

Steven D. Wolens

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Steve Wolens is a Principal in the Dallas office of McKool Smith. His practice involves the representation of clients in complex class-action claims and commercial litigation. He is peer-reviewed as an AV rated lawyer by Martindale Hubbell.

Mr. Wolens served as a member of the Texas House of Representatives from 1981 until 2005. During his lengthy public service, he authored landmark legislation covering partnerships and limited liability corporations, ethics reforms, antitrust laws and electric deregulation.

[Texas Monthly](#) magazine named him as one of the "Ten Best Legislators" in Texas on six different occasions, writing in 2003: "At the end of the session, he passed the best ethics bill in the history of the Texas Legislature...One of the great legislators of the modern era logged another big win."

Steve currently serves on the Texas Ethics Commission, which he chaired from 2017-2019. He was appointed to the Commission by House Speaker Joe Straus in 2016 and subsequently elected Chair twice by his fellow Commissioners. The Ethics Commission oversees compliance with laws concerning personal financial disclosures, political contributions and expenditures of state elected officials, judges, and certain local officeholders and candidates; it also reviews lobbying reports and activities.

Steve was born in Dallas and grew up in Corsicana, where his family founded the K. Wolens department stores. During high school, he served as a page in the U.S. Congress and worked in the Washington office of Congressman Olin Teague. He is married to the former Mayor of the City of Dallas, Laura Miller. They have three children.

Steve led a national effort to hold the internet travel companies (OTCs) accountable for hotel occupancy taxes that were not remitted to governmental authorities as required by local ordinances and state law. He was a lead attorney on behalf of San Antonio and 172 other Texas municipalities against the OTCs for delinquent occupancy tax payments. The class action was certified and later went to a

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Education

J.D., Southern Methodist University
School of Law, 1976

B.A., with distinction, Stanford
University, 1973

Court Admissions

State of Texas

The U.S. District Courts for the
Northern, Southern, Eastern, and
Western Districts of Texas

The U.S. Court of Appeals for the Fifth
Circuit

The U.S. Supreme Court

Bar Associations

Dallas Bar Association

State Bar of Texas

Eastern District Bar Association

Steven D. Wolens (cont'd)

successful verdict in 2009, resulting in an \$84MM judgment. The unanimous jury verdict was vacated by the 5th Circuit on Erie principles, <http://www.ca5.uscourts.gov/opinions/pub/16/16-50479-CV0.pdf>. Steve has represented the State of Hawaii and the City of San Francisco, among other governmental entities, in similar litigation.

Prior to joining McKool Smith, Mr. Wolens handled complex toxic tort litigation in addition to numerous class-action lawsuits. He has served as lead counsel in individual toxic tort cases heard throughout the United States.

Rankings & Honors

- Named a "Texas Litigation Star" by *Benchmark Plaintiff*, 2012
- Texas *Super Lawyers*, Law & Politics Media Inc. and Texas Monthly, 2003-2013
- Ten Best Legislators, *Texas Monthly*, 1983, 1991, 1993, 1997, 1999, 2003
- Outstanding Legislator of the 78th Texas Legislature, AARP Texas Chapter, 2003
- Legislator of the Year, Texas Renewable Energy Industries Association, 2001
- Public Service Achievement Award, Common Cause, 1991, 1993, 1997, 1999
- Outstanding Legislator, Texas Business, 1983

Interviews

"Electric Deregulation Is Working in Texas, Says Lawmaker Who Led the Effort", *Texas Monthly*, August 6, 2018, <https://www.texasmonthly.com/politics/electric-deregulation-working-texas-says-lawmaker-led-effort/>

"Bottled Up, The Battle Over Dublin Dr Pepper", 2014, documentary film, https://www.amazon.com/Bottled-Up-Battle-Dublin-Pepper/dp/B00KATVN4S/ref=sr_1_1?ie=UTF8&qid=1550609537&sr=8-1&keywords=Bottled+Up%2C+the+Battle+over+Dublin+Dr+Pepper

Publications

"Emerging Issues under the Payroll Protection Loan Program for Lawyers and Small Businesses" by Lewis LeClair, Michael Fritz, Steve Wolens and Gary Cruciani
04.07.2020

"The Texas Ethics Commission is surprisingly nonpartisan. What can this group teach the rest of us?" *Dallas Morning News*, February 26, 2019, <https://www.dallasnews.com/opinion/commentary/2019/02/26/legislatures-texas-ethics-commission-surprising/>
02.27.2019

State Bar of Texas
Legislative & Campaign Section

May 12, 2022

Presented by

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Sec. 253.039.

