



Memorandum

DATE February 3, 2023

TO The Honorable Mayor and City Councilmembers

SUBJECT Guide Regarding Whether Certain Communications Using City Funds and Resources Might Constitute Political Advertising and Overview of City-Funded Officeholder Accounts

This memorandum provides an overview of state law, the Dallas City Code, and Texas Ethics Commission opinions regarding the use of public funds and resources for communications that are considered political advertising and use of city-funded officeholder accounts.

Use of Public Funds for Political Advertising

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.¹ An offense under this section of the Texas Election Code is a Class A misdemeanor.² It is an affirmative defense, however, that an officer or employee reasonably relied on a court order or an interpretation of Title 15 in a written opinion issued by: (1) a court of record, (2) the attorney general, or (3) the Texas Ethics Commission.³

Texas Ethics Commission

The Texas Ethics Commission (“Commission”) is the state agency responsible for administering and enforcing Title 15 of the Texas Election Code concerning political advertising, including issuing rules and advisory opinions interpreting what constitute public funds and political advertising.

1. Public Funds.

Neither the Texas Election Code nor the Commission specifically defines public funds. However, the Commission has issued opinions concluding that the use of public funds means any use of a political subdivision’s resources, including the use of its facilities,⁴ employees’ work time, and internal mail system equipment to distribute political advertising.⁵ The

¹ TEX. ELEC. CODE § 255.003(a).

² *Id.* at § 255.003(c).

³ *Id.* at § 255.003(d).

⁴ Tex. Ethics Adv. Op. No. 443 (2002).

⁵ Tex. Ethics Adv. Op. No. 45 (1992).

Commission has also concluded that a city logo, because it was developed in part with the payment of city funds, constituted the use of public funds.⁶

2. Political Advertising.

Political advertising is a communication supporting or opposing a candidate for nomination or election to an office or office of a political party, a political party, an officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.⁷

The Commission has issued several advisory opinions regarding what types of communications constitute political advertising, including:

- An advertisement in a magazine congratulating a local sports team with the public official's title and contact information is "almost always" political advertising.⁸
- Holiday greeting cards containing the name and address of the public official were political advertising.⁹
- Advertisements supporting or opposing a candidate on a social networking website do constitute political advertising.¹⁰

⁶ See Tex. Ethics Adv. Op. No. 532 (2015).

⁷ TEX. ELEC. CODE § 251.001(16). Political advertising *does not* include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth. See Tex. Ethics Comm. Rule 20.1(11).

⁸ Tex. Ethics Adv. Op. No. 102 (1992).

⁹ Tex. Ethics Adv. Op. No. 289 (1995). Note that although the Commission determined that the holiday greeting cards were a political advertisement, they did not have to meet the disclosure requirements in Chapter 251 of the Election Code because of a Commission rule that exempts stationery as long as the name and address of the officeholder sending the cards appear on either the card or the envelope.

¹⁰ Tex. Ethics Adv. Op. No. 491 (2010). The Commission determined that, due to the spatial constraints imposed on such an advertisement by the networking website, the advertisement would comply with disclosure requirement (1) if the full disclosure statement appeared on the face of the advertisement or (2) if a direct link to another Internet landing page that displays the full disclosure statement appears on the face of the advertisement and the direct link contained the word "political advertising," "pol ad," or another recognizable abbreviation. The Commission said that the link must take the Internet user directly to the page that contains the full disclosure statement, and the Internet landing page to which the link refers must be operational and freely accessible during the time the advertisement is visible on the social networking website.

In advisory opinions addressing political advertising disclosure requirements, the Commission assumed that the following were political advertising:

- Lapel stickers, pens, magnets, emery boards, or invitations to an open house hosted by an officeholder.¹¹
- Envelopes used to send political advertising materials.¹²
- Wooden nickels with the candidate’s logo.¹³
- Campaign balloons with the candidate’s logo.¹⁴
- Candy wrappers with the candidate’s logo.¹⁵
- T-shirts with the candidate’s logo.¹⁶

Summary of Newsletter Rule Adopted by the Commission Regarding Use of Public Funds for Political Advertising

The Commission has few guidelines on political advertising and typically handles questions on a case-by-case basis. However, the Commission has adopted a rule regarding when a newsletter is political advertising, thereby prohibiting the use of public funds in its creation or dissemination.¹⁷

¹¹ Tex. Ethics Adv. Op. No. 184 (1994). Although the Commission assumed all these materials included political advertising, the materials were not subject to disclosure requirements because the Commission designated them “similar campaign materials” under Tex. Elec. Code §255.001(b), excepting from disclosure “...invitations to political fund-raising events or to campaign buttons, pins, hats, or similar campaign materials.”

