



Frequently Asked Questions about Legislative Advocacy

Every two years the Texas Legislature meets to tackle important issues, make new laws, and amend old ones. Often, the important issues considered by the Legislature involve education, an interest shared by many in the community, especially, parents, employees, and trustees. At times, members of the Legislature seek answers from school districts on education issues. At other times, individuals who feel strongly about proposed legislation want to advocate for or against its passage. This guide answers frequently asked questions about legislative advocacy by a school district, its trustees, and its employees.

Q. What is political advertising?

- A. *Political advertising* is defined as a communication that advocates a particular outcome in an election. Officers and employees of political subdivisions are prohibited from knowingly spending, or authorizing the expenditure of, public funds for political advertising. Tex. Elec. Code § 255.003.

Q. What is lobbying?

- A. The Texas Ethics Commission has defined lobbying as direct communications with members of the Legislature to influence legislation. Chapter 305 of the Texas Government Code, also known as the Texas Lobby Law, requires a person to register as a lobbyist after exceeding statutory threshold amounts of expenditures or compensation related to lobbying activities.

The Commission has recognized an exception to the registration requirement for activities by government officials. Government officials who attempt to influence legislation in their personal or official capacity are exempt from the requirement to register as a lobbyist. 1 Tex. Admin. Code § 34.41. The registration requirement may still be triggered, however, if the individual spends more than an incidental amount of time advocating for legislation or receives, or is entitled to receive, the threshold amount of more than \$1,000 in a calendar quarter for compensation and expenditures. 1 Tex. Admin. Code § 34.43(b).

Board Member Advocacy

Q. May board members use their own time and money to talk to legislators about issues concerning their district and education in general?

- A. Yes. Board members may become involved in legislative matters and may speak to legislators, as individual trustees. Public officials who act independently, without the use of public funds, have a free speech right to engage in advocacy for issues important to them, whether they are local political issues or local legislative issues. To be cautious, school

board members may wish to apply the standard for political advertising, as stated by the Texas Ethics Commission, to legislative advocacy: “Although you may not use political subdivision resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources.” An individual trustee who communicates with legislators or others may identify him or herself as a trustee. Generally speaking, however, legislative advocacy or lobbying on behalf of the district should not be done on district time or through the use of district resources without board approval.

Q. May board members use district resources to communicate with legislators about issues concerning their district and education in general?

A. Yes, if proper procedures are followed. A district may wish to designate one or more board members to communicate with legislators about matters affecting the district. These communications may involve the use of district resources, such as vehicles. Use of local resources to facilitate communication on behalf of the district will likely not present a legal problem if the board, as a *body corporate*, has authorized the expenditure. The board should make a determination that the expenditure is necessary to promote the interests of the district.

Q. Can the board attend a legislative hearing without violating of the Open Meetings Act?

A. Yes. A majority of the board may travel to Austin to testify on pending legislation. A quorum of a school board may attend a legislative hearing and testify, deliberate, or comment about matters of public business, without being subject to the requirements of the Open Meetings Act. Tex. Gov't Code § 551.0035.

Superintendent and Other Administrators

Q. May a superintendent advocate about pending school-related legislation?

A. Yes, if the superintendent does so on his or her own time using his or her own resources. A superintendent, acting independently, has a First Amendment right to free speech and to address government freely about legislative interests.

A delicate balance comes into play, however, when the superintendent or other administrator advocates for legislation while acting in his or her official capacity, i.e., on school time. Because superintendents' duties often include appearing as a district representative at public gatherings, superintendents may have a more difficult time than other district employees separating their official speech from their private speech. If a superintendent or other administrator is using school district time, equipment, supplies, meetings, events, or other resources to engage in legislative advocacy, the administrator should proceed with caution, following the guidelines described below.

Q. Can a superintendent provide information or advocate about pending school-related legislation while in the course of employment?

