



Frequently Asked Questions about Legislative Advocacy¹

Every two years the Texas Legislature meets to tackle important issues, make new laws, and amend old ones. Often, the important issues considered by the Legislature involve education, an interest shared by many in the community, especially parents, employees, and trustees. At times, members of the Legislature seek answers from school districts on education issues. At other times, individuals who feel strongly about proposed legislation want to advocate for or against its passage. The following are answers to frequently asked questions about legislative advocacy by a school district, its trustees, and employees.

Q. Is legislative advocacy by a school district prohibited as electioneering or political advertising?

- A. No, not unless the advocacy involves a candidate or a measure on a ballot. The Texas Election Code defines *political advertising* as a communication that advocates a particular outcome in an election. Officers and employees of political subdivisions are prohibited from knowingly spending, or authorizing the expenditure of, public funds for political advertising. Tex. Elec. Code § 255.003.

In addition, the Texas Education Code provides that “the board of trustees of an independent school district may not use state or local funds or other resources of the district to electioneer for or against any candidate, measure, or political party.” Tex. Educ. Code § 11.169.

Both of these statutory prohibitions restrict the use of public resources—including public funds, employee time, school district facilities, equipment, and technology—to support a candidate or measure on a ballot. Consequently, school district resources cannot be used to assist a candidate (including an incumbent) running for political office (including a seat in the Legislature). Similarly, school district resources cannot be used to campaign for or against a referendum called for by the Legislature, such as an amendment to the state constitution.

Generally speaking, however, engagement in the legislative process does not involve campaigning for candidates or measures on a ballot. As a result, the prohibitions on political advertising and electioneering are not relevant to school district expenditures for the purpose of legislative advocacy.

¹ An electronic version of this document is available on TASB School Law eSource at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/faq_on_legislative_advocacy.aspx.

Q. What is lobbying?

- A. The Texas Ethics Commission has defined *lobbying* as direct communication and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action. 1 Tex. Admin. Code § 34.1(3). Chapter 305 of the Texas Government Code, also known as the Texas Lobby Law, requires a person to register as a lobbyist after exceeding statutory threshold amounts of expenditures or compensation related to lobbying activities. Tex. Gov't Code § 305.003

For school districts and school officials, the following activities are NOT calculated into the activities for which a person receiving compensation must register as a lobbyist:

- Providing factual information to a member of the Legislature (or his or her staff) regarding legislation or administrative action upon the written request of the Legislator (or his or her office). 1 Tex. Admin. Code § 34.5(a)(5).
- Requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency. 1 Tex. Admin. Code § 34.5(a)(1).
- Communicating merely for the purpose of demonstrating or achieving compliance with existing laws, rules, policies, and procedures. 1 Tex. Admin. Code § 34.5(a)(3), (4).
- Providing public comment in person or in writing during rulemaking or a legislative hearing. Tex. Gov't Code § 305.004(2); 1 Tex. Admin. Code § 34.5(a)(8).
- Communicating with anyone who is not a member of the Legislature or his or her staff—including school district staff and the community—about legislative matters. 1 Tex. Admin. Code § 34.1(3).

Q. May a school district spend public funds to engage in lobbying?

- A. Yes, but only *local* funds. The Texas Government Code prohibits the use of *state* funds for the purpose of lobbying. Consequently, school districts may use local district funds, but not state funds, for such a purpose. Tex. Gov't Code § 556.0055(a).

School districts occasionally ask whether it is necessary to account specifically for the origin of revenue used to pay for legislative advocacy efforts. School business officials explain that, even in districts that rely most heavily on state funds, no school district spends such a significant amount on advocacy that the dollar amount would raise concern about exceeding available local funds. Most school districts use a relatively minimal amount of local funds to share advocacy positions during the legislative session, and if called upon to do so, the district's business office could demonstrate that the source of the funds was local tax revenue.

Advocacy by the School District

Q. May a school district distribute information related to school district legislative priorities?

A. Yes, if the district follows the provisions in the Texas Government Code and uses only local funds. In addition, *legislative advertising* is defined as a communication that supports, opposes, or proposes legislation and, in return for compensation, is published in a periodical, broadcast on television or radio, or appears in a pamphlet, flier, sign, button, or similar form of written communication. Tex. Gov't Code § 305.027(e). A person commits an offense if the person knowingly enters a contract to print, publish, or broadcast legislative advertising without a disclaimer that the communication is legislative advertising and identifying who paid for the advertising. Tex. Gov't Code § 305.027(a). Consequently, if a school district's written communications about priorities propose legislation or a change in current law, then a disclaimer may be appropriate.

