



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 532

*October 5, 2015*

*Whether a city officeholder may distribute political advertising on certain letterhead that contains a logo and a slogan that were designed in part with the city's public funds. (AOR-602)*

The Texas Ethics Commission ("commission") has been asked to consider whether a city officeholder may distribute political advertising on letterhead that contains a logo and a slogan that were designed in part with the city's public funds.

According to the officeholder requesting this opinion, the officeholder maintained in his law office a computer file consisting of city letterhead that the officeholder has used for correspondence in his official capacity. The letterhead includes the names and titles of the officeholder and other members of the city council, as well as a specially designed logo that includes the name of the city, a slogan, and an image of a star. The letterhead also includes a separate slogan or "branding" statement for the city. The city and the city chamber of commerce paid a private company to design the logo and slogan; the city paid one quarter of the design costs with funds from its collected hotel and motel occupancy taxes. The officeholder states that the logo is often used in a variety of ways within the community by the city and others, including the chamber of commerce. The officeholder also states that the city does not have any restrictions on the use of the logo or slogan, but that city staff had worked on a possible resolution to present to the city council regarding such limits.

The officeholder's assistant, who works in the officeholder's law firm, used the law firm's personal computer to modify the city letterhead for the officeholder's use. The officeholder removed from the letterhead the names of the other city council members, but retained the officeholder's name and title. The officeholder also changed the city's return address on the letterhead to his law firm's address. The officeholder asks whether it would be permissible to use the modified letterhead to write and distribute a letter that supports a local bond measure in a school district election. The officeholder would print the letter using equipment at his law firm and would not use city funds to print or edit the letter. The letter would also include a statement that no city funds were used in the dissemination of the letter.

The question is whether the distribution of the political advertising with the letterhead in question would violate section 255.003(a) of the Election Code, which states:

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

Elec. Code § 255.003(a). A "measure" is a question or proposal submitted in an election for an expression of the voters' will. *Id.* § 251.001(19).

The term "public funds" is not defined by the Election Code. However, we have held that "the spending of public funds" includes any use of a political subdivision's resources for political advertising. Ethics Advisory Opinion No. 443 (2002) (the prohibition applies to a school district's use of its facilities to post political advertising in a restricted area of a school on work time), 45 (1992) (the prohibition applies to a school district's use of employees' work time and internal mail system equipment to distribute political advertising).

In the facts presented, the officeholder modified an electronic copy of the city's letterhead for the purpose of distributing political advertising. Although city equipment or employees were not used to make the modifications, we assume that the city's letterhead was created by city staff or with city equipment to be used for official purposes. Additionally, both the original and the modified letterhead include the city logo and slogan that were paid for, in part, with city funds, and there is no indication that the city does not continue to maintain an ownership interest in the logo or slogan.<sup>1</sup> Thus, we assume that the logo and slogan are the city's intellectual property and, as such, would constitute a city resource.<sup>2</sup> In such circumstances, a city officeholder would be prohibited from using or authorizing the use of the letterhead to write and distribute political advertising.

### SUMMARY

An officer or employee of a political subdivision may not use letterhead that is created by city staff or with city resources, and that contains the city's logo and slogan that were designed with city funds, to write and distribute political advertising.

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<sup>1</sup> The issue before us is not whether the city can enforce its intellectual property interests in any particular case, but whether the letterhead and its contents are a resource of a political subdivision for purposes of section 255.003 of the Election Code

<sup>2</sup> We note that section 255.006 of the Election Code prohibits a person from representing in a campaign communication that a candidate holds a public office that the candidate does not hold. Elec. Code § 255.006. Section 255.006(d) states that a "person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising." *Id.* § 255.006(d). That statute indicates that an officeholder may use a representation of the state seal in political advertising. However, section 255.003 concerns the use of public funds of a political subdivision for political advertising, not the use of a state seal.