



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 42

July 24, 1992

Expenditures of public funds to compensate or reimburse the expenses of a person who communicates with a member of the legislative branch to influence legislation. (AOR-62)

The Texas Ethics Commission has been asked to consider several questions about section 305.026 of the Government Code. That section provides in part as follows:

Public funds available to a political subdivision may not be used to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation, unless the person being compensated or reimbursed resides in the district of the member with whom the person communicates or files a written statement with the [Texas Ethics Commission] that includes the person's name, the amount of compensation or reimbursement, and the name of the affected political subdivision.

Gov't Code § 305.026(a). The requestor's first question in regard to that provision is as follows: "What is the period of time for which the cap of \$50.00 for compensation or expense reimbursement in § 305.026(a) applies?" We note first that the provision does not actually place a cap on compensation or reimbursement of expenses. Rather, it sets a reporting threshold.¹ If the use of public funds for the purposes described exceeds that threshold, the specified information must be reported to the Ethics Commission.

The requestor's question is about the time period to which the \$50 threshold is applicable. The legislature did not tie the threshold to a particular time period. *Cf.* Gov't Code §§ 305.003 (lobby registration thresholds measured by calendar quarters), 305.0061 (certain reporting thresholds measured by day), 305.024(a)(4), (5) (expenditure limits measured by calendar year), 305.024(a)(6) (expenditure limit for an award or memento measured by individual award or memento). In determining the time period to which the period is applicable, it is important to consider the purpose of the statute. Chapter 305 is a disclosure statute. The longer the period of time covered by the \$50 threshold, the less likely it is that transactions can be structured to avoid disclosure. We conclude, therefore, that section 305.026(a) requires reporting of any expenditure of public funds *during a calendar year* to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation.

The requestor also asks about subsection (d) of section 305.026, which provides:

This section does not prohibit a political subdivision from making an expenditure of public funds to a statewide association with a minimum membership of at least 25 percent of eligible political subdivisions that contract with or employ a registrant for the purpose of communicating directly with a member of the legislative branch to influence legislation.

The requestor asks whether the Ethics Commission or the statewide association defines "eligible political subdivision." The charter, by-laws, or other organizational rules of the association would determine what type of political subdivision is eligible for membership in the statewide association.

The last question is about subsection (c) of section 305.026, which provides:

This section does not apply to a person who is registered under this chapter, to a person who holds an elective or appointive public office, or to a full-time employee of the affected political subdivision.

The question is whether a person employed by a statewide association not covered by subsection (d) may be exempt under subsection (c). A person is exempted from the reporting requirements if he falls within either subsection (c) or subsection (d). Thus a person employed by a statewide association may be excepted under subsection (c) regardless of the percentage of the eligible political subdivisions that make up its membership.

SUMMARY

Section 305.026(a) of the Government Code requires reporting of any expenditure of public funds during a calendar year to compensate or reimburse the expenses over \$50 of any person for the purpose of communicating directly with a member of the legislative branch to influence legislation. For purposes of section 305.026(d), the charter, by-laws, or other organizational rules of an association would determine what type of political subdivision is eligible for membership in the statewide association. A person employed by a statewide association may be excepted under subsection (c) regardless of the percentage of the eligible political subdivisions that make up its membership.

¹ There is no cap or reporting threshold applicable to a political subdivision's use of public funds in regard to communications with a member of the legislative branch if the person being compensated or reimbursed lives in the member's district. *See generally* Gov't Code § 305.002(7) (defining "member of the legislative branch" for purposes of chapter 305 to include members-elect, candidates for, and employees of the legislature).