



September 7, 2018

Mr. John Metzler  
Forestburg ISD  
P.O. Box 415  
Forestburg, TX 76239-0415

Dear Mr. John Metzler,

The importance of Texas' educators to the future of our state cannot be overstated, particularly when it comes to their critical role in the civic process. Our public schools are charged with preparing Texas children to be "thoughtful, active citizens,"<sup>2635</sup> and Texas teachers labor tirelessly to provide our children with the education, sense of civic duty, and reverence for the rule of law required of future citizens and leaders.

Because Texans place such great trust in their public schools, it is critically important that School Districts not abuse that trust by using their position as a platform to express their own opinions about political issues. Similarly, school districts must take care not to use taxpayer resources for the benefit of private individuals—including political candidates.<sup>2636</sup>

At the same time, educators, school district employees, and school board members do not lose their freedom of speech merely because they are public servants. A core value of Texas's constitution is that "[e]very person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege."<sup>2637</sup>

In recognition of the difficulty educators face balancing these two principles, the Office of the Attorney General prepared the enclosed advisory about the role of Texas schools in politics and elections. The advisory includes a compilation of laws and statutes, as well as a helpful Frequently Asked Questions section.

My hope is that you will find the advisory a useful aid to assist you in lawfully leading your school district, employees, and students through this and future election seasons.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey C. Mateer".

JEFFREY C. MATEER  
First Assistant Attorney General

<sup>2635</sup> Tex. Educ. Code §§ 4.001(b), 25.087; Tex. Elec. Code § 13.046.

<sup>2636</sup> See Tex. Const. art. III, § 52(a); Tex. Atty. Gen. Op. LO-97-077 (1997).

<sup>2637</sup> Tex. Const. art. I, § 8.

## **Educating Our Children: Texas Law and Frequently Asked Questions About the Role of Texas Independent School Districts in Politics and Elections**

### **All Texans Are Entitled to Freedom of Speech and Protection from Misuse of Taxpayer Resources**

It is a core value of Texas's constitution that "[e]very person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege."<sup>1</sup> Educators and School Board members do not lose their freedom of speech merely because they enter public service;<sup>2</sup> however, that freedom of speech does not extend to the use of public office and public resources to express an opinion.<sup>3</sup> It is also a core value of the Texas Constitution that taxpayer resources cannot be used for the benefit of private individuals—including political candidates.<sup>4</sup>

### **Public Schools Play Important Roles in Texas Elections**

"Political liberty is the bedrock of our democracy, and the right of citizens to choose their public officials and political associations is deeply rooted in our constitutional firmament."<sup>5</sup>

To that end, the Texas Legislature directs public schools to prepare "students to be thoughtful, active citizens."<sup>6</sup> School districts must offer a required curriculum in government,<sup>7</sup> and school districts are empowered to register students to vote, promote civic engagement, and allow high school students to serve as early voting clerks.<sup>8</sup> In addition, high school principals serve as deputy voter registrars and "distribute an officially prescribed registration application form to each student who is or will be 18 years of age or older during that year."<sup>9</sup> Principals may assist in completing the forms and review the applications for completeness.<sup>10</sup> School buildings throughout Texas also function as polling locations.<sup>11</sup>

Thus, school districts and educators are empowered to play a vital role in the functioning of our republican form of government.

### **Texas Law Prohibits Electioneering by Texas School Districts**

The Legislature creates and empowers school districts. School boards have "the exclusive power and duty to govern and oversee the management of the public schools of the district,"<sup>12</sup> but districts are limited in what they may do when it comes to elections. "Notwithstanding any other law, the board of trustees of an independent school district may not use state or local funds or

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<sup>1</sup> Tex. Const. art. I, § 8.

<sup>2</sup> *Phillips v. City of Dall.*, 781 F.3d 722 (5th Cir. 2015) (noting that public employers cannot force employees to relinquish constitutional rights, but explaining that government interests may be balanced against free speech interests).

<sup>3</sup> See generally, *Walker v. Tex. Div., Sons of Confederate Veterans*, 135 S. Ct. 2239 (2015); *Bullock v. Calvert*, 480 S.W.2d 367 (Tex. 1972).

<sup>4</sup> See Tex. Const. art. III, § 52(a); Tex. Atty. Gen. Op. LO-97-077 (1997).

<sup>5</sup> *King St. Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 731 (Tex. 2017).

<sup>6</sup> Tex. Educ. Code § 4.001(b).

<sup>7</sup> *Id.* § 28.002(a)(1)(D).

<sup>8</sup> Tex. Elec. Code § 13.046; Tex. Educ. Code § 25.087.

<sup>9</sup> Tex. Elec. Code § 13.046(a), (d).

<sup>10</sup> 1 Tex. Admin. Code § 81.7(d)(2)(C)(i)–(ii).

