



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 163

September 2, 1993

Whether an incorporated trade association may pay the expenses of hosting a meal for the purpose of raising funds for a general-purpose political committee. (AOR-163)

The Texas Ethics Commission has been asked whether an incorporated trade association may conduct a fundraiser in the form of a "meal function" for the benefit of a general-purpose political committee. The association proposes to bear all overhead costs for the function, including the cost of meals and invitations. Attendees would pay a fee for admission to the event, and all fees would be placed in the general-purpose committee's account. The question raised by this proposal is whether the incorporated association's payment of the fundraiser expenses would be a prohibited political expenditure under title 15 of the Election Code.

Subchapter D of chapter 253 of the Election Code concerns restrictions on political contributions and expenditures by corporations and labor organizations.¹ Although corporations generally may not make political contributions and expenditures, there are several circumstances under which they may use corporate funds for political purposes. These include making certain expenditures to support a general-purpose committee, as set out in section 253.100. Section 253.100 provides the following:

(a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.

(b) A corporation may make political expenditures *to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.*

....

(d) An expenditure under this section is not reportable by the general-purpose committee as a political contribution under Chapter 254. (Emphasis added.)

Section 253.100(b) permits a corporation to finance the solicitation of contributions to a general-purpose committee that the corporation assists under section 253.100(a). The financing of solicitations for contributions includes payment of costs directly associated with conducting a fundraiser, including, in the case before us, the cost of meals and invitations.² However, the provision allows the corporation or corporations to solicit only the stockholders, employees, or families of stockholders or employees of the corporation or corporations assisting the committee (the "solicitable class").³ Any costs associated with the fundraiser attributable to individuals who are not stockholders, members, or employees, or families of stockholders, members, or employees of the corporation may not be paid from the funds of the corporation. Such costs shall be calculated as the actual cost of an individual's attendance at the event, or if actual cost is not reasonably determinable, then the cost shall be calculated as a pro rata share of the total cost of the event.

This raises the question of who the solicitable class would be in the situation before us. The statute lists the corporation's stockholders, employees, and families of stockholders and employees as members of the solicitable

class. Clearly, employees of the trade association and their families may be solicited. The incorporated trade association in question, however, does not have stockholders; rather, it is composed of "members" that are themselves incorporated. Nonetheless, subchapter D, taken as a whole, makes clear the legislature's intent that members of covered organizations that do not have stockholders are to be considered corporate stockholders for purposes of the subchapter. *See* Elec. Code §§ 253.093 (members of associations covered by subchapter, whether or not incorporated, are considered to be stockholders), 253.098 (corporation or labor organization may make expenditures to communicate with stockholders or members, as applicable, or with their families), 253.100 (for purposes of this section regarding solicitation of contributions to general-purpose committee, members of labor organization are considered to be corporate stockholders). Therefore, we determine that the members of the trade association may be solicited as if they were corporate stockholders of the association.

Although the trade association may solicit contributions from its members, the incorporated members are themselves subject to the chapter 253, subchapter D, restrictions on corporate political contributions or expenditures. Accordingly, the trade association members may contribute to the general-purpose PAC only for the purposes permitted under subchapter D of chapter 253 of the Election Code.

We also determine that the trade association may solicit contributions from the stockholders and employees of its incorporated members, and from the families of those stockholders and employees. The general-purpose committee would not be restricted in its use of contributions from these sources, provided that none of the stockholders is a corporation for the purposes of Election Code chapter 253, subchapter D. *See* Elec. Code § 253.093.

SUMMARY

An incorporated trade association may finance costs directly connected with a fundraiser held for the benefit of a general-purpose committee it assists under Election Code section 253.100(a), including the cost of meals and invitations, for stockholders, members, employees, or the families of stockholders, members, or employees of the corporation. Any costs associated with the fundraiser attributable to individuals who are not stockholders, members, or employees, or families of stockholders, members, or employees of the corporation may not be paid from the funds of the corporation. Such costs shall be calculated as the actual cost of an individual's attendance at the event, or if actual cost is not reasonably determinable, then the cost shall be calculated as a pro rata share of the total cost of the event.

Members of a trade association that has no stockholders are treated as stockholders for purposes of the solicitation restrictions. If the members of such a trade association are themselves incorporated entities, the association may also finance the solicitation of contributions to the general-purpose committee from the stockholders, employees, and the families of stockholders and employees of its incorporated members.

¹ For purposes of subchapter D, the following entities, whether or not incorporated, are considered to be covered corporations: 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. Elec. Code § 253.093(a).

² In determining that financing the solicitation of contributions includes costs connected with conducting a fundraising event, we continue the policy of the Office of the Secretary of State when it regulated campaign finance in the state. Our determination also comports with federal campaign finance law regarding corporate solicitation of contributions to the political action committees (PACs) that the corporations sponsor. Under the federal statutes and rules, a corporation may pay all costs connected with fundraising activities of its PAC directed at the solicitable class. However, the PAC must reimburse the corporation for any portion of the costs of prizes or entertainment exceeding one-third of the total contributions raised. *See* 11 C.F.R. § 114.5(b)(2). The federal "one-third rule" does not apply to food or drink. *See* generally Fed. Elec. Comm'n, Campaign Guide FOR Corporations & Labor Organizations 16 (March 1992).

³ It has been suggested that the last phrase of subsection (b) should be read to allow the corporation to solicit contributions from the stockholders, employees, etc., of any corporation or corporations. Such an interpretation would practically render the general restriction on financing of solicitation by corporations a nullity, and we do not think the legislature intended such a result.