



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 494

October 21, 2010

Whether communications relating to a measure election comply with section 255.003 of the Election Code. (AOR-558)

The Texas Ethics Commission has been asked to consider whether three communications relating to a measure election comply with section 255.003 of the Election Code. The requestor states that the City of Richland Hills ordered an election on whether the city should withdraw from the Fort Worth Transportation Authority (hereinafter, FWTA). Prior to ordering the election, the city created a task force to study the matter. A report issued by the task force is one of the communications before us. The other two communications are an introductory article to that report and an article discussing a request for proposal for an alternative transportation system that could be implemented should the voters elect to withdraw from the FWTA. Copies of the three communications are attached to this opinion as an appendix. The City of Richland Hills wishes to make the communications available in the city newsletter and on the city website.

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 § 255.003.

The initial question in determining compliance with section 255.003 is whether the communications provided for our inspection constitute political advertising for purposes of section 255.003(a) of the Election Code. 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.

Elec. Code § 251.001(16).

The critical question in determining whether the communications constitute “political advertising” is whether the communications support or oppose 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 report issued by the task force and the introductory article to the report provide information about the task force, its objectives, and an analysis of ridership data produced by the FWTA. The remaining article is about a request for proposal for an alternative transportation system that could be implemented should the voters elect to withdraw from the FWTA. The three communications do not provide information about the election nor do they support or oppose withdrawal from the FWTA and, therefore, do not constitute political advertising as the term is defined in section 251.001(16) of the Election Code.

The remaining question in determining compliance under section 255.003 is whether using public funds to include the communications in the city newsletter or to post the communications on the city website is permissible under section 255.003(b-1). In our opinion, the information provided in the communications is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the withdrawal from the FWTA. Therefore, for the use of public funds to publish the communications to be permissible, an officer or employee of the city may not authorize the use of public funds if the officer or employee knows the communications contain information that is false. 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 communications are not “political advertising” and, therefore, public funds may be used to publish the communications unless an officer or employee of the city authorizing such use of public funds knows that the communications contain false information.

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

AD HOC TASK FORCE REPORTS RIDERSHIP DATA TO COUNCIL

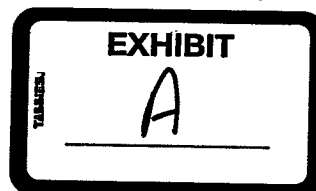
In June, the City Council established an ad hoc task force comprised of two Council Members and five citizens. The mission of the task force was to review, evaluate and report the actual ridership on: 1) the regular T Bus (Bus 41) service; 2) the mobility impaired transportation service ("MITS"); and 3) the school bus service that provides rides for students who live within 2 miles of a Birdville ISD school in Richland Hills, in order to give Council a better understanding of the average daily ridership on our public transportation system and who the riders were (i.e. citizens of Richland Hills or citizens from other cities).

Council asked the T to provide reports showing the pick-up and drop off points for riders on each of the three transportation services for a specified period. The reports were provided by the T to the City Council which, in turn, gave the reports to the ad hoc task force to begin their work. On July 19th, the ad hoc task force reported the results of their review to the City Council. Their full report is available on the City's Web site for your review.

The task force sorted the riders of each of the three services into two categories:

- 1) Richland Hills Riders. These were defined as riders who were either a Richland Hills resident, a patron of a Richland Hills business, or an employee of a Richland Hills business. The determination was made based upon the pick-up address or drop off address printed on the T rider report. If either the pick-up address or the drop off address was a residence or business location in Richland Hills (other than the former Sam's Club), then the rider was counted by the task force as a "Richland Hills rider."
- 2) Non-Richland Hills Riders. These were defined as riders who were neither an employee nor patron of a Richland Hills business, or a resident of Richland Hills. This determination was also made from the pick-up address and the drop-off address shown on the T rider report. Rides that originated at the TRE station in Richland Hills or at the former Sam's Club, for example, and that terminated at a location outside of Richland Hills, such as Northeast Mall or the ATI College in North Richland Hills were counted in that category.

