

Election Protocol

“A District Guide to Election Ethics”



BOLING INDEPENDENT SCHOOL DISTRICT
Home of the fighting Bulldogs!

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Boling Independent School District

Election Protocol

It cannot be overstated that when conducting a bond election the employees, officers, directors, trustees, and any other member of Boling Independent School District must be aware of and adhere to the legal requirements imposed on the oral and written communications they make relating to the bond election by the Election Code and the Texas Ethics Commission. The Texas Ethics Commission strictly enforces the legal requirements regarding statements made and actions taken by employees and officers of a school district before a bond election, and often finds that well intentioned actions violate the law. Penalties for this sort of ethical violation can include a personal fine imposed on the employee or officer responsible for the statement of up to \$10,000 and/or up to one year in jail.

The following list of questions and answers is intended to provide guidance to employees and officers of Boling Independent School District when they are communicating, orally or in writing, regarding a future bond election of the school district.

Frequently Asked Questions

Q: What actions are prohibited prior to a bond election?

A: Actions or authorizations by an employee or officer of a school district involving the spending of public funds for political advertising are prohibited by Texas Election Code 255.003. "Political advertising" is a communication that advocates a particular outcome in an election and includes statements made in writing, orally, email messages, posters, newsletters, fliers, television or radio ads and Internet sites. An employee or officer who makes use of any resources of the school district to engage in political advertising, including computer, copier or telephone use, is spending public funds in violation of the Texas Election Code. Also, using paid time of employees of a school district to create or distribute political advertising is prohibited.

Q: What can or can't I say about an upcoming bond election?

A: Any factual statement can be made at any time regarding the bond election without violating the Texas Election Code. All political advertising, whether in support of or against a bond election, is considered advocacy and is strictly prohibited.

Q: What's considered "advocating" for or against a bond election?

A: Most employees and officers violate the ethics laws by engaging in communication that is considered advocacy. Obviously, asking for support or rejection of a bond election is advocacy. Using statements such as "Vote for X" and "Defeat Y" is also advocacy. However, one of the difficulties in understanding what is or is not advocacy comes from the Texas Ethics Commission's prior decisions that have indicated whether communication is advocacy, with specific consideration to the tone and emphasis of the statements made.

Q: How can I know if a statement I want to make is advocacy? "Tone and emphasis" of a statement is subjective and doesn't help me figure out if I'm about to make an ethical violation.

A: Unfortunately, the Texas Ethics Commission has not provided a clear answer. Prior Ethics Commission decisions are helpful in understanding the types of prohibited communications. The following statements were all considered advocacy by the Ethics Commission and provide some guidance in determining the types of statements that are impermissible:

- "Although, as policy, we will not formally endorse the bond, there is a choice there that some of our leaders highly favor. You can contact me for who and why, but I am confident all of you will research and make the right choice."
- "It is very important for your children and the school district that the bond election passes."
- A newsletter headline indicated the governing body "seeks voter approval" and a quote stating "we want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence."
- Our citizens now have the opportunity to support X for the 21 Century. Please support the vision – our future depends on your commitment."
- "This bond is the right thing to do for the children of this community."

The following types of terms and phrases are also considered advocating a position and should not be used:

- "Best solution"
- "Fantastic"
- "State-of-the-art"
- "Countless benefits"
- "Horrible shape"
- "Need"
- "Improve" or "Improvement"
- "We must do something"

The following types of motivational slogans and calls to action are also violations:

- "Good Schools are the Foundation of a Good Community"
- "Every Child Deserves a Good Education"
- "Put Children First"
- "Show That You Care About Our Community"

Q: Is that an exhaustive list?

A: No. The comments listed above are representative of the type of statements that are considered advocacy. Any statement that is similar in tone or content to any of the above should be avoided.

Q: It doesn't seem like I can say much. What is permitted?

A: Texas Election Code 255.003(b) exempts communication that "factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure." ***Also, an employee or officer of a school district may advocate for or against a bond election on his or her non-official or off-duty time so long as no resources of the school district are used.***

Q: If I'm working on an advocacy campaign in my free time, can I take phone calls at work or receive/respond to emails for that campaign from my work computer?

A: No. There is no “*de minimis*” exception to the use of equipment of the school district. Brief telephone calls, one sentence emails, sending or receiving a fax, printing a single page off a work printer or making a single copy are prohibited. An employee or officer violates the Texas Election Code even if they will reimburse the school district for the costs associated with using a work machine or resource. All advocacy activity should be conducted in the employee's or officer's free time and should not involve any machinery or equipment owned by the school district.

Q: It is a fact that our school district needs this project and will not be able to grow without it. Does the Election Code allow me to explain that?

