



**School Law Section
“Lunch Duty” CLE Series**

Electioneering

October 24, 2024

Christine Badillo
Shareholder



WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.

Mark Tilley
Division Director



TASB
LEGAL SERVICES



Why Electioneering Matters

Voting in Republican Primaries is especially important because the votes cast in primaries inform issues that the party will prioritize. Since TX tends to always elect a Republican, we want to inform the party through our primary votes which issues we care about the most and how we feel about them. Thus, vote for candidates who support public education and school funding in the Republican primaries, no matter what your party affiliation is, Republican or Democrat. Consider thinking from a "purple" mindset in future elections, voting for the candidate that will support public ed and funding in the future, despite their party affiliation.

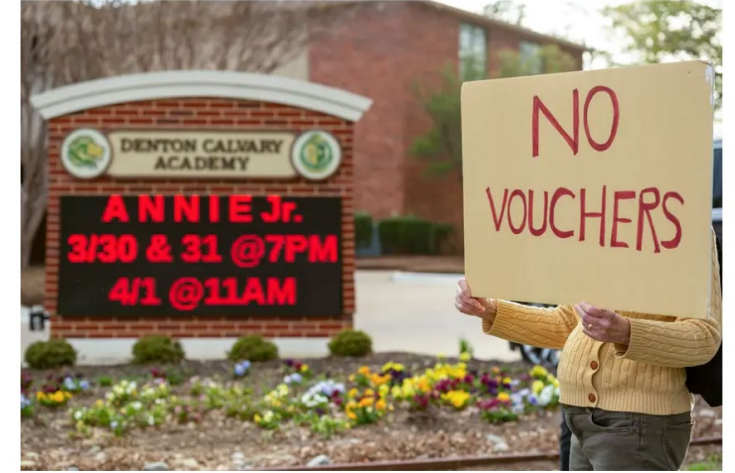
Early Voting Dates: Feb 20 - March 1
Election Day: March 5th

Please know that historically, 85% of PRIMARY voters in TX want vouchers. That's why it is so important that teachers and public school and funding advocates show up in the primaries.

Two Denton school district principals indicted on charges of illegal electioneering

A grand jury indicted the principals for allegedly using their school emails to encourage staff to vote for certain candidates in the March primary.

BY POOJA SALHOTRA APRIL 7, 2024 11 AM CENTRAL



A woman holds a sign opposing school vouchers outside Denton Calvary Academy on March 27, 2023. Two Denton ISD principals have been indicted on allegations that they encouraged their staffs to vote against political candidates who support school choice. Courtesy of Matt Iala/The North Texas Daily



Attorney General Ken Paxton ✓

@KenPaxtonTX · Follow



This constitutes illegal electioneering under the election code, which is completely unacceptable. It is a criminal offense for an officer or employee of a school district to knowingly spend or authorize the spending of public funds for political advertising.

Unfortunately, the... [Show more](#)

STATE

'Support public schools': AG Ken Paxton sues 6 Texas districts over electioneering claims



Keri Heath

Austin American-Statesman

Published 6:15 a.m. CT March 4, 2024 | Updated 9:11 a.m. CT March 4, 2024



What We Will Cover

- Definitions, relevant sources of law
 - Electioneering
 - Political Advertising
 - Legislative Advocacy
- Guidance from Texas Ethics Commission Opinions, Texas Attorney General's Opinions
- Current litigation
- Hypotheticals
- Ethics Rules



What is Electioneering?

Electioneering Prohibited at a Polling Place

“Electioneering” includes the posting, use, or distribution of political signs or literature.

Texas Election Code

§§ 61.003(b)(1), 85.036(f)(2).

A person may not electioneer for or against any candidate, measure, or political party in or within **100 feet** of an outside door through which a voter may enter the building.

Class C misdemeanor offense





Texas Education Code

Section 11.169

Electioneering Prohibited

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.**



This essentially requires **strict neutrality** by the district toward candidates, measures, and political parties.

- Board cannot take an official position on passage of bond or tax elections.
- Board cannot support particular candidates.



Electioneering is “to work for the election of a candidate or party...Thus, the Legislature prohibited a board of trustees of a school district from using public funds to work for a particular measure or candidate.”

Ken Paxton, KP-0177 (2018)



What is Political Advertising?

Political Advertising

A communication supporting or opposing a candidate, a political party, a public officer, or a measure.