Q. If a printed document supports a concept—like supporting full funding for public education—but not specific proposed legislation, is it legislative advertising?

A. Each communication should be judged on a case-by-case basis, so work with your school attorney. The short disclaimer simply calls for a statement that the item is legislative advertising and who paid for the communication; so in close cases, it may be easiest to add the disclaimer.

Q. Is a posting on the school district website or a link to another website from the school district's website a form of legislative advocacy?

A. Communications containing legislative advocacy (but NOT political advertising or electioneering) are permissible, whether in print or online, if the communications are paid for with local school district funds and follow the guidelines for legislative advertising, if necessary. Again, each communication should be judged on a case-by-case basis. Generally, if the school district is spending local funds to copy, display, or link to written communications supporting or opposing legislation, the communications may meet the definition of legislative advertising and require a disclaimer specifying who paid for the communication.

Q. Do the district's communications about legislative priorities have to avoid advocacy and be purely factual (as during an election)?

A. Not necessarily. The restriction on political advertising does not apply to advocacy during the legislative process. As long as state funds are not used and laws requiring lobbyists to register are followed, a school district, and the employees and officers acting on the district's behalf, can use school district resources (local funds, employee time, facilities, equipment, and so forth) to communicate and even advocate for or against legislative proposals. Remember, however, that in the expenditure of local taxpayer funds to influence

legislative priorities, the school board and school employees are accountable to the local community. Many school districts choose to limit communications by and through the district about proposed legislation to giving factual information about the impact proposed laws would have on the local district.

Q. May a school district employee engage in advocacy for the school district without registering as a lobbyist?

- A. Yes, if done in the capacity of a school district employee. The law allows flexibility for employees of political subdivisions to communicate with members of the Legislature without having to register as lobbyists. A school district employee who communicates to influence legislation or administrative action in that employment capacity is not required to register on the basis of those communications. Tex. Gov't Code § 305.003(b-1); 1 Tex. Admin. Code § 34.41(b).

Q. May a school district hire an outside lobbyist to promote legislative advocacy?

- A. Yes, but with several conditions. As stated, the Texas Government Code prohibits the use of state funds for the purpose of lobbying, so a district may use local funds, not state funds, to hire a lobbyist or lobbying firm. Tex. Gov't Code § 556.0055(a). Additionally, if public (including local) funds are used to compensate or reimburse the expenses over \$50 of any person (who is not a school official or employee) for the purpose of communicating directly with a member of the legislative branch to influence legislation, that person must file a written statement with the Texas Ethics Commission. The statement must include the person's name, the amount of compensation or reimbursement, and the name of the school district. This disclosure does not apply if the person being compensated or reimbursed resides in the district of the member with whom the person communicates. Tex. Gov't Code § 305.026(a)-(c).

Q. May a school district join a nonprofit organization, like TASB, that engages in legislative advocacy?

- A. Yes. The membership should be paid with local funds, not state funds, and any individual engaged in lobbying on behalf of the organization should register in accordance with the Texas Lobby Law. Tex. Gov't Code §§ 305.026(d), 556.0055(a).

Board Member Advocacy

Q. May board members use their own time and money to talk to legislators about issues concerning their district and education in general?

A. Yes. Board members may become involved in legislative matters and may speak to legislators as individuals, and an individual trustee who communicates with legislators or others may identify himself or herself as a trustee. Elected officials are not required to register as lobbyists, no matter how often they communicate with other elected officials, as long as they do not spend over \$500 in a three-month period (other than travel reimbursement) to lobby. Tex. Gov't Code § 305.003(b-1); 1 Tex. Admin. Code § 34.41(a). Moreover, public officials who act independently, without the use of public funds, have a free speech right to engage in advocacy for issues important to them, whether they are local political issues or local legislative issues. Generally speaking, however, legislative advocacy or lobbying on behalf of the district should not be done through the use of district resources without board approval.

Q. May board members use district resources to communicate with legislators about issues concerning their district and education in general?

