



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 607

June 18, 2024

ISSUE

Whether an officer or employee of a political subdivision who leases a residence to an employee may allow the employee to place a sign endorsing a candidate or a measure in the yard of the leased residence. (AOR-706)

SUMMARY

Under the facts presented in this opinion, an officer or employee of a political subdivision does not violate Section 255.003(a) by allowing an employee-tenant to place political advertising outside of a residence owned by the political subdivision.

FACTS

The requestor represents an Independent School District (“ISD”). The ISD owns multiple residences to facilitate employees living in district. In keeping with the purpose of the residences, the ISD prefers to rent to employees. When there are not enough employees who desire to live in ISD-owned residence, the ISD will occasionally either: 1) permit a former employee to continue leasing District-owned property, or 2) permit a member of the public to lease the property. The ISD is presently renting a residence to one non-employee. The ISD charges the same rental rate regardless of the resident’s employment status.

At issue here is an ISD-owned single-family residence that is leased to one of its employees. The employee-tenant wishes to place political advertising signs in the yard of the ISD-owned property. The request asks the TEC to assume the following facts regarding the lease arrangement:

1. The ISD withholds the rent for the property from the employee’s paycheck each month.
2. The ISD charges the market rental rate it charges to non-employees.
3. The property leased by the employee of the ISD is a single-family residence in which the employee resides.
4. The ISD’s lease agreement with the employee is silent as to the placement of signs on the leased property.

5. The ISD does not direct, encourage, or otherwise condone the placement of the political advertising.

ANALYSIS

We start by noting that requestors for this opinion are the trustees of an ISD. A requestor may seek an advisory opinion about how the law applies to the requestor regarding an actual or hypothetical set of facts. Tex. Gov't Code § 571.091. The TEC does not issue opinions for requestors asking whether a third-party's conduct violates the law. *Id.*; 1 Tex. Admin. Code § 8.5. The requestor is not the employee leasing the ISD-owned property. Therefore, this opinion is limited to whether an ISD official would violate the law by allowing the employee to place political advertising at his or her ISD-owned residence.

“An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.” Tex. Elec. Code § 255.003(a).

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. *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), 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).

But not all uses of a political subdivision property to display political advertising constitute a violation of Section 255.003(a). In EAO 552, the TEC held that 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 when certain conditions are met. Relevant to the holding in EAO 552 were the facts that the city-owned facility was rented to and paid for by the sponsor of the candidate debate or forum and the sponsor used non-public funds to pay the city its standard rental rate. The TEC further held that a city employee does not violate Section 255.003(a) by taking no action to prevent the display or distribution of the political advertising in a room rented by a member of the public or in corridors outside the city-owned room rented to and paid for by the sponsor of a candidate debate. *Id.*

Similar to the public space rented in EAO 552, the ISD makes residences available to employees and non-employees alike on the same terms (although it gives preference to ISD employees), the residences are leased at market rates from non-public funds, and the employee-tenant enjoys all the rights that a non-employee would during the duration of the lease. The facts presented by the requestor indicate also that the ISD has no formal or informal policy directing or controlling the display of any messages outside the ISD-owned residences. For these reasons, the ISD-owned residences function as an individual's private property. As such, under the facts presented in this opinion, an ISD official does not violate Section 255.003(a) by allowing a resident-employee to place political advertising outside of a residence owned by the ISD.