



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 531

*October 5, 2015*

*Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-604)*

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. Nacogdoches County (hereinafter “the county”) has approved placing on an election ballot a measure authorizing the creation of a county assistance district and imposing a sales and use tax for the purpose of financing the operations of the district, under chapter 387 of the Local Government Code. The county has prepared a brochure regarding the measure that it wants to distribute using public funds, including public resources, such as the county’s website and other public locations. A copy of the brochure is attached to this opinion. The measure on the ballot is the following:

Authorizing the creation of the Nacogdoches County Assistance District No. \_\_\_\_ and the imposition of a sales and use tax at the rate of 1% for the purpose of financing the operations of the district.

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.

*Id.* § 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 county assistance district, such as the maximum amount of a sales tax assessed for the district, the overall maximum amount of a sales tax that would be imposed in the district, and the district functions for which the sales tax revenue must be used. The brochure also includes the question as it would appear on the ballot and the dates and times 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 measure. Therefore, for the use of public funds to distribute the brochure to be permissible under section 255.003(b-1), an 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.

**EXHIBIT A**



Many Texas counties have found it challenging to fund public services, projects and programs. Chapter 387, Local Government Code, authorizes all counties to create county assistance districts and to adopt a local sales tax to finance these public purposes.

A district may impose a sales and use tax to fund the operations of the district if the tax is approved by a majority of votes received at the creation election and if the total combined rate of all local sales and use taxes would not exceed 2 percent at any location within the district. The maximum amount of tax assessed would be 1%. Any money spent in the district would be taxed at 8.25% instead of 7.25%.

The county must hold an election to authorize the creation of the district and imposition of the sales tax.

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The following will appear on the upcoming election ballot.

**PROPOSITION**

**FOR            )**  
**AGAINST )**

**AUTHORIZING THE CREATION OF THE [REDACTED] COUNTY ASSISTANCE DISTRICT NO. \_\_\_\_\_ AND THE IMPOSITION OF A SALES USE AND TAX AT THE RATE OF 1% FOR THE PURPOSE OF FINANCING THE OPERATIONS OF THE DISTRICT**

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**PROPOSITION ELECTION  
EARLY VOTING  
OCTOBER 19-23, 8AM-5PM  
OCTOBER 26-30, 8AM-5PM  
ELECTION DAY  
NOVEMBER 3, 2015**



The district must use the sales tax revenues to perform the following functions of the district:

- The construction, maintenance, or improvement of roads or highways;
- The provision of law enforcement and detention services;
- The maintenance or improvement of libraries, museums, parks or other recreational facilities;
- The provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or
- The promotion of economic development and tourism.