Sec. 253.039. CONTRIBUTIONS IN CERTAIN PUBLIC BUILDINGS PROHIBITED.

(a) A person may not knowingly make or authorize a political contribution while in the Capitol or a courthouse to:

- (1) a candidate or officeholder;
- (2) a political committee; or

Sec. 253.034.

Sec. 253.034. RESTRICTIONS ON CONTRIBUTIONS DURING AND FOLLOWING REGULAR LEGISLATIVE SESSION.

(a) During the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment, a person may not knowingly make a political contribution to:

- (1) a statewide officeholder;
- (2) a member of the legislature; or

Sec. 255.003.

Sec. 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING.

(a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

(b) Subsection (a) 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.

(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.

(c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.

Sec. 251.001.

Sec. 251.001. DEFINITIONS. In this title:

(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 550

June 28, 2019¹

Whether a public officer may use government resources for political advertising. (SP-14)

BACKGROUND

The Texas Ethics Commission ("Commission") has been asked on numerous occasions about the permissibility of a public officer's¹ use of government resources for political advertising. For example, we have been asked whether a public officer may be interviewed in his or her government office for use in a campaign video.

In the circumstances described above, the government resources come into the public officer's custody or possession by virtue of holding the public office.

SUMMARY

A public officer, including a statewide officer, legislator, county officer, municipal officer, or school district officer, would be prohibited from using government resources, such as the officer's office in a government building, to create a photograph, video, or other communication for political advertising because the officer has custody or possession of the government resources by virtue of holding the public office.

ANALYSIS

The Commission, on its own initiative, issues this advisory opinion to address whether a public officer may use government resources, such as the public officer's office, to create a photograph, video, or other communication for political advertising. We also address whether a public officer may similarly use government resources that are equally accessible to the public. To resolve this question, we must address sections 39.02(a)(2) and 39.02(a)(1) of the Penal Code and section 255.003(a) of the Election Code, which restrict the use of government resources for political advertising.

Use of Government Resources for Political Advertising

Section 39.02(a)(2), Penal Code

Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit² or harm or defraud another, intentionally or knowingly "misuse" government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment." Penal Code § 39.02(a)(2). A public servant, as defined in the Penal Code, includes a public officer, among

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In the circumstances described above, the government resources come into the public officer’s custody or possession by virtue of holding the public office.

SUMMARY

A public officer, including a statewide officer, legislator, county officer, municipal officer, or school district officer, would be prohibited from using government resources, such as the officer’s office in a government building, to create a photograph, video, or other communication for political advertising because the officer has custody or possession of the government resources by virtue of holding the public office.



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TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 561

June 17, 2021

ISSUE

May a judicial officer create—or coordinate the creation of—photographs of his courtroom for use in political advertisements? Does it make a difference if the photographs are taken from the gallery, the area in front of the bench, or behind the bench?

May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination, even if they show the officer behind the bench? (AOR-639)

SUMMARY

Section 255.003(a) of the Texas Election Code does not apply to district judges because they are not officers or employees of political subdivisions.

Section 39.02(a)(2) of the Penal Code prohibits judges from using their courtrooms to create political advertisements, but not from repurposing material that is created lawfully.

FACTS

The requestor is a judicial officer who seeks clarification of Ethics Advisory Opinion (“EAO”) No. 550 as it applies to a judge’s use of photographs taken in his courtroom.

