



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***  **Opinion History**

## ETHICS ADVISORY OPINION NO. 177

*November 18, 1993*

*Whether certain expenditures are political expenditures subject to the 60-day waiting period set out in section 253.037(a) of the Election Code. (AOR-198)*

A general-purpose committee has requested an opinion as to whether certain expenditures are political expenditures subject to the 60-day waiting period set out in section 253.037(a) of the Election Code. In [Ethics Advisory Opinion No. 161](#) (1993), the commission read section 253.031(b) and 253.037(a) together to conclude that a general-purpose committee may not knowingly make or authorize a political expenditure that will cause the committee's total political expenditures to exceed \$500 unless the committee's campaign treasurer appointment has been in effect for at least 60 days.<sup>1</sup> We will address the questions posed assuming that the expenditures concerned exceed \$500.

### **Fundraising Costs Subject To The 60-day Waiting Period**

The requestor asks us to indicate "what sorts of expenses related to political fundraising are acceptable during the 60-day waiting period" and whether the general-purpose committee could "hire a fund-raiser" during that time. Any expenditures related to political fundraising, including expenditures to hire a person to generate political contributions for the committee, are political expenditures and are thus subject to the waiting period.<sup>2</sup>

The requestor also raises questions about the propriety of a specific expenditure for the production of brochures about the committee, "which will be used primarily for educational and fundraising purposes." The brochures would discuss the nature of the general-purpose committee and describe its political concerns. The requestor has stipulated that the production costs would exceed \$500. From both the stated purpose and content of the brochures, we conclude that the production costs would indeed be political expenditures. The brochures would be used to generate contributions to the committee, and as we said above, expenditures on fundraising are political expenditures.

### **Acceptance Of Brochures As In-Kind Contribution**

Next, the requestor asks whether it would be permissible "for contributors to donate these brochures as an in-kind contribution." It is not clear to us what form such a donation would take. The requestor may mean to ask whether an individual may donate the brochures or whether a group of individuals may pool their resources to produce and donate the brochures. If individual contributors pooled their resources to produce the brochures, those individuals would themselves comprise a general-purpose committee. *See* Elec. Code § 251.001(12) (definition of political committee); [Ethics Advisory Opinions Nos. 77, 74](#) (1992). The new political committee's donation of the brochures would be an in-kind contribution by the new committee to the requestor's committee. At the same time, the production and donation of the brochures would involve political expenditures by the donating committee. The in-kind contribution of the brochures would therefore be permissible only if the contributors had filed an appointment of campaign treasurer for a general-purpose committee at least 60 days before they exceeded \$500 in expenditures, and had received contributions from at least 10 persons.

If a single person, not acting in concert with others, produced the brochures and donated them to the requestor's committee, that person would be making a permissible in-kind contribution.

Although nothing in title 15 would prohibit the general-purpose committee from accepting a lawful in-kind contribution in the form of the described brochures, the committee's subsequent distribution of the brochures would constitute a political expenditure by the committee subject to the 60-day waiting period. We interpret the statutory definition of "expenditure"--"a payment of money *or any other thing of value*"--to include transfers of assets belonging to a political committee to others, whether or not the transfer would ordinarily be thought of as a "payment." Elec. Code § 251.001(6) (emphasis added). The amount of the expenditure in this case would be the cost of producing the brochures plus any distribution costs, such as postage. It follows that the dissemination of the brochures would be permissible only if the committee had complied with the Election Code provisions concerning the 60-day waiting period for political expenditures exceeding \$500 applicable to general-purpose committees. *Id.* § 253.037(a); [Ethics Advisory Opinion No. 161](#) (1993).

### SUMMARY

General-purpose committee expenditures related to political fundraising are subject to the 60-day waiting period of Election Code section 253.037(a), as interpreted in [Ethics Advisory Opinion No. 161](#) (1993). Costs associated with the production and dissemination of a brochure discussing the nature of a general-purpose committee and its political concerns, to be used for educational and fundraising purposes, are political expenditures. If a general-purpose committee receives as an in-kind contribution brochures costing more than \$500 to produce, its distribution of the brochures constitutes a political expenditure subject to the 60-day waiting period.

---

<sup>1</sup> The general-purpose committee must also have received contributions from at least 10 persons. Elec. Code § 253.037(a)(2).

<sup>2</sup> A political expenditure is defined in title 15 of the Election Code as a campaign expenditure or an officeholder expenditure. Elec. Code § 251.001(10). A campaign expenditure is an expenditure "made by any person in connection with a campaign for an elective office or on a measure." *Id.* § 251.001(7). An officeholder expenditure is an expenditure made to defray expenses that are made by an officeholder "in performing a duty or engaging in an activity in connection with the office" and "are not reimbursable with public money." *Id.* § 251.001(9). An expenditure is "a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment." *Id.* § 253.001(6) (emphasis added).