A: No. This type of statement is prohibited and considered advocating for the project. It is for the voters to determine need and the future growth of the community, and an employee or officer cannot explain a project this way. The following objectively verifiable information, is classified as factual and is representative of the type of information that can be presented by an employee or officer of a school district prior to a bond election:

- Growth rates; student capacity of a school facility; performance data; relationship between the school district's mission and public welfare; specific data on how obtaining or not obtaining bond funds will affect the school district's mission and goals; age/condition of facilities; tax rate effect; cost of projects; identifying the proposed projects; efforts to provide factual information about the election; voter registration and encouraging voter turnout; voting dates; and, polling place locations.

Q: If I stick to factual information, will I avoid an ethical violation?

A: Probably, but it's necessary to remember that the tone and emphasis of the information presented, even if purely factual, may give rise to a violation punishable by the Texas Ethics Commission. Bold or italicized print in a written communication or voice inflection and intonation during an oral presentation could be viewed as advocacy even if the information presented is strictly factual.

Q: We want to prepare a newsletter/article/pamphlet/advertisement/press release explaining the bond election. Do these same issues apply?

A: Yes, the same legal requirements apply to oral and written communications. Material produced by a school district cannot contain advocacy. It is important to allow both opponents and proponents of a measure to use material produced by the school district in their efforts. Favorable treatment to one side must be avoided. Extra copies of materials produced by the school district should not be provided to either side and they should make copies at their own expense.

Q: May a district link from its website to other websites supporting its bond campaign?

A: No. The attorney general has opined that a court would likely find that the use of public funds to link to a website supporting a candidate or measure is a communication supporting or opposing a candidate or measure in violation of Texas Education Code section 11.169 and Texas Election Code section 255.003(a). Tex. Att’y Gen. Op. No. KP-0177 (2018).

Q: May a district create a special logo for its bond election?

A: The answer to this question depends on the particular facts and circumstances in the district. A district may *not* create a logo containing any advocacy whatsoever; thus, logos that contain slogans should be avoided. A district wanting to create a logo for its bond campaign or election to approve a tax rate must consult its attorney for guidance.

Q: May a district use photos of school children in its bond materials?

A: Using photos of school children raises several concerns. If the children are depicted in deteriorating district facilities, this may be considered overly persuasive, and therefore advocacy, depending on how factual the depiction is and the context in which it is presented. Further, there may be privacy concerns related to the use of student photos based on the district’s designation of directory information and a parent’s release of the information. See TASB Policy FL. Finally, the use of stock photos of children who are not district students may be problematic because those photos convey no factual information about the district. For these reasons, TASB Legal Services advises against using photos of children or students in bond materials. A district wanting to do otherwise must consult its attorney for guidance.

Q: Can we provide space on property owned by the school district for advocacy groups to distribute literature or advocate for their side?

A: Advocacy literature produced by proponents or opponents cannot be distributed or available on property owned by the school district, even if equal access is allowed to both sides. The one exception to this is that a school district can establish a public forum reserved for discussion of certain topics, at which advocacy literature may be made available by the advocacy groups. A public forum or public debate is permitted if all sides have the same opportunity to participate and viewpoint discrimination is prohibited and restrictions on the public forum must be reasonable in light of the purpose served by the forum.

Q: May the district hold a press conference to provide factual information about an election or a measure on the ballot?

A: Yes, and board members may attend. For the reasons previously discussed, a school district press conference cannot be used for political advertising, but it can be used to disseminate factual information about an election or a measure on the ballot. Further, the Texas Open Meetings Act (OMA) specifically states that the attendance of a quorum of the board at a press conference related to school business is not a *meeting* governed by the OMA, so long as any discussion of school business is incidental to the event. Tex. Gov’t Code § 551.001(4).

Q: May board members use personal time and money to campaign for candidates and causes?

A: Yes. Public officials who are acting independently, without the use of public funds, have a free speech right to engage in political advocacy, including advocacy for their reelection. In its [Short Guide to the Prohibition Against Using School Resource for Political Advertising](#), TEC states, “Although you may not use political subdivision resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources.” For example, a school board member may attend a community meeting and advocate for passage of a bond measure or write a letter to the newspaper editor in support of a voter-approval tax rate election.

When engaging in advocacy using personal time and resources, a trustee need not conceal the trustee’s position or claim to be acting as a private citizen. *See, e.g.,* Tex. Ethics Comm’n Op. No. 321 (1996) (determining that a sitting judge did not violate the law by sending campaign solicitations on letterhead that she purchased but that identified her position).

Q: May a school board member join a political action committee (PAC) to support a bond election?

A: Yes. Board members are free to join special purpose PACs organized under Texas Election Code chapter 252. Board members may attend PAC events; however, because bond issues are public business over which the board has supervision or control, OMA requirements may apply if a quorum is present at an event.

Q: Is the superintendent ever “off the clock” and free to advocate as a private citizen?

