



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 582

December 14, 2022

ISSUE

Whether a written communication, created by a political subdivision and related to a measure, constitutes political advertising for purposes of the Election Code's prohibition against using public funds for political advertising. (AOR-672)

SUMMARY

No. Assuming the factual statements in the communication are true, the communication provided by the requestor is entirely informational and does not include any advocacy.

FACTS

The requestor, the superintendent of an independent school district, requests an opinion on whether a written communication constitutes political advertising for purposes of Section 255.003(a) of the Texas Election Code. The one-page communication provides information about an upcoming Voter Approved Tax Rate Election ("VATRE").

The communication explains what a VATRE is generally, identifies the consequences of the specific VATRE presented to the district's voters, and provides information about voting periods and locations. It states that the VATRE's passage would increase revenue to be used for the district's operations, including salaries, curriculum, and facility maintenance. It identifies the district's tax rate for 2022 and compares it to what the rate would be in 2023 should the VATRE be adopted.

ANALYSIS

Officers and employees of political subdivisions are prohibited from "knowingly spend[ing] or authoriz[ing] the spending of public funds for political advertising." Tex. Elec. Code § 255.003(a).

"Political advertising" means, in relevant part, a communication *supporting or opposing* a measure that appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication. Tex. Elec. Code § 251.001(16) (emphasis added).

As in many of our prior opinions applying Section 255.003(a), the communication considered in this request contains factual information that may affect whether voters will support or oppose the passage of a measure. *See, e.g.* Tex. Ethics Comm'n Op. No. 565 (2021). However, "[t]he

Election Code does not prohibit political subdivisions from spending public funds to enable voters to make informed decisions.” Tex. Ethics Comm’n Op. No. 559 (2021); *see also* Tex. Elec. Code § 255.003(b).

The communication does not include a “motivational slogan or call to action.” Tex. Ethics Op. No. 559 (2021). Nor does the communication include any “express advocacy” as defined by the Commission’s rules. *See id.* (citing 1 Tex. Admin Code § 20.1(18)). When viewed as a whole, the communication does not appear advocate for the passage or defeat of the measure.

Assuming the information contained within the communication is true,¹ the Commission concludes that it does not support or oppose the measure. Therefore, Sections 255.003(a) and 255.003(b-1) of the Election Code does not prohibit the district from spending public funds to create and distribute the communication.

¹ The Commission’s authority to issue advisory opinions does not permit factfinding, nor is there an opportunity for adverse parties to participate in the process. When a requestor asks whether a communication constitutes political advertising, we must assume that the information conveyed in the communication is true and accurate. We do not foreclose the possibility that *false* statements of fact—even without any accompanying express advocacy—may constitute political advertising for purposes of Section 255.003(a).

In addition, an officer or employee of a political subdivision is prohibited from spending or authorizing 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. Tex. Elec. Code § 255.003(b-1).