



Political Advertising Guidelines for Bond Elections

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Conducting Bond Elections

Current State of Conducting Bond Elections

- Election laws are nuanced and seem to change with every legislative cycle. Legislation is proposed every legislative cycle that aims at limiting the ability to conduct a bond election.
- Assuming the voters approve the propositions at the bond election, when the district issues the voter-authorized bonds, the OAG will review the transcript of the bond proceedings submitted by Bond Counsel, which will include a transcript of the bond election proceedings.
- **It is crucial that bond counsel be involved in all aspects of conducting the election to ensure that the election conforms with law and that the proceedings are complete in anticipation of OAG review.** There could be a long period of time between the election and when the bonds are issued. Obtaining updated documents at a later date could be difficult, especially if there are changes to Board members and/or district staff.
- Our Firm has a tremendous amount of experience and knowledge in responding to OAG's questions regarding compliance with bond election proceedings through our role as bond counsel and ushering the bond proceedings through the OAG's office for approval (we know what the OAG is looking for and will request).
- OAG review of bond election proceedings will include confirmation of compliance with uniform election dates, separate proposition requirements, deadlines (calling, noticing, canvassing, etc.), contents of order calling election and notices of election, and canvassing the election.

General Bond Election Timetable

Event	Time Required
District confers with financial advisor/bond counsel	At least 4 weeks before calling election
District explores possible polling locations and joint election agreement with election official	At least 3 weeks before calling election
Board adopts an order calling the election	Not later than 78 days before election
Bond counsel orders translations (Spanish, etc.)	Immediately after calling the election
Bond counsel delivers ballot language to election official	Deadline determined by the election official
Bond counsel delivers notice of election to the county election official	Not later than 60 days prior to election
District publishes notice of election in English, Spanish, and other applicable languages	Not more than 30 days nor less than 10 days prior to election
Last day to register to vote	30 days prior to election
District posts notice of election (all applicable languages) prominently on the District's website	Not later than 21 days prior to election until after election day

General Bond Election Timetable (*cont.*)

Event	Time Required
District posts sample ballot on the District's website	Not later than 21 days prior to election until after election day
District posts notice of election (all applicable languages) at the District's bulletin board used for posting meeting notices	Not later than 21 days prior to election until after election day
District posts notice of election (all applicable languages) at three public places in the District	Not later than 21 days prior to election until after election day
Early voting begins	[17 days prior to election day (November election)] / [12 days prior to election day (May election)]
Early voting ends	4 days prior to election day
Election day	[1st Tuesday after the 1st Monday in November] / [1st Saturday in May]

General Bond Election Timetable (*cont.*)

Event	Time Required
Board canvasses election returns	Not later than 11 days after election day and not earlier than the later of: (1) the 3rd day after election day; (2) the date the provisional ballots have been counted; or (3) the date that all timely cast overseas ballot have been counted
End of election contest period	Later of 30 days after canvassing or 15 days after electronic records available

Recent Legislative Changes

- The 87th Legislative Session (effective September 1, 2019) included substantial changes to a district's ability to conduct a bond election (HB 3, HB 440, HB 477, etc.), including (among others):
 - A new “separate proposition” requirement;
 - The ballot must include: “THIS IS A PROPERTY TAX INCREASE.”;
 - The order calling the bond election must include a “Voter Information Document”;
 - Permissible uses of unspent bond proceeds; and
 - Limitation on issuance of bonds to purchaser property if the weighted average maturity of the issue of bonds exceeds 120% of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds.

Recent Legislative Changes (*cont.*)

- How does a district determine whether certain projects should fall under the “general proposition” or under a “separate proposition” and at what stage in the bond election process (our Firm would recommend WELL before the bond election call deadline)?
- “General Proposition” may be used for:
 - [School Buildings] the construction, acquisition, and equipment of school buildings in the district;
 - [Demolition] and any necessary or related removal of existing facilities;
 - [Land] the purchase of the necessary sites for school buildings;
 - [Buses] the purchase of new school buses;
 - [NEW] the retrofitting of school buses with emergency, safety, or security equipment;
 - [NEW] the purchase or retrofitting of vehicles to be used for emergency, safety, or security purposes; and
 - the acquisition of property or the refinancing of property financed [with a PPFCO].

