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COUNTY BOND ELECTION ISSUES



ILLIAMSON COUNTY, TEXAS

PROPOSED BOND ELECTION

MARCH 5, 2019

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March 5, 2019

The Honorable Judge and Commissioners
Williamson County, Texas
710 South Main Street
Georgetown, Texas 78626

Re: County Bond Election Issues

Dear Judge and Commissioners:

The enclosed materials have been prepared to assist you and County staff in managing the County's debt issuances and preparing for and conducting a possible bond election later this year. Let us know if this is helpful. We can style and prepare additional copies.

We look forward to working with you on these issues.

Very truly yours,

McCALL, PARKHURST & HORTON L.L.P.



Carol D. Polumbo
Managing Partner

Enclosures

cc: Hal Hawes
Jerri Jones
Julie Kiley

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BOND ELECTION ISSUES

Below we have outlined some of the major legal issues involved in calling a bond election, structuring a bond issue and preparing the necessary documents in order to call the election.

I. PRELIMINARY ISSUES

- Type of projects to be bonded
- Sizing considerations
- Negotiation and execution of joint election agreements and/or election services agreements for election if election is to be jointly held

II. TIMING CONSIDERATIONS

- Election and notice schedule for November 5, 2019 election - See "**TAB F**"
- Availability of electronic voting equipment
- Date for holding election (current law authorizes bond elections only on uniform election dates)
- Section 3.005 of the Election Code requires ordering an election held on the date of a general election not later than the 78th day before election (71 days for a non-general election date)
- Notice of election must be given to the county clerk of each county that the county is located not later than the 60th day prior to the election
- A substantial copy of the election order in English and Spanish must be posted at three (3) public places within the County, at the Courthouse and on the County's website not less than twenty-one (21) days prior to the date the election is to be held
- Notice of election in English and Spanish must also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation in the County, the first of these publications to appear in such newspaper not more than thirty (30) days, and not less than seventeen (17) full days prior to the day of the election
- A copy of the election order must be posted at each polling location on the first day of early voting and posted continuously through the day of the election
- Other general election notice/timing considerations (notice to election judges, office hours for election, etc.)
- Election order must now contain the requirements outlined in Section 3.009(b) of the Texas Election Code. See "**TAB G**"

III. ELECTION DAY POLLING PLACES/ELECTION JUDGES AND CLERKS/EARLY VOTING

- Location of polling places/joint election procedures
- Appointment of election judges and clerks/joint election procedures
- Location of permanent and any temporary early voting polling places as well as appointment of judges and clerks
- Decision to have joint early voting

IV. PROPOSITION/BALLOT LANGUAGE

- Single proposition versus multiple propositions with varying purposes
- Project specific language versus general constitutional language (preserving ability to use interest earnings and other excess funds for additional projects)
- Alternative propositions
- Wording of ballot
- New restrictions after a proposition to issue bonds fails
- Contract with voters issue - "TAB D"

V. FEDERAL TAX LAW CONSIDERATIONS

- Consideration of any sizing issues
- Review/consideration of any management contracts
- Contract with rebate consultant regarding timing of construction draws and other rebate issues

VI. ETHICS ISSUES

- Officers or employees of the County are prohibited from spending County funds or using County resources (including other employees) on communications that support or oppose the bond election - See "TAB C"
- The County can only prepare communications that factually describe the purpose of the bond election, and only if the communication does not advocate the passage or defeat of the bonds - See "TAB C"
- Violations can subject County officers and employees to significant fines and/or jail time - See "TAB C" and the opinions of the Texas Ethics Commission attached to such exhibit
- All materials prepared by the County regarding the bond election must also be in English and Spanish
- Political action committees in support of or against the bonds can be formed, but they must comply with Texas Election Code and Texas Ethics Commission requirements

ETHICS ISSUES

The following is a general discussion regarding issues that frequently arise when conducting a bond election as they relate to political advertising. The employees and officers of a political subdivision should be aware of the legal requirements imposed on communications related to the bond election imposed by the Election Code and the Texas Ethics Commission.

The Election Code specifically prohibits a political subdivision from using public funds and resources to produce or distribute communications that support or oppose a bond election. Section 255.003(a) of the Election Code prohibits an officer or employee of a political subdivision from spending or authorizing the spending of public funds for "political advertising." The Election Code's definition of "political advertising" includes communications that support or oppose a candidate or a measure. A violation of Section 255.003 of the Election Code constitutes a Class A Misdemeanor and is punishable under the Texas Penal Code by a fine of up to \$4,000 and/or up to a year in jail. The Texas Ethics Commission is the primary body that enforces election law issues such as advocacy and can impose an additional civil penalty of up to \$5,000 per violation.

