



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 516

February 13, 2014

Whether a city may permit a political committee to participate in a city-sponsored “adopt-a-park” program, whereby the city purchases and displays within the park a sign that includes the name of the political committee in exchange for the political committee’s clean-up activities within the park. (AOR-584)

The Texas Ethics Commission has been asked whether a city may permit a political committee to participate in a city-sponsored program known as the “adopt-a-park” program without violating section 255.003 of the Election Code. The city, which requested this opinion, provides the following facts:

The city has adopted an “adopt-a-park” program, wherein an individual, group, association, partnership or corporation signs an agreement to conduct clean-up activities in a local municipal park. In exchange for the clean-up activity by the person or entity, the city will purchase and erect a sign with the person’s or entity’s name attached. The person or entity is loaned vests, gloves and retrieval tools that belong to the city on clean-up day. The city purchases and maintains the signage with the persons or entities name attached. No other words, symbols or icons are allowed.

May the city allow a person or entity that is a registered specific- or general-political action committee to participate in the “adopt-a-park” program, where the program will allow the political action committee to use city-purchased equipment and will result in the purchase, display, and maintenance of a sign, on city property, listing the name of the political action committee without violation the Texas Election Code, Section 255.003?

According to the terms of the “adopt-a-park” program submitted with the request, the purpose of the program is to give “civic-minded individuals, organizations, and businesses the opportunity to participate in creating a cleaner, more beautiful community.” The terms of the “adopt-a-park” program provide that the city’s responsibilities include “[erecting] signs identifying the name of [the] volunteer organization” and that the city “reserves the right to approve, disapprove, and/or edit names or acronyms on the signs.” The terms of the “adopt-a-park” program also provide that the volunteer’s responsibilities include completing at least four clean-up activities per year.

Section 255.003 of the Election Code states that an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. “Spending” of public funds includes the use of political subdivision employees’ work time, the use of existing political subdivision equipment, and the use of facilities maintained by a political subdivision. Ethics Advisory Opinion No. 443 (2002) (EAO 443). Thus, an officer or employee of a city may not use or authorize the use of the city’s employees’ work time, equipment, or facilities for political advertising. “Political advertising” is defined, in pertinent part, as 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 appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. Elec. Code § 251.001(16)(B)(i).

Whether any particular sign or other communication constitutes political advertising depends upon its specific content. The requestor has not provided an example of a name that would be included on a sign purchased by the city and displayed within a city park and we cannot address every possible name that could be included on a sign. However, a sign that bears the name of a political committee may constitute political advertising if the name supports or opposes a candidate, political party, public officer, or measure. A sign bearing the name of a political committee named “Citizens for Jane Doe for Mayor,” for example, would likely constitute political advertising. See, e.g., Ethics Advisory Opinion No. 102 (1992) (an advertisement congratulating a sports team and identifying a candidate or public officer as such is generally political advertising).

The city’s intent in creating and administering the program is presumably not to support or oppose a candidate, political party, public officer, or measure. Nevertheless, we have previously stated that the prohibition in section 255.003 applies to any use of a political subdivision’s resources for political advertising, regardless of whether a political subdivision shows a preference for political advertising from a particular source. EAO 443. Thus, the city may not use its resources to create and maintain political advertising in the “adopt-a-park” program even if the city permits other political committees to participate in the program and shows no preference for any participant in the program.¹

SUMMARY

A city may not use its resources to create or maintain political advertising bearing the name of a political committee pursuant to the “adopt-a-park” program described in this opinion.

¹ We also caution that government resources generally may not be used for campaign purposes. See Penal Code § 39.02. Whether city resources may be used in the requestor’s circumstances depends upon the specific laws governing their proper use.