



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 144

*June 24, 1993*

*The application of the ethics laws to the production of a television program. (AOR-136)*

The Texas Ethics Commission has been asked to consider the application of the ethics laws to the production of a television program.<sup>1</sup> The request letter states that a television station has agreed to a thirty-minute weekly program featuring a state representative. The state representative would have the responsibility "to line up commercial sponsors for the programs," although sales representatives for the television station would also be able to sell advertising time. The request letter states that the program would, for example, explain the representative's votes on certain bills and explain why the representative filed certain bills.

This request raises two questions under title 15 of the Election Code: (1) whether a commercial sponsor would be making a political contribution subject to regulation under title 15, and (2) whether the television program would be "political advertising" for purposes of title 15 and therefore required to carry a disclosure statement.

### **Political Contributions**

*Officeholder contribution defined.* The first issue is whether a commercial sponsor of the program described would be making a political contribution. There are two types of political contributions for purposes of title 15: campaign contributions and officeholder contributions. Elec. Code § 251.001(5). The definition of "officeholder contribution" contains several elements: it is a transfer of any thing of value 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.

*See* Elec. Code § 251.001(2), (4).

*Commercial sponsorship of television program as officeholder contribution.* In our opinion, the commercial sponsorship of the proposed television program would be within the definition of an officeholder contribution. In the first place, the commercial sponsors would ultimately be providing the legislator with television time--a thing of significant value to an officeholder--whether they directed their payments to the officeholder himself or to the television station. Secondly, the commercial sponsors would provide their funds with the intent that they be used to defray expenses incurred in connection with the legislator's office: clearly, a legislator's communication to explain legislation to constituents is an activity in connection with his office. Furthermore, we are aware of no law that would make the production costs of the television program reimbursable with public money. Thus, a sponsor who provided television time to a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution.<sup>2</sup>

A candidate or officeholder must report all political contributions on forms to be filed with the Ethics Commission. Elec. Code ch. 254. Further, corporations and certain other entities are generally prohibited from

making political contributions. *Id.* ch. 253, subch. D.<sup>3</sup> Accordingly, the legislator would have to list all sponsorships of the proposed television program as officeholder contributions and would be prohibited from accepting sponsorships from corporations and other entities listed in Election Code section 253.093(a).<sup>4</sup>

## Political Advertising

The request also raises the issue of whether the television program would be subject to the disclosure requirement for political advertising. A person may not enter into a contract or other agreement to broadcast political advertising unless the advertising indicates that it is political advertising and contains the full name of either the individual who personally entered into the contract or agreement with the broadcaster or the person that individual represents. *Id.* § 255.001. "Political advertising" includes a paid television broadcast supporting or opposing a candidate for nomination or election to a public office or supporting or opposing a public officer. *Id.* § 251.001(16). If the television show in question fits that definition, the show must include the information required by section 255.001. Although we have not been provided with a script or other information that precisely demonstrates the nature of the proposed program, it is our opinion that such a program will usually be political advertising.

## SUMMARY

A commercial sponsor who provided funding for a television program for a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution. Because officeholder contributions from corporations and certain other entities are generally prohibited, these entities could not sponsor such a program. If a paid television broadcast supports or opposes a candidate for nomination or election to a public office or supports or opposes a public officer, the show must include the information required by section 255.001 of the Election Code.

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<sup>1</sup> The Ethics Commission has jurisdiction to issue advisory opinions in regard to certain Texas ethics laws. V.T.C.S. art. 6252-9d.1, § 1.29. This opinion does not consider whether the television broadcast in question is subject to federal communications laws or any other laws outside of the Ethics Commission's jurisdiction.

<sup>2</sup> Under certain conditions, an arm's-length transaction that involves a transfer of a thing of value to a candidate or officeholder does not constitute a political contribution. [Ethics Advisory Opinion No. 143](#) (1993). A transaction that does not constitute a political contribution must be one in which the transfer to the candidate or officeholder cannot be said to be given with the intent that it be used "in connection with an election" or to defray officeholder expenses not reimbursable with public money. We recognize that it is normal practice in the television industry for commercial sponsors to underwrite production expenses for television programs in exchange for the publicity they receive for their sponsorship. Commercial sponsorship of television time for a particular officeholder or candidate, however, links the sponsor to the candidate or officeholder in a way that precludes the conclusion that the commercial sponsorship is not intended to be used in connection with an election or to defray officeholder expenses. We caution that this opinion concerns only a situation in which the officeholder essentially creates and controls the television program as a forum to communicate with his constituents. This opinion does not apply to a situation in which an officeholder is merely a featured guest on an independently established program.

<sup>3</sup> Election Code section 253.093(a) provides the following: For purposes of this subchapter, the following associations, whether incorporated or not, are considered to be corporations covered by this subchapter: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies.

<sup>4</sup> Provision of television time may also be a campaign contribution: that is, a thing of value given with the intent that it be used in connection with a campaign for elective office. An officeholder who is also a candidate must report officeholder contributions and campaign contributions on one form and need not specify whether contributions are officeholder contributions or campaign contributions.