The Election Code's requirements apply to all communications, both written and oral, that are made by or at the direction of the employees and officers of the political subdivision (including members of its governing body) and (i) are published in a newspaper, magazine or other periodical, provided that such communication was paid for, (ii) are broadcast on the radio or television, provided that such communication was paid for, (iii) appear in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or (iv) appear on an Internet website. Additionally, the prohibition against the use of public funds for communications that support or oppose a bond election extends to the use of all property of the political subdivision, including the payment of mailers. Even during non-working hours, the use of the political subdivision's copiers, telephones, computers, email system, software, fax machines, office supplies and other property is prohibited. The Election Code also contains a specific prohibition on the use of a political subdivision's internal mail system by its employees or officers to distribute communications that advocate a position on the election.

The Election Code does allow a political subdivision to expend public funds on election communications that factually describe the bond proposition if the communication does not advocate the passage or defeat of the bonds. However, the wording of any such factual communication needs to be carefully considered as the Texas Ethics Commission has indicated that no matter how much factual information appears in a communication, if the communication contains any amount of advocacy, the communication will be considered impermissible and will subject the employees and officers of the political subdivision who prepared it to liability. The communication's overall tone and the emphasis placed on certain statements can also lead to the communication being considered as advocating a position on the bond election.

To help assure that the information contained in a communication will be considered factual in nature, the information needs to be objectively verifiable and not subject to interpretation or evaluation. Types of generally permissible factual information include: the

identification and costs of the proposed projects, comparisons to the services or facilities of other similar political subdivisions, the estimated tax rate effect (assuming no change in assessed valuation), voting dates and polling locations. The communication may also encourage people to vote in the bond election.

However, the communication must be informational only in nature and cannot advocate a position with respect to the Bonds. Communications cannot use words or phrases that evaluate the proposed facilities or lack thereof, such as "fantastic," "state-of the art," "countless benefits," or "horrible shape." Such communications should also refrain from using motivational slogans like "good schools are the foundation of a good community" and "every child deserves a good school." Other statements intended to inspire action like "our future depends on your commitment," "put the children first," and "show that you care about our community" are also impermissible.

The following summary is intended to provide guidance to employees and officers when they are communicating, orally or in writing, regarding a future bond election of the political subdivision.

1. An employee or officer of a political subdivision may advocate for or against a bond election on his or her nonofficial or off-duty time, and using his or her own funds, so long as no resources of the political subdivision are used.
2. Actions or authorizations by an employee or officer of a political subdivision involving the spending of public funds for political advertising are prohibited by Texas Election Code 255.003. "Political advertising" is a communication that advocates a particular outcome in an election and includes statements made in writing, orally, email messages, posters, newsletters, fliers, television or radio ads and Internet sites. An employee or officer who makes use of any resources of the political subdivision to engage in political advertising, including computer, copier or telephone use, is spending public funds in violation of the Texas Election Code. Also, using paid time of employees of a political subdivision to create or distribute political advertising is prohibited.
3. Any factual statement can be made at any time regarding the bond election without violating the Texas Election Code. All political advertising, whether in support of or against a bond election, is considered advocacy and is strictly prohibited.
4. Most employees and officers violate the ethics laws by engaging in communication that is considered advocacy. Obviously, asking for support or rejection of a bond election is advocacy and using statements such as "Vote For X" and "Defeat Y" is also advocacy. However, one of the difficulties in understanding what is or is not advocacy comes from the Texas Ethics Commission's prior decisions that have indicated whether communication is advocacy can turn on the tone and emphasis of the statements made.
5. Officers or employees of the County are prohibited from spending County funds or using County resources (including other employees) on

communications that support or oppose the bond election The County can only prepare communications that factually describe the purpose of the bond election, and only if the communication does not advocate the passage or defeat of the bond proposition(s).

6. Violations can subject County officers and employees to significant fines and/or jail time.
7. All materials prepared by the County regarding the bond election must also be in English and Spanish.
8. Political action committees in support of or against the bonds can be formed, but they must comply with Texas Election Code and Texas Ethics Commission requirements. Such materials are available on the website of the Ethics Commission at <http://www.ethics.state.tx.us/filinginfo/spacfrm.htm>.

FREQUENTLY ASKED QUESTIONS

Q: What actions are prohibited after the Commissioners Court calls a bond election, but prior to the bond election being held?

A: Actions or authorizations by an employee or officer of a political subdivision involving the spending of public funds for political advertising are prohibited by Texas Election Code 255.003. "Political advertising" is a communication that advocates a particular outcome in an election and includes statements made orally or in writing, email messages, posters, newsletters, fliers, television or radio ads and Internet sites. An employee or officer who makes use of any resources of the political subdivision to engage in political advertising, including computer, copier, telephone or social media use, is spending public funds in violation of the Texas Election Code. Also, using paid time of employees of a political subdivision to create or distribute political advertising is prohibited.

