



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 113

January 6, 1993

Lobby reporting requirements applicable to a reception for state officials held by a private foundation that supports a state institution of higher education. (AOR-124)

The Texas Ethics Commission has been asked about the application of the lobby statute to a reception sponsored by a nonprofit corporation (hereinafter the "foundation") that provides support to a state institution of higher education (hereinafter the "institution"). The Governor and all members of the legislature, as well as local officials and representatives of various businesses, are invited to the reception. The request letter states that the purpose of the reception is "to provide friends of the [institution] an opportunity to demonstrate the [institution's] purpose and articulate its mission to the Texas Legislature."

The foundation sent a notice of the event and a request for donations to various businesses and individuals, including vendors who sell to the institution, members of chambers of commerce in areas in which the institution holds classes, and members of the board and various advisory groups associated with the foundation. Donations received in response to the request will be used to pay for the reception as well as for other foundation purposes.

In the situation described, foundation expenditures for food, beverages, and entertainment at the reception will be made to communicate with members of the legislative and executive branches to influence legislation or administrative action and therefore require the foundation to register and report under the lobby statute.¹ Gov't Code §§ 305.003(a)(1) (expenditure threshold), 305.006(b) (listing type of expenditures that require lobby registration and reporting); [Ethics Advisory Opinion No. 4](#) (1992) (communications to generate goodwill are lobby communications). The requestor asks whether the foundation's registered lobbyist, who will be present but will make no expenditures in connection with the reception, is subject to any reporting requirements in connection with the reception. Because the foundation, rather than its individual lobbyist, will make the expenditure, it is the foundation that must report the cost on its lobby activity report.² [Ethics Advisory Opinion No. 89](#) (1992) (regarding attribution of expenditures to entities and individuals). The individual lobbyist must, of course, report the foundation as a client on his lobby registration. *See* Gov't Code § 305.005(f), (g), (i), (j).

The requestor also asks whether an individual or business that donates more than \$200 to the foundation must register as a lobbyist and report the donation as a lobby expenditure if a portion of the donation is used to pay for the reception. Similarly, the requestor asks whether a person already registered as a lobbyist must report a donation if a portion of the donation is used to pay for the reception. The type of expenditures that are subject to lobby registration and reporting are expenditures for: transportation and lodging; food and beverages; entertainment; gifts, other than awards and mementos; awards and mementoes; and expenditures made for the attendance of members of the legislative or executive branch at political fundraisers or charity events. Gov't Code § 305.006(b); *see also id.* § 305.006(c) (expenditures for mass media communications). Because the foundation exercises discretion over the use of the donations in question, the donations cannot be characterized as the type of expenditures that require lobby registration, even if the donations are ultimately used for one or more of the purposes set out above. *See* [Ethics Advisory Opinion No. 71](#) (1992) (whether charitable contribution must be reported as a lobby expenditure); *see also* [Ethics Advisory Opinion No. 91](#) (1992) (earmarking funds for lobby expenditures). Therefore a donor is not required to report a donation to the foundation as a lobby expenditure.

SUMMARY

A donation to a private foundation that supports a state institution of higher education is not a lobby expenditure if the foundation exercises discretion in the use of the donation, even if the donation is ultimately used for the type of expenditures that may require lobby registration and reporting. An individual registrant who attends an event and thereby satisfies the "presence" requirement for an organization that is making the expenditures for the event is not required to report the expenditures for the event.

¹ We assume that the expenditures for food, beverages, and entertainment at the reception will exceed the lobby registration threshold of \$200. *See* Gov't Code § 305.003(a)(1); 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.1, of the Texas Administrative Code).

² In order for the foundation to make lobby expenditures for food, beverages, or entertainment, the foundation must be present. Gov't Code §§ 305.006(f), 305.024(a)(7). The presence of the foundation's registered lobbyist will satisfy that requirement. [Ethics Advisory Opinions Nos. 92, 89](#) (1992).