‘Tis The Season – To Be Wary: Election Do’s and Don’ts

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Office of the City Attorney

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The Employee may participate in political activities … of Employer, provided such activities do not take place during duty hours for services under this contract. City equipment and resources provided to Employee for use in performing services … shall not be used directly or indirectly in connection with the political activities … of Employer.
Political Activity A.D.

Protects employees from political pressure, to prohibit the use of public employees and city resources for political purposes, and to avoid any appearance of bias or favoritism in carrying out Public policy.

Limitations on political activity of city employees are established in the Charter, Ethics Code, and Municipal Civil Service Rules.
Political Activity A.D.

City employees are prohibited from taking any part in the management or affairs or political campaign of any candidate for city office.

Council Aides can take part in the management or affairs or political campaign of a candidate for city office but...
Prohibited Political Activity in the Workplace

During city work hours, on city time, in city offices or on city property, using city resources, you may not:

- Organize rallies or parades
- Write letters or articles for publication
- Prepare ads, literature, or similar material
- Drive voters to polls
- Actively solicit votes for or against a candidate
- Wear campaign buttons or clothing
- Display campaign materials on a city vehicle
- Send emails, update social media pages
- Make phone calls for or against candidate
Permitted Political Activity in the Workplace

During city work hours, on city time, in city offices or on city property, using city resources, you may:

- Provide factual information to the public regarding city elections
- Express your opinion
Texas Election Code and the TEC
Texas Election Code

Election Code, Section 255.003:

A government officer or employee may not spend or authorize the spending of public funds for political advertising.

Class A misdemeanor
Political Advertising: What is it?

- A specifically defined term, not to be confused with a common-sense understanding of advertising.
- A communication that advocates a particular outcome in an election or promotes or opposes a candidate or officeholder.
- It can be in almost any written or broadcast form, such as a billboard, a flier, a newsletter, a poster, a television or radio ad, or an Internet site.
Political Advertising: the TEC

The Texas Ethics Commission is charged with review of advertisements to ensure public funds are not being spent on political advertising.

When in doubt, public officials may request the TEC’s review and opinion.

Office of the City Attorney also provides local opinion on public official media, but is not legally binding if complaint filed at TEC.
TEC Rule 26.2

For purposes of section 255.003 of the Election Code, a newsletter of a public officer of a political subdivision is not political advertising if:

(1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear; and
TEC Rule 26.2

(2) It includes no more than eight personally phrased references (such as the public officer's name, “I”, “me”, “the city council member” – but be careful, if little text, even three references can be too many);

on a page that is 8 ½” x 11” or larger;

with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 ½” x 11”; and
TEC Rule 26.2

(3) When viewed as a whole and in the proper context:

(A) is informational rather than self-promotional;

(B) does not advocate passage or defeat of a measure; and

(C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.
Who does the rule apply to?

The prohibition applies to any "officer or employee of a political subdivision."

In other words, if an officer or employee of a political subdivision makes a decision to use political subdivision resources in violation of the prohibition, the employee could be fined by the Ethics Commission or held criminally liable.
Extent of Prohibition

The prohibition applies to "spending or authorizing the spending of public funds" for political advertising.

Political subdivision may not purchase or authorize the purchase of new materials for use in creating political advertising; and

Violation of prohibition if an officer or employee of a political subdivision used existing paper and machinery to generate, display, or distribute political advertising.
Bottom Line

When viewed as a whole, if the media is self-promotion of a public officer because the name and photograph of the officer appear in an unduly conspicuous way, it constitutes political advertising, and public funds may not be used to pay for the media.
Examples of Political Advertising

Advertisement in youth magazine to congratulate a sports team that identifies a candidate or public officer. EAO No. 102 (1992).

City Council member refrigerator magnet prominently displaying individual photograph of public officer standing in front of city seal, with name of officer in larger font than other text on magnet, name of office held, contact information, internet website, and three political priorities listed. EAO No. 506 (2012).
Examples of Political Advertising

City Council member 4-page newsletter contained one individual photo and 22 photos of public officer and other persons.

- Area covered by photos was almost 50% of newsletter.
- Name of public officer appeared 22 times in print type larger than other text.
- Self-promotion of public officer = political advertising. EAO No. 476 (2007)
Misuse of Public Funds

This means government cannot use public funds to support or oppose candidate or ballot measure; communication must be factual.

But can use facilities as a public “forum” where all interested parties can participate.