Q: What can or can't I say about an upcoming bond election?

A: Any factual statement can be made at any time regarding the bond election without violating the Texas Election Code. All political advertising, whether in support of or against a bond election, is considered advocacy and is strictly prohibited.

Q: What's considered "advocating" for or against a bond election?

A: Most employees and officers violate the ethics laws by engaging in communication that is considered advocacy. Obviously, asking for support or rejection of a bond election is advocacy and using statements such as "Vote For X" and "Defeat Y" is also advocacy. However, one of the difficulties in understanding what is or is not advocacy comes from the Texas Ethics Commission's prior decisions that have indicated whether communication is advocacy can turn on the tone and emphasis of the statements made.

Q: How can I know if a statement I want to make is advocacy? "Tone and emphasis" of a statement is subjective and doesn't help me figure out if I'm about to make an ethical violation.

A: Unfortunately, the Texas Ethics Commission has not provided a clear answer. Prior Ethics Commission decisions are helpful in understanding the types of prohibited communications. The following statements were all considered advocacy by the Ethics Commission and provide some guidance in determining the types of statements that are impermissible:

"Although, as policy, we will not formally endorse, there is a choice there that some of our leaders highly favor. You can contact me for who and why, but I am confident all of you will research and make the right choice."

"It is very important for your children and the school district that the tax rollback election pass."

A newsletter headline indicated the governing body "seeks voter approval" and a quote stating "we want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence."

"[O]ur citizens now have the opportunity to support X for the 21st Century. Please support the vision – our future depends on your commitment."

"This bond is the right thing to do for the children of this community."

The following types of terms and phrases are also considered advocating a position and should not be used:

"Best solution"

"State-of-the-art"

"Countless benefits"

"Horrible shape"

"Need"

"We must do something"

The following types of motivational slogans and calls to action are also violations:

"Good Schools are the Foundation of a Good Community"

"Every Child Deserves a Good Education"

"Put Children First"

"Show that You Care about Our Community"

Q: Is that an exhaustive list?

A: No. The comments listed above are representative of the type of statements that are considered advocacy. Any statement that is similar in tone or content to any of the above should be avoided.

Q: It doesn't seem like I can say much. What is permitted?

A: Texas Election Code 255.003(b) exempts communication that "factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure." Also, an employee or officer of a political subdivision may advocate for or against a bond election on his or her non-official or off-duty time so long as no resources of the political subdivision are used.

Q: If I'm working on an advocacy campaign in my free time, can I take phone calls at work or receive/respond to emails for that campaign from my work computer?

A: No. There is no de minimis exception to the use of equipment of the political subdivision. Brief telephone calls, one sentence emails, sending or receiving a fax, printing a single page off a work printer or making a single copy are prohibited. An employee or officer violates the Texas Election Code even if they will reimburse the political subdivision for the costs associated with using a work machine or resource. All advocacy activity should be conducted in the employee's or officer's free time and should not involve any machinery or equipment owned by the political subdivision.

Q: It is a fact that our political subdivision needs this project and will not be able to grow without it. Does the Texas Election Code allow me to explain that?

A: No. This type of statement is prohibited and considered advocating for the project. It is for the voters to determine need and the future growth of the community, and an employee or officer cannot explain a project this way. The following objectively verifiable information, is classified as factual and is representative of the type of information that can be presented by an employee or officer of a political subdivision prior to a bond election: growth rates; student capacity of a school facility; performance data; relationship between the political subdivision's mission and public welfare; specific data on how obtaining or not obtaining bond funds will affect the political subdivision's mission and goals; age/condition of facilities; tax rate effect; cost of projects; identifying the proposed projects; information on establishment of committees to assist management of successful bond programs; efforts to provide factual information about the election; voter registration and encouraging voter turnout; voting dates; and polling place locations.

Q: If I stick to factual information, will I avoid an ethical violation?

A: Probably, but it's necessary to remember that the tone and emphasis of the information presented, even if purely factual, may give rise to a violation punishable by the Texas Ethics Commission. Bold or italicized print in a written communication could be viewed as advocacy even if the information presented is strictly factual. Also, a preponderance of "facts" that set forth reasoning supporting passage of a bond election may result in the overall content of the communication being seen to be an advocacy statement.

Q: We want to prepare a newsletter/article/pamphlet/advertisement/press release explaining the bond election. Do these same issues apply?

A: Yes. Material produced by a political subdivision cannot contain advocacy. It is important to allow both opponents and proponents of a measure to use material produced by the political subdivision in their efforts. Favorable treatment to one side must be avoided. Extra copies of materials produced by the political subdivision should not be provided to either side and they should make copies at their own expense.

