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**Senator Bettencourt Asks For AG Opinion To Prevent Politics From Being Pushed Into School Districts**

*Requests opinion on use of taxpayer monies to promote candidate or issue oriented electioneering*

**Austin** – Senator Bettencourt (R-Houston) has asked for Texas Attorney General Ken Paxton to opine whether school districts, encouraged by a third party advocacy group, are operating within the bounds of Texas law by promoting the use of taxpayer resources to nearly mandate participation in candidate or issue oriented electioneering and even calling for the use of public resources to transport voters to and from polling locations.

**“The underlying public policy issue here is whether taxpayer monies should be spent on issue or candidate specific electioneering that pushes one particular outcome over another,”** said Senator Bettencourt. **“In my experience, as a Texas Senator and a former election official, the Texas Constitution is clear on this point and I am asking for Attorney General Paxton’s opinion on the matter.”**

Ninety-eight school districts have adopted a resolution that, among other things, call for:

- Creating District communications that encourage employees to participate in voter pledge programs (such as TexasEducatorsVote.com). From Allen ISD’s, October 30<sup>th</sup>, 2017 Resolution for example.
- Where feasible, providing District transportation to and from polling places.

**“There is no fact, or supposition of fact, that it is legal to coerce public employees to sign an ‘oath’ to a particular political viewpoint and then use taxpayer money to help them cast their ballot,”** continued Senator Bettencourt. **“The Texas Constitution prohibits the collection or expenditure of public money for anything other than public purposes. This prohibition is contained in the sections of the Texas Constitution know as the Gift Clauses. Taxpayers would agree that an ISD providing employee transportation to vote is preposterous.”**

See generally <http://texaseducatorsvote.com/>. These viewpoints espouse a political perspective on education. The website also links to other websites that are partisan in nature. As part of this partisan effort is an “Educator’s Oath to VOTE” which advocates for members to “vote in support of more than 5.4 million Texas school children” and highlights that election outcomes have the result of “supporting or undermining public education” and whether education will be “privatized” in Texas. **“This political group is giving the wrong advice to 253 member participating ISD’s,”** continued Senator Bettencourt. **“I hope an Attorney General’s opinion will make clear to everyone the plain facts of the law.”**

In his AG opinion request Senator Bettencourt asked that that the following two questions be addressed:

- Does a school district providing or securing transportation for employees or students to and/or from polling places violate the Gift Clauses of the Texas Constitution?
- What legal constraints exist regarding a school district’s ability to spend or authorize the spending of public funds for political advertising or communications designed to influence voters to vote for or against a particular measure or candidate? (Opinion letter attached)

**“No group should try to stampede ISDs into spending public funds to influence voters to vote for or against a particular measure or candidate,”** concluded Senator Bettencourt. **“I am all for increasing voter participation in registration and elections, but it cannot be done by violating the Gift Clauses of the Texas Constitution, nor by spending public monies to influence voters to vote for or against a particular measure or candidate.”**

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**Paul Bettencourt**  
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December 12, 2017

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Paxton,

It has come to my attention that several Texas independent school districts recently adopted a resolution purportedly designed to create a culture of voting. According to the website where the resolution can be found, the resolution is important because:

The people you elect decide:

1. How much to fund public schools
2. How much time, money, and attention is spent on standardized testing
3. Whether to support or undermine public education
4. Whether to privatize education in Texas.

See generally <http://texaseducatorsvote.com/>. These viewpoints espouse a political perspective on education. The website also links to other websites that are partisan in nature.

