



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 593

September 27, 2023

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. Tex. Elec. Code § 255.003(a). (AOR-689).

SUMMARY

The specific communication considered in this opinion is political advertising for purposes of Section 255.003 of the Election Code because it advocates for the passage of a measure.

FACTS

The requestor is a superintendent of an independent school district that put a voter-approved tax rate election ("VATRE") on the November 2023 ballot. The requestor asks whether a proposed communication would violate the prohibition on an officer or employee approving the spending of public funds for political advertising.

The communication is a video that uses animated text and images to present questions and answers about the VATRE. The communication explains that the VATRE will be used to add money to the school district's general fund.

The video contains the question "Why do we need a VATRE?" which it answers by citing the state's recapture system, inflation, "COVID-19 Costs," and increase in property values that outpaced growth in student enrollment.

The video also explains the cost of the VATRE and notes that it will have no additional cost to "those over 65." The video provides a table with the current tax rate and amount for a typical home under the current tax structure, the tax structure for next year if the VATRE fails, and the tax structure if the VATRE passes. The table shows a tax savings to the tax payer with the VATRE and a greater tax savings with no VATRE from the "current" tax structure. The video explains that an owner of a typical home can expect property taxes to be reduced even though the VATRE would raise the tax rate imposed by the ISD due to property tax relief legislation passed by the 88th legislature.

We assume that facts contained in the communication are true.

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). However, Section 255.003(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. Tex. Elec. Code § 255.003(b).

“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).

We view the communication as a whole when determining whether a communication supports or opposes a measure. Tex. Ethics Comm’n Op. No. 476 (2007). However, any amount of express advocacy, a motivational slogan, or call to action is impermissible even if the communication is otherwise factual. *See* Tex. Ethics Comm’n Op. No. 559 (2021).

“[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. 582 (2022) (quoting Tex. Ethics Comm’n Op. No. 559 (2021)). A communication may contain factual information that may affect whether voters will support or oppose the passage of a measure without advocating for or against the measure. *See, e.g.* Tex. Ethics Comm’n Op. No. 565 (2021); Tex. Ethics Comm’n Op. No. 582 (2022).

However, the communication at issue contains statements that are not factual and advocate for the passage of the VATRE. One question asked during the video is “Why is the VATRE necessary?” The question itself assumes the necessity for the increased tax rate. The communication then offers justifications. The VATRE being necessary is not a fact; it is a question for the voters to decide. Framing questions to assume the VATRE is necessary and then providing justifications is advocacy. The communication also emphasizes that taxes overall will go down for homeowners despite the increase from the VATRE, and actually writes “Yes” in a test bubble on the screen, after asking whether the VATRE should be approved.

When viewed as a whole, the communication advocates for the passage of the measure. Therefore, Section 255.003(a) prohibits an officer or employee from knowingly spending or authorizing the spending of public funds for its distribution or publication.