



Texas Association of School Boards

Legal Services

P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.3610 • 800.580.5345 • legal.tasb.org • legal@tasb.org

Serving Texas Schools Since 1949

February 23, 2018

Can Schools Still Promote a Culture of Voting?

In recent weeks TASB has heard from numerous school district officials expressing concern over a chain of events that began with a statewide media request for public information about elections-related correspondence, followed by a request for an attorney general opinion about the use of public funds to promote a “culture of voting.” The opinion, [KP-177](#), was followed by inflammatory letters sent to school employees from a political interest group, letters from the attorney general’s office to specific school districts alleging violations of law, and unprecedented Public Information Act requests from the attorney general’s office directed to individual school districts.

All of this activity has centered on allegations that school district officials and employees have used public school resources to engage in either political advertising or electioneering. Without question, school resources may not be used for these purposes. TASB Legal Services has offered consistent guidance on both [campaign speech](#) and [legislative advocacy](#) for years.

That said, the apparently concerted effort from both private and public sources to mischaracterize the attorney general’s opinion and accuse public school officials and employees of improper electioneering amounts to an exaggerated attack on good faith efforts to encourage public school supporters to exercise their constitutional right to participate in the political process.

In KP-177, the attorney general did not “rule” that school district efforts to promote a culture of voting were illegal or unconstitutional. Rather, the attorney general offered his “opinion” that if a challenge went to court, a court would likely conclude that offering transportation to the polls was a gift of public funds, absent a predominating educational or employment-related purpose for providing the transportation. The attorney general also followed established guidance from the Texas Ethics Commission that public funds should not be used to share communications with Web links to outside sites containing political advertising. In other words, a governmental entity cannot get around the prohibition against using public funds to promote political advertising simply by linking to other sites that promote political advertising. Generally speaking, these conclusions were grounded in existing law and therefore not surprising.

Nevertheless, parties interested in discouraging school districts' efforts to promote a culture of voting and advocate for public schools' interests have exaggerated and mischaracterized both the scope of the attorney general's opinion and alleged violations spotted in school district and officials' social media feeds. No law prohibits school districts from engaging in "get out the vote" efforts or advocating for the interests of public schools. The line is crossed only when public resources are used to campaign for a particular candidate, political party, or measure on a ballot.

What can school districts do to promote the right and responsibility of voting?

- As long as school district resources are not used to campaign for a specific candidate, political party, or measure, school district resources can be used to encourage students, staff, and parents to vote.
- School district resources, including newsletters and social media, can be used to share factual information about voter registration, polling sites, dates and hours of voting.
- Local school district funds can be used to advocate for the interests of Texas public education, as long as the advocacy does not include campaigning for a specific candidate, political party, or measure.

With the prevalence of electronic communications and social media, school officials should exercise caution to be sure school-sponsored online posts do not link to outside content that promotes a particular political party, candidate, or measure. School officials should seek the advice of counsel if they are uncertain about their communications, especially if the district has a measure (like a bond election or tax ratification election) on the ballot.

Given the accusations being hurled (using public resources, no less) at public school districts, school officials are understandably wary about communications that might be construed as political advertising or electioneering. Recognize, though, that these prohibitions rest on specific legal definitions and do not preclude general advocacy in favor of a culture of voting and support for public schools. On the contrary, encouraging voting and support for public education are central to the work of public schools. As the U.S. Supreme Court has observed, the objective of public education is to "inculcat[e] fundamental values necessary to the maintenance of a democratic political system." *Ambach v. Norwick*, 441 U.S. 68, 77 (1979). A culture of voting reflects the fundamental values public schools are charged with transmitting to the next generation.

For more information on this and other school law topics,
visit TASB School Law eSource online at schollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.