



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 552

February 27, 2020

ISSUES

Whether a city employee violates section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted. (AOR-629)

SUMMARY

1. A city employee does not violate section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum, and if the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned facility.
2. A city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum and the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned room.

3. A city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising.

FACTS

The Texas Ethics Commission (“Commission”) has been asked three separate questions by a city employee regarding the application of section 255.003(a) of the Election Code. According to the facts provided for this opinion, the city employee is the chief administrative and executive officer of the city and is responsible for the administration of all city affairs. The city owns facilities that have been used as venues for third parties to sponsor and conduct debates and forums for candidates for public office. The sponsors pay rent to the city to use the facilities and the debates and forums are open to all candidates and to the public. The debates and forums attract candidates and their supporters who wish to display or distribute political advertising materials to members of the public who may be present within a rented meeting room, in a corridor outside a rented meeting room, or in the parking lot outside a city-owned facility where the debate or forum is being conducted. The city does not prepare or pay for any of the political advertising materials, sponsor or conduct the debates, invite or contact candidates, or endorse or oppose any candidates. No city employees participate on work time in the preparation, display, placement, or distribution of any political advertising materials.

ANALYSIS

The city employee asks about the application of section 255.003(a) of the Election Code in three scenarios involving the display or distribution of political advertising on city-owned property. The law at issue in each scenario is section 255.003(a) of the Election Code, which states that “an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.” We will separately address the application of this law to each scenario.

City Employee Allows the Display or Distribution of Political Advertising at a City-Owned Facility Rented by a Sponsor

In the first scenario, the city employee asks whether he would violate section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum.

We have stated in prior opinions that, for purposes of section 255.003(a) of the Election Code, the spending of public funds includes the use of a political subdivision’s resources, including

money, employees' work time, facilities, and equipment.¹ Addressing the first scenario, the city-owned facility is a city resource, and thus the restriction in section 255.003(a) of the Election Code applies to the city employee's use of that city-owned facility for political advertising. However, the sponsor would be paying the city for the use of that city-owned facility, which would be made available to members of the public for the display or distribution of political advertising during or in connection with the candidate debate or forum. If the sponsor uses non-public funds to pay the city for the use of the city-owned facility, and the amount paid is the standard rental rate charged by the city to others who rent the city-owned facility, then there would be no spending of public funds for political advertising. Therefore, in our opinion, the city employee does not violate section 255.003(a) of the Election Code by allowing political advertising to be displayed or distributed by members of the public at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum and the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned facility.

Political Advertising Displayed or Distributed in a City-Owned Room Rented by a Sponsor

In the second scenario, the city employee asks whether he has authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum. This scenario is substantively identical to the first scenario, except that the facts do not indicate that the city employee specifically allows the display or distribution of political advertising. However, regardless of whether the city employee allows the display or distribution of political advertising, public funds would not be spent for political advertising if the sponsor uses non-public funds to pay the city for the use of the city-owned room, and the amount paid is the standard rental rate charged by the city to others who rent the city-owned room. Thus, the city employee would not knowingly authorize the spending of public funds for political advertising under section 255.003(a) of the Election Code if political advertising is displayed or distributed by members of the public in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum and if the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned room.

¹ See Ethics Advisory Opinion Nos. 550 (2019) (officer of a political subdivision may not use employees' work time or restricted areas of the political subdivision's facilities for political advertising), 532 (2015) (city officer may not modify city letterhead, created by city staff or with city equipment and which included the city's intellectual property, to create and distribute political advertising letters), 516 (2014) (city officer or employee may not use city funds to purchase and maintain a political advertising sign in a city park as part of an "adopt-a-park" program), 443 (2002) (school district employees may not use work time to distribute a candidate's campaign flyers to a restricted area of the school that is not accessible to the public), 45 (1992) (school district officer or employee may not use the district's internal mail system equipment to distribute political advertising).

Political Advertising Displayed or Distributed in a City-Owned Corridor or Parking Lot

In the third scenario, the city employee asks whether he has authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum, or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted. This scenario is distinguishable from the first two scenarios in that the political advertising would be displayed or distributed in locations that are separate from the specific location that is rented by the sponsor. Thus, the use of the corridor and the parking lot would be considered the “spending of public funds” for purposes of section 255.003(a) of the Election Code. However, whether the city employee would be deemed to have authorized the spending of public funds for political advertising in this scenario depends upon the city employee’s specific actions.

According to the facts provided, the debate or forum is “open to all candidates and to the public” and the display or distribution of political advertising, to the extent that it occurs, would be conducted by members of the public, not by the city employee or any other city employee on city work time. The facts do not indicate that the city employee would take any action to prevent or allow the display or distribution of political advertising by members of the public in the corridor or parking lot, and we assume for purposes of this opinion that the city employee would take no such action. The issue, therefore, is whether the city employee would “knowingly ... authorize the spending of public funds for political advertising” by taking no action to prevent members of the public to display or distribute political advertising in the corridor or parking lot near the city-owned room that is rented by a sponsor who allows the public to access the city-owned room.

Our prior opinions regarding the spending or the authorization of the spending of public funds for political advertising have addressed scenarios in which an officer or employee of a political subdivision takes specific actions with the political subdivision’s resources to create or distribute political advertising.² The scenario before us in this opinion, however, is distinguishable from those prior scenarios in that the city employee does not take any specific action with city resources to create or distribute political advertising. The actions are taken instead by members of the public who display or distribute political advertising. A city employee taking no action in preventing the display or distribution of political advertising does not equate to the city employee “knowingly ... authoriz[ing] the spending of public funds for political advertising.”

Furthermore, we are guided in this instance by the legislative policy stated in our enabling legislation at section 571.001 of the Government Code, which is to “protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances.”³ To achieve that purpose, we are directed to construe the law to achieve certain objectives, including “to enhance the potential for individual participation in electoral and governmental processes[] and to ensure the public’s confidence and trust in its government.”⁴

² See *supra* note 1 (summarizing prior advisory opinions).

³ Gov’t Code § 571.001.

⁴ *Id.* §§ 571.001(4),(5).

Our interpretation of section 255.003(a) of the Election Code in this instance furthers this policy, as we do not think the legislature intended section 255.003(a) of the Election Code to require an officer or employee of a political subdivision to prevent the display or distribution of political advertising by members of the public. Therefore, in our opinion, the city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising.⁵

⁵ We do not conclude that a city employee must always allow the display or distribution of political advertising, but only that the city employee does not authorize the spending of public funds in the circumstances before us.