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December 12, 2017 **OPINION COMMITTEE**

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

RQ-0201-KP

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-Culuture-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 know 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. Cokinos*, 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,

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