<sup>11</sup> See Tex. Elec. Code § 43.001 *et. seq.*

<sup>12</sup> Tex. Educ. Code § 11.151(b); see Tex. Const. art. VII, § 1.

other resources of the district to electioneer for or against any candidate, measure, or political party.”<sup>13</sup>

Moreover, school districts must not only be good stewards of taxpayer monies, but abide by legal restraints in spending public funds. Specifically, the Texas Constitution prohibits school districts from granting “public money or thing of value in aid of, or to any individual . . . whatsoever.”<sup>14</sup> “A transfer of funds for a public purpose, with a clear public benefit received in return, does not amount to a lending of credit or grant of public funds in violation of article III, sections 51 and 52.”<sup>15</sup>

In addition, “[a]n officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.”<sup>16</sup> Moreover, “[a] public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly . . . misuses government property, services, personnel, or any other thing of value belonging to the government . . .”<sup>17</sup> This is a statewide principle.<sup>18</sup> Those that violate these provisions are guilty of a crime.<sup>19</sup>

Therefore, while school districts have a role in elections, they must be careful to ensure that they do not engage in electioneering or the expenditure of public funds in an unconstitutional manner.

### **Frequently Asked Questions**

Many public servants, like school administrators and teachers, are engaged in civics and politics in their communities. However, those that work for schools must be ever-mindful of the limitations the law places upon them in this regard. The following Frequently Asked Questions are designed to shed light on what is and is not proper.

*May a school or district transport employees or students to or from polling places?*

No. Absent some form of educational purpose in providing students transportation to the polling locations, that form of transportation serves no public purpose of the school district and violates the parameters of Texas law.<sup>20</sup> The goal of promoting a culture of voting or civil engagement among students is not such an educational purpose.

*I am a school district employee. Am I allowed to go vote during normal business hours?*

Check with your district. State employees have “sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.”<sup>21</sup> Your district may have a similar policy.

*May a school distribute or post campaign or political materials on school or district grounds?*

A school or class might examine or discuss a particular political race or measure for educational purposes, and when it does so, viewing or disseminating political materials

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<sup>13</sup> Tex. Educ. Code § 11.169.

<sup>14</sup> Tex. Const. art. III, § 52(a); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995).

<sup>15</sup> Tex. Const. art. III, § 52(a); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995).

<sup>16</sup> Tex. Elec. Code § 255.003(a).

<sup>17</sup> Tex. Pen. Code § 39.02.

<sup>18</sup> Tex. Gov’t Code § 556.004; *Whether a Legislator May Use State Computer Equipment and Employees to Make Entries About Personal or Political Business on A Computer Schedule, and Whether a State Employee May Conduct Transactions Involving Officeholder Contributions and Expenditures*, EAO-172 (1993).

<sup>19</sup> Tex. Elec. Code § 255.003(c); Tex. Pen. Code § 39.02.

<sup>20</sup> Tex. Const. art. III, § 52(a); Tex. Elec. Code § 61.001. *See generally* Tex. Atty. Gen. Op. KP-0177 (2018).

<sup>21</sup> Tex. Gov’t Code § 661.914.

may not be considered electioneering so long as all sides of an issue, or all candidates involved, are equally and fairly discussed, demonstrating no clear or implied favoritism or preference.<sup>22</sup> However, using school resources to promote particular candidates, measures, or political parties may constitute the type of electioneering prohibited by law.

*May school district employees actively participate in politics and political campaigns?*

Yes, but only on your personal time and you may not use district resources to do so. Most school districts have guidelines and policies regarding appropriate speech and workplace conduct, and you should be familiar with those limitations.<sup>23</sup>

*My school district has official accounts on Facebook, Twitter, and other social media sites. May they share electioneering communications through those platforms?*

No. School districts may use a variety of mediums of communication, but that does not alter whether the communication violates the prohibition against electioneering. Using the district's official Facebook, Twitter, or other social media account is not different than using the district's or school's letterhead. Not only are you using a resource that belongs to the district, you are unlawfully electioneering on behalf of the district or school.

*I am authorized to manage or otherwise add content to my school or district's official social media accounts. Though we do not produce, copy, or forward electioneering communications, may the school district merely "like" certain political or electioneering communications without violating Texas law?*

No. A school or district's use of a particular medium of communication does not alter whether the communication violates the prohibition against electioneering. The "like" is a common expression on social media today and will generally draw the content into your stream of communications so that others that follow you can see it too.<sup>24</sup> Thus, the "like" permits a social media user to redistribute content without having to copy and paste that content. If communicating through the district's official social media account is akin to using the district's or school's letterhead, "liking" an electioneering communication on the district's official social media account is akin to dropping a political flyer into an envelope containing an official district communication. Thus, a court would likely find you are not only using a resource that belongs to the district, you are unlawfully electioneering on behalf of the district or school.

*I am authorized to manage or otherwise add content to my school or district's official social media accounts. May content that I post or "like" include third-party websites?*

Yes, so long as the communication is neutral in terms of its content or the content to

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<sup>22</sup> Texas law prohibits school districts from electioneering "for or against any candidate, measure, or political party," so the best course of action is to refrain from posting campaign or political materials on or around school or district property. Tex. Educ. Code § 11.169.

