



Frequently Asked Questions about Legislative Advocacy

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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. This article answers 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, 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 §§ 251.001(16), 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 may not be used to assist a candidate (including an incumbent) running for political office (including a seat in the Legislature). Similarly, school district resources may not be used to campaign for or against a local measure, such as a bond proposition or tax rate increase, or 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.

Q. What is lobbying?

- A. The Texas Ethics Commission defines *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, 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, compensation for the following activities is NOT included in calculating the registration threshold:

- Providing factual information to a member of the Legislature (or the member's staff) regarding legislation or administrative action upon the written request of the member (or the member's 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 proceedings 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 the member's 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. Tex. Gov't Code § 556.0055(a).

While there is no requirement to account specifically for the origin of revenue used to pay for legislative advocacy efforts, each district must include in its proposed budget a line item indicating expenditures for *lobbying*. This must be presented in a manner that allows for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the prior year. Tex. Loc. Gov't Code § 140.0045.

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. *Legislative advertising* is defined as a communication that supports, opposes, or proposes legislation and that, in return for compensation, is published in a periodical or is 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 into a contract to print, publish, or broadcast legislative advertising without disclosing that the communication is legislative advertising, the name of the person who entered into the contract for the advertising, and, if the advertising is printed or published, the address of the person who entered into the contract. 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 disclosure may be required.

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 disclosure simply requires a statement that the item is legislative advertising and the name and address of the person who entered into the contract for the communication; so in close cases, it may be easiest to add the disclosure. For more information, see the Texas Ethics Commission's [Legislative Advertising](#) resource.

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. 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 disclosure statement.

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, may 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 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).

Further, a district may not enter into a contract for lobby services unless the lobbyist or lobbying firm submits a disclosure of interested parties to the district at the time the lobbyist or firm submits the signed contract. The district must submit a copy of the disclosure to the Texas Ethics Commission. Tex. Gov't Code § 2252.908; 1 Tex. Admin. Code Chapter 46. See TASB Policy CH(LEGAL).

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 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; however, an elected official may not spend over \$500 in a calendar quarter (other than travel expenses) to lobby in the official's individual capacity. 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 using 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 an 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 or use. The board should make a determination that the expenditure or use of district resources is necessary to promote the interests of the district.

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

A. Yes. A quorum of a school board may attend a legislative committee meeting without being subject to the requirements of the Open Meetings Act as long as the board's deliberations at the meeting consist only of publicly testifying, commenting, and responding to questions from members of the legislative committee. Tex. Gov't Code § 551.0035.

Q. May 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 disclosure statement. 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. Tex. Att’y Gen. Op. 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 or tax rate 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 more difficulty 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 speaking in an official capacity.

Q. May a superintendent provide information or advocate about pending school-related legislation in an 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 an 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 the person 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 the superintendent sent to the Legislature regarding proposed legislation to district employees? If so, may 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 to send 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 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 the legislative advertising disclosure 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. *May 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. May 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 election to approve a tax rate because the slogan might 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 district since a public sign on a school district building is clearly a school-sponsored communication.

Q. May 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. Tex. Att’y Gen. Op. 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 opined 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 concluded that public funds should not be used to share communications with links to outside websites containing political advertising.

Districts wishing to encourage voting should remember these key points:

- As long as school district resources are not used to campaign for a specific candidate, political party, or measure, school district resources may be used to encourage students, staff, and parents to vote.
- School district resources, including newsletters and social media, may be used to share factual information about voter registration, polling sites, and dates and hours of voting.
- Local school district funds may 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 or tax rate election) on the ballot.

Employees

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

- A. Employees have free speech rights protected by the First Amendment of the United States 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 the employee's 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 regulation by 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 the employee's individual capacity and not as a district employee.

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

- A. School districts may 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 individual capacities.

Q. May a teacher prepare a letter to a state representative or senator and circulate it to the parents of the teacher's 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 duties as a district employee. The teacher may, however, prepare the letter and disseminate it to personal contacts after hours using 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. Tex. Ethics Comm'n Op. 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. May 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 can be fairly attributed to the individual students and are not dictated by school officials.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/faq_on_legislative_advocacy.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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