A: Because superintendents’ duties often include appearing as a district representative at after-school community gatherings, superintendents may have more difficulty than other district employees separating their official speech from their private speech. Advocacy by a superintendent on a school district election matter may appear to others to be an official statement by the district and thus a use of district funds. A superintendent should either speak only about the factual purposes of an election measure so as not to encourage, promote, or imply that listeners should vote for or against the measure, or limit expression of personal viewpoints to times and places that are clearly not associated with the superintendent’s job.

Q: How serious is this type of ethical violation? What are the penalties?

A: A person who violates Texas Election Code 255.003 commits a Class A misdemeanor punishable by a civil fine of up to \$5,000, or, for a sworn compliance deemed frivolous, up to \$10,000. If the violation was intentional or knowing, criminal charges, including bribery, coercion of public servant or voter, abuse of official capacity or official oppression, could be brought. Each of these violations is against the employee or officer committing the offense and not against the school district.

Examples

The following are summaries of certain decisions of the Texas Ethics Commission that, in light of the rules described above, offer insight into what is and is not permissible:

Ethics Advisory Opinion No. 443 (2002)

Placement of campaign flyers in an area restricted to employees of the school district is prohibited because it necessarily requires school district employees to transport the flyers to the restricted area on work time. Allowing equal access for political advertising did not make the distribution of campaign flyers permissible.

Ethics Advisory Opinion No. 343

A forum in which all candidates in an election are provided the same opportunity to appear and speak is not a forum in support or opposition to any individual candidate, regardless of how the candidates actually perform.

Ethics Advisory Opinion No. 198 (1994)

Corporations are prohibited from making expenditures for communications if they "expressly advocate" the election or defeat of a candidate for public office.

Ethics Advisory Opinion No. 77

Under an "express advocacy" analysis, a corporation could not pay for the printing or mailing of postcards stating "let's elect judges by qualifications," and then listing the winners of a county bar poll.

Ethics Advisory Opinion No. 172 (1993)

A state employee could not be used as a political or personal scheduler but nonetheless found that directing a state employee to keep track of a legislator's overall schedule would not be a misapplication of the employee's time. The use of a state employee's work time to handle campaign transactions is a misapplication of employee's time unless it is incidental and unavoidable (e.g., forwarding campaign contributions to a campaign office.)

Sworn Complaint Order SC-230963

Mayor, city manager, city clerk and city attorney participated in the taping of a television program where they discussed proposed charter amendments and the effects of passing the amendments, including arguing in favor of the amendments. The television program was broadcast violating the Texas Election Code.

Sworn Complaint Order SC-230309

Dissolution of a city was proposed and the residents were sent a letter from the Mayor listing sixteen things that would happen if the city were dissolved and encouraging residents to "keep the control here – among the residents – not in the hands of outsiders." The Mayor was held to have violated the Texas Election Code.

Sworn Complaint Order SC-230205

Despite factual descriptions in a brochure, when considered in its entirety, it advocated a vote in favor of a bond proposition.

Sworn Complaint Order SC-220574

An advertisement in the local newspaper in the last edition prior to an election outlined a disagreement between two parties and linked the complainant by name to the disagreement, which involved taxes and water rate hikes. The Ethics Commission found these circumstances linked the complainant to two issues that can be perceived as unpopular and was therefore a violation of the Texas Election Code.

Sworn Complaint Order SC-210541

A school district trustee wrote two letters supporting his reelection and placed them in internal school district mailboxes. Even though the superintendent granted permission and called the other candidates and offered them the same opportunity, the trustee violated the Texas Election Code.

Sworn Complaint Order SC-210426

Mayor violated the Texas Election Code by directing his secretary to distribute a media release asking people to vote for a specific result in a referendum, despite a subsequent media release later that day stating the first media release had inadvertently contained the statement seeking support, acknowledging the first media release was improper and stating the city would be reimbursed for any costs involved with the error.

Sworn Complaint Order SC-210101

School employees who created a flyer advocating a position in the upcoming election on school district computer and made copies on school copiers before the school day began violated the prohibition against spending or authorizing the spending of public funds for political advertising.

Sworn Complaint Order SC-200416

General manager of a metropolitan transit authority violated the Texas Election Code by preparing a PowerPoint presentation that included a number of endorsements of a bond proposition from community organizations (e.g., "we support the light rail measure 100%").

Sworn Complaint Order SC-970852

Political advertising cannot be inserted into the city's water bill that is mailed by the city. Sworn Complaint Order in the Matter of Jim Richardson, a hospital district administrator violated the prohibition against the use of public funds for political advertising, despite the respondent having reimbursed the district for the funds spent on political advertising.

Sworn Complaint Order SC-93029

A school district superintendent violated the Texas Election Code by circulating a cover memo stating "Be aware! Beware! Share!" to which was stapled a political advertisement distributed by the candidates in an upcoming election.