Q: Can we provide space on property owned by the political subdivision for advocacy groups to distribute literature or advocate for their side?

A: As a general rule, advocacy literature produced by proponents or opponents cannot be distributed or available on property owned by the political subdivision, even if equal access is allowed to both sides. In some instances, such as elections involving college districts that have established "free speech" zones on its campus, advocacy provided by third parties can be posted or presented in such designated areas. Another exception is that a political subdivision can establish a public forum reserved for discussion of certain topics, at which advocacy literature may be made available by the advocacy groups, although the government itself cannot participate if its participation is to advocate passage. A public forum or public debate is permitted if all sides have the same opportunity to participate and viewpoint discrimination is prohibited and restrictions on the public forum must be reasonable in light of the purpose served by the forum.

Q: Does these types of ethical violations apply only to bond related projects?

A: These ethical rules apply to advocacy during any kind of election, bond related or not. It comes up most often in bond elections, but if the County were to present another question to voters (eg. charter provisions), public resources cannot be used to advocate for/against those either.

Q: How does any of this apply to members of organizations that support the County?

A: If a group is independent from the County and doesn't access any public resources, these restrictions won't apply, however if they use public space, such as a meeting room in a library, then they'd be prohibited from using it for advocacy. Also, if the group receives any money from the County for their activities, they would need to be certain that none of it was used for advocacy. Often, groups like these become inactive during a bond election cycle, but the same group of people create a PAC to raise money and advocate for/against their issue to avoid any appearance of advocacy.

Q: What about county advisory and statutory committee/commission members? Do these ethics laws apply to these group members while they are acting as volunteers or sitting as an advisory committee member on one of the county's committees?

A: These group members are in the same position as members of the various foundations mentioned above. If they receive public funds, or use any public resource these rules would apply. If they are completely independent and all activities occur away from County facilities and not during work hours for the various employees, they can exercise all their rights as citizens. Using a public resource is what would trigger a problem.

Q: What about law enforcement associations?

A: These group members are also treated the same as foundation members or members of the groups mentioned in the preceding question -- if these association members receive public funds, or use any public resource for advocacy these rules would apply.

Q: Periodically, the County will put up signage in certain parts of the county that declares "Future Site of _____." Can we continue to do this for projects that are being considered for placement on the ballot? If yes, then does this change once the project tie to that parcel and signage is placed on an official ballot?

A: So long as you are certain of a location, it would be educational to voters to clarify where a project would go. The County would need to be certain the signage is neutral and strictly factual, therefore it would better to describe the location as "Proposed Site for _____" instead of just stating "Future Site" since that could be viewed as advocacy

before voters have determined whether they even want the road, park or other facility, but putting up this type of signage in a neutral way would be appropriate if the location is certain.

Q: What about an employee that places a bumper sticker regarding a ballot measure on their private vehicle that is parked in designated staff parking spaces?

A: Unless an employee receives a stipend/car allowance or the County provides them with a car, a person can exercise their first amendment rights and place a bumper sticker on their personal vehicle. Merely parking their vehicle in a County lot, even in designated staff parking areas, should not trigger a violation.

Q: How serious is this type of ethical violation? What are the penalties?

A: A person who violates Texas Election Code 255.003 commits a Class A misdemeanor punishable by a civil fine of up to \$4,000, or, for a sworn complaint deemed frivolous, up to \$10,000. If the violation was intentional or knowing, criminal charges, including bribery, coercion of public servant or voter, abuse of official capacity or official oppression, could be brought. Each of these violations is against the employee or officer committing the offense and not against the political subdivision.

CONTRACT WITH THE VOTERS

It is a well-established principle of Texas law that proceeds of bonds approved by the voters may only be expended for the purposes for which they were approved and they may not be expended for additional or different purposes.¹ The order calling a bond election, which must state the purpose for which the bonds will be issued, has been interpreted to create a contract with the voters if the voters approve the bond issue.²

When an election order calling an election states only the general purpose for which bonds will be issued and does not specify particular projects for which the proceeds will be used, the governing body is free to exercise its discretion in expending the funds for projects within the scope of the general purpose.³ Yet, even in such a case, the governing body must act reasonably.⁴ On the other hand, if the election order specifies the projects for which bonds will be issued, the proceeds can only be used for those specific projects, and cannot be applied to different projects.⁵ Texas law further provides that where an election order specifies the location of a project to be constructed, the governing body gives up its discretion to select a different location after the election passes and must construct the project at the location approved by the voters.⁶

In determining the purposes for which the bonds were voted, the courts have looked not only to the election order and notices, but also to resolutions, orders, and minutes adopted by the governing bodies prior to the election. Thus, where governing bodies formally adopt orders, minutes, resolutions, or "official statements" prior to the election, pledging that the proceeds of bonds will be used on a certain project or projects, such pledge also becomes part of the governing body's contract with the voters.

