UPCOMING ELECTIONS
BOARD OF TRUSTEES – May 2015 (order approved)
ANTICIPATED BOND ELECTION – November 2015 (no formal approval at this time)

On January 26, 2015, the Board of Trustees ordered a general election to be held on May 9, 2015 for the purpose of electing a trustee to fill the three open positions in our District. In light of the upcoming election, it is important for all San Jacinto Community College District employees to understand and comply with legal requirements regarding political activities on college grounds. The Texas Constitution and Election Code prohibit any and all uses of school funds, facilities, equipment, and time to advocate political positions, including advocacy for or against a candidate. Employees cannot take part in political advertising or campaign on work time or coerce others to do so. The prohibition on using school equipment and property to advocate for or against an issue or a candidate includes computers, telephones, fax machines, copiers, paper, etc. As an employee, you can, however, convey factual information concerning the election, such as the date of the election.

As is true for all citizens, individual employees have a legal right to engage in political activities on their own time. There is nothing in state law or College policies that prohibit private political activity.

The attached document provides information around permissible and impermissible activities related to an election.
SAN JACINTO COMMUNITY COLLEGE DISTRICT (SJCD)
ACTIVITIES RELATED TO ELECTIONS

**Permissible**

Communications by employees while off duty and off SJCD property advocating the passage or defeat of the bond or board election measure are permissible.

Preparation by the College Administration of SJCD-published brochures, flyers, TV/radio/newspaper ads that provide purely factual information about the election are permissible, e.g.:

- date/time of election
- amount of bonds
- purpose of bond election
- verifiable (meaning documented facts) information about need for bonds, e.g., current student capacity, age of facilities, growth rates, tax rates, etc.
- actual degree of need for/factual consequences of not repairing facilities or building facilities

Communications encouraging people to vote or to register to vote are permissible. Such communications should not contain any statements that may be viewed as advocacy regarding a particular candidate or position on the bond election.

**Impermissible**

While on College time or while using College-owned equipment, employees may not send emails, make phone calls, or prepare written materials that advocate passage or defeat of the bond measure.

Use of SJCD resources and equipment, including telephones, computers, and copy machines, is impermissible even after hours.

Advocacy during a lunch break or coffee break or during vacation or other leave requires advance, documented permission that the employee is not on duty.

SJCD trustees and SJCD employees (whether on duty or not) should not advocate passage or defeat of the measure while speaking with other SJCD employees who are on duty because such communications may interrupt the SJCD employees from attending to their work duties.

Placement of advocacy material in areas not available to the public is impermissible (e.g., campus mailboxes, private lounges).

It is impermissible to send emails or school communications that contain indirect advocacy, e.g., “Although the law prohibits me from openly advocating for the passage or defeat of the bond referendum, I know how the leaders of this District feel about the issue and urge you to give me a call.”

“Communication” means any form by which information is transmitted or displayed such as oral statements, written statements (pamphlets, ads, posters, flyers, leaflets, etc.), or electronic statements (e-mail or faxes).
The District Itself

Can a school district or community college district take an official position in an election?
No, if public funds will be used directly or indirectly to reach or disseminate the position.

District employees and officials cannot use public funds, directly or indirectly, for political advertising to advocate for or against a candidate or measure that will appear on a ballot. Tex. Elec. Code §§ 251.001(16) & 255.003(a). In the school district context, this law most commonly prohibits the use of public funds to support particular candidates (including incumbents seeking reelection), school district bond elections, and school district tax elections.

“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 or is broadcast by radio or television; or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on a Web site. Tex. Elec. Code § 251.001(16). The Texas Ethics Commission, which is the state agency that oversees the implementation of this provision, interprets the prohibition broadly. According to the Commission, even the conduct of a meeting on public property involves an indirect use of public funds. Board members and school and community college district employees who violate this prohibition could face fines or criminal penalties; violations can also jeopardize the validity of the election.

May public funds be used to communicate anything about an election? Yes, public funds may pay for the dissemination of factual information, but not advocacy.

The prohibition in Section 255.003 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. Tex. Elec. Code § 255.003(b). For example, factual information includes information about what is at stake in a bond or tax election, as well as information about the conduct of the election (date, polling sites, etc.).

The Texas Ethics Commission warns, however, that even communications with mostly factual information can still violate Section 255.003 if they also include persuasive slogans such as “Do the Right Thing for Our Kids.” For example, the Commission concluded that a superintendent violated Section 255.003 by using district funds to pay for a brochure...
containing factual descriptions, but that also advocated a vote for the bonds. Tex. Ethics Comm. Sworn Complaint Order No. SC-230205(2003).

The Commission emphasizes that there is no de minimis exception to the amount of advocacy that can be included in school district materials. See the Texas Ethics Commission's pamphlet entitled, “A Short Guide to the Prohibition against Using Political Subdivision Resources for Political Advertising in Connection with an Election” (Ethics Commission “Guide”) on its Web site at www.ethics.state.tx.us/pamphlet/pad-pol.html.

Employees

Are school or community college district employees permitted to advocate for or against particular candidates or measures (like a bond or tax election)? Not on work time or using district resources, including office supplies and computer equipment.