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

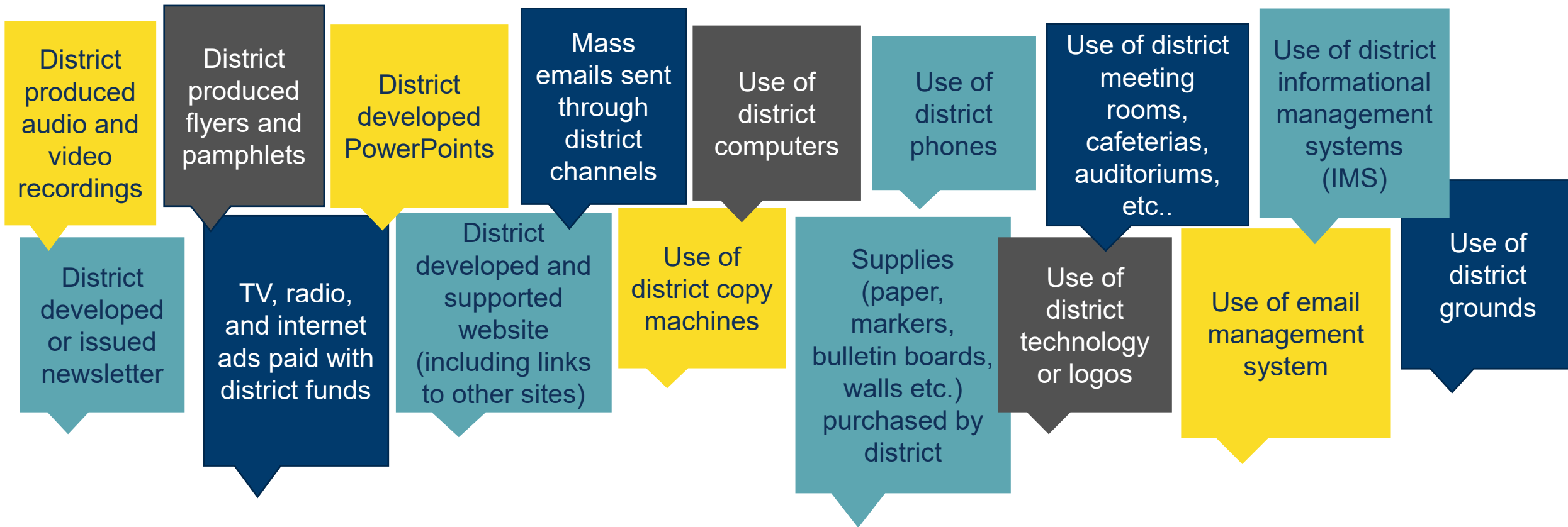
Tex. Elec. Code §§ 251.001(16),
255.003(a)

A violation is Class A Misdemeanor, subject to fines.

Tex. Elec. Code § 255.003(c).



Examples of Resources Within Prohibition for Political Advertising



Bottom Line: Cannot use any district resources in any imaginable manner—no matter how small—for political advertising (**but neutral limited public forum exception**)

So, what *is* allowed?

This restriction does not apply to a “communication that **factually describes the purposes of a measure** if that communication does not advocate passage or defeat of the measure.”


Tex. Elec. Code § 255.003(b)



Texas Ethics Commission Guidance

**A SHORT GUIDE TO THE
PROHIBITION AGAINST USING
SCHOOL DISTRICT RESOURCES FOR
POLITICAL ADVERTISING**





“Violations of the law often occur because someone finds it irresistible to wrap up a factual explanation with a motivational slogan...”

Good Schools are the Foundation of a Good Community

or

Every Child Deserves a Good Education

“Another common misstep is to include ‘calls to action...’”

Put Children First

or

Show that You Care About Education

No matter how much factual information is included in a communication, any amount of advocacy is impermissible.

Examples of Phrases Within Prohibition for Political Advertising

"Seeks Voter Approval" . . .
"We want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence."

"The important point is that a vote to authorize this 'Our Children, Our Schools, Our Future' bond package gives [School District] the flexibility needed to match the pace of coming growth, fast or slow."

"After examining our options and each department's budget, we are left with only one way to generate the monies needed to continue programs and services that are essential to our students' success. We must have a change in our tax rates. That means asking voters to go to the polls and vote in a tax rate election. If approved, the district's rate would still be considerably lower, than it was just three years ago."

"What do you think it takes to educate our children in [School District] . . . And it takes your tax contributions. So let your voice be heard by casting an early vote November 3rd through the 17th in the tax rollback election or on November 20th, election day. . . . The bottom line is: whatever it takes."

"It is very important for your children and the school district that the Tax Rollback Election pass."

"The bond proposal provides the "best solution" to the needs generated by the school district's population growth."