In certain instances a court has determined that the governing body is not bound by representations of employees. In *Davis v. Duncanville Independent School District*, Davis sought to enjoin the construction of a swimming pool by the district on the theory that prior to the election the superintendent had made numerous presentations to voters throughout the district, during which he described the facilities to be constructed with the proceeds of the bonds, and none of which representations ever included references to any swimming pools. The court held:

A school district was not bound by representations concerning use of school bond proceeds that were made by the school district superintendent at a number of community meetings and contained in a leaflet distributed to residents of the school district where the representations were **not** formally adopted by the school board as a body at a properly called meeting. *Davis*, at 16.

¹ *Moore v. Coffman*, 200 S.W. 374 (Tex. 1918); *Black v. Strength*, 246 S.W. 79 (Tex. 1922).

² *Moore*, at 374-375; *Black*, at 80-81; see also *Devorsky v. La Vega Independent School District*, 635 S.W.2d 904 (Tex. App. - Waco 1982, no writ); *Inverness Forest Improvement District v. Hardy Street Investors*, 541 S.W.2d 454 (Tex. Civ. App. - Houston [1st Dist.] 1976, writ ref'd n.r.e.); *Blanton v. City of Houston*, 350 S.W.2d 947 (Tex. Civ. App. - Houston 1961, writ granted), judgm't vacated & cause dism'd on other grounds, 353 S.W.2d 412 (Tex. 1962).

³ *Barrington v. Cokinis*, 338 S.W.2d 133 (Tex. 1960); *Hudson v. San Antonio Independent School District*, 95 S.W.2d 673 (Tex. 1936); *Levis v. City of Fort Worth*, 89 S.W.2d 975, 978 (Tex. 1936); *Davis v. Duncanville Independent School District*, 701 S.W.2d 15 (Tex. App. - Dallas, writ dism'd).

⁴ *Barrington*, at 143; *Levis*, at 978.

⁵ *Moore*, at 374-375; *Black*, at 80-81; *Devorsky*, at 908; *Inverness Forest Improvement District*, at 460; *Blanton*, at 951.

⁶ *Moore*, at 374.

Implied in the Court's holding, however, is the concept that if the board of trustees of the district does act as a body to formally adopt a specific group of projects or statements regarding specific projects to be financed with bond proceeds, the district has created a "*contract with the voters*" governing the use of bond proceeds for such purposes.

Furthermore, in *Taxpayers for Sensible Priorities v. City of Dallas*¹, the Court held that extraneous documents relating to a bond proposition that were not approved by the City Council do not form a contract with the voters. In *Taxpayers for Sensible Priorities*, the City's staff developed, printed and distributed a pamphlet and two other documents that described certain bond propositions, including a proposition relating to the Trinity River Corridor Project. All three documents bore the City's official seal and allocated amounts for various components of the project. In addition, the pamphlet included the names of each City Council member. The lawsuit alleged that these three documents were part of the contract with the voters and that the City violated the contract by altering the project from the description in the three documents. The Court disagreed and held that "the bond proposition itself is the contract between voters and the City, and extraneous documents not approved by the City Council do not form any part of that contract." In addition, the Court reaffirmed the holding in *Davis* that "a political subdivision cannot be bound by the representations of individual council members or the City staff."²

It is important to consider that the Court gave great weight to an affidavit of the City's secretary asserting that the City Council did not authorize the publication or distribution of the pamphlet, and that no official action of the City Council was taken to approve any other representation to the public regarding the Trinity River Corridor project, other than the proposition itself. *Taxpayers for Sensible Priorities* at 675. In doing so, the Court, as in *Davis*, implied that if the City Council had directed the production of the pamphlet and other documents, or approved their content by official action, the pamphlet and other documents may become part of the contract with the voters.

Notwithstanding these well-established principles, there are several cases in which the courts found that even though a contract with the voters was created for a particular project or projects at a particular location or locations by formal adoption of orders, minutes, resolutions, or "official statements" prior to the election, the governing bodies did not act arbitrarily or illegally in abandoning or altering the size, scope, location or character of the projects.