The task force indicated in their report to Council that because the T rider reports appear to be incomplete or contain some inaccurate data a margin of error of plus or minus 10% was expected. The task force also explained that a "ride" for the regular rider request (Bus 41) was a one-way trip. The task force counted and reported the total of one way "rides" for the entire number of days covered in the T reports. From that data, the task force then calculated the average number of one way rides per day. Those one-way rides then were categorized (on basis of pick-up and drop off points) as:



1) Richland Hills resident/business rides and 2) non-Richland Hills resident/business rides.

The following table shows the average daily usage on each of the three public transportation services identified by the task force from the T rider reports as determined by the task force:

Service	Richland Hills Rides	Non-Richland Hills Rides
Regular Bus (41)	12 rides/day	41 rides /day
Mobility Impaired (MITS)	3.18 round trips/day	5.72 round trips /day
Student Bus - Home to School	25 students	39 students
Student Bus - School to Home	58 students	51 students

Data Source: Fort Worth Transportation Authority Ridership Reports

Bus 41. The task force reported that, based on the T's rider reports, the majority of riders on Bus 41 for the reporting period were believed to be non-resident riders who arrived at the TRE station and then took Bus 41 to the ATI College on Boulevard 26 in North Richland Hills, and return trips to the TRE station by those riders.

The task force did not report whether the rides were round trip or one way. In other words, for example, the 12 "Richland Hills rides" average daily trips may have been 6 round trips or 12 one way trips, or any combination thereof.

Mobility Impaired Service. The daily average "Richland Hills round trips" on the T MITS service in Richland Hills was 3.18, and the daily average "Non-Richland Hills round trips" on the T MITS service in Richland Hills was 5.72.

Student Bus Service. The task force separated the student ridership report into two parts because there was a significant difference in the number of riders in the morning and afternoon. More students rode the afternoon bus (from school to home) than the morning bus (home to school). Student riders who were picked up outside the city limits of Richland Hills (in Haltom City, Hurst and North Richland Hills) were assumed to be non-Richland Hills residents. In the morning student bus service, an average of 25 Richland Hills students rode the bus each day while an average of 39 students who did not live in Richland Hills rode the student bus. The afternoon student bus service had a higher number of both Richland Hills resident students and non-resident students. 58 students were from Richland Hills while 51 were non residents.

City of Richland Hills
Ad Hoc Task Force for collection of Ridership Data

July, 19th 2010

EXHIBIT

B

Mission:

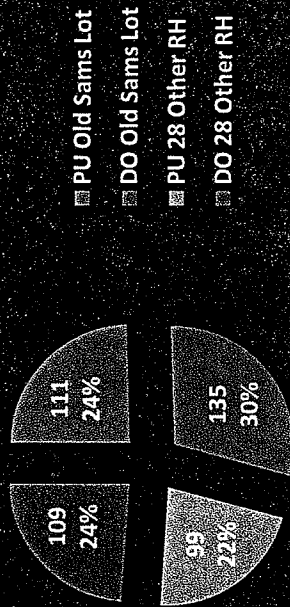
- ✓ Review ridership reports provided by the T which reflect recent public, non-rail transportation within the City.
- ✓ To document, from official T reports, the average daily usage of our City's public transportation system for MITS, School Bus, and On-Demand Bus 41 service.
- ✓ Present a detailed three part ridership report segregated by type of service for MITS, School Bus, and On-Demand Bus 41 services. Each section should be further sorted by:
 - 1) Richland Hills Rider – Rider who is either a Richland Hills resident, a patron of Richland Hills businesses, or an employee of Richland Hills businesses.
 - 2) Non-Richland Hills Rider – Non-Richland Hills resident rider who is neither an employee nor patron of Richland Hills businesses, or a Non-Richland Hills resident student.
- ✓ Report will be used by City staff to develop contingency plans and to solicit competitive contingency bids from qualified vendors, including the T.