Recent Legislative Changes (cont.)

- A “Separate Proposition” must be used if one of the following purposes is a part of the bond election:
 - [Stadium] the construction, acquisition, or equipment of a **stadium** with seating capacity for more than 1,000 spectators;
 - [Natatorium] the construction, acquisition, or equipment of a **natatorium**;
 - [Recreational Facility] the construction, acquisition, or equipment of another **recreational facility** other than a gymnasium, playground, or play area;
 - [Performing Arts Facility] the construction, acquisition, or equipment of a **performing arts facility**;
 - [Teacherage] the construction, acquisition, or equipment of **housing for teachers** as determined by the district to be necessary to have a sufficient number of teachers for the district; and
 - [Technology] an acquisition or update of **technology equipment**, other than equipment used for school securities purposes or technology infrastructure integral to the construction of a facility.

Recent School District Bond Election Analysis*

Analysis of School District Bond Elections by Election Cycle by Year

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
May	72%	78%	81%	74%	78%	73%	70%	76%	78%	100%	91%	53%
November	52%	72%	63%	88%	89%	76%	78%	85%	76%	88%	55%	

Highlight represents presidential election.

Election Cycle	Total ISD Bond Elections	General		Stadium		Natatorium		Recreational		PAF		IT		Teacherage	
		Number	Pass Rate	Number	Pass Rate	Number	Pass Rate	Number	Pass Rate	Number	Pass Rate	Number	Pass Rate	Number	Pass Rate
May 2020	2	2	100%	1	100%	-	-	1	100%	-	-	-	-	-	-
Nov. 2020	41	41	88%	14	21%	2	0%	6	50%	2	50%	9	100%	-	-
May 2021	66	65	91%	26	73%	2	100%	9	67%	3	100%	10	100%	-	-
Nov. 2021	60	59	56%	21	24%	4	25%	6	67%	4	0%	9	78%	-	-
May 2022	118	113	56%	22	32%	5	20%	25	48%	12	17%	12	100%	3	33%
	287		69%		42%		31%		55%		29%		95%		33%

*Information presented on this slide has been obtained and summarized from the Texas Municipal Advisory Council website.

Political Advertising Guidelines for Bond Elections - Applicable Statutes

Ethics Considerations when Conducting a Bond Election

- It is important the District lead an “information-only” effort, as the District has a responsibility to inform all voters about the election but may not utilize District funds or resources to engage in electioneering (which is prohibited in all circumstances).
- During bond elections, most complaints filed with the Secretary of State’s Office concern violations involving improper use of public resources for advocacy campaigns. This is a direct violation of election law.
- There are different ethics considerations for Board of Trustees versus district staff, which includes the Superintendent of Schools.
- A district should have bond counsel review bond election materials that the district intends to circulate to its voters. Other advisors to the district (e.g., architecture firms) may offer public relations services to a district during a bond election and any advice offered should be reviewed by bond counsel.
- Consider the creation of a Political Action Committee.

Section 255.003 of the Texas Election Code

- Texas Election Code §255.003 prohibits an “officer or employee of a political subdivision” from spending or authorizing the spending of public funds for political advertising.
- Political advertising means “a communication supporting or opposing a candidate or a measure” that, is:
 - published in a newspaper or other periodical or is broadcast by radio or television;
 - appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication;
 - or on a website.
- Bond Propositions are considered “measures” under this Texas law.

Section 255.0031 of the Texas Election Code

- Texas Election Code §255.0031 prohibits an officer or employee of a state agency or political subdivision from knowingly using or authorizing the use of an “internal mail system” (i.e., e-mail) for the distribution of political advertising.