<sup>23</sup> Texas law prohibits school districts from electioneering "for or against any candidate, measure, or political party," so the law requires that any electioneering activity you engage in is on your own personal time, and not on school time or using school resources. *Id.*

<sup>24</sup> See, e.g., *What does it mean to "Like" something?*, <https://www.facebook.com/help/110920455663362> ("Clicking Like below a post on Facebook is an easy way to let people know that you enjoy it without leaving a comment. Just like a comment, the fact that you liked the post is visible below it. . . . A story will be posted on your timeline that you liked your friend's video."); *How to like a Tweet or Moment*, <https://help.twitter.com/en/using-twitter/liking-tweets-and-moments> ("Likes are represented by a small heart and are used to show appreciation for a Tweet or a Moment. You can view Tweets an account has liked from their profile page by clicking or tapping into the likes tab.").



which it links. To link to a website or social media account containing a political message without simultaneously linking to other websites or social media accounts containing countervailing political messages can be "electioneer[ing] for or against any candidate."<sup>25</sup> Alternatively, to link only to the Twitter handle of the Texas Republican Party without simultaneously linking to the Twitter handle of the Texas Democratic Party (and other parties), may be "electioneer[ing] for or against any . . . political party."<sup>26</sup> When linking to other third-party websites or social media accounts, the district must be careful to ensure that they are not partisan or "for or against any candidate, measure, or political party."<sup>27</sup> Oftentimes, certain organizations or groups may feign neutrality, but provide or link to resources that only support certain candidates, parties, or political points of view. Unless you comprehensively vet every possible third-party link, its resources, sponsors, and other aspects to guarantee neutrality, the safest form of third-party links regarding elections will be government-sponsored (Secretary of State, Elections Administrators, etc.).

*I am a school district employee and want to distribute electioneering communications via my personal e-mail and social media? Am I allowed to do so?*

Yes, so long as you do it on your personal time, the account or social media platform you use is exclusively personal and not otherwise used for or identified with official business or district purposes. You should also comply with any policies that your district may have about social media use and content. For example, if you are the Superintendent of Texas ISD, and your Twitter handle is @TexasISDSuperintendent, the distribution of electioneering communications may be attributable to you in your official capacity and that of the Texas ISD. This is so even if you believe you personally own the Twitter account, as there is no reasonable way for the public to know that you are distributing personal messages rather than official ones.<sup>28</sup>

*I am a school district employee and frequently receive political e-mails from candidates and public interest organizations. May I share those with others?*

Yes, so long as you do it on your personal time, you use an e-mail or social media platform that is exclusively personal and not used for official business or district purposes, and you comply with any policies that your school district may have about social media use and content. You may run afoul of Texas's anti-electioneering laws when you spread political and campaign material in your official capacity, or during regular business hours. Moreover, you may inappropriately use taxpayer resources for private political purposes if you send electioneering messages such as political endorsements through your school district's e-mail system. Like many government employees, you may receive political or campaign e-mails on your official school district e-mail account. If you want to share this message with others, you should forward it to your personal e-mail and then, from your personal e-mail, on your own private time, you may share with others that you want to see your message. Make sure you do not send the message to others on their official school district e-mail. Even if you send an e-mail from your personal account, if you send it to others on their official e-mail, you may still be appropriating district resources for political purposes.

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<sup>25</sup> Tex. Educ. Code § 11.169.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> A social media communication from an account that appears to be from a public employee is unlikely to receive First Amendment protection from legal scrutiny. See, e.g., *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968). For this reason, for example, public servants maintain official Twitter accounts for their public offices, as well as separate personal Twitter accounts.

*As a school district employee, I generally only care about local elections (particularly school board elections) and do not usually get involved in statewide or other political races. Since local elections affect my school district, and perhaps even my job, may I be more involved in those elections without violating Texas law?*

Texas law on electioneering and misappropriating district resources does not distinguish between national, state, or local matters. The restrictions are equally applicable to all.

*As a school district employee, may I orally discuss political campaigns at staff meetings or around the school?*

Official meetings (e.g., staff meetings, mandatory meetings) represent the official business of the school district and must adhere to the same requirements as written communications. Casual conversations between colleagues in the break room, or in other informal settings, are permissible. Your employer may have other policies that limit the nature of communications at work, especially for those in supervisory positions.

*As a school district employee and manager, may I make it clear to my employees which candidates or parties I want them to vote for while using district time and e-mail, so long as I do not mention a particular candidate's name?*

No. Texas law prohibits communications endorsing a particular candidate or group of candidates, even if the government employee does not mention the specific candidate by name. An example of such prohibited communication would be one where the communication avoids using the candidate or group's name, but instead uses "magic words" or "catch phrases" to make clear which candidate or group is being endorsed. If your political endorsement is sufficiently clear, it does not matter whether you say "do not vote for the X party" or whether you list the candidates out by name. Both types of communications are unlawful.