

Elections: Do's and Don'ts

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Meet Your Presenter



Ben Morse Head of Public Finance Leon Alcala, PLLC

Education

- J.D., University of Michigan, 2010
- B.A., University of Texas at Austin, 2007

Experience

- Bond counsel, disclosure counsel and underwriter's counsel on over 180 transactions totaling over \$20 billion in principal amount.
- Practice focuses on serving as bond counsel for Texas school districts.
- During 2023: 30 bond transactions, 20 bond elections and 5 VATREs

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Overview

- ❑ Conundrum:
 - Elections are extremely important to school districts, as well as their constituents.
 - Districts usually have a lot to say about elections.
 - However, various statutes limit school districts' communications with voters regarding elections.
- ❑ District's role as provider of information:
 - School districts are not prevented from communicating regarding elections.
 - Districts should strive to inform voters about what is at stake.

Relevant Prohibitions

- ❑ Section 255.003(a), Texas Election Code (Unlawful Use of Public Funds for Political Advertising)
- ❑ Section 11.169, Texas Education Code (Unlawful Electioneering)
- ❑ Section 255.003(b-1), Texas Election Code (Unlawful False Statements Regarding Measures)
- ❑ Various Penal Code provisions

Unlawful Political Advertising

- ❑ Section 255.003, Texas Election Code
 - Statute prohibits:
 - An officer or employee of a political subdivision from knowingly spending or authorizing the spending of “public funds” for “political advertising.”
 - Important notes:
 - Applies to both board members and employees.
 - Applies to school districts and other political subdivisions.
 - “Public funds” and “political advertising” are critical terms that merit in-depth discussion.

Unlawful Political Advertising

- ❑ “Political advertising” means a communication supporting or opposing a candidate or a measure that:
 - in return for consideration, is published in a newspaper or other periodical;
 - in return for consideration, 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
 - appears on a website.
- 1 T.A.C. § 20.1(11)(A); Tex. Elec. Code § 251.001(16).

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