Section 11.169 of the Texas Education Code

- Notwithstanding any other law, 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 (e.g., a bond election), or political party.
- The Education Code does not define the term “electioneering.” A common understanding of the term is “to work for the election of a candidate or party.”
- The Election Code defines “electioneering” as “the posting, use, or distribution of political signs or literature.”

Section 255.003 of the Texas Election Code

- Subsection (b-1): An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:
 - (1) the officer or employee knows is false; and
 - (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

Texas Penal Code §36.03

- Texas Penal Code §36.03 makes it a criminal offense for a person to, by means of coercion:
 - influence or attempt to influence a voter *not to vote* or *to vote in a particular manner*.
 - influence or attempt to influence a public servant's specific exercise of his/or her official power or the specific performance of his/or her official duty
 - influence or attempt to influence a public servant to violate the public servant's known legal duty.
- Violation of this statute is a Class A misdemeanor, unless the coercion is a threat to commit a felony. In such event, the violation is a third degree felony.

Permissible and impermissible actions

The communication must either:

If advocacy:

Be produced and distributed without the use of any public funds or resources

OR

If using district resources:

Contain ONLY factual information about the election or the measure without any tone of advocacy

If advocacy: No public funds or resources may be used

- Rules are interpreted broadly and there is no “de minimis” exception for use of small amounts of funds or resources
- The prohibition includes indirect expenditures as well as direct expenditures. Examples include:
 - Use of a district computer, telephone, copier, paper,
 - Use of District school buildings, stadiums or parking lots
 - Posting of flyers on school or district property
 - Internal mail systems (i.e. email)
 - School marquees
 - Time of District employees
 - The District’s website
 - Accessing social media during work hours or on District computers and engaging in prohibited conduct.

If advocacy: No public funds or resources may be used

- Permissible
 - Statements made outside of normal district business hours, off district property, and not using district funds
 - Requires that the staff member's job be structured with daily designated hours, so that there is a clear delineation between business hours and personal time
 - Likely not permissible for Superintendent with hours continual throughout the day – no time “off the job”
 - Members of the governing body who do not receive salaries (i.e. members of Board of Trustees) may make oral presentations in support of election measures
 - Letters to the editor and op-ed articles in a newspapers, magazines, or periodicals by political subdivision officers and employees where no payment is provided to the publisher
 - Statements made by a Parent-Teacher Association, pro-bond political action committee, or other organization if the materials are generated on its own and not through district equipment or staff

Use of Public Funds: Examples of Violations

“Spending” of public funds includes the use of school district facilities:

- An officer or employee of a school district may not use or authorize the use of school personnel or equipment for the distribution of political advertising. The “spending” of public funds includes the use of school district facilities (e.g., school classrooms, stationary, use of computers, internal mail systems and copiers) and the use of employees during work time to distribute political advertising. (EAO 45 (1998)).
- Use of internal mail system to send email to all school staff to advocate for a candidate for school trustee found to be a violation. (SC-2406114 (2004)).
- School employees violated §255.003 by using a school district computer to create a flyer advocating a position in an upcoming election and by using school copiers to make copies. (SC-210101) (2001)).
- Posting a flier on school or district property or in a restricted area such as the teacher’s lounge is a violation. This does not apply to the use of the facilities of a political subdivision in a situation in which the facilities function as a public forum. (EAO 443 (2002)).
- The use of state equipment or state employees' work time to handle campaign contributions or expenditures is a misapplication of state property unless it is incidental and unavoidable (e.g., forwarding campaign contributions to a campaign office.) (EAO 172 (1993)).

If public funds or resources are used: Only factual statements with no tone of advocacy are allowed

Impermissible: No matter how factual a statement may be, any amount of advocacy is impermissible. Examples include:

- Motivational Slogans or Calls to Action such as the following:
 - Our citizens now have the opportunity to position Lancaster ISD for the 21st century. Please support the vision. Our future depends on your commitment.
 - Put children first
 - Good schools are the foundation for a good community
 - Every child deserves a good education
 - Show you care about education
 - Show you care for your community
- Factual Statements or words but with a tone of advocacy such as the following:
 - Given today's construction costs and the needs of the district, a long term bond is the only viable financial solution.
 - Our facilities are really old.
 - These security improvements will keep our children safer.
 - We need a new elementary school.
 - This facility will be state of the art.

