



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 488

February 11, 2010

Whether a communication relating to a measure that a city is considering including with a city newsletter that is paid for with public funds complies with section 255.003 of the Election Code. (AOR-552)

The Texas Ethics Commission has been asked to consider whether a communication relating to a measure that a city is considering including with a city newsletter that is paid for with public funds complies with section 255.003 of the Election Code.¹ The requestor of the advisory opinion provides that the communication at issue relates to a special election the city is holding in which the voters will consider reauthorizing a Crime Control and Prevention District (hereafter, District). The requestor states that all of the statements of fact contained in the communication are true.

Section 255.003 of the Election Code provides in relevant part as follows:

(a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

(b) Subsection (a) 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.

(b-1) 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.

(c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.

Elec. Code 253.003.

The initial question in determining compliance with section 255.003 is whether the communication provided for our inspection constitutes political advertising for purposes of section 255.003(a). 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 question in determining whether the communication constitutes “political advertising” is whether it is a communication supporting or opposing a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure. [Ethics Advisory Opinion No. 476 \(2007\)](#). The communication at issue consists of one page and includes a brief history of the District, a list of services that have been accomplished with the funding generated by the District, the sources that fund the district, and a statement that continuation of the funding will allow the city to continue providing the same level of law enforcement service without raising other fees and taxes. The communication also includes a statement about community meetings to provide further information and a statement about voting times and locations.

In our opinion, the one page communication provided for our inspection does not support or oppose a measure and therefore does not constitute political advertising as the term is defined in section 251.001(16).

The remaining question in determining compliance under section 255.003 is whether including the communication in a city newsletter is permissible under section 255.003(b-1). In our opinion, the description of the measure provided in the communication is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Therefore, for the inclusion of the communication in the newsletter to be permissible, an officer or employee of the city may not authorize such inclusion if the officer or employee knows the communication contains information that is false. We note that the requestor represents that all of the statements of fact contained in the communication are true. Whether or not an officer or employee provides such authorization is a fact question that cannot be resolved in an advisory opinion.

SUMMARY

For purposes of section 255.003 of the Election Code, the attached communication is not “political advertising,” and, therefore, may be included in a city newsletter that is paid for with public funds unless an officer or employee of the city authorizing such inclusion knows that the communication contains false information.

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

Crime Control & Prevention District

The City of North Richland Hills is planning an election for May 2010 to renew the Crime Control & Prevention District and the half-cent sales tax that helps to fund local law enforcement services and programs.

The Crime Control & Prevention District was initially approved by North Richland Hills voters in 1996 for a 5-year period and it was renewed in 2001 for a 10-year period. State law allows voters to extend the Crime Control & Prevention District for up to 20 years.

Since its inception in 1996, the Crime Control & Prevention District has generated approximately \$51 million through the half-cent sales tax to fund law enforcement services and programs. This has allowed the Police Department to:

- Hire 27 additional police officers, 2 detectives, 18 support personnel and 1 school crossing guard;
- Instruct the D.A.R.E. Program at all NRH elementary schools;
- Provide school resources officers for the middle schools and high schools;
- Continue the Neighborhood Watch and other crime prevention programs;
- Establish new crime prevention programs including the Crime Free Multi Housing program, the "Lock, Take and Hide" program, and others;
- Purchase 30 vehicles and refurbish 12 vehicles;
- Upgrade emergency radio and computer systems;
- Maintain competitive salaries for North Richland Hills police officers.

Since the Crime Control & Prevention District was created, calls for service have increased from 97,038 to 123,877 per year while response times to Priority 1 emergency calls have decreased from an average of 9 minutes and 42 seconds to 5 minutes and 18 seconds; in addition, there has been an increase in the percentage of crimes cleared each year.

The Crime Control & Prevention District is not only funded by North Richland Hills residents. People from other communities who patronize North Richland Hills stores and businesses also pay the Crime Control & Prevention District half-cent sales tax. Continuation of this half-cent sales tax will allow the City to continue providing the same level of law enforcement service without raising other fees and taxes.

Community meetings will be held this Spring to provide residents with further information about the Crime Control & Prevention District. Information on voting times and locations for the May 2010 Crime Control & Prevention District Continuation Election will be included in the Spring City Newsletter, which will be delivered to residents in April. For more information regarding the Crime Control & Prevention District or the upcoming election, please contact the Police Department at 817-427-7000.