A. Yes, if proper procedures are followed. A board member who communicates to influence legislation or administrative action in his or her official capacity is not required to register as a lobbyist on the basis of those communications. Tex. Gov't Code § 305.003(b-1); 1 Tex. Admin. Code § 34.41(b). A district may wish to designate one or more board members to communicate with legislators about matters affecting the district. These communications may involve the use of district resources, such as vehicles, computers, or office supplies. Use of local resources to facilitate communication on behalf of the district will likely not present a legal problem if the board, as a body corporate, has authorized the expenditure. The board should make a determination that the expenditure is necessary to promote the interests of the district.

Q. Can the board attend a legislative hearing without violating the Open Meetings Act?

A. Yes. A majority of the board may travel to Austin to testify on pending legislation. A quorum of a school board may attend a legislative hearing and testify, deliberate, or comment about matters of public business, without being subject to the requirements of the Open Meetings Act. Tex. Gov't Code § 551.0035.

Q. Can a board adopt a resolution supporting a position that is or will be the subject of proposed legislation?

A. Yes. The resolution should be adopted at a public meeting, in accordance with the Open Meetings Act. No state funds should be used in the creation, adoption, or distribution of the resolution. If the resolution is duplicated and distributed, further reproduction or broadcast

may be legislative advertising and require a disclaimer. The resolution should not contain content about a measure or candidate on an election ballot. If the resolution contains links to external websites, any political advertising or electioneering on those websites will be attributed to the school district. Op. Tex. Att’y Gen. No. KP-177 (2018). With the prevalence of electronic communications and social media, school officials should exercise caution to ensure 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.

Superintendent and Other Administrators

Q. May a superintendent advocate about pending school-related legislation?

- A. Yes, but superintendents should exercise caution given their unique role as the chief executives of their school districts.

Because superintendents’ duties often include communicating as a district representative, superintendents have a more difficult time than other district employees separating their official speech from their private speech. For the most part, if a superintendent is going to communicate publicly about a legislative matter—including speaking at school district and community events, writing an editorial in the newspaper, or posting online—the superintendent should proceed as if he or she is speaking in an official capacity.

Q. Can a superintendent provide information or advocate about pending school-related legislation while in his or her official capacity and in the course of employment?

- A. Yes, within certain limits. A superintendent or other administrator may wish to engage in communications with the Legislature while acting in his or her official capacity. TASB Legal Services recommends that the board-superintendent team reach a clear understanding about the scope of these activities. Concerns may arise if a superintendent or administrator is so involved in legislative activities that he or she is not able to address routine business matters. Any expenditure of school district funds to support the superintendent’s efforts must be necessary and appropriate to the operation of the school district. Expenditures must come only from local district funds, not state funds.

Q. Is it acceptable for a superintendent or administrator to attend a legislative hearing during the school day?

- A. Yes. A superintendent may be selected by the board to represent the district at a legislative hearing to testify as a witness. Responding to questions about school-related issues is directly related to the job duties of a superintendent or other executive-level administrator. Therefore, this task is appropriate for the administrator to perform during the work day.

Q. *May the superintendent email a letter he has sent to the Legislature regarding proposed legislation to district employees? If so, can the superintendent encourage employees to send the letter to their legislators?*

- A. The superintendent may create and send the letter, but employees should not be pressured into sending the letter. The creation of a letter about school business is an acceptable use of district resources and time. The superintendent should be cautious, however, not to suggest that employees are required to copy the letter and send it; the decision to create and send a similar letter should be left up to each individual employee.

For reasons explained above, only local, not state, funds should be used to create and distribute the letter. In addition, if the letter is printed and distributed throughout a campus, it could be seen as a “flier,” which is a form of legislative advertising. The legal definition of *legislative advertising* includes communications that support, oppose, or propose legislation and that appear in a pamphlet, circular, or flier. Tex. Gov’t Code § 305.027(e). If an email becomes a flier, it may be necessary to place legislative advertising disclosure statements on the document.

Q. *May the superintendent create and send a message about legislative issues to parents or the press?*

- A. Yes. The superintendent may create and send a message explaining how proposed legislation would affect the district. The purpose of the communication should be to inform the community about financial or other school-related matters relevant to the legislation. Again, state law does not strictly require district communications to avoid advocacy and be purely factual (as required in communications about elections), but many districts choose to follow this approach.

