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January 12, 2018

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

Re: RQ-0201-KP

Dear General Paxton:

Please accept this letter on behalf of the Association of Texas Professional Educators (“ATPE”) related to the above referenced request for opinion. (See Exhibit 1.)

ATPE was incorporated as a nonprofit, member-controlled association in 1980. ATPE’s Articles of Incorporation and State Bylaws state that the purpose for which the corporation was organized was to “further education as a service and a profession . . . [and] promot[e] ...activities, services and training for educators...” ATPE’s published Vision Statement includes the goal of making “a positive difference in the lives of educators and schoolchildren.” ATPE membership is open to all educators employed by the independent public school districts of Texas, and with more than 100,000 members statewide, we are the leading educators’ association in Texas. With our strong collaborative philosophy, ATPE speaks for classroom teachers; administrators; future, retired, and para-educators. We work to create better opportunities for 5.4 million public schoolchildren.

On behalf of its members, ATPE submits this letter in response to the above-referenced request for an opinion submitted by Sen. Paul Bettencourt as Chair of the Senate Select Committee on Property Tax Reform. ATPE respectfully requests that the Office of the Attorney General accept this letter submitted on behalf of our membership and consider the points made herein.

ATPE is one of the original partner members of the group known as the Texas Educators Vote (TEV) coalition. The nonpartisan group was informally created in 2015 to provide a mechanism for diverse entities to share ideas and collaborate on strategies to cultivate interest in increasing voter participation within the education community. The coalition hosts a website containing resources for educators interested in participating in elections and provides additional tips and resources for school leaders to encourage voter turnout within the education community. These resources include model language for a school board resolution to encourage voter awareness and participation within a school district and a voluntary oath by which educators may signify their personal commitment to being actively engaged voters during an election year.

In his request for an opinion, Sen. Bettencourt suggests that as a result of the TEV coalition’s recent efforts to help “Get Out The Vote” (GOTV) within the education community, some Texas school boards have taken actions that “espouse a political perspective on education,” which

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he presents as actions that are illegal and unconstitutional. At the heart of his criticism is the TEV-promoted resolution that encourages school district employees and eligible students to participate in the elections process. Members of the TEV coalition drafted the model resolution to help school leaders promote a culture of voting within their school communities, and several school boards have voted to adopt such a resolution. The resolution encourages participation by district employees and eligible students and identifies GOTV resources that “may” be useful to help facilitate their participation in the election process. Nothing in the model resolution requires or compels school district employees to vote or not vote, or to take any mandatory action related to elections. The resolution language also makes no reference whatsoever to political candidates, parties, or ballot measures.

The GOTV efforts of the TEV coalition within the education community are no different from similar work being done by Texas’s own Secretary of State (SOS) through that office’s Project V.O.T.E. and related initiatives. On its website, the SOS describes its project as “a program designed to help students become knowledgeable, responsible voters. This non-partisan program provides information on voter registration, student workers on Election Day, and the VoteTexas.gov website.” The SOS website similarly applauds school superintendents for implementing a voter registration program and pledging the participation of all their school principals: “Cultivating Lifelong Voters: The following Texas superintendents have pledged 100% participation among their district’s high school principals in the Texas Secretary of State’s High School Voter Registration Initiative...” (<https://www.sos.state.tx.us/elections/projectvote/superintendents.html>.)

The Secretary of State’s program, administered with taxpayer funds by a statewide elected official and his staff to “cultivate lifelong voters” through school-based initiatives, is hardly different from the coalition’s effort to encourage school districts to promote a culture of voting. If Sen. Bettencourt believes that the TEV coalition’s activities are illegal, then arguably he must also believe that the state of Texas is violating the constitution when it encourages school officials to facilitate voter registration and participation by students. Under Sen. Bettencourt’s reasoning, the “100% participation pledge” made by hundreds of public school superintendents and touted on the Texas Secretary of State’s website must also constitute “coercing” and “compelling the speech” of government employees. Sen. Bettencourt’s assertions run counter to longstanding, legally supported traditions of promoting voter education and nonpartisan GOTV efforts like ATPE’s and the work of the TEV coalition.

Sen. Bettencourt mistakenly asserts that the coalition’s GOTV efforts are aimed at spurring voter participation only by those who would cast votes aligned with particular viewpoints or partisan agendas. He asks for guidance on school-subsidized “political advertising or communications designed to influence voters to vote for or against a particular measure or candidate.” We respect the senator’s interest in learning more about the legal restrictions on political advertising and the

use of school district resources for political purposes. In fact, ATPE and other member partners of the TEV coalition have worked to ensure that the coalition's educational materials include guidance about what educators can and cannot do related to elections. (See, for example, the Resources section of the coalition website at <http://texaseducatorsvote.com/key-resources/>.) We are, however, puzzled by the senator's repeated implications that the GOTV initiatives of the TEV coalition are designed to favor particular political parties, candidates, or ballot measures, when there is no evidence whatsoever to support such a claim.