In *Hudson v. San Antonio Independent School District*³, Hudson sought to restrain the district from spending bond proceeds of school bonds for other than construction of a high school building at a particular site. The voters had approved bonds in question "for the purpose of constructing, remodeling, equipping and repairing public free school buildings and the purchase of the necessary sites therefor." Two days before the election, however, the board of trustees of the district entered in its minutes an "official statement" that if the bonds were approved, the board would use \$750,000 of the proceeds to build a new senior high school at "Aster and South Pine Streets." Hudson argued that the board was bound by its official statement to build the high school at that location. The court stated that while the election order and notice were in general terms and gave the school board the discretion in expending the proceeds for legitimate projects, the official statement had the effect of pledging to the voters that the proceeds would be used for the particular projects. However, the court determined that the voters had not relied on the subsequent official statement in voting to authorize the school building bonds. Therefore, the court concluded the "official statement" would not be enforced, and the school

¹ *Taxpayers for Sensible Priorities v. City of Dallas* 79 S.W.3d 670 (Tex. App. – Dallas 2002).

² Id. at 675.

³ *Hudson v. San Antonio Independent School District*, 95 S.W.2d 673 (Tex. 1936)

board was not limited to using the bond proceeds for the high school. In so concluding, the court reasoned that conditions had so materially changed since the bonds were voted that building the high school would be unwise and unnecessary expenditure of school funds. Accordingly, the court also concluded that the school board had not acted arbitrarily in abandoning the high school project.

In making its decisions, the Court in the *Hudson* case relied upon the holding in *Black v. Strength*:

It will be noted that the opinion in the *Black* Case does not hold absolutely that in all instances where the voters have voted bonds, relying on a subsequent order pledging that the proceeds would be used on a certain project or projects, the governing body must carry out the order or pledge, regardless of consequences or changed conditions. It merely holds that the governing body must not "arbitrarily ignore or repudiate" such order or pledge. In the case at bar, it is shown ... by the record that the conditions have so materially changed since the bonds were voted that the building of the high school building here involved would be an unwise and unnecessary expenditure of public school funds. Such record does not show that the board acted arbitrarily in abandoning the project.¹

At the same time, however, the Texas Attorney General has noted that *Hudson* cannot be read to establish the principle that the Board had the discretion to use bond proceeds for projects different from those approved by the voters.² The Texas Attorney General notes that nothing in the *Hudson* court's opinion indicates that because the school board in that case could reasonably abandon the particular high school project, it had discretion to use bond proceeds for projects different from those approved by the voters. The board of trustees was clearly limited to expending the bond proceeds for constructing, remodeling, equipping, and repairing school buildings and acquiring the necessary sites. While such purposes were much broader than the particular high school building project the school board had abandoned, they were obviously not different or additional purposes given that these were precisely the purposes stated in the bond election proposition and approved by the voters.

¹ *Hudson* at 674-675.

² Op. Tex. Atty. Gen. LO98-060 (1998).

SAMPLE PROPOSITIONS

Draft Bond Propositions

PROPOSITION A

Shall the Commissioners Court of Williamson County, Texas be authorized to issue and sell bonds of the County in the principal amount of not to exceed \$_____ (which amount of bonds does not exceed one-fourth (1/4) of the assessed valuation of the real property in the County) for the purpose of the construction, acquisition by purchase, maintenance, and operation of macadamized, graveled, or paved roads, or in aid thereof, within Williamson County, Texas including, but not limited to, constructing, improving, extending, expanding, upgrading and/or developing roads including right-of-way acquisition, utility relocation, traffic safety and operational improvements, related drainage and other transportation related improvements (to include, but not limited to, drainage improvements for _____ and _____ Road area, extension and expansion of _____, CR ____, CR ____, _____ Boulevard, _____ Trail and _____ Road); and including, but not limited to, constructing, improving, extending, expanding, upgrading and/or developing State highways including right-of-way acquisition, utility relocation and other transportation related improvements (to include, but not limited to, safety improvements and expansion of RM ____, the intersection of _____ Road and SH ____, the _____ Bridge and IH 35, the _____ bypass and FM _____); such bonds to mature serially or otherwise not more than [thirty (30)] years from their date; and any issue or series of bonds to bear interest at such rate or rates as may be determined within the discretion of the Commissioners Court, provided that such rate of interest shall not exceed the maximum rate per annum authorized by law at the time of the issuance of any issue or series of the bonds; and shall the Commissioners Court of the County be authorized to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes on all taxable property in said County sufficient to pay the annual interest and provide a sinking fund to pay bonds at maturity?

PROPOSITION B

Shall the Commissioners Court of the Williamson County, Texas be authorized to issue and sell bonds of the County in the principal amount of not to exceed \$_____ for the purpose of constructing, improving, renovating, equipping and acquiring land, buildings and facilities for park and recreational purposes including, but not limited to, parkland, open space/preserve land, trail acquisition, pedestrian and bike trail improvements, _____ County Park, _____ County Park, _____ Park, _____, _____ Regional Trail (extension eastward to _____) and _____ trail toward City of _____), such bonds to mature serially or otherwise not more than [thirty (30)] years from their date; and any issue or series of bonds to bear interest at such rate or rates as may be determined within the discretion of the Commissioners Court, provided that such rate of interest shall not exceed the maximum rate per annum authorized by law at the time of the issuance of any issue or series of the bonds; and shall the Commissioners Court of the County be authorized to levy and pledge, and cause to be assessed and collected, annual ad valorem taxes, within the limitations

prescribed by law, on all taxable property in said County sufficient to pay the annual interest and provide a sinking fund to pay bonds at maturity?