As part of this partisan effort is an "Educator's Oath to VOTE." This Oath provides, in part, "I will vote in support of public education in the interest of the more than 5 million Texas school children." See <http://texaseducatorsvote.com/the-oath/>. Each Texas school district is asked to "[g]et [the] 'Oath' prepared for [the] September [2017] board meeting agenda," see <http://texaseducatorsvote.com/wp-content/uploads/2017/09/Superintendents-Timeline.pdf>, and school districts are encouraged to "[o]ffer a reward for anyone who shows his/her confirm email that they submitted their signed oath." *Id.*

The resolution itself reads as follows:

RESOLUTION OF THE BOARD OF TRUSTEES OF \_\_\_\_\_  
INDEPENDENT SCHOOL DISTRICT

WHEREAS, the Texas Election Code Sections 276.001 and 276.004 protect an employee's right to vote;  
WHEREAS, exercising one's right to vote is a civic duty that should be encouraged and promoted;  
WHEREAS, the Board of Trustees of \_\_\_\_\_ ISD seeks to create a culture of voting and encourages all District employees to model responsible citizenship for the benefit of students;  
WHEREAS, public education and the educated citizenry created by public education are the greatest safeguards to the State of Texas and the continuation of a free society; and the institution of public education is best protected by a robust and informed electorate;

NOW THEREFORE BE IT RESOLVED,

1. That the Board of Trustees of \_\_\_\_\_ ISD supports a culture of voting and seeks to encourage maximum participation by District employees and eligible students in the elections process.
2. That the Board of Trustees of \_\_\_\_\_ ISD authorizes the administration to take steps necessary to ensure maximum participation by District employees and eligible students in the elections process, which may include:
  - Creating District communications that inform employees and eligible students of the importance of voting;
  - Creating District communications that inform employees and eligible students about when and where they may vote;
  - Creating District communications that encourage employees to participate in voter pledge programs (such as TexasEducatorsVote.com);
  - Creating District communications that encourage employees to use third party tools to learn about candidates' positions on public education (such as TeachTheVote.org);
  - Conducting campus or Districtwide assemblies that promote a culture of voting;
  - Implementing administrative procedures that provide time during the early voting period for employees to vote;
  - **\*Where feasible, providing District transportation to and from polling places;**
  - Implementing no cost incentives to promote voter participation, such as permitting employees with an "I Voted" sticker to wear jeans; and
  - Encouraging District and/or campus coordination with volunteer organizations, such as the PTA/PTO or retired educators groups, to encourage and facilitate the District's efforts to create a culture of voting.
  - [\*If the district will allow non-school use of district-owned vehicles, consult with the district's attorney and insurance carrier and ensure such use is permitted by district policy at CNB(LOCAL).]

ADOPTED this \_\_\_\_ (date) day of \_\_\_\_\_ (month/year), by the Board of Trustees.

\_\_\_\_\_, Presiding Officer

\_\_\_\_\_, Secretary

See <http://texaseducatorsvote.com/wp-content/uploads/2017/09/TASB-Culture-of-Voting.pdf>

I am concerned about the legal implications of coercing government employees to ascribe an oath to a particular political viewpoint, as well as compelling the speech of government employees regarding the display of "I Voted" stickers. However, I am particularly distressed about the highlighted portion of the resolution regarding the usage of taxpayer-funded transportation to take public employees and students to and from the polling locations to vote in favor of a particular political agenda. School districts are asked by February 2018 to "plan bus dates, routes, and times for taking employees/students to the polls during early voting," see <http://texaseducatorsvote.com/wp-content/uploads/2017/09/Superintendents-Timeline.pdf>, and school districts are encouraged to begin using taxpayer resources to bus students and employees to the polls at the beginning of early voting on February 20, 2018. The use of publicly-funded transportation to and from the polls is requested for an 11 day period, through the end of early voting, and again on Election Day on March 6, 2018.

The Texas Constitution prohibits the collection or expenditure of public money for anything other than public purposes. This prohibition is contained in the sections of the Texas Constitution known as the Gift Clauses. "No appropriation for private or individual purposes shall be made, unless authorized by this Constitution." Tex. Const. art. XVI, §6. The Texas Constitution guarantees that political subdivisions may not provide public money to individuals, associations of individuals, or corporations. See Tex. Const. art. III, §§ 50, 51, 52. This is done to prevent the gratuitous grant of public funds to any individual or corporation. See *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377 (Tex. 2002); *Texas v. City of Austin*, 160 Tex. 348 (1960).