Specifically, the requestor asks whether he may use, for political purposes, photographs that are taken in different parts of the courtroom, such as the gallery, the area in front of the bench, or behind the bench. The requestor states that his courtroom is open anytime the building is open, but that he typically restricts the public to the gallery, permits attorneys into the area in front of the bench, and allows no one but himself behind his bench. Exceptions are made for ceremonies like weddings or adoptions, or for public tours of the courthouse, when the requestor allows the public into the area in front of the bench, and, if requested, even behind his bench.

Separately, the requestor asks whether he is permitted to use, for political purposes, photographs that are published in the public domain, even if they show him behind the bench. He specifically identifies multiple sources of public-domain photographs, including “local media outlets (print, TV, and Internet)” and “social media (from ZOOM hearings).”

ANALYSIS

Section 255.003(a) of the Election Code does not apply to the requestor because he is not an officer or employee of a political subdivision.

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June 17, 2021

ISSUE

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May a judicial officer use, for political advertisements, photographs that are created without his cooperation or coordination, even if they show the officer behind the bench? (AOR-639)

SUMMARY

Section 255.003(a) of the Texas Election Code does not apply to district judges because they are not officers or employees of political subdivisions.

Section 39.02(a)(2) of the Penal Code prohibits judges from using their courtrooms to create political advertisements, but not from repurposing material that is created lawfully.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 476

August 21, 2007

Whether section 255.003 of the Election Code prohibits the spending of city funds for a city council member's newsletter. (AOR – 539)

The Texas Ethics Commission has been asked to consider whether a city council member's newsletter is political advertising that may not be paid for with public funds.¹

Section 255.003 of the Election Code provides as follows:

- (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- (b) 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.
- (c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

Political advertising is defined by section 251.001(16) of the Election Code as follows:

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

- (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (B) appears:
 - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) on an Internet website.

The critical issue in determining whether an advertisement is "political advertising" is whether it is a communication supporting or opposing a candidate or a public officer. *Ethics Advisory Opinion No. 102* (1992). Whether a particular communication supports or opposes a candidate or a public officer is a fact question.

In a previous opinion, we considered whether a brochure that merely describes the duties of a justice of the peace court constituted political advertising. *Ethics Advisory Opinion No. 211* (1994). In that instance, the name of the incumbent justice of the peace appeared only on the letterhead and was not done in an unduly conspicuous way or in a way that would lead one to believe that the purpose of the brochure was to support the

Sec. 253.035.

Sec. 253.035. RESTRICTIONS ON PERSONAL USE OF CONTRIBUTIONS

- (a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.
- (b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.
- (c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.
- (d) In this section, "personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include:
- (1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section [253.038](#); or
 - (2) payments of federal income taxes due on interest and other income earned on political contributions.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 547

June 27, 2018

Whether a candidate may use political contributions to pay childcare expenses incurred during a campaign. (AOR-627)

SUMMARY

Under the facts presented, a candidate may use political contributions to pay childcare expenses to facilitate the candidate's participation in campaign activities.

FACTS

The requestor of this opinion is a candidate for public office who states that, since becoming a candidate for public office, she has had to pay for childcare services (daycare and babysitting) for her two young children while she attends campaign events and meetings. She describes the campaign activities, in part, as commissioners court meetings, public office hours to meet with voters, meetings with campaign volunteers, and attendance at other campaign events and blockwalking. She states that she cannot be an effective and successful candidate without the childcare services for several reasons, including that she is facilitating the meetings, she is required to be "hands-on" at the meetings, that children would be a disturbance during the meetings, that the events occur past the children's bedtime, or that outdoor temperatures are too high for the children to attend. She states that before she was a candidate, she was "a stay-at-home mom" and never incurred costs for childcare other than an occasional babysitter for personal reasons. She states that she desires to use political contributions to pay for the childcare and that a supporter intends to contribute to the candidate's campaign specifically to help defray the costs of childcare.

ANALYSIS

A person who accepts a political contribution¹ as a candidate may not convert the contribution to personal use. Elec. Code § 253.035(a). "Personal use" is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate. *Id.* § 253.035(d).

