



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 35

July 24, 1992

Regarding the application of section 253.041(b) of the Election Code, which limits an officeholder's or candidate's use of political contributions for payments to a business in which the candidate or officeholder has a significant interest. (AOR-40)

The Texas Ethics Commission has been asked about the application of section 253.041 of the Election Code to specific facts. The requestor is a candidate for public office who owns 50 percent of the stock in a corporation engaged in the advertising business. The candidate is not employed by the business. The candidate would like to purchase advertising services and supplies from the business if it is permissible under section 253.041. Section 253.041 of the Election Code provides:

(a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made *for personal services* rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to:

(1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or

(2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder.

(b) A payment that is made from a political contribution to a business described by Subsection (a) and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for actual expenditures made by the business.

(c) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor. (Emphasis added.)

Subsection (a) is not relevant to this fact situation since the situation, as described by the requestor, does not involve payment for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder.

Subsection (b) does apply to this fact situation since the requestor is a candidate who would like to make purchases from a business in which he has a participating interest of more than 10 percent. Under subsection (b), a candidate may make a payment from a political contribution to such a business as long as the payment does not exceed the amount necessary to reimburse the business for actual expenditures made by the business. In other words, the business may not make any profit on such a transaction.

The fact that the business in question here is a corporation, however, raises another problem under title 15 of the Election Code because corporate campaign contributions are generally prohibited. Elec. Code § 253.094(a). If a candidate arranged a transaction with a corporation to comply with section 253.041, the corporation would be transferring something of value to that person, namely the difference between the corporation's cost and the fair

market value. Such a transfer is a "contribution" for purposes of title 15. *Id.* § 251.001(2). We do not think, however, that it is a "campaign contribution," which is a contribution given "with the intent that it be used in connection with a campaign for elective office." *Id.* § 251.001(3). If a corporation charges a candidate less than fair market value so that a transaction complies with section 253.041, we do not think the discount can be characterized as one given with the intent that it be used in connection with a campaign. Rather, the discount is given so that the transaction does not generate a profit for the corporation. Therefore the discount is not a campaign contribution, and the transaction is not prohibited by section 253.041. A discount greater than is necessary to comply with section 253.041, however, would be an impermissible corporate contribution.

SUMMARY

A candidate who owns 50 percent of the stock in a corporation engaged in the advertising business may make a payment from a political contribution to the corporation to purchase advertising services and supplies if the payment is in the amount necessary to reimburse the corporation for actual expenditures. A payment greater than that amount would be in violation of section 253.041. A payment less than that amount would be an impermissible corporate contribution.