Grants of public money are not "gratuitous" "so long as the statute requiring such payments: (1) serves a legitimate public purpose; and (2) affords a clear public benefit received in return." *Texas Mun. League*, 74 S.W.3d at 383. A public purpose exists if (1) the "predominant purpose is to accomplish a public purpose, not to benefit private parties;" (2) the government "retain[s] public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment;" and (3) "the political subdivision [must] receive[] a return benefit." *Id.* at 384. "What is a public purpose cannot be answered by any precise definition further than to state that if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose." *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934).

The website operators, and its listed "partners," are private organizations that aim to advance their own interests and protect the interests of its members. Thus, a district decision to implement a particular organization or association's political agenda is of questionable service to the public. And as far as I am able to tell, a public purpose has never been defined to include political activity by a private organization. Rather, prior expenditures that survived Gift Clause scrutiny did not involve the unconditional gift of public funds in furtherance of a private political entity's electioneering efforts. *See, e.g., City of Austin*, 160 Tex. at 358; *Barrington v. Cokinios*, 161 Tex. 136 (1960); *Davis v. City of Lubbock*, 160 Tex. 38 (1959); *Byrd v. City of Dallas*, 118 Tex. 28 (1928); *Harris Cty., Tex. v. Dowlearn*, 489 S.W.2d 140 (Tex. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.), *disapproved of on other grounds, Tex. Dep't of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235 (Tex. 1992). And in 1997, the Attorney General opined that the margin of error under the Gift Clauses is very narrow. *See Tex. Att'y Gen. LO-97-077* (1997). In that letter opinion, a county employee running for public office used the county's postage meter to mail campaign materials. There, even that minimal expenditure of public funds violated the Texas Constitution because it did not serve a public purpose.

The only instance where Texas courts sanction the payment of taxpayer funds to private political organizations is so that primary elections *may be held* (generally) - not so that a particular organization can increase voter turnout for its political ends. Expenditures for *all* "major part[ies]" serve a public purpose because political primaries are "a unitary portion of the electoral process directed by state law" that benefit the public as a whole. *Bullock v. Calvert*, 480 S.W.2d 367, 370 (Tex. 1972). But here, the proposed expenditures by a school districts are for the benefit of one or more private organizations, and not for all. Rather, it is for only a certain few who are being asked to go to the polls by the school district to vote in a manner befitting their own self-interests, or those of particular organizations. Such expenditures do not advance a legitimate public purpose.

Such transportation also does not benefit the taxpayers. Rather, it benefits the political agenda of one or more private organizations, especially since the transportation is only provided to those likely to support and vote in favor of those organizations' political agenda. But in order for a public benefit to exist, the public money must be used to perform some government function. *See Rd. Dist. No. 4, Shelby Cty. v. Allred*, 123 Tex. 77, 91 (Comm'n App. 1934, op. adopted). Clearly, there is a valid government function in holding the primary elections. *See supra Bullock v. Calvert*. But the government function in holding the election has never been extended to securing transportation for voters to reach the polls.

The use of public money for specific transportation for a limited segment of voters is not a valid government function. (This is obviously distinguishable from pre-existing public transportation methods that are available to all registered voters.) The use of taxpayer funds to transport some voters, but not all voters, cannot be a public benefit and do not benefit the public as a whole.



In light of these circumstances, I respectfully request that you provide a formal opinion to answer the following questions:

- 1) Does a school district providing or securing transportation for employees or students to and/or from polling places violate the Gift Clauses of the Texas Constitution?
- 2) What legal constraints exist regarding a school district's ability to spend or authorize the spending of public funds for political advertising or communications designed to influence voters to vote for or against a particular measure or candidate?

Sincerely,

A handwritten signature in black ink that reads "Paul Bettencourt". The signature is written in a cursive style with a large initial "P" and a stylized "B".

Senator Paul Bettencourt  
Chairman, Senate Select Committee on Property Tax Reform