Examples . . .
Misuse of Public Funds

Press release stating, “This bond is the right thing to do for the children of this community” found to be a violation. SC-231180;

School District cannot use school personnel or equipment such as the school’s internal mail system to circulate flyer advocating position on bond election. EAO No. 45.
Misuse of Public Funds

Publicly funded advertisements making reference to “everyone’s enjoyment of books” and “attractive amenities” found to be advocacy in violation.
Section 39.02: It is a criminal offense to misuse government property, services, personnel or other gov’t resource.

Offense level depends on value of resource. Class C Misdemeanor for $20 or less ranging up to Class A Felony for $200,000 or more.
Misuse of Gov’t Property

Violation to use gov’t computers and personnel to prepare campaign finance reports. EAO No. 386 (1997); EAO No. 172.

Violation for public official to use staff members to gather information for use at a campaign fundraiser. EAO No. 431 (2000).
Misuse of Gov’t Property

*But:* Incidental use of gov’t property for things such as short personal phone calls which do not result in additional costs and which do not hinder day-to-day operations of government is not considered a misapplication.

EAO 1984-9.
Gifts, Contributions & Donations to the Community

EAO No. 427:

Public servant who names or approves recipient of charitable contribution paid for by another has received the equivalent of a gift certificate, something that the public servant can dispense according to his or her own interests.
Gifts, Contributions & Donations to the Community

EAO No. 427 continued:

In contrast, if a public servant exercises no control in regard to a charitable contribution but is simply named as an honoree in connection with a contribution, the public servant may feel honored, but receives nothing of pecuniary value to dispense or use.
Gifts, Contributions & Donations to the Community

Penal Code Sec. 36.08(i) allows public servant to donate prohibited gift to a religious, educational, or scientific tax-exempt organization.
“Campaign Contribution” is a contribution to a candidate or PAC with the intent that it be used in connection with a campaign for elective office or on a measure. Timing of the contribution before, during or after election does not affect its status.
“Officeholder Contribution” is a contribution to an officeholder or PAC for the intent that it be used to defray expenses that:

a. are incurred by the officeholder in performing a duty or activity in connection with the office; and

b. are not reimbursable with public money.
Texas Election Code

Section 253.094 of the Election Code prohibits political contributions from corporations and labor unions.

Does not prohibit direct expenditures, where candidate or officeholder is not involved in expenditure. (See Citizens United)
Election Code – Corporate Contributions

TEC Advisory Opinion No. 489 (April 2010):

TEC cannot prohibit a corporation or labor organization from making a direct campaign expenditure.

Citizens United does not, however, stop enforcement of the restrictions on corporations or labor organizations making political contributions to candidates or officeholders.
Contribution Reports

Candidates must submit semi-annual reports for all contributions and expenditures during that period, due January 15 and July 15 every year;

Election year also has a 30 day before election report and an 8-day before election report.

These reports are due by 5:00 pm for the respective date.

These dates are NOT the same timeline as the contribution cycles of the City.
Municipal Campaign Finance Regulations
Contribution Limits

City Council officeholders/candidates, $500 contribution limit from any single donor per contribution cycle.

Candidates for Mayor or mayoral officeholder, $1000 contribution limit from any single donor per contribution cycle.

Same limits apply to Specific Purpose Political Action Committees supporting a candidate for City Council or Mayor.
Contribution Cycles

**Pre-election cycle:** July 1 of the year before election ending on the date of election;

**Run-off cycle:** for run-off candidates, day after election through date of run-off;

**Post-election cycle:** day after election and ending on June 30 of the year before the election.
Definition of “Contribution”

Municipal Code incorporates definitions used by the Texas Election Code.

“Contribution” means transfer of money, goods, services, or any other thing of value. It also includes a loan or extension of credit, and a guarantee of a loan or extension of credit.
In-kind donations and coordinated campaign expenditures are subject to $500 or $1000 limits.

Loans, extensions of credit, etc. are also subject to the limits, unless they are commercial loans.
Cash Contributions Limited

Cash contributions limited to $50 from a single donor during a campaign finance reporting period, as defined in TX Election Code.

Cash loans are prohibited.
Contributions by Minors

Minors may contribute, but only with their own funds. Must verify status of personal funds.
Contribution Freeze

Candidates restricted from accepting or depositing contributions after midnight on the 4th calendar day before election.

