

November 13, 2023

The Honorable Ken Paxton
Texas Attorney General
ATTN: Opinion Committee
PO Box 12458
Austin, TX 78711

Re: Request for legal opinion of the application of Sec. 36.02, Texas Penal Code

Dear General Paxton:

I respectfully request an Attorney General Opinion in regards to the following questions:

1. If a jurisdiction provides to its employees an incentive to vote in an election when normally employees are required to pay for said benefit, constitute providing a benefit for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion in violation of Section 36.02, Texas Penal Code or 18 USC § 597?
2. If the provision of an incentive does constitute a violation of Sec. 36.02, Texas Penal Code and/or 18 USC § 597, what remedies are available to stop the illegal conduct?

Background

Fort Bend Independent School District's board of trustee's has elected to hold a voter approval tax rate election (VATRE) on election day, November, 7, 2023.

We have received reports that Fort Bend Independent School District (FBISD) reportedly began offering "jean passes" to FBISD staff as a reward for staff voting in the November 2023 election. Some FBISD campuses have reportedly charged FBISD employees money for the same "jean passes".

By selling these "jean passes" to ISD staff, the Independent School District has established some pecuniary value for the passes. Importantly, after receiving concerns related to these practices, FBISD has reportedly instructed campuses to not offer jean passes for purchase, but these changes were made after early voting had already started. Presumably, this benefit of a "jeans pass" for employees is not offered during elections where FBISD is not seeking money from the voters.

Additionally, we have received reports that children are being incentivized to pressure their parents to vote. Allegedly, if a child brings an "I voted sticker" to school, they may draw for a prize.

During the November 2023 election, it was reported that Kirk Elementary School with the Cy Fair Independent School District was giving teachers 500 points if they voted in the November 2023 election. These points could be used in the school store for products.

Under Chapter 36 of the Texas Penal Code, a person commits a felony offense of the second degree if he or she "intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts or agrees to accept from another: (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party

official, or voter.” Under Federal law, 18 USC §597 “Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote Shall be fined under this title or imprisoned not more than one year, or both; and if the violation was willful, shall be fined under this title or imprisoned not more than two years, or both.”

It appears that giving an incentive to vote to an employee of the jurisdiction that may potentially benefit financially from the outcome of an election constitutes an offer of a benefit as consideration for the employee’s decision to vote. Thank you for your time and assistance in this matter. I would be glad to provide any additional information you may require to address this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Paul Bettencourt".

Paul Bettencourt
Chair, Senate Committee on Local Government

Cc: Suzanna Hupp, Director of Intergovernmental Relations, Office of the Attorney General