- A. Yes, cautiously. A superintendent or other administrator may wish to engage in communications with the Legislature while acting in his or her official capacity. TASB Legal Services recommends that the board-superintendent team reach a clear understanding about the scope of these activities to prevent risking the misuse of public funds. Any expenditure of school district funds to support the superintendent's efforts must be necessary and appropriate to the operation of the school district. Expenditures must come only from local district funds, not state funds, and should not exceed the statutory limits for *lobbying*.

In addition, the board-superintendent team should reach an understanding about how much time the superintendent should dedicate to legislative matters. Concerns may arise if a superintendent or administrator is so involved in legislative activities that he or she is not able to address routine business matters.

Q. Is it acceptable for a superintendent or administrator to attend a legislative hearing during the school day?

- A. Yes. A superintendent may be selected by the board to represent the district at a legislative hearing to testify as a witness. Responding to questions about school-related issues is directly related to the job duties of a superintendent or other executive level administrator. Therefore, this task is appropriate for the administrator to perform during the work day.

Q. May the superintendent e-mail a letter he has sent to the legislature regarding proposed legislation to district employees? If so, can the superintendent encourage them to send the letter to their legislators?

- A. The superintendent may create and send the letter but, employees should not be pressured into sending the letter. The creation of a letter about school business is an acceptable use of district resources and time, provided that the letter's purpose is to present factual information or data to the legislature or to respond to a question presented by a member of the legislature. The superintendent should be cautious, however, not to suggest that employees are required to copy the letter and send it. The employees may be informed of the letter and may even receive a copy of the letter at their school e-mail address. Nevertheless, the decision to create and send a similar letter should be left up to each individual employee.

In addition, it is possible that the letter might be printed and distributed throughout a campus, thereby becoming a "flyer," which is a form of legislative advertising. If so, it may be necessary to place legislative advertising disclosure statements on the document. A document is considered legislative advertising if the document is a communication supporting or opposing proposed legislation and is printed or published in mass quantities by an outside business, such as a copy store. Tex. Gov't Code § 305.027(e).

Q. May the superintendent create and send a message about legislative issues to parents or the press?

A. Yes. The superintendent may create and send a message explaining how proposed legislation would affect the district. The purpose of the communication should be to inform the community about financial or other school-related matters relevant to the legislation. Direct advocacy about the passage of proposed legislation should be left to parents and other community members.

Q. Can the superintendent or campus administrators allow parents or other community members to speak at events, hand out flyers, publish links to websites, or take other steps to advocate for legislative action?

A. Yes. Parent groups, like the PTA, parent members of site-based decision making committees, or other parents or community members acting independently and not at the direction of the district may take advantage of any open forum for public or school communication. This may include holding a parent meeting on school grounds when other community meetings are allowed; making a presentation or announcement during a meeting or event, like the public comment period at a board meeting; or handing out flyers when other announcements or flyers are allowed.

Q. Can the superintendent or campus administrators allow a banner, marquee sign, or other signage to be displayed on school property with a slogan such as “Support Texas Public Schools” or “Make Education a Priority”?

A. Yes, whether to post a message of this sort is a local district decision. For the reasons explained above, a slogan like “Support Texas Public Schools” is not *political advertising* governed by the Texas Election Code because the message does not involve an issue appearing on an election ballot. A similar type of slogan would be inappropriate during a bond election or tax ratification election, because the slogan would be supporting a measure in the election. However, when no election is pending, such a statement is not prohibited as *political advertising*. Nevertheless, administrators may wish to ensure that these slogans reflect positively on the school district, since a public sign on a school district building is clearly a school-sponsored communication.

Employees Generally

Q. When is employee speech about politics protected by the First Amendment?

A. Employees have free speech rights protected by the First Amendment of the U.S. Constitution and other laws to express their views as citizens on matters of public concern. This free speech protection means that employees can participate fully in the political process as citizens, using their free time and their own resources. A school district employer may not discriminate or retaliate against an employee who engages in personal expression about politics, elections, or legislative matters in his or her capacity as a citizen.

