HOUSTON CITY COUNCIL, DISTRICT B
 City Hall Annex - 900 Bagby Street - 77002
 Direct 713.247.2009 - Fax. 713.247.2707
 eMail. DistrictB@cityofhouston.net



BINFORMED

REPORT FROM JARVIS JOHNSON HOUSTON CITY COUNCIL DISTRICT B



ACCOMPLISHMENTS

CITY BUDGET REPORT, AMENDED

Council Member Jarvis Johnson successfully added *Amendments* to the **FY07 (Fiscal Year 2007)** City Of Houston's **Budget**, including the **SWEAT EQUITY PROGRAM** and an *Amendment* to "Review Fire Inspection Fees".

CAPITAL IMPROVEMENT PROGRAMS

CM Jarvis Johnson worked to pass the successful **NOVEMBER 2006 CITY BOND REFERENDUM**, authorizing **\$625-million in Capital Improvements (CIP)** and quality of life expenditures—street repair and restoration; storm sewer enhancement and drainage projects; with additional funding for police, fire, parks, health care, and library programs.



DISTRICT B's CITY COUNCIL TEAM

... **ALVIN BYRD**, *Constituent Services* ... **EMILY BARRIERE**, *Senior Citizen Activity Director* ... **LINDA LAYTON**, *Council Agenda Director* ... **CM JARVIS JOHNSON** ... **JANA EYA CARMOUCHE**, *Calendar Scheduler & Special Events* ... **JERI BROOKS**, *Senior Council Aide* ... **ASHLEY TAYLOR**, *High School Student Intern* ... **LATRICIA SELLS**, *Volunteer, Small Business Development*. — v.f. Bennett Photography & Graphic Design

THANK YOU friends, neighbors, volunteers, community leaders and my City Hall staff for working with me to help build a coalition within Houston City Council District B, that is working each day to resolve individual concerns and neighborhood issues, as we increase our community pride and family security.

Jarvis' 2006 REPORT

LEADING BY EXAMPLE is my guiding work ethic in District B as we • **GROW** economic development opportunity • **BUILD** sustainable housing • **INCREASE** parks and green space, and • **FIGHT** to provide comfortable and stable communities for our youth and older residents.

OUR GOAL, to serve the needs of our 300,000+ residents in District B, is being accomplished through new • **Partnerships** • **Collaborations** and • **Information Dissemination** that is **EMPOWERING** our small businesses, civic clubs, faith-based groups, and professional organizations.

WE ARE PROUD of our first year of accomplishments. I invite each of you to **"GET INVOLVED"** and work with me to improve and revitalize our communities in District B.

Jarvis Johnson
 Houston City Council Member

Community Programs

SMALL BUSINESS INITIATIVES

Small business continues to be the fastest growing industry in the United States. **CM Johnson** is committed to providing educational seminars, community conversations and networking experiences for business owners in District B. **Jarvis** and the **Port Of Houston** co-sponsored **Doing Business With The Port**, a small business networking event in December 2006.



PORT OF HOUSTON Commissioner **Janiece Longoria** and Council Member **Jarvis Johnson** hosted 60 business people from District B to a luncheon and boat ride down the **Houston Ship Channel**. An introductory seminar, "HOW TO DO BUSINESS WITH THE PORT OF HOUSTON", was presented by Ms. Longoria.

INTERNSHIP OPPORTUNITIES IN DISTRICT B

Council Member Johnson has proudly sponsored **STUDENT INTERNSHIPS** in the District B offices at City Hall for five local High School students and several volunteers.

CRIME REDUCTION

CM Johnson supported recommendations from **Houston Police Chief Harold Hurtt** to help reduce crime by adding more **HPD Officers** through approvals in the **FY07 (Fiscal Year 2007)** budget process for seven **HPD Cadet Classes**.