Draft Ballot Language

PROPOSITION A

FOR () THE ISSUANCE OF \$_____ TAX BONDS FOR ROADS WITHIN
AGAINST () WILLIAMSON COUNTY

PROPOSITION B

FOR () THE ISSUANCE OF \$_____ TAX BONDS FOR PARK AND
AGAINST () RECREATIONAL PURPOSES WITHIN WILLIAMSON COUNTY

ELECTION SCHEDULES

Cities and Counties- Nov 2019 Bond Election Schedule of Major Events *

Tuesday	5-Nov-2019	<==== Election Date ¹	
Date		Event	Time frame **
Wednesday	7-Aug-2019	First day for governing body to adopt the Order/Ordinance calling the Bond Election. Gov. Code §1251.003(c)	90 days before election
Monday	19-Aug-2019	Last day for governing body to adopt the Order/Ordinance calling the Bond Election. §3.005	78 days before election
Friday	6-Sep-2019	Last day for governing body (other than a Commissioners Court) to give notice of election to applicable county clerk(s) and to voter registrar. §4.008	60 days before election
Monday	16-Sep-2019	First day of mandatory office hours in which the secretary/ clerk must keep office open for election duties for at least 3 hours during regular business hours on regular business days. §31.122(a)(1)	50 days before election
Sunday	6-Oct-2019	First day to publish the first of two successive weekly notices of election in a newspaper circulated in the territory covered by the election. ² §4.003(a)(1), (c) & Gov Code §1251.003(e)	30th day before election
Monday	7-Oct-2019	Last day for eligible voters who are not yet registered to submit their applications for registration. §13.143(a) & (b)	30th day before election
Tuesday	15-Oct-2019	Last day to post election order, Notice of Election and contents of proposition on political subdivision's website, if website is maintained. §4.003(f)	21st day before election ³
Tuesday	15-Oct-2019	Last day to post Notice of Election and polling places on bulletin board. §4.003(b)	21st day before election
Tuesday	15-Oct-2019	Last day to post election order/ordinance in three public places in the boundaries of the political subdivision. §4.003(f)	21st day before election
Friday	18-Oct-2019	Last day to submit by personal delivery an application for a ballot to be voted by mail. §84.008(a) & §85.001(a)	Last business day before the first day for Early Voting
Monday	21-Oct-2019	First day for Early Voting. The bond election order/ordinance must be posted at each polling location. §85.001(a), (c) & (e) & §4.003(f)(1)	17th day before election ³
Monday	21-Oct-2019	Last day to publish the first of two successive weekly notices of election in a newspaper circulated in the territory covered by the election. §4.003(a)(1), (c) & Gov Code §1251.003(e)	17th day before election
Friday	25-Oct-2019	Last day to submit by mail an application for a ballot to be voted by mail. §84.007(c)	11th day before election ⁴
Monday	28-Oct-2019	Last day to publish the second of two successive weekly notices of election in a newspaper circulated in the territory covered by the election. §4.003(a)(1), (c) & Gov Code §1251.003(e)	10th day before election
Monday	28-Oct-2019	Last day to post notices of consolidated precincts. §4.003(b)	10th day before election
Friday	1-Nov-2019	Last day for Early Voting. §85.001(a)	4th day before election
Friday	1-Nov-2019	First day to post notice of each delivery of early voting ballots to the early voting ballot board. §87.023(b)	24 hours before each delivery
Saturday	2-Nov-2019	First day to deliver early voting ballots to the early voting ballot board (assuming notice has been posted 24 hours in advance of each delivery). §87.023(b)	After the end of the period for Early Voting
Tuesday	5-Nov-2019	Election Day - Polls Open 7:00 a.m. to 7:00 p.m. The bond election order/ordinance must be posted at each polling location. §41.031 & §4.003(f)(1)	Election Day
Friday	8-Nov-2019	Earliest possible day for governing body to canvass election. §67.003 (Notice of meeting to canvass election returns must be posted 72 hours before meeting. Texas Gov. Code §551.043)	3rd day after election ⁵
Monday	18-Nov-2019	Last day for governing body to canvass election. §67.003	11th day after election
Monday	16-Dec-2019	Last day of mandatory office hours for the election. §31.122(a)(2)	40th day after election

* All dates and deadlines may be subject to change by the Texas Legislature through future legislation.