In his request for an opinion, Sen. Bettencourt states that the TEV coalition 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." Sen. Bettencourt does not provide any example of which "organization or association's political agenda" he believes is being "implemented" within school districts. The only agenda that has been espoused by the TEV coalition through its members is a nonpartisan one aimed at increasing voter turnout.

Sen. Bettencourt also notes in his letter that the TEV coalition's website "links to other websites that are partisan in nature." The senator has not identified which of the linked websites he believes are "partisan," but we note that the coalition's externally sponsored resources include the aforementioned voter guide created by the Texas Rural Education Association; the Texas Civil Rights Project's publication on student voter registration; the Texas Secretary of State's Project V.O.T.E.; the nonpartisan League of Women Voters of Texas; and TeachtheVote.org, which is another nonpartisan voter education resource maintained by ATPE.

ATPE's Teach the Vote website features profiles of all candidates running for legislative seats, seeking to become members of the State Board of Education, or pursuing certain statewide elected offices. The cornerstone of the website is a candidate survey in which all of the aforementioned candidates are invited to take part and have their own statements about public education issues and campaign information published on our website in an unedited, unabridged, and unadulterated format. Through TeachtheVote.org, ATPE compiles and shares factual information on votes taken by incumbents and endorsements that candidates have received from other entities, but ATPE does not endorse candidates or use the website to make recommendations for voters on particular candidates. The goal of TeachtheVote.org is to provide a nonpartisan resource that voters can use to learn more about their own candidates' stances on education issues. As such a resource for voters, TeachtheVote.org has been linked and promoted by other nonpartisan groups, including the TEV coalition.

Again, it is unclear to us why Sen. Bettencourt feels concerned that the TEV coalition website links to other websites, including our own TeachtheVote.org, when those sites do not endorse

particular political parties, candidates, or ballot measures. This is all the more puzzling when you consider the fact that Texas taxpayer resources are being used elsewhere by state government officials to promote websites and resources that are manifestly “partisan.” For example, the Secretary of State’s VoteTexas.gov website provides external links of interest to such entities as the Texas Democratic Party and the Republican Party of Texas, among others (<https://www.vote-texas.gov/resources/learn-more-about-voting.html>). While those links are clearly tied to political party “websites that are partisan in nature” by their very definition, we doubt that Sen. Bettencourt would complain that the Texas Secretary of State through VoteTexas.gov is expending taxpayer resources in an attempt to encourage only “partisan” voters to participate in the election process. Thus, we remain perplexed by the unfounded claims that the TEV coalition and its partners are endeavoring to promote voter participation only by those with particular viewpoints.

Additionally, Bettencourt complains in his opinion request that some school boards have authorized their school district administrators to facilitate voter participation among school district employees and eligible students through a variety of means, “which may include...providing District transportation to and from polling places.” Bettencourt has woven into his request for a legal opinion inaccurate statements of fact. He states that the aforementioned TEV model resolution deals with “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.” (Emphasis added.) This is factually inaccurate, as there is absolutely nothing in the model resolution language shared by the TEV coalition that encourages, states, or even implies that school officials should facilitate voting “in favor of a particular political agenda.” The sole purpose of the resolution, clearly stated in the language of the model resolution, is to facilitate voting, regardless of political affiliations, persuasions, parties, agendas, or outcomes.<sup>1</sup>

Sen. Bettencourt further distorts the reality of the TEV coalition’s GOTV initiatives with additional misstatements of facts about the coalition’s suggestions to school officials regarding bus transportation. Bettencourt falsely states in his letter that school bus transportation to the polls would be “only provided to those likely to support and vote in favor of those organizations’ political agenda.” Sen. Bettencourt also states that such transportation would be offered “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.” In his repeated references to “those organizations,” it is unclear which entities Sen. Bettencourt believes would be the beneficiaries of

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<sup>1</sup> While ATPE is familiar only with the model resolution language and has not collected data on actual resolutions adopted by school boards around the state, it is worth noting that Sen. Bettencourt has offered no evidence of any school board’s adopting resolution language that is different from the model language. Thus, there has been nothing presented in the senator’s letter that would back up his claim that the resolutions being adopted by school boards have advocated voting “in favor of a particular political agenda.”

