

Electioneering and Open Meetings Act Refresher



Type A Board
Presentation

August 15, 2016

Political Advertising

- Definition (251.001(16) of Election Code) – a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:
 - In return for consideration, is published in a newspaper, magazine, 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 an Internet website**

Use of Public Resources Prohibited

- Section 255.003 of the Election Code .
- An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- This section 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. (ex: “Bond election – May 15th.”))
- A person who violates this provision commits an offense. An offense under this section is a Class A misdemeanor.
- Similar prohibition in City Code of Ethics 2-311(3)(b).

What is Not Allowed

- Purchasing or authorizing the purchase of materials for use in creating political advertising.
 - Using existing resources (including City email or website) to create, display, or distribute political advertising.
 - Use of paid time of municipal employees to create or distribute political advertising.
 - Allowing political advertising to be placed in a non-public area.
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What is Allowed

- May use public resources to factually describe the purposes of the measure election – provide factual information about what is on the ballot, date of election, etc.
 - If making a factual statement, be sure that you do not include a motivational slogan or call to action.
 - Examples:
 - “Election regarding economic development sales tax – Nov. 8” is factual only and okay.
 - “Vote yes for proposition #2 on Nov. 8” – not okay as it is in support of a ballot measure.
 - “Show that you care about your city” – this is a call to action and should be avoided.
 - “Economic development measures help to improve the City by bringing in more jobs” – again, this sort of language should be avoided as it goes beyond a factual statement of what is on the ballot.
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City Code of Ethics

- Section 2-311(4) of the City's Code of Ethics prohibits City officials, board members, or employees, except for council members, from using the prestige of their position with the City on behalf of any political party or cause.
- Best practice – don't publicly speak on behalf of any political party or cause.

General Rule - Meetings

- Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by the Texas Open Meetings Act. Tex. Gov't Code Ann. § 551.002.
 - The Act generally applies whenever there is:
 - a gov't body (rule making or quasi judicial authority or as provided by ordinance), and
 - that body is meeting.
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Definition of “Meeting”

- Meeting is a gathering of a **quorum** of the governmental body and a discussion about the public business between the members or with a third party
 - Gathering at a social function, regional/state/local convention or workshop, ceremonial event, or press conference is not a meeting **if**:
 - No formal action **and**
 - Any discussion of public business is merely incidental to the organized event
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Examples of Meetings

- Quorum appears at regular meeting of the Board.
- Quorum meets at a social function related to Type A business and discusses public business.
- Quorum attends a meeting of another entity and discusses public business.
- Quorum meets with City Staff outside regular meeting.
- Electronic communications between a quorum – ex: reply all to email, group texts, or Facebook.

Required Notice for Items at Meetings

- At least 72 hours written notice of the:
 - Time & Date of Meeting
 - Place
 - Subjects to be considered
- Limited right to post on 2 hours notice in actual emergencies with threat to public health/safety
- Public comment OK without notice of subject, but Board cannot discuss or deliberate item brought up during public comment

Recess, Postponement, Cancellation

- Reposting of notice is not required when recessing if:
 - The meeting resumes the following regular business day; and
 - The recess is made in good faith and not to circumvent the Act.
- No notice needed to cancel
- Postponement of meeting OK in catastrophe

Quorum

- Quorum – usually majority – required to convene meeting and conduct business
- If no quorum is present, gathering does not violate OMA (exception – circumvention or walking quorum)
- If quorum is lost, business may not be conducted

Meetings must be Open

- Located in Texas
- Accessible to Public
- Accessible to persons with disabilities
- Governmental body may not vote in an open session by secret written ballot.
- Governmental body may not take action by circulated letter without a meeting.
- All action must be in open session.

Crimes of violating Open Mtgs Act

- Participating in a “closed meeting” other than a permissible executive session
 - Participating in a “closed meeting” w/ knowledge that no certified agenda or minutes being made
 - Conspiring to meet in numbers of less than quorum for purpose of secret deliberations in violation of OMA
 - Disclosure of certified agenda
 - Punishable by up to 30 days jail & \$500 fine
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Walking Quorum

- OMA does **not** define a “walking quorum.”
- Courts have defined “walking quorum” as:
 - “serial meetings of less than a quorum.” *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003).
 - “overlapping series of meetings or telephone conferences [when] a quorum of members was not in the same room at the same time” *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433 (W.D. Tex. 2001).

Treatment of Email by OMA

- A “deliberation” is a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person.
- AG has stated that deliberation need not be oral. Meeting can be by written letter, email, memo, etc.
- Dangers:
 - Reply to all e-mails – Councilmembers have been prosecuted for replying to all in emails
 - Facebook, Twitter - Befriending other members

Best Practices

- Bcc'ing instead of cc'ing all Board Members in e-mails, to avoid accidental reply-to-all
- No Public Business on Facebook or Twitter
- Do not follow or friend other Board members on social media
- No quorum present at meetings of other entities
- No discussion of public business at social functions, especially if other Board members are present