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**Hot Button Boards:
Representing School Districts Addressing
Controversial Political Issues**

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Introduction

In March of 2020, the dynamics of representing school districts, trustees, administration, employees, parents, and students changed dramatically. Prior to this time, most school board meetings progressed without much fanfare, and the issues discussed were routine administrative matters. Contentious disagreements were rare. However, the onset of the Covid-19 Pandemic ushered in a new era of school district business. School board meetings have become primetime news as trustees and administrators grapple with issues of national debate such as school safety, CRT, DEI, library books, health protocols, and gender issues.

School law attorneys – particularly those serving as counsel for boards – are now often caught in the middle of a tug-of-war between feuding factions of trustees and school administrators who disagree on hot-button political issues. This paper explores the ethical obligations and practical advice every attorney must know to effectively represent school districts while navigating these contentious situations.

Types of Conflict

Disagreements within districts exist in a few categories:

1. Board (as a body corporate) in conflict with the administration;
2. Board (majority) in conflict with individual trustee(s) (minority); and
3. Individual trustees in conflict with one another (limited / zero consensus).

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Hot-button political issues often cause or exacerbate these disagreements. To navigate these conflicts, the district's attorney must consult the rules of ethics and work to understand practical measures she or he can take to promote civility and consensus.

Who is the Client?

Rule 1.12 (a) of the Texas Rules of Professional Conduct states:

A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, . . . the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

Therefore, an attorney retained by a school board represents the school district as an entity, not the interests of any one trustee, group of trustees, or administrator.

But who decides what is in the "best interests" of an entity governed by seven trustees with differing viewpoints? Texas Education Code § 11.151(b) states that district "trustees as a **body corporate** have the exclusive power and duty to govern and oversee the management of the public schools of the District. . . . The trustees may adopt rules and bylaws necessary to carry out the powers and duties" of the board. Tex. Educ. Code § 11.151(b). Further, most districts' Board Policy BBE (LOCAL) states: "Except for appropriate duties and functions of the Board President [as listed in Policy BDAA], an individual member may act on behalf of the Board only with express authorization of the Board." Accordingly, the interests of the district are those expressed by the majority of the school board as defined by the rules, policies, and procedures the board has adopted. Under Rule 1.12, quoted above, the board's attorney must represent the entity's interests as expressed by the majority of the board, and not the interests of individual trustees or district administrators. In particularly contentious circumstances where an individual trustee's interests

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