



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 employees, and trustees. At times, members of the Legislature seek answers from community colleges on higher 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 community college, its trustees, and employees.

Q: *Is legislative advocacy by a community college prohibited as 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 colleges are prohibited from knowingly spending, or authorizing the expenditure of, public funds for political advertising. Tex. Elec. Code § 255.003.

The statutory prohibition restricts the use of public resources—including public funds, employee time, college facilities, equipment, and technology—to support a candidate or measure on a ballot. Consequently, college resources cannot be used to assist a candidate, including an incumbent running for political office, including a seat in the Legislature. Similarly, college 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 prohibition on political advertising is not relevant to college expenditures for the purpose of legislative advocacy.

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). Texas Government Code Chapter 305, also known as the Texas Lobby Law,

¹ An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/faq-on-legislative-advocacy.pdf.

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 community colleges and college 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 college staff and the community—about legislative matters. 1 Tex. Admin. Code § 34.1(3).

Q: *May a community college 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, colleges may use local college funds, such as local taxes and tuition, but not state funds, for such a purpose. Tex. Gov't Code §§ 556.005(a)-(b), .0055(a), .006, .008.

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

Advocacy by the College

Q: *May a community college distribute information related to college legislative priorities?*

A: Yes, if the college follows the provisions in the Texas Government Code by using only local funds and attaching any necessary disclaimers. A college is prohibited from knowingly entering into a contract to print, publish, or broadcast legislative advertising without including a disclaimer stating that the communication is legislative advertising and identifying who paid for the advertising. *Legislative advertising* is 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(a), (e). Consequently, if a college'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 free college tuition—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 local counsel. 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 community college's website or a link to another website from the college's website a form of legislative advocacy?*

A: Communications containing legislative advocacy, but not political advertising are permissible, whether in print or online, if the communications are paid for with local 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 college 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 community college'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 college, and the employees and officers acting on the college's behalf, can use college resources (e.g., 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 college and college employees are accountable to the local community. Many colleges choose to limit communications by and through the college about proposed legislation to giving factual information about the impact proposed laws would have on the college.

Q: *May a college employee engage in advocacy for the community college without registering as a lobbyist?*

A: Yes, if done in the capacity of a community college employee. The law allows flexibility for employees of political subdivisions to communicate with members of the Legislature without having to register as lobbyists. A college 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 community college hire an outside lobbyist to promote legislative advocacy?*

A: Yes, but with several conditions. A community college may use local funds, such as local taxes and tuition, but not state funds, to hire a lobbyist or lobbying firm. Additionally, if a college uses any public funds to compensate or reimburse the expenses over \$50 for an outside lobbyist or lobbying firm, 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 college. This disclosure does not apply if the person being compensated or reimbursed resides in the district of the legislator with whom the person communicates. Tex. Gov't Code §§ 305.026(a)-(c), 556.005(a)-(b), 0055(a), .006, .008.

Q: *May a college 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 community college and higher 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 on

expenses 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 community college should not be done through the use of college resources without board approval.

Q: *May board members use community college resources to communicate with legislators about issues concerning their college and higher education in general?*

A: Yes, if proper procedures are followed. A board member who communicates to influence legislation or administrative action in their 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 college may wish to designate one or more board members to communicate with legislators about matters affecting the college. These communications may involve the use of college resources, such as vehicles, computers, or office supplies. Use of local resources to facilitate communication on behalf of the college 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 college.

Q: *Can the board attend a legislative hearing without violating the Texas Open Meetings Act?*

A: Yes. A majority of the board may travel to Austin to testify on pending legislation. A quorum of a community college board may attend a legislative hearing and testify, deliberate, or comment about matters of public business, without being subject to the requirements of the Texas Open Meetings Act (OMA). 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 OMA. 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 on those websites could be attributed to the college. Tex. Att'y Gen. Op. No. KP-177 (2018). With the prevalence of electronic communications and social media, college officials should exercise caution to ensure college-sponsored online posts do not link to

outside content that promotes a particular political party, candidate, or measure. College officials should seek the advice of counsel if they are uncertain about their communications, especially if the college has a measure, such as a bond election or tax ratification election, on the ballot.