"Our citizens now have the opportunity to position the [School District] for the 21st century. Please support the vision - our future depends on your commitment."

"The [School District] and Board of Trustees believe this rate increase is vitally important."

"It's time to change to meet the needs of our students . . . While the [safety issues] may not yet be matters of student safety, they will be soon if the situations are not addressed."

Given today's construction costs and the needs of the district, a long-term bond is the only viable financial solution."

"This bond is the right thing to do for the children of this community."

Bottom Line: Words matter. Remember: No matter how much factual information about the purposes of a bond election is in a communication, any amount of advocacy is impermissible.

Texas Ethics Commission Guidance

Another provision of the Texas Election Code prohibits a school district board member or employee from using or authorizing the use of an internal mail system to distribute political advertising. An internal mail system is a system operated by a school district to deliver written documents to its board members or employees. A violation of this prohibition could also lead to the imposition of fines by the Ethics Commission or to criminal prosecution.

Internal mail systems

The prohibition applies to any **“officer or employee of a political subdivision.”** In other words, if a school district employee makes a decision to use district resources in violation of the prohibition, the employee could be fined by the Ethics Commission or held criminally liable. School board members, as “officers” of a school district, are also subject to the prohibition.

Applies to employees and students

Also, it is not permissible to authorize the use of the paid time of school district employees to create or distribute political advertising. For example, school district staff may not copy, staple, or distribute political advertising on work time. Nor is it permissible to have school children work on political advertising during school time.



So, what's the risk?

State v. Logiudice et al. (Hutto ISD)

Cause No. 24-0437-C425, 425th Judicial District Court of Williamson County, Texas

State v. Taliaferro et al. (Castleberry ISD)

Cause No. 017-350665-24, 17th Judicial District Court of Tarrant County, Texas

State v. Price et al. (Denton ISD)

Cause No. 24-1663-431, 431st Judicial District Court of Denton County, Texas

State v. Rhoden et al. (Denison ISD)

Cause No. CV-24-1114, 59th Judicial District Court of Grayson County, Texas

State v. Collins et al. (Aledo ISD)

Cause No. CV24-0305, 415th Judicial District Court of Parker County, Texas

State v. McGee et al. (Huffman ISD)

Cause No. 2024-13851, 269th Judicial District Court of Harris County, Texas

State v. Davis et al. (Frisco ISD)

Cause No. 429-01216-2024, 429th Judicial District Court of Collin County, Texas



Electioneering / Political Advertising?

Public education is always on the ballot, especially during the primaries. The Texas legislature determines public school funding. Last session, proposed legislation that tied public school funding to a voucher program failed, leaving Frisco ISD \$90 million behind 2019 funding levels. Many of the seats up for election do not have competitive races during the November general election, so whoever wins the primary—in most cases—will win the November election. That means candidates we're voting for right now will decide whether or not public schools get funded appropriately.

In Texas, we have “open primaries,” which means any registered voter can vote in either party's primary. Since redistricting has mostly solidified which seats will be held by a Republican and which will be held by a Democrat, some voters choose to vote in the primary of the party that's most likely to win in their area, regardless of which party they normally identify with.

Very few competitive seats were left after Texas redistricted Senate and House districts in 2021. Redistricting mostly solidified which seats would be held by a Republican and which would be held by a Democrat. That means whoever wins the party's primary race will most likely be elected in the general election in November 2024. This is why it is so important to vote in the primary elections in Texas.”



What about employees and students?



Hypothetical

- Ashley is having an amazing Friday! Her campus principal and both APs are out at a conference, so she has chosen today to:
 - (1) Roll up to school in her new SUV with a huge sticker on it that says “Vote for Patricia.”
 - (2) Wear her brand new “Vote for Patricia” button on her jean jacket because it’s super-cold in her classroom.
 - (3) Send an email to three of her friends at the middle school during lunch to remind them early voting has started, and they need to vote for Patricia.
 - (4) Change into her “Vote for Patricia” t-shirt because it’s still hot outside a week before Halloween and wear it to the homecoming football game.
 - (5) Spend halftime launching tiny foam footballs that say “Vote for Patricia” into the crowd.

What’s wrong with that?

Hypothetical

- The senior class is super-excited! Today they are going to:
 - (1) Take a school bus to the nearest polling location so those who are registered can vote.
 - (2) Make an informational video for the school district's bond measure in their film class. They've even thought to bring a bunch of onions so they can get elementary school kids to cry next to their current sad playground equipment!
 - (3) Twin out in their matching "Vote for Pedro" shirts!