a school district's provision of transportation to the polls, but it's also immaterial since ATPE, the TEV coalition, and many school district officials would contest the accuracy of Sen. Bettencourt's claim that such bus transportation may be used to further a partisan political agenda. Again, the senator's representations are wholly without merit since there is nothing in the TEV coalition's model resolution, website, or informational materials that states, suggests, or implies that transportation to the polls should be limited to voters of a particular persuasion. There has also been no evidence cited of any school district attempting to provide transportation on the basis of political preference. Considering that there is no factual basis for the senator's contention that school districts are intending to use taxpayer-funded buses to transport only voters of a particular persuasion to the polls, we believe there are no circumstances giving rise to a potential violation of the Gift Clauses of the Texas Constitution.

Sen. Bettencourt also refers in his letter to the "Educator's Oath to Vote," developed and promulgated by the TEV coalition since 2016. The coalition proposed this voluntary "oath" for educators to use as a way of signifying their interest in being an active voter and their support for Texas schools. Sen. Bettencourt states in his opinion request, "I am concerned about the legal implications of coercing government employees to ascribe an oath to a particular viewpoint." Here again the senator has woven misstatements of key facts into his request for a legal opinion – first with respect to the claim that any coercion has occurred, and second with his assertion that the oath espouses a particular viewpoint. The senator has not provided any substantiation of his claim that public school employees are being "coerced" to sign the Educator's Oath to Vote. He has offered no evidence of coercion by any local school administrator or school board member, and certainly any such evidence would be contested if it were presented. As a member of the TEV coalition, ATPE maintains that the oath is not intended to be coercive in any way, but is in fact completely voluntary, non-binding, and symbolic. As with his claim of coercion, the senator also has not articulated any explanation for how support for Texas schools represents a particular partisan viewpoint any more than support for the Texas flag, Texas pledge, or Texas Constitution. ATPE and other members of the TEV coalition have shown that the oath is entirely non-partisan and as such espouses no partisan viewpoint, and the plain language of the oath supports this factual conclusion.

Bettencourt similarly alleges that encouraging public school employees to display an "I voted" sticker amounts to "compelling the speech of government employees." Missing from the senator's letter is any basis that would support the necessary leap in logic for his conclusion that merely "encouraging" employees to vote equates to "compelling" them to take a given action. The senator has offered no factual evidence that any employee has ever been "compelled" to wear an "I voted" sticker. Encouraging employees to wear an "I voted" sticker seems no different from encouraging students and staff of a school district to wear red, white, and blue clothing during





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Celebrate Freedom Week, of which Sen. Bettencourt has been a vocal proponent. We question, again, how Sen. Bettencourt can support encouraging staff to wear patriotic colors while at the same time maintaining that encouraging employees to wear an “I voted” sticker is an infringement on free speech rights.

We at ATPE are disheartened that a sitting state senator would submit a request for an advisory opinion that is so replete with factual inaccuracies, misrepresentations, and illogical conclusions. We are also deeply troubled by the fact that this request, when viewed in the context of Sen. Bettencourt’s press releases and attempts to focus media attention on his request, seems timed and designed to have a chilling effect on certain voting populations in the critical weeks leading up to the March 2018 primary elections.

Grounded under Article 7 of the Texas Constitution, the Texas Education Code (TEC) §4.001 states among its fundamental objectives: “Educators will prepare students to be thoughtful, active citizens who have an appreciation for the basic values of our state and national heritage and who can understand and productively function in a free enterprise society.” ATPE believes that educating students about the right to vote and encouraging voter participation within the education community do serve the fundamental interest of democracy, arguably the most legitimate public purpose of all – a belief clearly shared by the drafters of the Texas Constitution. The fact that the interests of individual voters may at times align with those of ATPE, other TEV member partners, or other organizations both partisan and nonpartisan does not negate or invalidate the clear, legal, ethical, and noble purpose of nonpartisan GOTV efforts like the ones undertaken by the TEV coalition and many school districts. Texas voter turnout has languished below national averages for a very long time, and ATPE is committed to doing our part to help raise awareness of the importance of voting and find ways to make it easier for members of the education community that we represent to exercise their right to vote. We hope that Attorney General Paxton will continue to uphold the constitutional rights of public school employees, school board members, and eligible students to vote and to participate in nonpartisan GOTV programs sponsored by the state of Texas and third-party entities such as ATPE and the TEV coalition.

Sincerely,

Jennifer M. Canaday, CAE  
ATPE Governmental Relations Director

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State of Texas  
Texas Senate



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December 12, 2017 **OPINION COMMITTEE**

Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
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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

