

# Bond Election Process, Laws & Ethics



# Role of Bond Counsel in Bond Election Process

- Prepare election documents, including the ordinance calling the election, legal notices, various affidavits and canvass documents
- Advise the City as to ethics rules applicable to City officials and employees
  - No advocacy for or against election while acting in official capacity
  - No use of City funds or resources for advocacy purposes
  - Factual information only
- Assist the City in ensuring election is conducted in accordance with Texas law
  - Timeliness of ordinance calling election and ordinance canvassing election returns
  - Publication of notice of election
  - Posting of notice of election
- Election contest period
  - If no election contest is filed within 30 days of the date the election is canvassed, election becomes incontestable

## Section 255.003 of the Texas Election Code

Provides as follows:

- An officer or employee of a political subdivision may not spend or authorize the spending of public funds for **political advertising**.
- This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
- A person who violates this section commits an offense. An offense under this section is a **Class A Misdemeanor**.

# Political Advertising Defined



Political Advertising is a communication that **advocates a particular outcome** in an election and includes statements made in writing or orally:

- in a newspaper, magazine or other periodical;
- broadcast by radio or television;
- in a pamphlet, circular, flyer, billboard or other sign, bumper sticker or similar form of written communication;
- emails, posters and newsletters; or
- on an Internet website.

# Advocacy Defined



Most employees and officers violate the ethics laws by engaging in communication that is considered **advocacy**.

Asking for support or rejection of a bond election is advocacy and using statements such as "Vote For X" and "Defeat Y" is also advocacy.

# Section 255.003 of the Texas Election Code



- In addition, 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:
  - the officer or employee knows is false; and
  - is sufficiently substantial and important as to be reasonably likely to influence a voter for or against the measure.

# So what does this mean?



An employee or officer who uses any funds or resources of the City to engage in political advertising is in violation of the Texas Election Code.

- City resources include use of the telephone, computers, copiers, facilities, etc.
- The City may not purchase or authorize the purchase of new materials OR use EXISTING materials for use in creating or distributing political advertising.
- Also, it is not permissible to use the paid time of City employees to create or distribute political advertising. For example, staff may not copy, staple or distribute political advertising on work time.

# What is the role of the City?



- The City is required to provide **factual** information.
- It is permissible to use City resources to produce explanatory material about what is at stake in a bond election.
  - Proposed projects & costs
  - Current capacity
  - Voting times & locations
  - Age/Condition of facility, streets, etc.
  - Growth rates
  - Tax rate impact



# The Good News



**ALTHOUGH YOU MAY NOT USE CITY RESOURCES FOR  
POLITICAL ADVERTISING, EMPLOYEES AND OFFICERS  
ARE FREE TO CAMPAIGN FOR OR AGAINST A  
PROPOSITION ON THEIR OWN TIME AND WITH THEIR  
OWN RESOURCES.**

# Real World Examples



- Can a city council member authorize the spending of city funds to create a brochure urging support of the bond? **No**
- Can a city council member urge citizens to support the bond at a Kiwanis Club meeting using his or her own time and resources? **Yes**
- Can a city council member use a city copy machine to copy a “Vote Yes” flyer? **No**
- Can a city council member write a Letter to the Editor urging support for the bond using his or her own time and resources? **Yes**

# Real World Examples



- Can a city council member use the city credit card to pay for yard signs to promote the bond? **No**
- Can a city council member personally contribute funds to a Political Action Committee to print yard signs advocating for the passage of the bond? **Yes**
- Can a city council member use the PA system at a city park urging visitors to support the bond? **No**
- Can a city council member ask members of his or her church to support the bond using their own time and resources? **Yes**