



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 501

December 14, 2011

Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-564)

The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with section 255.003 of the Election Code. The Coryell County Commissioners Court approved placing a jail and law enforcement center bond initiative on an election ballot. The requestor prepared a brochure that he wants to distribute using public funds, including public resources. A copy of the brochure is attached to this opinion as an appendix.

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. A “measure” is a question or proposal submitted in an election for an expression of the voters’ will. Id. § 251.001(19).

The initial question in determining compliance with section 255.003 is whether the brochure 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.

Elec. Code § 251.001(16).

The critical question in determining whether the brochure constitutes “political advertising” is whether the brochure supports or opposes 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 brochure at issue includes facts about the proposed project such as the current jail situation, where a new jail would be built, the costs of a new jail, and alternatives to building a new jail. The brochure also includes the question as it would appear on the ballot and the date and time of early voting. In our opinion, the brochure provides information and discussion of a measure without promoting the outcome of the measure and therefore does 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 distribute the brochure is permissible under section 255.003(b-1). In our opinion, the information provided in the brochure is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the bond measure. Therefore, for the use of public funds to distribute the brochure to be permissible under section 255.003(b-1), the officer or employee of the county authorizing the use may not do so knowing that the brochure contains 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 brochure is not political advertising and, therefore, public funds may be used to distribute the brochure unless an officer or employee of the county authorizing such use of public funds knows that the brochure contains false information.

How much will the project cost?

Based on an assessment from our independent architectural firm, the Jail and Law Enforcement Center facility total development budget is \$18,764,000. The Project includes construction, furnishings and all related architectural and engineering fees which will be awarded through competitive bid.

What will the project cost taxpayers?

- ◆ The facility would require a tax increase of about four and one-half cents per \$100 valuation to pay the estimated \$950,000/year bond payment
- ◆ Any operational savings including personnel, utilities, and maintenance savings per inmate, may reduce the tax increase to about three and one-half cents.

When could the project be completed?

If the bond election is approved by voters, final architectural and engi-

neering work could commence quickly, and construction would likely commence approximately 6 months later. Part of the 6-month time frame will be for soliciting competitive bids for all phases of the construction. It is anticipated construction would be completed in late 2013.

The following will appear on the November 8, 2011 ballot.

PROPOSITION

FOR)
AGAINST)

THE ISSUANCE OF \$18,764,000 TAX BONDS FOR THE CORYELL COUNTY JAIL AND LAW ENFORCEMENT FACILITY.

Early Voting

Oct 24 - 28; 8 to 5 pm
Oct 31 - Nov 2; 8 to 5 pm
Nov 3 - 4; 7 to 7 pm

Gatesville & Copperas Cove Annexes

<p>CORYELL COUNTY</p> <p>JAIL AND LAW ENFORCEMENT FACILITY</p> <p>BOND ELECTION</p> <p>NOVEMBER 8, 2011</p>

Facts about the Proposed Project and Bond Election

Coryell County has a constitutional requirement to provide inmate incarceration as part of its law enforcement, judicial and public safety missions.

The question to voters is whether general obligation bonds should be authorized to build a larger jail and law enforcement facility so that the County can house inmates within Coryell County and provide more space for the Sheriff Department to operate and train.

Background:

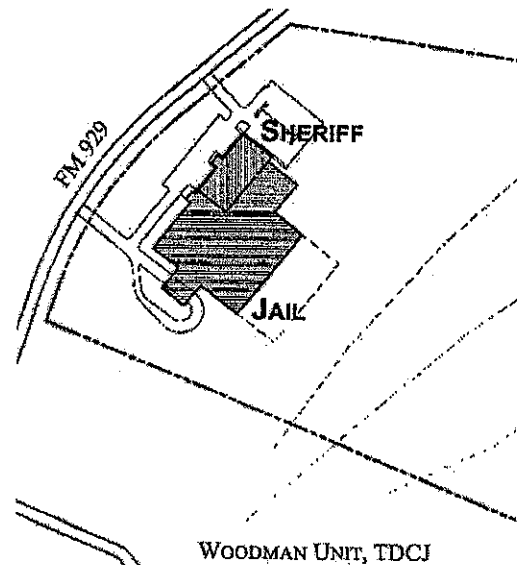
Twenty years ago, the current 92 bed jail was built providing an increase of 65 beds which was able to satisfy all County incarceration needs for fifteen years. After the jail reached full capacity in 2006, a jail committee of County citizens was formed to explore actions that should be taken.

Current Jail Situation:

- Existing jail capacity is 83 inmates with separation requirements. The average county inmate count of about 115 prisoners requires over one-fourth to be housed out of county.
- County inmates above the jail capacity are transported and housed in other county jails. The County paid \$700,000 in 2010 to other counties to house its inmates.
- In 2010, \$44,989 was spent on repairs and maintenance of the jail.

Where would we build the Jail?

Adjacent to the Woodman Unit operated by the Texas Department of Criminal Justice (TDCJ) on FM 929 in Gatesville. The required land for the project was given to the County by TDCJ. Below is the proposed site plan for the project:



Items impacting new Jail costs?

⇒ The County has received a 40 year loan commitment from the U.S. Department of Agriculture (USDA) Rural Development to fund the jail construction costs at an interest rate no greater than 4.625%. If approved by voters, the general obligation

bonds will provide the necessary security required by the USDA loan offer.

⇒ Although the USDA loan approval was for approximately \$22 million, the Commissioners' Court and Sheriff redesigned areas of the facility and reduced the project budget to the current \$18,764,000.

Alternatives to building New Jail?

- ♦ Continue to pay for the transport and housing of prisoners out of county.
- ♦ Invest maintenance and repair dollars in the existing jail facility in order to maintain compliance with standards developed by the Texas Commission on Jail Standards.

What if final building costs come in less than budgeted?

- The bond proceeds may only be used for the construction and related costs of the Jail and Law Enforcement Center.
- The amount of bonds issued will be decreased and cost to taxpayers reduced.