HPD Chief Harold Hurtt



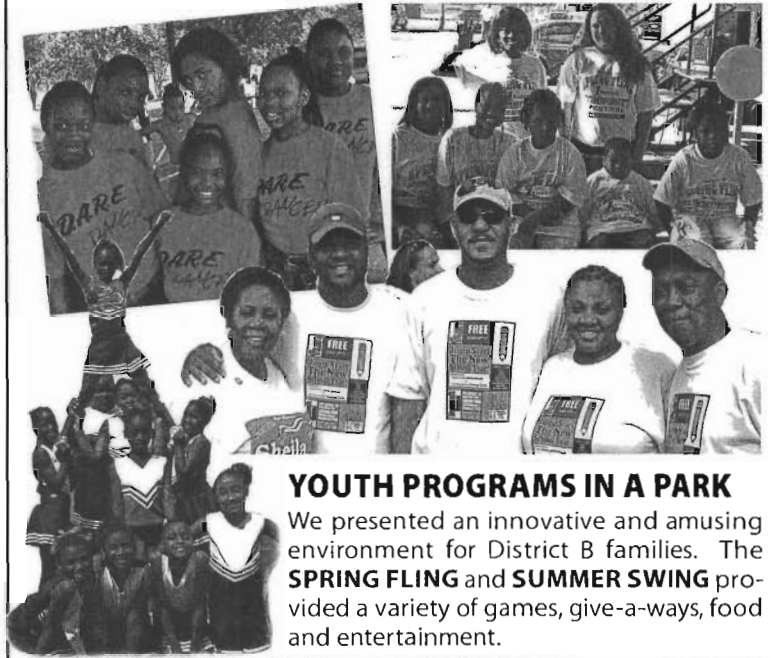
ACRES HOMES AREA

CM Johnson brought the **Houston Police Department**, the **Million More Movement** and other local community and civic groups together to protect the women of **Acres Homes** through his **PROJECT PROTECT HER** and **SILENCE IS NOT SAFETY PROGRAM**. During the active search for murder suspects in Acres Homes, **CM Johnson** organized and lead weekly block walks to distribute self-help information to residents in need of housing and social services.

SWEAT EQUITY PROGRAM

CM Jarvis Johnson and Harris County's **Youth Advocate Program (Y.A.P.)** launched the District B's **Sweat Equity**, revitalization program, with its first project at the **W. LEO DANIELS TOWERS**. The thirty **Y.A.P.** members gave the Towers a fresh coat of paint and installed new benches in front of the senior independent living facility. The **Y.A.P.** students will clean-up dilapidated neighborhoods, plant flowers and distribute informative newsletters within District B, while receiving group training and enrichment from several City Council Members.

SPRING FLING



YOUTH PROGRAMS IN A PARK

We presented an innovative and amusing environment for District B families. The **SPRING FLING** and **SUMMER SWING** provided a variety of games, give-a-ways, food and entertainment.



SILENCE IS NOT SAFETY

Report all illegal activity that you witness!

CALL 311 TO REPORT

Illegal Dumping of Trash
Weeded Lots
NEGLECTED BUILDINGS
Flooding
Stray / Dangerous Dogs
ABANDONED CARS

- When you call - 311
1. Obtain a service request number
 2. Give your address, name (your telephone number is optional)
 3. Expect a response within 72 hours

Community Involvement



NORTHSIDE WOMEN HONORED

Wanda LeBrie St. Mary LeBlanc (center-left) and Algenita Scott Davis (center-right) were honored, as **HOUSTON HEROES** by Council Members **Peter Brown** (left) and **Jarvis Johnson**, for being appointed to the Board of Directors for the **Harris County Hospital District Foundation**. Wanda is a realtor, and Algenita is the *Executive Director* for **Houston Habitat For Humanity**.

— v.f.bennett.photo



EXCESS FUNDS TO LIBRARY PROJECT

CM Johnson made a \$5,000 donation to the City of Houston **Library Department** for purchasing **DIGITAL PROJECTORS** for LIBRARIES located in **Fifth Ward, Scenic Woods, Acres Homes, Kashmere Gardens**.

MDI SITE, TOXIC WASTE REMOVAL

CM Johnson worked with the **FIFTH WARD SUPER NEIGHBORHOOD COUNCIL**, local residents and the land developers to clean-up and remediate the toxic waste at **3617 Baer Street** in Fifth Ward. This agreement was signed in November 2006.

WAYSIDE VILLAGE

Council Member Jarvis Johnson led the fight with **CM Peter Brown** to cause the replotting of a poorly designed land-use plan for a 1,600 home development.