Factual statements with no tone of advocacy

Permissible: A statement containing only an explanation of facts about the election is not “advocacy” within the meaning of the applicable statutes.

- **Permissible examples might include:**

- Notice of the Election consisting of the form of the order calling the bond election
- District’ produced brochure with only factual information and no tone of advocacy
- Informational meeting on District property with no tone of advocacy
 - A List of the anticipated projects
 - Polling locations, dates and times
 - Demographic study results
 - Tax impact of the bond
 - Voter registration information

Factual statements with no tone of advocacy; cont.

Permissible: A statement containing only an explanation of facts about the election is not “advocacy” within the meaning of the applicable statutes.

- **Permissible examples might include:**

- District website posting containing the date of election, polling locations, and candidates and/or measures
- An expenditure on a nonpartisan notice to inform employees about an election and encourage people to register to vote
- Reports issued by a task force created to study a matter prior to its submission for election does not constitute political advertising if such report contains the objectives of the task force and an analysis of the data obtained and does not support or oppose the measure.
- Repeating measure or proposition language in materials

Examples of Violations

Distribution of materials identifying bonds as the “best solution” and the “right thing”:

- The Superintendent and school board members of Decatur ISD hired a consultant to prepare materials related to a bond election. The materials included: (1) a circular stating that the bond proposal was the “best solution” to meet the district’s needs generated by population growth, (2) a booklet containing a press release quoting the school board president as saying, “This bond is the right thing to do for the children of this community,” and (3) a letter to senior citizens signed by the school board president and the superintendent explaining that senior citizens’ taxes would not increase unless they added significant structural changes to their homesteads. *Both the circular and the booklet were considered violations.* Effect of adverse Texas Ethics Commission finding – criminal sanctions and fines up to \$4,000. (SC-231180)

“Express advocacy” of a candidate or measure:

- The inclusion of words such as “vote for,” “elect,” “support,” “defeat,” “reject,” or “Smith for Senate” *would clearly constitute express advocacy.* Whether communications including candidates' voting records and positions on issues, poll results, and third-party endorsements constitute express advocacy would depend on the precise language of the communication. (EAO 198 (1994))

Examples of Violations

Inclusion of supportive news article in PowerPoint at school sponsored community meeting:

- PowerPoint containing news article in favor of bond proposal at school sponsored meeting for community created the equivalent of a sign supporting the bond measure. Therefore, that portion of the PowerPoint presentation was political advertising in violation of §255.003(a). (SC-2612267 (2006))

Letter sent from City to city residents:

- The city violated §255.033 when it sent residents a letter encouraging them to “keep the control here – among the residents – not in the hands of outsiders” which was considered advocating the defeat of a measure to un-incorporate the city. (SC-230309 (2003)).

Overall “tone” of communication helps advocate for a measure:

- Superintendent of an ISD violated §255.033 by authorizing school district funds to produce and mail a brochure supporting passage of a bond measure. Although the brochure factually described the purpose of the bond election, the commission found that “when considered in its entirety, it also advocate[d] a vote for the bonds.” (SC-230205 (2003)).

Review

Key Points to Remember

- As a District representative your duty is to inform and encourage voter registration and information, not to advocate for a particular outcome.
- Retain First Amendment Right to Free Speech provided no District resources are being used.
- Social media postings and emails should include a disclaimer that posting constitutes a personal opinion and District resources were not used to communicate the message.
- As your trusted Bond Counsel, Norton Rose Fulbright will provide the District with a summary of the “do’s and don’ts” in the form of a letter addressed to the Board and a separate letter addressed to District staff.





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