



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 504

April 18, 2012

Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-568)

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 requestor states that the City of Richland Hills (hereinafter “the city”) ordered an election on the issue of whether the city should consolidate with the City of North Richland Hills. The city prepared a proposed “fact sheet” to inform voters of the facts pertinent to the election. The city wants to distribute the fact sheet and make it available on the city’s website to provide the citizens of the city with information regarding the proposed consolidation. A copy of the fact sheet is attached to this opinion as an appendix. The measure on the ballot is the following: Shall the cities of Richland Hills and North Richland Hills be consolidated?

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 fact sheet 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 fact sheet constitutes “political advertising” is whether the fact sheet 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 communication at issue includes facts about the measure to consolidate the City of Richland Hills and the City of North Richland Hills, such as the manner in which the measure was placed on the ballot, the fact that consolidation would require a majority of Richland Hills voters voting in favor of the measure and a majority of North Richland Hills voters voting in favor of a separate measure in November 2012, and various effects of consolidation and differences between the two cities. The communication goes beyond factually describing the measure. However, in our opinion, the fact sheet 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 fact sheet is permissible under section 255.003(b-1). In our opinion, the information provided in the fact sheet is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Therefore, for the use of public funds to distribute the fact sheet to be permissible under section 255.003(b-1), an officer or employee of the city authorizing the use may not do so knowing that the fact sheet 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. In our opinion, statements provided in the fact sheet should be verified to ensure that they are not false.

SUMMARY

For purposes of section 255.003 of the Election Code, the attached fact sheet is not political advertising and, therefore, public funds may be used to distribute the fact sheet unless an officer or employee of the city authorizing such use of public funds knows that the fact sheet contains false information.

City of Richland Hills F.A.Q. About Consolidation

How did this proposition get on the ballot?

This proposition was placed on the ballot by an individual group of citizens who collected 145 signatures out of 4,575 registered voters. This proposition was not sponsored by either the City of Richland Hills or the City of North Richland Hills. No member of either city council or either staff initiated this proposition.

What would have to take place for Richland Hills and North Richland Hills to consolidate?

A majority of Richland Hills residents would have to vote in favor of consolidation in May 2012 and then a majority of North Richland Hills voters would have to vote in favor of consolidation in November 2012.

What happens if consolidation passes in both cities?

The City of Richland Hills would cease to exist, and the current residents of the City of Richland Hills would become residents of the City of North Richland Hills. On the date of consolidation, all former Richland Hills residents would become subject to North Richland Hills laws, ordinances and taxes, all Richland Hills elected officers would lose their offices, and all Richland Hills city employees would lose their jobs.

What are the major differences between Richland Hills and North Richland Hills?

Public Transportation

Richland Hills contributes a ½ cent sales tax to participate in the Fort Worth Transportation Authority, commonly known as "The T." Services provided by "The T" within Richland Hills are the Trinity Railway Express commuter rail, door-to-door Rider Request bus service, mobility impaired service ("MITS") and DFW Airporter service. The citizens of North Richland Hills have not elected to contribute the ½ cent transportation sales tax in order to participate in The T. Under state law the citizens of North Richland Hills have to eliminate or reduce by election the other local sales taxes collected in North Richland Hills before North Richland Hills could join The T. According to The T, all area public transportation services by The T in Richland Hills will end if the cities are consolidated.

City Finances

The City of Richland Hills has financial rating and financial reserves have been described as "Sound finances" with "very strong reserves" by Standard & Poor's Rating Direct on October 31, 2011.

	Richland Hills	North Richland Hills
Debt Rating	AA- Stable	AA+
Gross Debt versus average valuation	.24 %	.92 %
% of Property Tax that goes toward paying Debt	6.6%	21.4%

What are the major differences between Richland Hills and North Richland Hills?

Property Taxes

Richland Hills currently has lower tax rate than North Richland Hills, and historically has had a lower tax rate than NRH. Richland Hills current tax rate is 55 cents per \$100 valuation; North Richland Hills currently has a tax rate of 57 cents per \$100 value, and is holding a bond election in May to raise the tax rate to 61 cents per \$100 valuation.

Under state law, if the cities are consolidated, any bond funds for public improvements approved by election in the City of North Richland Hills that have not been appropriated or subject to contract must be kept in a separate fund and used for public improvements in the territory for which the bonds were voted, in this case, in North Richland Hills.

Sales Taxes

The local sales tax rates in both cities are the state maximum 8.25%, with 2% in local sales taxes options. However, the local sales tax options are different in the two cities. If the cities are consolidated, the local sales taxes in Richland Hills would be allocated as established in the City of North Richland Hills.

