



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 46

September 9, 1992

Reporting requirements in instances where both the lobby statute and the Election Code might be applicable. (AOR-45)

The Texas Ethics Commission has been asked to consider a number of questions about the reporting requirements in chapter 305 of the Government Code, which regulates lobby activity. The first of the four questions is whether expenses shared by a group of persons registered as lobbyists to sponsor a reception for a member of the legislature are to be reported under chapter 305 of the Government Code (lobbying), title 15 of the Election Code (political expenditures), or both.

Chapter 305 requires registrants to report certain expenditures made to communicate directly with members of the legislative branch to influence legislation. *See* Gov't Code ch. 305; [Ethics Advisory Opinion No. 3](#) (1992) (registration requirements under chapter 305). If the purpose of the reception in question is to communicate with the legislator to influence legislation and if the expenditures in question are among the types of expenditures listed in section 305.006(b) of the Government Code, the registrants must report the expenses under chapter 305. *See generally* [Ethics Advisory Opinion No. 4](#) (1992) (communications to generate goodwill may be communications to influence). In that case, it is not a political contribution for purposes of title 15. Elec. Code § 251.001(2)(B) (an expenditure required to be reported under chapter 305 is not a contribution under title 15); *see* [Ethics Advisory Opinion No. 4](#) (1992) (regarding communications to influence). If the registrants are not making the expenditures for the reception to influence legislative action or if the expenditures are not of the type required to be reported under chapter 305, the registrants are not required to report the expenditures under chapter 305. In that case, the legislator benefitting from the expenditures would have to report them as political contributions if they meet either the definition of "officeholder contribution"¹ or "campaign contribution"² in title 15. Elec. Code § 251.001(3), (4).

The second question is as follows:

Is the amount paid for a ticketed fund-raiser, where members of the legislature are present (such as a reception for the Senate Democratic Campaign Committee, Republican Caucus or an individual elected official) considered a reportable expenditure of the Lobbyist Activity Report; a campaign contribution; or both.

This question is susceptible of several different interpretations. If the registrant is paying for his own ticket to attend and the amount paid goes directly to a candidate or political committee, the candidate or political committee must report the payment as a political contribution. *See* Gov't Code §§ 305.024(a)(2) (person required to register as a lobbyist may not give cash to member of legislative branch), 305.025(5) (prohibition on gifts of cash does not apply to political contributions). If the registrant purchases a ticket to be used by a member of the legislature to attend the fundraiser, the expenditure for the ticket would be reported under section 305.006(b)(6) of the lobby statute as an expenditure made for the attendance of a member of the legislative branch at a political fundraiser. *See id.* §§ 305.006(f), 305.024(7) (registrant must be present at the political fundraiser).

Another possible interpretation of the inquiry before us is that the registrant is paying the costs of the fundraising event. In this circumstance, it is possible that the sponsor has both the intent to influence legislative action and

the intent that the expenditures be used in connection with a campaign for elective office. *See* Elec. Code § 251.001(2), (3) (defining "campaign contribution"). In that case, any of the expenditures of a type required to be reported under chapter 305 must be reported by the registrant under chapter 305. Expenditures required to be reported under chapter 305 would not be contributions reportable by the candidate under title 15.³

The third question is whether expenditures made to communicate with a candidate who is not an officeholder are required to be reported under chapter 305. The registration and reporting requirements of chapter 305 apply to a person who exceeds either a compensation or an expenditure threshold⁴ in connection with direct communication to "members of the legislative or executive branch to influence legislation or administrative action." "Member of the legislative branch" includes a candidate for the legislature. Gov't Code § 305.002(7). Therefore an expenditure to communicate with a candidate for the legislature to influence legislation⁵ would be subject to the registration and reporting requirements of chapter 305.

The fourth question is whether a campaign contribution that is personally delivered to a legislator is required to be reported under chapter 305. The fact that something is delivered in person is not determinative of whether it is an expenditure to be reported under chapter 305 or under title 15. *But see* Elec. Code § 253.039 (prohibition on contributions while in the Capitol). A transfer of cash is impermissible under chapter 305. Gov't Code § 305.024(a)(2); *see also id.* § 305.025(5) (section 305.024 does not prohibit political contributions). A transfer of cash to a candidate made with the intent that it be used in connection with a campaign for elective office must be reported under title 15.

SUMMARY

If a registrant makes expenditures to sponsor a reception for a legislator, they are to be reported under chapter 305 of the Government Code, not title 15 of the Election Code, if a purpose of the reception is to communicate with the legislator to influence legislation and if the expenditures are of a type required to be reported under chapter 305. If the registrant is not making the expenditures for the reception to influence legislative action or if the expenditures are not of the type required to be reported under chapter 305, the expenditures must be reported as political contributions if they meet either the definition of "officeholder contribution" or "campaign contribution" in title 15.

If a registrant purchases his own ticket to attend a political fundraiser, the candidate or political committee receiving the payment must report the payment under title 15. If a registrant purchases a ticket for a legislator to communicate with the legislator to influence legislation, the registrant must report the expenditure under chapter 305 of the Government Code. If a registrant pays the costs of a political fundraiser and has both the intent to communicate with one or more members of the legislative branch to influence legislation and also the intent that the expenditures be used in connection with a campaign, the registrant should report the expenditures under the lobby statute.

A candidate for the legislature is a "member of the legislative branch" for purposes of chapter 305 of the Government Code. A cash campaign contribution that is delivered personally must be reported by the recipient under title 15, not by the donor under chapter 305 of the Government Code.

¹ Section 251.001(4) of the Election Code defines "officeholder contribution" as a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

- (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and
- (B) are not reimbursable with public money.

² Section 251.001(3) defines "campaign contribution" as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure."

- ³ Expenditures required to be reported under chapter 305 are excluded from the definition of "campaign contribution." Elec. Code § 251.001(2)(B). An expenditure is not excepted from the requirement that it be reported under chapter 305 simply because it is given with the intent that it be used in a campaign.
- ⁴ The expenditure threshold is calculated on the basis of the types of expenditures listed in section 305.006(b)(6) of the Government Code.
- ⁵ "Legislation" for purposes of the lobby statute, includes any matter that may be the subject of action by either house or by a committee of either house. *Id.* § 305.002(6).