What's wrong with that?

Ethics Rules

TX Disciplinary Rules of Professional Conduct

- Rule 1.13 – Organization as a Client
 - (a) A lawyer employed or retained by an organization represents the entity. While the lawyer, in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

TX Disciplinary Rules of Professional Conduct

- Rule 1.13 – Organization as a Client
 - (b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:
 - (1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;
 - (2) the violation is likely to result in substantial injury to the organization; and
 - (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

TX Disciplinary Rules of Professional Conduct

- Rule 1.13 – Organization as a Client
 - (c) Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions, and measure may include, but are not limited to, the following:
 - (1) asking for reconsideration of the matter;
 - (2) advising that a separate legal opinion on the matter be sought for presentation to the appropriate authority in the organization; and
 - (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

TX Disciplinary Rules of Professional Conduct

- Rule 1.13 – Organization as a Client
 - (e) In dealing with an organization’s directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organizations’ interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

Hypothetical

- You receive a call from Cheryl, a member of the board of trustees of one of your local school district clients. Cheryl observed her opponent in the upcoming race for school board taking Tiff's Treats to the elementary school this morning.
- Cheryl would like to know what you intend to do about it. What do you say?

Rule 1.13 – Comment 1

“...Unlike individual clients who can speak and decide finally and authoritatively for themselves, an organization can speak and decide only through its constituents, such as its officers or employees... This fact requires the lawyer under certain conditions to be concerned whether the intermediary legitimately represents the organizational client.”

Hypothetical

- You are general counsel at a large school district that has two important bond propositions on the upcoming ballot. You are working extensively across multiple departments and with two different law firms to ensure bond-related communications fully comply with the law.
- The chief of communications sends you for review a video their team wants to debut at the start of early voting in the morning. It is 6:00 p.m.
- You watch the video and discover it is 120 seconds of students in different classrooms all across the district shouting “vote yes!” before intermittently cutting back to the Superintendent detailing the various improvements the bond measures would fund.
- Is this problematic?

Hypothetical

- Yes, obviously it is highly problematic.
- You reply back to the chief of communications, you text, you call, you finally wrap up your evening on a call with the superintendent and chief in which you clearly advise them of the legal concerns and potential consequences.
- Promptly at 7:00 a.m. the next day, the very same video goes live on the district website and socials.
- What do you do?

Rule 1.13 – Comment 6

- “When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province...”
- “...However, different considerations arise when the lawyer knows, in regard to a matter within the scope of the lawyer’s responsibility, that the organization is likely to be substantially injured by the action of a constituent that is in violation of law or in violation of a legal obligation to the organization. In such circumstances, the lawyer must take reasonable remedial measures...”

TX Disciplinary Rules of Professional Conduct

- Rule 1.14 – Conflicts: Public Interest Activities

A lawyer serving as a director, officer, or member of a legal services, civic, charitable, or law reform organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization:

- (a) if participating in the decision would violate the lawyer's obligations to a client under Rule 1.06; or
- (b) where the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

TX Disciplinary Rules of Professional Conduct

- **Rule 1.06 – Conflicts: General Rule**

- A lawyer shall not represent opposing parties in the same litigation.
- A lawyer shall not undertake a representation on behalf of anyone whose interests are materially and directly adverse to the interests of another client (or reasonably appears to be or become adverse).
- Lawyer may undertake multiple representation if the lawyer reasonably believes neither client will be materially affected, provides notice, and obtains consent from both.
- If a dispute occurs in a multiple representation situation, the lawyer may not represent either party, unless prior consent is obtained by all parties to the dispute.
- Lawyer must withdraw if they accepted a representation in violation of Rule 1.06 or if a properly accepted representation becomes improper.
- Conflict imputed to all within a firm.

- **Rule 5.01 – Responsibilities of a Partner or Supervisory Lawyer**

- **Rule 5.02 – Responsibilities of a Supervised Lawyer**

- **Rule 5.03 – Responsibilities Regarding Nonlawyer Assistants**

Vote!

Important Election Dates in 2024

- ☐ **October 21:** First Day of Early Voting
- ☐ **October 25:** Last day to Apply for Ballot by Mail
(Received not postmarked)
- ☐ **November 1:** Last Day of Early Voting
- ☐ **November 5:** Election Day
- ☐ **November 8-19:** Dates for Local Canvass



**School Law Section
“Lunch Duty” CLE Series**

Electioneering

Questions?



WALSH GALLEGOS
KYLE ROBINSON & ROALSON P.C.



TASB
LEGAL SERVICES