The candidate's payments for childcare services further some individual or family purposes. However, we have previously recognized that "by specifying that the use must not *primarily* serve individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefits to the individual candidate." Ethics Advisory Opinion No. 149 (1993) (emphasis in original). According to the facts presented, the candidate began paying for childcare services only after becoming a candidate, and the candidate's stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign activities. Thus, in our opinion, the payments would not primarily further individual or family purposes not connected with the performance of duties or activities as a candidate and therefore would not constitute personal use.²



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 506

November 29, 2012

Whether a city council member's refrigerator magnet constitutes political advertising for purposes of section 255.003 of the Election Code. (AOR-571 and AOR-572)

The Texas Ethics Commission has been asked to consider whether a city council member's refrigerator magnet constitutes political advertising for purposes of section 255.003 of the Election Code.¹

Section 255.003 of the Election Code provides, in relevant part, as follows:

(a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

(b) Subsection (a) 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.

...

(c) A person who violates Subsection (a) ... commits an offense. An offense under this section is a Class A misdemeanor.

Political advertising is defined by section 251.001(16) of the Election Code as follows:

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

A magnet is a type of "sign" or "similar form of written communication" for purposes of political advertising. See generally Ethics Advisory Opinion No. 184 (1994).

The critical issue in determining whether a communication is "political advertising" is whether it is a communication supporting or opposing a candidate or a public officer. Ethics Advisory Opinion No. 102 (1992). Whether a particular communication supports or opposes a candidate or a public officer is a fact question. A factor in determining whether a particular communication supports or opposes a public officer is



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 522

December 2, 2014

Whether an employee of a member of the Texas Legislature may, at the direction of the member and as a regular part of the employee's job duties, drive the member between the member's Austin residence and the Capitol and drive the member for personal appointments and errands. (AOR-590)

The Texas Ethics Commission has been asked whether an employee of a member of the Texas Legislature may, at the direction of the member and as a regular part of the employee's job duties, drive the member between the member's Austin residence and the Capitol and drive the member for personal appointments and errands. The requestor of this opinion provides the following hypothetical situation:

[T]he member for personal reasons does not care to operate a motor vehicle and, to avoid doing so, has established a standing policy in which his Capitol staff, from the chief of staff on down to the scheduler, all take turns driving him to his Capitol office on workday mornings and back to his home in the evenings according to a regular schedule. Additionally, staff occasionally drive the member to midday personal appointments, such as to the member's barber or dentist. The question is whether the conduct described in this hypothetical scenario violates a provision of Chapter 39, Penal Code ... and, if so, whether staff become complicit in the violation by acquiescing in the member's request.

The requestor has also stated that the member of the legislature does not ordinarily reside in Travis County, that the member maintains an Austin residence for legislative purposes, and that the employee's time spent driving the member is time for which the employee is compensated (i.e., state work time).

The work time of state employees is a thing of value belonging to the state. Ethics Advisory Opinion No. 431 (2000). Section 39.02 of the Penal Code states that a public servant may not, with intent to obtain a benefit or with intent to harm or defraud another, violate a law relating to the public servant's office or employment or misuse a thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. Penal Code § 39.02(a).¹ The issue before us is whether the use of a legislative employee's work time to transport a member of the legislature for the purposes described in the request would constitute a misuse of government property.

As we have indicated in previous opinions, the legislature is the appropriate body to determine whether, subject to constitutional limitations, a particular use of legislative resources is permissible.² However, we have recognized that public funds and other state resources must be used for public purposes. Tex. Const. art. III, §§ 50, 51; art. VIII, § 3. See also Ethics Advisory Opinion No. 372 (1997).³ Whether any particular activity furthers a public purpose depends upon the specific facts. Tex. Att'y Gen. Op. No. JM-516 (1986).

Whether a legislative employee's work time is used for public or private purposes depends on the specific activities in which the employee is engaged during that time. The use of a legislative employee's work time for purely personal activities would not further a state purpose and would constitute a misuse.⁴ Similarly, directing a legislative employee to spend work time for improper purposes constitutes a misuse. Ethics Advisory Opinion Nos. 431 (2000), 209 (1994), 190 (1994), 172 (1993) (a legislator may not use state equipment and employees for personal or campaign purposes).