Contributions received during this freeze period to be deposited during the next election cycle.
3-Day Contribution Report

In addition to the reports required by the Texas Election Code, under the City Code, candidates must also file a contribution report by midnight on the third calendar day preceding an election.

Deadline moved to next business day if deadline falls on weekend or holiday.
Individuals associated with a “high-risk” contract cannot make a political contribution to officeholder from tenth business day after RFP/RFQ is released through 30th day after contract award.

Time begins on the 10th business day.
Loans

Three categories of loans:

• commercial loans;
• loans made by political supporters to fund campaigns;
• personal loans made by candidates from their own personal assets.

A candidate cannot accept a loan made in cash.
Commercial Loans

Commercial loans are excluded from the definition of “contribution,” so contribution limits would not apply for commercial loans.
Loans from Supporters

Loans, extensions of credit, loan guarantees, etc. made by political supporters, including family members are “contributions” under the Texas Election Code.

Non-commercial loans are subject to municipal contribution limits.
Ethics Laws & Regulations
Contract Personnel

Contract aides must comply with the City’s Ethics Code as it applies to City employees, with only one exception – aides may participate in a Council election, but not on City time, with City resources.
Conflicts of Interest

Conflicts of interest

• Self, family/household members, businesses owned by family, clients of family members and family, businesses, associated businesses, non-profit boards, business and employment contacts.

Prohibition against unfair advancement of private interests

• Nepotism and acquiring interest in pending matters.
Recusal and Disclosure Form

City Ethics Code and Local Government Code Chapter 171 require official to file recusal and disclosure form with the Office of the City Clerk.

And also see Chapter 176 of the Local Gov’t Code
ReQUIRES MEMBERS OF GOVERNING BOARDS OF LOCAL
GOVERNMENTAL ENTITIES AND CHIEF EXECUTIVE OFFICER TO FILE
CIS FORM DISCLOSING:

1) business relationships with contractors that
   result in income to the official; or

2) gifts worth $250 or more.
Gifts prohibited if given to reward or influence official conduct.

Gifts prohibited from contractors, those seeking zoning/platting decisions, public relations firms and lobbyists.
Gifts: Exceptions

• Meals up to $50, maximum $500 per year;
• Items up to $50 in value;
• Events attended in official capacity;
• Reasonable travel expenses related to official duties;
• Gifts relating to special occasion, in keeping with relationship between recipient and donor;
• Public award for professional achievement;
• Admission to charity event provided by event sponsor;
• Training or educational program relating to official duties.
Texas Penal Code - Gifts

Felony offense of bribery to accept:

• Any benefit as consideration for the public servant’s decision, opinion, recommendation, vote or other exercise of discretion;

• Any political contribution that is offered pursuant to express agreement to take or withhold specific exercise of official discretion.
Texas Penal Code - Gifts

Class A misdemeanor to accept any benefit from:

• a person who has a contract or interest in a future contract or transaction; or

• a person subject to regulation, inspection or investigation by the City.

Exceptions: Items less than $50 and gifts of entertainment accepted as a guest.
“Speaking” or “Appearance” fees

Class A Misdemeanor offense to accept an honoraria when services are requested because of the public servant’s official position.

But may accept reasonable meal, transportation, lodging.
Travel Reporting

If outside organization pays for travel and associated reasonable costs to attend a function member must file travel report reflecting costs.

Expenditures exceeding costs that could be paid by the city or that city would not cover are treated and reported as personal gifts.

(Ex. Upgrade to first-class, side trips)
Misuse of Public Resources

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies or time while on city duty for private purposes (including political purposes).

Ex: Use of phones, faxes, flyers, computer.
“No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee.”
Prohibited Contracts

City officers and family are prohibited from contracting with the city, even if officer has no role in awarding or administering contract.

Sanction for willful is forfeiture of office.

Note: Contract aides cannot serve on more than advisory boards and change any term of contract that pre-dated service on board.
Reports and Forms

Recusal form - conflicts of interest;

CIS form - gifts from and financial relationships with those seeking contracts;

Travel reports;

Personal Financial Statements (annual).
Advisory Opinions

City Attorney’s Office

City officials may request opinion in writing, which may be relied upon in event a complaint is filed.
Information

Texas Ethics Commission (Title 15, TX Election Code)
1-800-325-8506

Secretary of State (Election Process)
1-800-252-8683

Office of the City Clerk (City Elections, Filing)
(210) 207-7255

Office of the City Attorney (Muni Campaign Finance, Ethics, Elections)
(210) 207-8940
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