President and Other Administrators

Q: *May a college president or chancellor advocate about pending college-related legislation?*

A: Yes, but community college presidents and chancellors should exercise caution given their unique role as the chief executives of their colleges.

Because a president or chancellor's duties often include communicating as a college representative, presidents and chancellors have a more difficult time than other college employees separating their official speech from their private speech. For the most part, if a president is going to communicate publicly about a legislative matter—including speaking at college and community events, writing an editorial in the newspaper, or posting online—the president should proceed as if they are speaking in an official capacity.

Q: *Can a community college president or chancellor provide information or advocate about pending college-related legislation while in his or her official capacity and in the course of employment?*

A: Yes, within certain limits. A community college president or chancellor may wish to engage in communications with the Legislature while acting in their official capacity. TASB Community College Services recommends that the board president team reach a clear understanding about the scope of these activities. Concerns may arise if a college administrator is so involved in legislative activities that they are not able to address routine business matters. Any expenditure of college funds to support the president or chancellor's efforts must be necessary and appropriate to the operation of the college. Expenditures must come only from local funds, not state funds.

Q: *Is it acceptable for a community college president or chancellor to attend a legislative hearing during the work day?*

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

Q: *May a community college president or chancellor email a letter he or she has sent to the Legislature regarding proposed legislation to college employees? If so, can the college president or chancellor encourage employees to send the letter to their legislators?*

A: A community college president or chancellor may create and send the letter, but employees should not be pressured into sending the letter. The creation of a letter about community college business is an acceptable use of college resources and time. The college 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 flyer 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 flyer. Tex. Gov't Code § 305.027(e). If an email becomes a flyer, it may be necessary to place legislative advertising disclosure statements on the document.

Q: *May a community college president or chancellor create and send a message about legislative issues to the community or the press?*

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

Q: *Can the community college president or chancellor allow community members to speak at events, hand out flyers, publish links to websites, or take other steps to advocate for legislative action?*

A: Yes. Community members acting independently and not at the direction of the community college may take advantage of any open forum for public or college communication. This may include holding a meeting on college 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 flyers when other announcements or flyers are allowed. Note, this use must be in compliance with the college's facilities use and literature distribution policies and procedures.

Q: *Can the community college president or chancellor allow a banner, marquee sign, or other signage to be displayed on community college property with a slogan such as “Support Texas Higher Education”?*

A: Yes, whether to post a message of this sort is a local decision. For the reasons explained above, a slogan like “Support Texas Higher Education” is not political advertising governed by the Texas Election Code because the message does not involve an issue appearing on an election ballot. However, 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 college, since a public sign on a college building is clearly a college-sponsored communication.

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 college employer may not discriminate or retaliate against an employee who engages in personal expression about politics, elections, or legislative matters in their capacity as a citizen.

Employees’ free speech protection is not limitless, however. When a college 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 college. This does not mean that a college can restrict all political speech that occurs on college 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 their personal capacity and not as a college employee.

However, community college faculty members are entitled to additional protections of their speech. Faculty members are entitled to academic freedom in their research and teaching. This means that while acting in their professional capacity, faculty members are free from censorship and discipline by the college employer.

Association of American Colleges and Universities and American Association of University Professors, [1940 Statement of Principles on Academic Freedom and Tenure](#)²; See TASB Policy DGC(LOCAL).

² 1940 Statement of Principles on Academic Freedom and Tenure (PDF): aaup.org/file/1940%20Statement.pdf.

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

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

Students

Q: Can students write letters, make posters, or display buttons or ribbons expressing their views on legislative or college issues?

A: Yes, as long as the communications comply with community college rules and represent the students' own viewpoints. Students, too, have First Amendment rights while attending college. As a result, students 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 college rules and are not disruptive. If students are given an opportunity in college work or other college-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 college's dress code permits students to wear buttons or T-shirts with slogans, then students may wear items that express views. Students may also make and display signs or ribbons on college grounds, in accordance with college 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 college officials.

Where can I find more information about legislative advocacy?

If you have questions about these or other legal issues, college representatives may contact Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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