¹² Tex. Ethics Adv. Op. No. 380 (1997). Political disclosure is not required on envelopes when the political advertisement inside the envelope meets disclosure requirements.

¹³ Tex. Ethics Adv. Op. No. 387 (1997). The Commission categorized the coins as “campaign buttons, pins, hats, or similar campaign materials” under Tex. Elec. Code §255.001(b), thereby excepting the coins from disclosure requirements.

¹⁴ Tex. Ethics Adv. Op. No. 390 (1998). The Commission categorized the balloons as “campaign buttons, pins, hats, or similar campaign materials” under Tex. Elec. Code §255.001(b), thereby excepting the coins from disclosure requirements.

¹⁵ Tex. Ethics Adv. Op. No. 424 (1999). The Commission categorized the candies as “campaign buttons, pins, hats, or similar campaign materials” under Tex. Elec. Code §255.001(b), thereby excepting the coins from disclosure requirements.

¹⁶ Tex. Ethics Adv. Op. No. 457 (2004). The Commission categorized the shirts as “campaign buttons, pins, hats, or similar campaign materials” under Tex. Elec. Code §255.001(b), thereby excepting the coins from disclosure requirements.

¹⁷ For other communications related to a referendum, charter amendment, or bond election that may be published on a city website or on a pamphlet or flier created by the city, the Commission begins its analysis by determining whether the content of the communication supports or opposes the measure. The content of the communication must provide information and discussion of the measure without promoting the outcome of the measure. *See* Tex. Ethics Adv. Op. No. 476 (2007).

The Commission has ruled that a newsletter of an officer of a political subdivision is *not* political advertising if:

- It includes *no more than two pictures of the officer* (city councilmember) and the total area of the newsletter covered by the pictures is no more than 20 percent of the page on which the picture(s) appear(s);
- It includes *no more than eight personally phrased references* (such as the city councilmember's name or use of "I," "me," or "the city council member") on an 8 ½" x 11" page or larger, with a reasonable reduction of those personal phrases in anything smaller than 8 ½" x 11"; and
- When viewed as a whole and in the proper context: (a) is informational rather than self-promotional; (b) does not advocate passage or defeat of a measure; and (c) does not support or oppose a candidate for nomination or election to a public office or office of a political party, a political party, or an officer.¹⁸

Summary of Commission Advisory Opinions Regarding Public Funds and Political Advertising

Since 1992, the Commission has issued 17 advisory opinions regarding whether certain expenditures of public funds were permissible under Section 255.003 of the Texas Election Code. The following is a summary of several of the relevant opinions regarding use of public funds for political advertising.

- An officer or employees may not use or authorize the use of an internal mail system, school district equipment, or any other method of distribution that involves the use of employees on school district time.¹⁹
- A city-sponsored city council candidate forum that excludes candidates who did not voluntarily agree to comply with local campaign contribution and expenditure limits makes the forum itself a communication in support of those included and, thus, is political advertising.²⁰
- A school district may not allow school board candidates to post political fliers in facilities owned and managed by the district that are not accessible to the general public.²¹
- A broadcasted city council meeting, including the broadcast of a tape of such a meeting, over a public access television channel in which individual councilmembers state opinions on particular election measures *is not* a violation under Section 255.003 of the Texas Election Code if the broadcast is in keeping with the city's regular practice of broadcasting meetings. The Commission noted, however, that it is not possible to state

¹⁸ Tex. Ethics Comm. Rule 26.2.

¹⁹ Tex. Ethics Adv. Op. No. 45 (1992).

²⁰ Tex. Ethics Adv. Op. No. 343 (1996).

²¹ Tex. Ethics Adv. Op. No. 443 (2002).

that comments by city councilmembers at a recorded public meeting could *never* give rise to a violation because it could imagine a situation in which one or more city councilmembers might arrange a discussion of a matter not pending before the city council with the hope that the broadcasts would influence the outcome of an election.²²

- A four-page city councilmember newsletter published with city funds, which contained 22 pictures of the councilmember and 22 mentions of the councilmember’s name in bold and in larger text constituted a political advertisement.²³
- A magnet that prominently displayed the councilmember’s photo with a three-item list promoting the city councilmember’s priorities created for a city councilmember constituted a political advertisement.²⁴
- A city may not pay for or maintain an “adopt-a-park” sign that contains the name of a political committee supporting a particular candidate or election measure, regardless of the fact that the city does not discriminate against the message of the particular group’s name.²⁵
- A city councilmember may not use letterhead with the city’s logo for political communications when the logo design was paid for with city funds because the logo constituted an intellectual property resource of the city.²⁶