Use	Richland Hills	North Richland Hills
State	6.25%	6.25%
City General Fund	1 %	1 %
Transportation, The T	.5%	
Crime Control	.375%	.5%
Economic Development	.125%	
Parks		.5%

Library

The Richland Hills Public Library is located within the corporate limits of the City of Richland Hills. The Richland Hills collections has 37,180 titles available on site and is a member of the MetroPAC library consortium with over a million combined titles available for residents through delivery three time per week. The North Richland Hills library is located 5.3 miles away from the Richland Hills library and is not a member of the MetroPAC system. It is unknown what decisions the City Council of North Richland Hills would make regarding whether to keep the current Richland Hills library open if the cities are consolidated.

Community Center

The City of Richland Hills operates a Community Center in for the citizens of Richland Hills. The community center is the regular meeting space for numerous civic groups, exercise classes, and arts classes. . It is unknown what decisions the City Council of North Richland Hills would make regarding whether to keep the current Richland Hills community center open if the cities are consolidated.

What are the major differences between Richland Hills and North Richland Hills?

Police

Emergency response times and patrol officers per citizen in Richland Hills and North Richland Hills are as follows.

	Richland Hills	North Richland Hills
Priority 1 Response Time	3:56 minutes	4:54 minutes
Property Crime Clearance Rate	17%	19%
Police Beats	2 Patrol areas	7 Patrol areas
Average Beat Size	1.9 square miles	2.6 square miles
Patrol Officers per 1,000 residents	1.68 Patrol Officers	1.29 Patrol Officers

It is unknown what decisions the City Council of North Richland Hills would make regarding police services in the former "Richland Hills" neighborhood if the cities are consolidated.

Fire Rescue

The City of Richland Hills has fewer residents per firefighter/paramedic. 68% of all Richland Hills emergency calls are for advanced life support/emergency medical services. North Richland Hills services 52% more residents per firefighter/paramedic than Richland Hills.

	Richland Hills	North Richland Hills
Average Calls Per Year	1,400	7,000
Ratio of Firefighter/paramedic per number of residents	1 firefighter/paramedic per 500 residents	1 firefighter/paramedic per 760 residents

It is unknown what decisions the City Council of North Richland Hills would make regarding fire rescue services in the former "Richland Hills" neighborhood if the cities are consolidated.

Grants

Both Richland Hills and North Richland Hills have access to Federal grants, they just have different ways of applying for them. As a city over 50,000 North Richland Hills is considered a direct entitlement city for Federal H.U.D. grants. As a smaller city Richland Hills must apply for funding through Tarrant County for some Federal H.U.D. funding. Richland Hills is regular recipient of Federal Community Development Block Grant (C.D.B.G.) going on its 37th year of receiving funds, which is used to make infrastructure repairs in many of the city's neighborhoods. The total cost of C.D.B.G. projects in Richland Hills is \$1,528,711.

What are the major differences between Richland Hills and North Richland Hills?

Pets & Animals

If the Cities of Richland Hills and North Richland Hills consolidate the citizens of Richland Hills would be subject to the City of North Richland Hills laws and ordinances. The City of North Richland Hills has a number of restrictions on the type and amount of animals a citizen may own that are different than those adopted in the City of Richland Hills. Some of these are outlined below:

	Richland Hills	North Richland Hills
Yearly license fee for altered animal	\$3	\$8
Yearly license fee for unaltered animal	\$5	\$28
Yearly license fee for multiple pets	\$10	\$26
Horses	1 per 1/3 of an acre	Limited to Agricultural and R1-S zoning districts, one acre minimum lot size, not permitted within 50 feet of a residence and subject to approval by Animal Control Officer
Chickens	Up to 15 hens or 14 hens & 1 rooster	
Goats/Small Live Stock	Allowed in appropriately fenced areas	

In the City of North Richland Hills lots with agricultural zoning lots must be a minimum of two acres in size. If the cities are consolidated, it is unknown how the City of North Richland Hills would zone the former Richland Hills area, or whether such zoning would permit the continued use of horses, chickens and small live stock.

Recreational Vehicle Parking

North Richland Hills limits where a resident may park their recreational vehicle. In NRH recreational vehicles may only be parked on an approved concrete or asphalt surfaces or in a screened in lot.

Public Works

The Richland Hills Public Works Department completes a number of capital improvement projects such as street repair and drainage improvements each year. The total cost of completed and existing projects is \$17,594,142. The Public Works Department has proposed an additional \$6,335,000 in streets and drainage improvements and \$2,650,000 in wastewater improvements. It is unknown what decision the City Council of North Richland Hills would make regarding funding and completing projects in the former Richland Hills area if the cities are consolidated.