



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 165

September 2, 1993

How a political committee may incorporate for liability purposes only. (AOR-182)

The Texas Ethics Commission has been asked how a political committee may incorporate for liability purposes only. Under title 15 of the Election Code, corporations may not generally make political contributions or expenditures. Elec. Code § 253.091 *et seq.* However, the election laws except from this restriction a political committee "the only principal purpose of which is accepting political contributions and making political expenditures" that incorporates for liability purposes only. *Id.* § 253.092.

Since January 1, 1992, the Ethics Commission has been responsible for administering title 15. S.B. 1, Acts 1991, 72d Leg., ch. 304, § 1.11, at 1292 (giving Ethics Commission regulatory authority over title 15). Before January 1, 1992, the secretary of state administered title 15. *See* General Appropriations Act, Acts 1989, 71st Leg., ch. 1263, art. I, § 1, at 5376 (1990 and 1991 appropriations to secretary of state for administration of campaign and disclosure filings). *See generally* Elec. Code § 31.001, and predecessor statutes (secretary of state is chief election officer); *id.* ch. 251 (Vernon 1986), and predecessor statutes (prior version of title 15 specifying reports to be filed with the secretary of state).

In 1979 the secretary of state adopted a rule establishing how a political committee could incorporate for liability purposes only. Tex. Sec. of State, 4 Tex. Reg. 3822-23, *adopted* 4 Tex. Reg. 4344 (1979). The rule was amended in 1986 to read as follows:

(a) A political committee may incorporate for liability purposes only pursuant to the Texas Nonprofit [Corporation] Act. However, incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of the Texas Election Code. It is lawful within the meaning of Texas Civil Statutes, Article 1396-2.01, for a nonprofit corporation to operate as a political committee.

(b) To incorporate for liability purposes only pursuant to the Texas Election Code, § 251.001(3), a political committee must state exactly the following language as the only purpose for which the corporation can be organized[:] "to accept contributions and make expenditures as a political committee pursuant to § 251.001(15), Texas Election Code." Any incorporated political committee that states this precise language as the only purpose for which the corporation can be organized shall not be deemed to be a corporation within the meaning of the Texas Election Code[, § 251.001(3)].

Tex. Sec. of State, 11 Tex. Reg. 3722, *adopted* 11 Tex. Reg. 4482 (1986) (codified at title 1, section 81.164, of the Texas Administrative Code); *see* 1 T.A.C. § 81.164 (1988). The secretary of state repealed this rule after the 72d Legislature passed Senate Bill 1, which transferred the authority over title 15 to the Ethics Commission. Tex. Sec. of State, 17 Tex. Reg. 370 (1992) (repealing sections 81.161 through 81.165 of the Texas Administrative Code); *see* 1 T.A.C. ch. 81, Editor's Note at 131 (1993 Supp.). Despite the repeal of that rule, it is the position of the Ethics Commission that a political committee that incorporates under the Nonprofit Corporation Act for liability purposes only and states as its only purpose for incorporating the exact language outlined in the above rule or substantially similar language is formed for liability purposes only within the meaning of section 253.092 of the Election Code. Such an incorporated political committee is not subject to the prohibitions generally applicable to corporations under title 15.

SUMMARY

A political committee that incorporates under the Nonprofit Corporation Act for liability purposes only and states that its only purpose for incorporating is to accept contributions and make expenditures as a political committee is formed for liability purposes only within the meaning of section 253.092 of the Election Code. Such an incorporated political committee is not subject to the prohibitions generally applicable to corporations under title 15.