Unauthorized Use of a City Seal or other Insignia

The Dallas City Code prohibits, unless express written authorization from the city manager is first obtained, the use of the official flag, seal, shield, service mark, badge, or other insignia of the city or a department of the city or a facsimile of the flag, seal, shield, service mark, badge, or other insignia of the city or the department of the city: (1) for commercial purposes; or (2) to signify sponsorship or approval by an agency or department of the city.²⁷

Dallas Code of Ethics

Chapter 12A of the Dallas City Code prohibits the use of city resources for private purposes. Section 12A-20 states that:

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies for private purposes (including political purposes).

²² Tex. Ethics Adv. Op. No. 456 (2004).

²³ Tex. Ethics Adv. Op. No. 476 (2007). Note that Tex. Ethics Comm. Rule 26.2 governs the content restrictions for newsletters.

²⁴ Tex. Ethics Adv. Op. No. 506 (2012).

²⁵ Tex. Ethics Adv. Op. No. 516 (2014).

²⁶ Tex. Ethics Adv. Op. No. 532 (2015).

²⁷ DALLAS CITY CODE § 31-23.

A city official or employee who violates this section is subject to an ethics complaint and potential sanctions.

City-Funded Officeholder Accounts

Each member of the city council receives a city-funded officeholder account that is funded from the city budget and intended for use by a city council member to cover the expenses of holding office.²⁸ Chapter 15A of the Dallas City Code provides guidelines for allowable expenses under this account. City-funded officeholder accounts may only be used for official city business.²⁹ An expense is for official city business if it meets all of the following criteria:

- (1) serves a public purpose of the city of Dallas, rather than serving a personal purpose or campaign purpose;
- (2) helps defray the cost of holding public office;
- (3) is a reasonable amount for the goods or services purchased;
- (4) is not a prohibited gift or transfer of public funds to an individual or entity; and
- (5) is consistent with Texas Ethics Commission rules, regulations, and opinions for non-campaign expenses of officeholders.³⁰

Examples of permissible expenses from this account include office supplies and equipment used in the city council member's office, membership dues or fees in community service or civic organizations, and ceremonial and protocol items.³¹ Examples of impermissible expenses include membership dues or fees in athletic clubs, social clubs, or any other organization not allowed by administrative directives; purchase of food, drink, decorations, caterers, audio-visual, or supplies for non-city events; and promotional items intended primarily to promote the public image of the city council member.³²

In addition, expenditures from a city-funded officeholder account may not exceed the amount allocated by the city manager, and city council members who exceed this budgeted amount will be personally liable for the amount exceeded.³³ Funds may not be transferred from one city-funded officeholder account to another city-funded officeholder account.³⁴ City council members must file an annual statement with the city itemizing expenses paid from the city-funded officeholder accounts during the prior fiscal year on April 30 or when the council member vacates office.³⁵

²⁸ *Id.* at § 15A-1(1).

²⁹ *Id.* at § 15A-7.4(b).

³⁰ *Id.*

³¹ *Id.* at § 15A-7.4(d).

³² *Id.* at § 15A-7.4(e).

³³ *Id.* at § 15A-7.4(f)(1).

³⁴ *Id.* at § 15A-7.4(f)(2).

³⁵ *Id.* at § 15A-7.4(h).

A city council member who violates this section is subject to an ethics complaint and potential sanctions.

Conclusion

This memorandum is a general guide. The advisory opinions summarized here are based on facts presented to the Commission; therefore, before relying on any one advisory opinion, we recommend that you read the complete advisory opinion.

In addition, our office is available for questions; however, an opinion from our office does not provide a safe harbor or a defense to prosecution for a Texas Election Code violation. An employee may request an opinion from the Commission that advises how the law applies to that person in a specific real or hypothetical factual situation.³⁶ The Commission rules state that they will issue an advisory opinion within 60 days after it receives a written request.³⁷

For more information about the Commission, visit its website at <https://www.ethics.state.tx.us/> or contact it at 512-463-5800.

/s/ Christopher J. Caso

CHRISTOPHER J. CASO
City Attorney

³⁶ Tex. Ethics Comm. Rule 8.5.

³⁷ Tex. Ethics Comm. Rule 8.7 and 8.13.