Q. *Can the superintendent or campus administrators allow parents or other community members to speak at events, hand out fliers, publish links to websites, or take other steps to advocate for legislative action?*

- A. Yes. Parent groups, like the PTA, parent members of site-based decision making committees, or other parents or community members acting independently and not at the direction of the district may take advantage of any open forum for public or school communication. This may include holding a parent meeting on school grounds when other community meetings are allowed; making a presentation or announcement during a meeting or event, like the public comment period at a board meeting; or handing out fliers when other announcements or fliers are allowed.

Q. Can the superintendent or campus administrators allow a banner, marquee sign, or other signage to be displayed on school property with a slogan such as “Support Texas Public Schools” or “Make Education a Priority”?

A. Yes, whether to post a message of this sort is a local district decision. For the reasons explained above, a slogan like “Support Texas Public Schools” is not *political advertising* governed by the Texas Election Code because the message does not involve an issue appearing on an election ballot. On the other hand, a similar type of slogan could be inappropriate during a bond election or tax ratification election, because the slogan would be perceived as supporting a measure in the election. To the extent such slogans are promoted, administrators should ensure the slogans reflect positively on the school district, since a public sign on a school district building is clearly a school-sponsored communication.

Q. Can a school district or school officials promote a “culture of voting” or otherwise engage in “get-out-the-vote” campaigns?

A. Yes, as long as no public funds are used for political advertising or electioneering. 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. Op. Tex. Att’y Gen. No. KP-177 (2018). In KP-177, the attorney general did not determine 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 links to outside websites containing political advertising.

- 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, and 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.

Again, school officials should exercise caution when using social media to promote content shared by advocacy organizations, and 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.

Employees Generally

Q. When is employee speech about politics protected by the First Amendment?

- A. Employees have free speech rights protected by the First Amendment of the U.S. Constitution and other laws to express their views as citizens on matters of public concern. This free speech protection means that employees can participate fully in the political process as citizens, using their free time and their own resources. A school district employer may not discriminate or retaliate against an employee who engages in personal expression about politics, elections, or legislative matters in his or her capacity as a citizen.

Employees' free speech protection is not limitless, however. When a district employee is on duty at work, whether in an instructional, administrative, or auxiliary capacity, the employee's speech is subject to the regulation of the school district. This does not mean that a district can restrict all political speech that occurs on district property. Employees continue to enjoy First Amendment protections during free time at work, such as lunch breaks, if it is clear that the employee is making statements in his or her personal capacity and not as a district employee.

Q. What are some ways a district can choose to regulate employee speech while they are on duty or using district resources?

- A. School districts can limit employees' expression during their on-duty time in a number of ways. In addition to restricting spoken expression, many districts limit wearing or displaying campaign materials like signs and buttons. Most districts do permit employees to display bumper stickers on cars in the school district parking lot, however, in recognition of employees' free speech rights in their personal capacities.

Q. Can a teacher prepare a letter to a state representative or senator and circulate it to the parents of her students encouraging them to support specific legislation?

- A. Not in the teacher's official capacity. Without authorization from the administration, a teacher may not prepare communications about legislation using district resources and while engaged in his or her duties as an employee of the school district. The teacher may, however, prepare the letter and disseminate it to personal contacts after hours and through the use of private resources.

Additionally, absent authorization by the administration, a teacher should refrain from disseminating legislative advocacy material on campus, unless the school district has provided a limited public forum for community speech. Op. Tex. Ethics Comm'n No. 443 (2002). Check your TASB Policy GKDA(LOCAL) for more information on whether your district has established a part of campus where distribution of non-school literature is permitted.

Students

Q. Can students write letters, make posters, or display buttons or ribbons expressing their views on legislative or school district issues?

- A. Yes, as long as the communications comply with school rules and represent the students' own viewpoints. Students, too, have First Amendment rights while at school. As a result, students of all ages are free to express their personal opinions, including their opinions about current events and governmental affairs, as long as they do so in ways that comply with school rules and are not disruptive. If students are given an opportunity in school work or other school-sponsored activities to express their opinions on current events, students' work may be evaluated based on neutral pedagogical standards—like grammar, neatness, and timeliness—but may not be penalized based on the personal viewpoints expressed in the work. Similarly, if a district's dress code permits students to wear buttons or T-shirts with slogans, then students may wear items that express views like "Save our Schools" or "No New Taxes." Students may also make and display signs or ribbons on school grounds, in accordance with school rules, as long as the messages expressed in the signs or ribbons can be fairly attributed to the individual students and are not dictated by school officials.

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

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