



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 175

November 18, 1993

Treatment under Texas law of contributions from an employee participation plan established under Federal Election Commission rules. (AOR-194)

A corporation has asked the Texas Ethics Commission to explain how title 15 of the Texas Election Code applies to contributions to candidates for Texas state office from participants in the corporation's "employee participation plan" established under Federal Election Commission regulations. *See* 11 C.F.R. § 114.11. An employee participation plan is a "political giving program in which a corporation pays the cost of establishing and administering separate bank accounts for any employee who wishes to participate." *Id.* § 114.11(a). Participating employees authorize a certain amount of their salaries to be placed in their separate bank accounts through a check-off or payroll deduction plan. *Id.* The employees have exclusive control over the disbursement of the funds in their accounts, and the corporation is forbidden access to any information about the source or recipient of contributions flowing from the accounts. The identity of the corporation sponsoring the employee participation plan may not be revealed to recipients of contributions from participating employees. The corporation bears the costs of maintaining the separate accounts and administering the check-off or payroll deduction plan. The Federal Election Commission does not require the corporation to file any reports concerning the participation plan.

The requestor wishes to know whether a corporation with such a plan would have any obligation under Texas law "to register as a PAC or report its contributions" if participating employees contribute to Texas state candidates. Title 15 of the Election Code does not include the concept of an employee participation plan, although it does permit a corporation to finance the establishment or administration of a general-purpose committee, and to finance solicitations for contributions to that committee from a restricted class of individuals connected with the corporation. *See* Elec. Code § 253.100. We will therefore discuss the questions raised under more general provisions of the Texas law on campaign finance.

In general, corporations and labor organizations may not make political contributions or expenditures. *Id.* § 253.094. An employee participation plan raises questions about prohibited corporate political activity in two ways. The first question is whether political contributions passed through the corporation in an employee participation plan are attributable to the corporation. The answer is that they are not. In [Ethics Advisory Opinion No. 108](#) (1992) we determined that a contribution from a partnership did not become a prohibited contribution if the partnership used a corporate agent to collect and disburse its funds, including funds disbursed as political contributions. We stated in that opinion the following:

Just as a corporation does not avoid the prohibitions on corporate contributions by passing a contribution through an individual or non-corporate entity, a contribution from a partnership does not become a corporate contribution simply because the partnership uses a corporation to manage and disburse its funds. *See* Elec. Code § 253.001(a) (prohibiting a person from making a political contribution in the name of another unless the person discloses the other's name in order for proper disclosure to be made); [Ethics Advisory Opinion No. 38](#) (1992).

In the situation addressed by [Ethics Advisory Opinion No. 108](#), as well as with employee participation plans, the corporation has no discretion in how the funds it handles are disbursed. Indeed, under an employee participation

plan, the employee, and not the corporation, actually disburses the contributions from his or her separate account. The contribution is attributable to the employee and not to the corporation.¹

The second issue raised is whether the corporation's expenditures in establishing or administering an employee participation plan amount to prohibited corporate political activity. The Election Code defines a campaign expenditure as an expenditure made in connection with a campaign for elective office or on a measure.² Elec. Code § 251.001(7). The expenditures made by the corporation in this case merely facilitate political expression by the employees. The corporation extends its services under the plan to all employees regardless of the individual employees' political views, does not exercise any influence as to the ultimate recipient of the funds, and is not permitted to know the source or recipient of contributions flowing through the individual accounts. Therefore, we conclude that corporate expenditures for the establishment and administration of an employee participation plan as provided for under Federal Election Commission regulations are not political expenditures under title 15 of the Election Code. *See Ethics Advisory Opinion No. 37* (1992) (corporate expenditure on nonpartisan notice informing employees about an election and encouraging them to vote is not a political expenditure).

SUMMARY

Contributions to Texas state candidates made through an employee participation plan established by a corporation under regulations of the Federal Election Commission do not constitute corporate contributions under the Texas Election Code, and do not trigger any reporting or registration requirements on the part of the corporation. Corporate expenditures to establish and administer such an employee participation plan are not political expenditures regulated by title 15 of the Election Code.

¹ The requestor specifically asks whether the corporation has any reporting responsibilities as a result of its role in administering the employee participation plan. Because the corporation has not participated in political activity, it has no reporting obligations.

² We emphasize that the requestor asks only about contributions from employees involved in an employee participation plan established under federal law. The situation is not to be mistaken for one in which a corporation establishes a general-purpose committee under Texas law and sets up a check-off or payroll deduction plan for its employees who choose to contribute to the committee. To date, we have not been asked about the application of title 15 to such an arrangement.