Assumptions/Limitations:

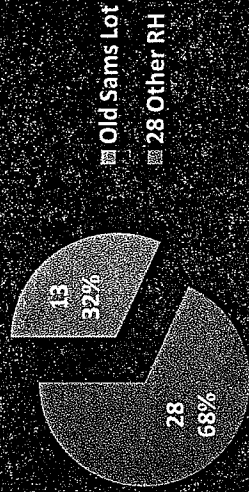
- ✓ Expected error of +/- 10% based on incomplete/inaccurate data provided by T.
- ✓ Riders with TRE home addresses were treated as Non-Richland Hills Residents if their ending address was outside of Richland Hills.
- ✓ Riders with Sam's parking lot addresses were treated as Non-Richland Hills Residents.

MITs Data

Total MITs Trips



Riders by Location



RH Other PU/DO by Location



Average Daily Riders

RH Locations
 Weekday – 3.18
 Weekend – 1.14

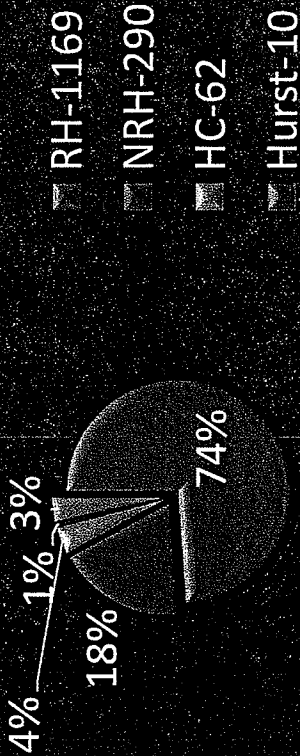
Average Daily Riders

Sam's Parking Lot
 Weekday - 5.72

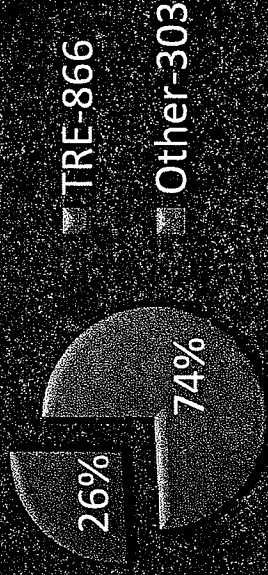
On-Demand Bus 41 Data

(Rider Request)

**1585 Total Rides By Client
Home Address (One Way)**



Of 1169 Richland Hills



**Total Riders
(85 Total)**



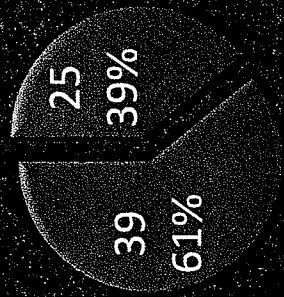
**Average Daily Rides
(53 Total)**



Student Rider Data

Average Daily Riders
Home to School
(64 Total)

- RH Riders
- Non-RH Riders



Average Daily Riders
School to Home
(109 Total)

- RH Riders
- Non-RH Riders



Total Student Riders by City

- Richland Hills
- Hurst
- Haltom City
- NRH



Questions?

ALTERNATE TRANSPORTATION REQUEST FOR PROPOSAL

At its Monday, July 19, 2010 Special Meeting, the City Council approved an Alternate Transportation Request for Proposal (RFP) for release to qualified vendors. The RFP was advertised on Friday, July 23, 2010 and Friday July 30, 2010. The RFP submission deadline is Monday, August 23, 2010. The Alternate Transportation RFP permits each vendor to submit proposals to the City to provide public transportation services for one or more of the following three categories of services: (1) for Richland Hills residents in general; (2) transportation services for the mobility impaired and elderly residents; and (3) school students. The RFP provides that the contract between the City and the vendor will be contingent upon the citizens electing to discontinue the Fort Worth Transportation Authority transportation service, so that the alternate transportation service will be placed into operation only if the citizens elect to discontinue the Fort Worth Transportation Authority transportation service. As with all city contracts, the contract can be terminated upon sufficient written notice by either the vendor or the City. More information will be provided as it becomes available. Additional information will be provided as it becomes available.

