



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 506

November 29, 2012

Whether a city council member's refrigerator magnet constitutes political advertising for purposes of section 255.003 of the Election Code. (AOR-571 and AOR-572)

The Texas Ethics Commission has been asked to consider whether a city council member's refrigerator magnet constitutes political advertising for purposes of section 255.003 of the Election Code.¹

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.

...

(c) A person who violates Subsection (a) . . . 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.

A magnet is a type of "sign" or "similar form of written communication" for purposes of political advertising. *See generally* Ethics Advisory Opinion No. 184 (1994).

The critical issue in determining whether a communication 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. 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. Ethics Advisory Opinion No. 476 (2007).

In Ethics Advisory Opinion No. 211, 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.

In Ethics Advisory Opinion No. 476, we considered whether a city council member’s newsletter constituted political advertising. In that instance, the four-page newsletter included one individual photograph of the public officer and 22 other photographs in which the public officer appeared with other persons. The area covered by the photographs was almost 50 percent of the newsletter. In addition, the name of the public officer appeared 22 times in print type that was bolded or larger than the main text of the newsletter. We determined that the newsletter was a self-promotion of the public officer and, thus, constituted “political advertising” as defined by section 251.001(16) of the Election Code. Ethics Advisory Opinion No. 476 (2007).

The refrigerator magnet at issue prominently displays an individual photograph of a public officer standing in front of a representation of a city seal. Below the photograph, the name of the public officer appears in a print type size that is larger than any other text on the magnet. Additionally, the magnet includes the name of the public office held, the public officer’s contact information, and the Internet website address for information about the public officer on the city’s website. The magnet also prominently features the phrase “DEDICATION to . . .” and a list of three items relating to activities of the public office: (1) Timely Constituent Response! (2) Responsible City Spending! (3) Standing up for residents, businesses, and for what is right and just! After the first item appear the words “Our #1 Priority.”

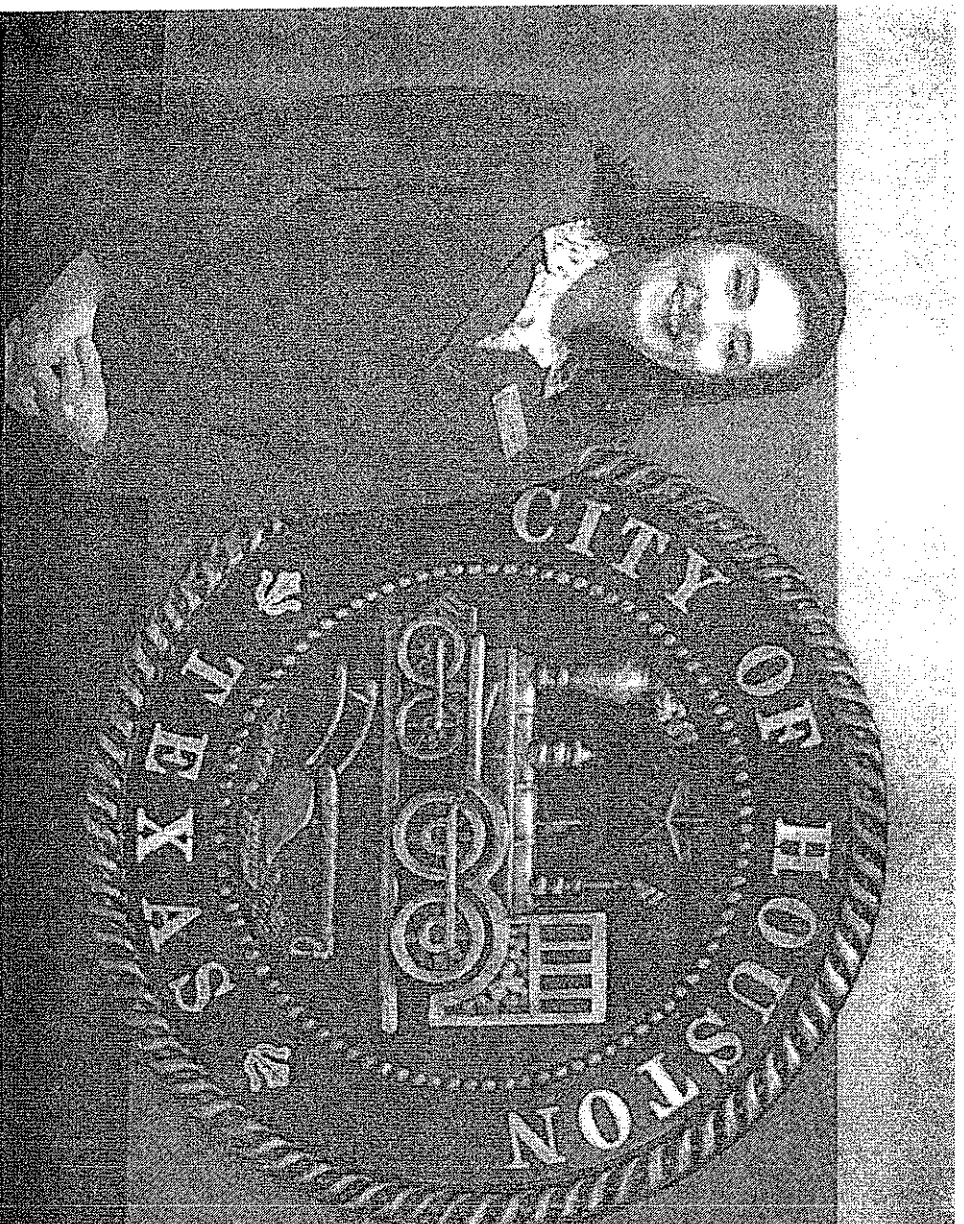
In our opinion, the refrigerator magnet is a self-promotion of a public officer because the name and photograph of the public officer appear in an unduly conspicuous way and the three-item list promotes the public officer’s priorities. When viewed as a whole, the magnet constitutes “political advertising” as defined in section 251.001(16) of the Election Code and for purposes of section 255.003 of the Election Code.² Consequently, public funds may not be used to pay for the magnet.

SUMMARY

The refrigerator magnet at issue constitutes “political advertising” for purposes of section 255.003 of the Election Code.

¹ An image of the 4” x 6” refrigerator magnet at issue is attached to this opinion as an appendix.

² 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.



DEDICATION to...

- 1. Timely
Constituent
Response!**
- 2. Responsible City Spending!**
- 3. Standing up for residents,
businesses, and for what
is right and just!**

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