



HOT TOPICS IN MUNICIPAL FINANCE

Texas City Attorneys Association 2018 Summer Conference

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HOT TOPICS...

- Impact of Trump's Infrastructure Plan on Local Governments
- Millennials Impact on Bond Industry
- Increase in Sale of Green Bonds
- Oyster Bay Municipal Fraud Case



**BOND
ELECTIONS 101**
A Brave New World

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GOALS

- Understand the Procedural Issues that are the Focus of the Attorney General's Review of Election Proceedings
- Outline Recent Legislative Initiatives Related to Elections
- Highlight Political Advertising Considerations Faced by Cities
- Outline Contract with the Voters Considerations Faced by Cities

ATTORNEY GENERAL REVIEW OF ELECTION PROCEEDINGS

- Uniform Election Dates
- Deadlines for Calling Bond Elections
- Requirements for the Order Calling the Election
- Notice Requirements
- Canvassing Order

RECENT LEGISLATIVE INITIATIVES

Passed:

- SB 957: This bill requires a City's proposition on the ballot to be assigned a unique letter on the ballot and must also identify the name of the City ordering the election. It also requires that proposed constitutional amendments would be placed on the ballot before all other propositions.

RECENT LEGISLATIVE INITIATIVES

Failed (but will likely return):

- Minimum voter turnout requirements (e.g. HB 1773, SB 702)
- Moving all bond elections to the November uniform election date (e.g. HB 151, HB 212, SB 701)
- Adding tax rate impacts and other financial information such as total principal and interest on debt outstanding to the ballot (e.g. HB 738, HB 739, HB 1658, HB 3335, SB 201)
- Requiring each project to be covered in a separate proposition (e.g. HB 1910, HB 2811)
- Limitations on the use of debt for short-lived assets (e.g. HB 1811)

RECENT LEGISLATIVE INITIATIVES

- Governor Abbott's Property Tax Policy Proposal
 - Requiring a two-thirds supermajority vote to approve issuance of debt
 - Adding voter turnout requirements
 - Adding Debt Information to the Ballot
 - Amount of debt currently outstanding
 - Current debt service payments
 - Current per capita debt obligations
 - Estimated debt service on the new debt
 - Estimated per capita debt burden

POLITICAL ADVERTISING

- “An officer or employee of a political subdivision may not knowingly spend or authorize spending public funds for political advertising.”
 - Section 255.003(a), Texas Election Code
- The restriction does not apply to “a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.”
 - Section 255.003(b-1), Texas Election Code

POLITICAL ADVERTISING

- “Notwithstanding any other law, the City Council may not use state or local funds or other resources of the City to electioneer for or against any candidate, measure, or political party.”

- Section 11.169, Texas Education Code

WHAT COUNTS AS “POLITICAL ADVERTISING”?

- A communication advocating a particular election outcome
 - Key fact question is whether the communication is advocating passage or defeat of a ballot measure
- Political advertising can be written, spoken, or broadcast
 - memo, newsletter, flyer, poster, circular, sign, speech, e-mail, billboard, bumper sticker, refrigerator magnet, pamphlet, TV or radio ad, web site, etc.

WHAT COUNTS AS “SPENDING PUBLIC FUNDS”?

- “Spending public funds” is more than just spending City money.
 - Any use of City employees during work hours
 - Any use of City equipment during or after work hours
 - Includes computers, fax machines, copiers, printers, office supplies, office space, internal mail, e-mail, and websites.

Rule of Thumb:
If you are at work (City), you are probably *spending public funds*.

“WHAT CAN I SAY ABOUT THE ELECTION?”

- Employees and officers of the City may spend public funds on communications that are factual descriptions of the bond proposition. Factual information includes:
 - The amount of the bonds
 - The tax rate impact of the bonds
 - Tax rates of surrounding areas
 - A description of the projects and amounts to be spent on each project
 - City demographics

“WHAT ARE SOME THINGS I CAN’T SAY?”

- “[N]o matter how much factual information about the purposes of a bond election in the communication, any amount of advocacy is too much.”

– Texas Ethics Commission
Advocating Passage or Defeat of a Measure

“WHAT ARE SOME THINGS I CAN’T SAY?”

Communications that advocate passage or defeat of the proposition are prohibited

- *Voting yes means better facilities*
- *Vote yes for a brighter future*
- *This bond will ensure future generations have access to the best facilities we can offer*
- *Let’s build a better City*
- *Show that you care about our community*
- *Please support our vision*
- *This bond is what’s best for our community*
- *This bond will allow us to better serve the community*
- *It pays to invest in the future*
- *It’s time to move ahead*
- *Our future depends on your commitment*
- *Position our City for the 21st century*

FALSE STATEMENTS

- An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:
 - (1) the officer or employee knows is false; and
 - (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

Section 255.003(b-1), Texas Election Code

ATTORNEY GENERAL AND TEXAS ETHICS COMMISSION OPINIONS

- Attorney General Opinion KP-0177
 - Transportation to the Polls
 - Raises questions regarding the constitutionality of providing transportation for students or teachers to the polls.
 - Website Links
 - “[A] court would likely conclude that the use of public funds to link to an Internet website promoting a specific candidate or measure is itself a communication supporting a candidate or measure in violation of Section 11.69 of the Education Code and subsection 255.003(a) of the Election Code.”

TEXAS ETHICS COMMISSION REVIEW OF ELECTIONS MATERIALS

- It is an affirmative defense to prosecution for an offense under Section 255.003 or the imposition of a civil penalty for conduct under Section 255.003 that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of Section 255.003 in a written opinion issued by:
 - (1) a court of record;
 - (2) the attorney general; or
 - (3) the Texas Ethics Commission
- On written request of the governing body of a political subdivision that has ordered an election on a measure, the commission shall prepare an advance written advisory opinion as to whether a particular communication relating to the measure does or does not comply with this Section 255.003.

Section 255.003(d) and (e), Texas Election Code

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CAN I ADVOCATE FOR A BOND PROPOSITION WITHOUT VIOLATING THE LAW?

- City officers and employees may campaign for the passage of a bond measure on their own time with their own resources.
- Councilmembers and other officials whose duties include appearing as representatives of the City after hours may have more difficulty separating their official speech from their private speech.

WHO CAN ADVOCATE FOR THE PASSAGE OF A BOND ELECTION?

- A Political Action Committee (PAC)
- A PAC is a privately funded campaign committee.
- PACs are not prohibited from using their funds for advocacy purposes.
- A PAC may prepare materials that highlight the City's achievements and goals and tout the benefits of passing the bond measure.

A WORD ABOUT “CONTRACT WITH THE VOTERS”

- A written communication from the City that is widely distributed and that includes specific promises about how bond proceeds will be used can create a binding and enforceable contract with the voters.
- To avoid creating a contract with the voters, use flexible language
 - “anticipate” “expect” “predict” “plan to”
- Make it clear that the board retains discretion and flexibility in deciding how bond money will be used.

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