** As a general rule, if the last day to perform an act falls on a Saturday, Sunday, or a legal state or national holiday, then the deadline becomes the next regular business day, unless a particular provision of the election code provides otherwise. §1.006.

¹ Bond elections may only be held on the May and November uniform election dates. Pursuant to Senate Bill 100, 2011 Legislative Session, county-ordered elections may not be held on the May uniform election date in even-numbered years. §41.001.

² Home Rule cities must also give notice as provided in their charters.

³ If the governing body orders early voting to occur on a Saturday or Sunday, then notice of the early voting must be posted on the bulletin board 72 hours before such early voting during the early voting period. §85.007(b) & (c). For purposes of notice of early voting, House Bill 2721, 2015 Legislative Session, requires posting the election notice on the internet website of the authority ordering the election, if the authority maintains a website.

⁴ If this date falls on a Saturday, Sunday, or a legal state or national holiday, then the deadline is moved to the first regular business day before that date. **§84.007(c)** (NOTE: This is an exception to the general rule). Senate Bill 5, 2017 Legislature, 1st Called Session, established that an application is considered to be submitted at the time of its receipt by the early voting clerk. **§84.007(d)**

⁵ Before canvassing, any provisional ballots cast must be verified and counted, and all ballots from outside the US received within 5 days of the election must also be counted.

SAMPLE EMAIL TO ALL EMPLOYEES

SAMPLE MEMORANDUM

DATE: _____

TO: _____

FROM: _____

RE: Permissible Conduct and Comments of Employees and Officers of Political Subdivisions Leading up to a Bond Election



As you are likely aware, the County called a bond election to be held November 5, 2019. Under Texas law, when a political subdivision, including the County, has called an election the employee, officer or any member of the governing body or representative of the County is prohibited from using any resources of the County for political advertising (i.e., in any way advocating for or against the bond propositions) pursuant to Texas Election Code 255.003. Any of these persons who make use of any of the resources of the County to engage in political advertising, including computer, copier, County social media or telephone use, is spending public funds in violation of Texas law.

There is no de minimis exception to the use of resources of the County for political advertising. Brief telephone calls, one sentence emails, sending or receiving a single fax, printing a single page off a work printer or making a single copy are prohibited. Any advocacy activity should be conducted in the employee's or officer's free time and should not involve any machinery, equipment or other resources of the County.

A person who violates Texas Election Code 255.003 commits a Class A misdemeanor punishable by a civil fine of up to \$4,000, and/or up to a year in jail. The Texas Ethics Commission can impose an additional civil penalty of up to \$5,000 per violation.

**EXHIBIT G
[SAMPLE]**

**EXHIBIT "___"
ANEXO "___"**

**INFORMATION REQUIRED PURSUANT TO
SECTION 3.009(b) OF THE TEXAS ELECTION CODE¹**

- (1) The proposition language that will appear on the ballot is set forth in Section 8 hereof.
- (2) The purpose for which the bonds are to be authorized is set forth in Section 7 hereof.
- (3) The principal amount of the debt obligations to be authorized is set forth in Sections 7 and 8 hereof.
- (4) As set forth in Sections 7 and 8 hereof, if the bonds are approved by the voters, the Commissioners Court will be authorized to levy annual ad valorem taxes, on all taxable property in the County, within amounts prescribed by law, to pay the principal of and interest on the bonds and the cost of any credit agreements executed in connection with the bonds.
- (5) Based upon the bond market conditions at the date of adoption of this Order, the maximum interest rate for any series of the bonds is estimated to be [4%] as calculated in accordance with applicable law. Such estimate takes into account a number of factors, including the issuance schedule, maturity schedule and the expected bond ratings of the proposed bonds. Such estimated maximum interest rate is provided as a matter of information, but is not a limitation on the interest rate at which the bonds, or any series thereof, may be sold.
- (6) As set forth in Section 7 hereof, if the bonds are approved, they may be issued in one or more series, to mature serially, over a period not to exceed [40] years.
- (7) The aggregate amount of the outstanding principal of the County's debt obligations (all of which are secured by ad valorem taxes levied for debt service purposes) as of the beginning of the County's 2018-19 fiscal year is \$_____.
- (8) The aggregate amount of the outstanding interest of the County's debt obligations (all of which are secured by an ad valorem tax levied for debt service purposes) as of the beginning of the County's 2018-19 fiscal year is \$_____.
- (9) The ad valorem debt service tax rate for the County for the 2018-19 fiscal year is \$_____ per \$100 of taxable assessed valuation.

¹ This information is provided solely for purposes of compliance with Section 3.009(b) of the Texas Election Code and is for illustration purposes only. The information is not a part of the proposition to be voted on and does not create a contract with the voters.