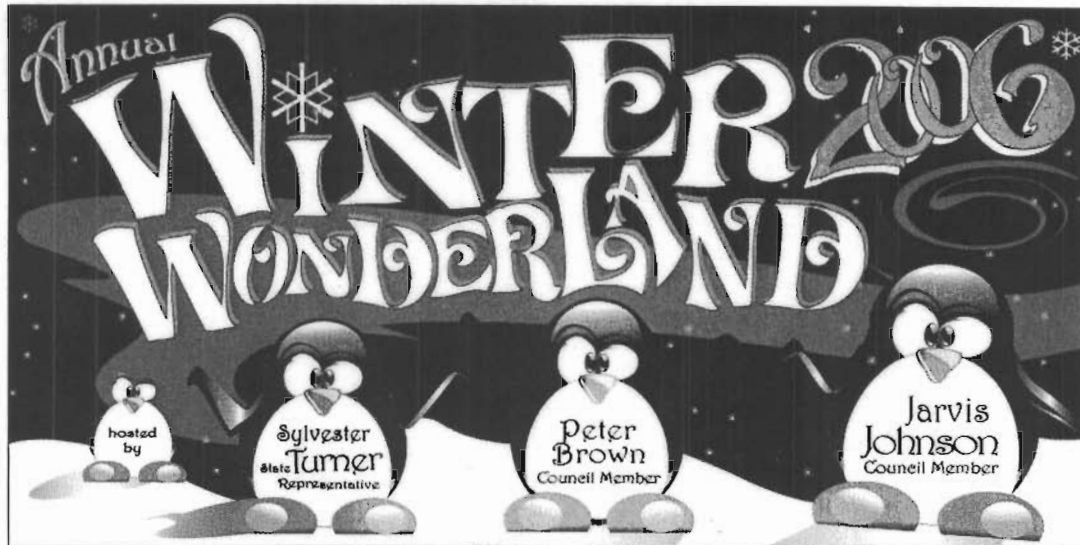
WE SALUTE THE PRESIDENTS OF SUPER NEIGHBORHOOD COUNCILS FOR THEIR DEDICATION FOR FIGHTING TO MAKE STRONG AND SAFE COMMUNITIES FOR ALL. OUR DISTRICT B COUNCIL OFFICE IS COMMITTED TO **STAY INVOLVED**:

- ATTENDED 100+ CIVIC AND FAITH BASED LOCAL MEETINGS
- EARNED A 98.6% RESPONSE RATE FOR 311 CALLS
- SPONSORED AND WORKED THREE CLEAN-UPS
- HOSTED TWO CAPITAL IMPROVEMENT PLAN (CIP) COMMUNITY MEETINGS.





*Exciting
Dazzling
Cross-Cultural
Educational
...enjoyed by all*



CM Jarvis Johnson hosted over 300 children from across *District B* to a **WINTER WONDERLAND 2006** of music, song, dance, and a three course luncheon — co-hosted by *State Representative Sylvester Turner* and *Houston City Council Member Peter Brown*. This gala luncheon presented kings and queens, from local schools, wearing formal tuxedos and ball gowns in the grand lobby of the Wortham Theatre. Special guests: *Swishahouse's Paul Wall*, and *Lil Keke*. Performances by: "*American Idol*" finalist **Paris Bennett**, **Lil J. Xavier** and the **Houston Grand Opera**.



Jarvis Johnson,
Lil J. Xavier,
Peter Brown, &
Sylvester Turner
—v.f.bennett.fotos



Thank You
Students & Educators,
Parents & Friends
Volunteers & Sponsors
FOR A SUCCESSFUL EVENT

2006 Winter Wonderland

*Special Friends
& Partners*

- The Sunland Group
- AT&T
- Esquire Title Company
- Continental Airlines
- Houston Yellow Cab
- Burchfield Companies
- Int'l. Union Of Painters & Allied Trades
- The Port Of Houston
- ARAMARK
- Anheuser-Busch Companies
- Houston Grand Opera
- Inner City Action Network (I.C.A.N.)
- Houston Convention & Entertainment Facilities
- Houston Symphony Orchestra
- Unity Bank
- Kirst Kosmoski, Inc.
- Healthy Resources Enterprise, Inc.
- Swishahouse
- Capital Records
- Dana Kaufmann
- Texans Shuttle
- Plumbers' Union
- SCIENTECH, Inc.
- Mary Hammer Menzel
- Corporate Security Solutions
- Reliant Energy
- CH2M Hill
- Charles D. Gooden Consulting Engineers
- Starbucks
- Kareem McKenzie, New York Giants
- D.A.R.E. + P.L.U.S.
- Schlumberger
- Harris County Youth Advocate Program