District employees cannot use public funds, directly or indirectly, for political advertising to advocate for or against a candidate or measure that will appear on a ballot. Tex. Elec. Code §§ 251.001(16) & 255.003(a). The Texas Ethics Commission interprets the prohibition broadly to include any employee time and all school district resources like copy and fax machines, supplies, facilities, and computer equipment. (See the Commission’s Guide, referenced above.) School employees who violate this prohibition could face fines or criminal penalties.

May school or community college district employees advocate for or against candidates or measures on their own time with their own resources? Yes.

District employees retain their First Amendment right to campaign for or against a candidate or election measure in their non-work time, using their personal funds. The key is not to use school district resources such as work time, money, facilities, equipment (e.g., copy machine), and supplies (e.g., paper, tape, ink).

Can a school or community college district employee send an email saying “Vote for Bob” from her home computer to all of her coworkers at their school email addresses?

Personal emails campaigning for or against a measure or candidate are permitted. Even emails sent to district email addresses are arguably not an impermissible use of district funds. See 1 Tex. Admin. Code § 20.1(13) (exempting email from the definition of political advertising). However, to avoid even the appearance of violating the law, employees should avoid engaging in political advocacy in favor of particular candidates or measures in ways that access school equipment.

Can a school or community college district employee park in the school parking lot with a bumper sticker that says "Vote for Bob"?

No legal authority has directly addressed this issue, but, generally speaking, unless the expression on the personal vehicle as a bumper sticker or other sign is obscene or otherwise
in violation of school rules, schools should probably avoid interfering with this form of personal expression.

*Can a school or community college district employee arrive early for work and place flyers for a candidate in the faculty members' offices or in the faculty members' mailboxes?*

Under local policy and practice, there may be a part of campus where public distribution of non-school literature is permitted; this is often referred to as a *limited public forum*. If so, the flyers may be placed there, in accordance with *local* policy. However, political advertising cannot be placed in an area of the school that is not part of a limited public forum. Op. Tex. Ethics Comm’n No. 443 (2002) (distribution of candidate fliers in the faculty’s office that was not a public forum violated the Texas Election Code). As a result, a faculty member’s office is probably off limits.

Special prohibitions apply to the use of school mail systems, like faculty mailboxes. These communications systems are district resources, and the district generally should not permit them to be used for political advertising. In 2003, the Legislature added a provision which prohibits an officer or employee of a school district from knowingly using or authorizing the use of the district's internal mail system for the distribution of political advertising. *Internal mail system* means a system operated by a school district to deliver written documents to officers or employees of the district. This restriction does not apply to the use of an internal mail system to distribute political advertising that is delivered to the premises of a school district through the U.S. Postal Service. Tex. Elec. Code § 255.0031.

**Board Members**

*May board members use their own time and money to campaign for candidates and causes? Yes.*

Public officials, who are acting independently, without the use of public funds, have a free speech right to engage in political advocacy. In its Guide, the Texas Ethics Commission states, "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." For example, a school board member may attend a community meeting, like a Rotary Club meeting, and advocate for passage of a bond election; or a school board member may write a letter to the newspaper editor in support of a tax rollback (or "ratification") election.

When engaging in advocacy using his own time and resources, a trustee need not conceal his position or claim to be acting as a private citizen. *See, e.g.*, Op. Tex. Ethics Comm. No. 321 (1996) (determining that a sitting judge did not violate the law by sending campaign solicitations on letterhead that she had purchased herself, but that identified her position).

*Can a board member send an email from her home computer to the private email accounts of friends and family, urging them to vote for a certain candidate in the*
As stated, a board member may speak, write, or distribute political advertising of any sort, as long as school funds are not used directly or indirectly. This applies to emails campaigning for or against particular measures, such as bond or tax elections, and particular candidates in national, state, and local elections. Moreover, in administrative rules adopted pursuant to the Election Code, the Texas Ethics Commission has adopted a definition of political advertising that repeats the statutory definition with one important exception: "the term [political advertising] does not include a communication by email." 1 Tex. Admin. Code § 20.1(13).

But beware! Emails can be printed and passed out, thereby becoming flyers; school district employee time spent writing or even reading email could be seen as an indirect use of funds; and finally, the Texas Education Code's prohibition on electioneering may prevent board members from sending such communications. See Tex. Educ. Code § 11.168. If a board member wants to send personal email advocating for a particular outcome in a bond or other election, she might consider adding a short disclaimer stating that the email is personal, rather than official school district business, and was created using personally owned equipment and accounts.

Could the board member send a similar email from a school computer? Preferably not.

Emails on a school computer are typically governed by the district's acceptable use policy. Such policies often permit limited personal use of the district's computer equipment and Internet service, as long as the personal use does not incur an additional cost to the district. Nevertheless, it may be difficult to distinguish personal from official use of school equipment. Because so much is at stake when campaign speech is at issue, we recommend that board members avoid personal, election-related communications on school district equipment.

During a reelection campaign, may a sitting board member use school resources to assist in his campaign? No.

Election Code Section 255.003 prohibits the use of public funds in a campaign for election or reelection to the school board. For example, the Texas Ethics Commission found that that a school teacher and school secretary broke the law when they distributed a campaign flyer for a school board candidate that they had created in the computer lab and copied on the school's copier, even though they made and distributed the flyers before school and reimbursed the district for the costs. Tex. Ethics Comm. Sworn Complaint Order No. SC-210101 (2001).

For purposes of his reelection campaign, a school board member should have only the same access to district events, staff, and resources as the other candidates.