Employees' free speech protection is not limitless, however. When a district employee is on duty at work, whether in an instructional, administrative, or auxiliary capacity, the employee's speech is subject to the regulation of the school district. This does not mean that a district can restrict all political speech that occurs on district property. Employees continue to enjoy First Amendment protections during free time at work, such as lunch breaks, if it is clear that the employee is making statements in his or her personal capacity and not as a district employee.

Q. When is employee speech about politics an improper use of district resources?

- A. State laws prohibit the use of public funds for *electioneering* and *political advertising*. Tex. Elec. Code § 251.001(16). In addition, as described above, state law prohibits *lobbying* by a person who is not properly registered to lobby or by using state funds. 1 Tex. Admin. Code §§ 34.41, .43. The Texas Ethics Commission has adopted a broad understanding of what constitutes use of public funds. Public funds can include the use of school employee time; equipment such as computers, printers, and copiers; materials such as paper and ink; facilities; and more.

The terms *electioneering* and *political advertising* are, technically speaking, focused on election time speech, as opposed to legislative advocacy. Nevertheless, to avoid the appearance of impropriety or undue influence, most school attorneys advise school districts and their employees to refrain from legislative advocacy using school district resources, unless otherwise approved by the board.

Q. What are some ways a district can choose to regulate employee speech while they are on duty or using district resources?

- A. School districts can limit employees' expression during their on-duty time in a number of ways. In addition to restricting spoken expression, many districts limit wearing or displaying campaign materials like signs and buttons. Most districts do permit employees to display bumper stickers on cars in the school district parking lot, however, in recognition of employees' free speech rights in their personal capacities.

Q. Can a teacher prepare a letter to a state representative or senator and circulate it to the parents of her students encouraging them to support specific legislation?

- A. It depends. A teacher may not prepare the letter using district resources and while engaged in her duties as an employee of the school district. It would be acceptable, however, for the teacher to prepare the letter and disseminate it to the parents after hours and through the use of her own resources.

The teacher should refrain from disseminating legislative advocacy material on campus, unless the school district has provided a limited public forum for community speech. Op. Tex. Ethics Comm'n No. 443 (2002). Check your TASB policy GKDA(LOCAL) for more information on whether your district has established a part of campus where distribution of non-school literature is permitted.

Q. Can an employee put legislative material on a classroom website or school website?

- A. It depends. It would be appropriate for factual legislative material to be posted on the website if the material is related to the curriculum or lesson the students are being taught. Material that in any way advocates for legislation or urges advocacy of legislation should be avoided. Placing material on a school or classroom website that advocates for legislation would be another example of a prohibited use of public funds and resources.

Students

Q: Can students write letters, make posters, or display buttons or ribbons expressing their views on legislative or school district issues?

- A. Yes, as long as the communications comply with school rules and represent the students' own viewpoints. Students, too, have First Amendment rights while at school. As a result, students of all ages are free to express their personal opinions, including their opinions about current events and governmental affairs, as long as they do so in ways that comply with school rules and are not disruptive. If students are given an opportunity in school work or other school-sponsored activities to express their opinions on current events, students' work may be evaluated based on neutral pedagogical standards – like grammar, neatness, and timeliness – but may not be penalized based on the personal viewpoints expressed in the work. Similarly, if a district's dress code permits students to wear buttons or T-shirts with slogans, then students may wear items that express views like "Save our Schools" or "No New Taxes." Students may also make and display signs or ribbons on school grounds, in accordance with school rules, as long as the messages expressed in the signs or ribbons can be fairly attributed to the individual students and are not dictated by school officials.

In conclusion, citizens should to be able to engage in shaping our future through legislation, advocacy, or petitioning the government for redress of grievances. However, such activity should not interfere with school business or violate state laws. This guide is a starting point to assist districts in answering tough questions. As always, if you have further questions about these legal issues, feel free to call the toll-free TASB Legal Line at 800-580-5345.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

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