



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***  **Opinion History**

## ETHICS ADVISORY OPINION NO. 183

*January 27, 1994*

*Whether a newsletter that generally addresses issues about a local real estate market must bear a political advertising disclosure if it contains communications opposing a local measure, and related question. (AOR-204)*

The Texas Ethics Commission has been asked to determine the circumstances under which a newsletter must carry a political advertising disclosure under section 255.001 of the Texas Election Code. The requestor has provided us with two different examples of "newsletters" that he has produced and distributed. The first is an example from a series of newsletters periodically published and distributed by the requestor in connection with his business. This newsletter typically contains information about a local real estate market, recipes, safety tips, and items of local interest. Sometimes the publisher discusses local political issues in the newsletter, including his support for or opposition to local ballot measures or officials. The other example is a publication devoted solely to the defeat of a local measure. Although also produced by the requestor, this second publication had a much greater area of distribution than the regular newsletter and did not bear the heading of the regular newsletter.

Election Code section 255.001(a) provides the following:

- (a) A person may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising that does not indicate in the advertising:
  - (1) that it is political advertising;
  - (2) the full name of either the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster or the person that individual represents; and
  - (3) in the case of advertising that is printed or published, the address of either the individual who personally entered into the agreement with the printer or publisher or the person that individual represents.

"Political advertising " is defined in the Election Code to mean

a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

- (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (B) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

Elec. Code § 251.001(16). Both the regular newsletter and the special publication contain communications expressly opposing a local measure or public officer. In our opinion, however, only the special publication comes within the definition of "political advertising." We interpret section 251.001(16) to mean that messages of political support or opposition that appear in a newspaper, magazine, or other periodical constitute political advertising *only if they are published in return for consideration*. In other words, if the political message is one sponsored by the periodical, the message is not political advertising within the statute. Unfortunately, the statute does not define the phrase "newspaper, magazine, or other periodical," nor does the legislative history reveal the intent behind the exception. We assume the legislature intended to distinguish written communications disseminated solely in connection with a particular election from a publisher's own political commentary in a periodical the publisher produces whether or not an election is imminent. In our view, the regular newsletter under discussion qualifies as a periodical. Because the political communications in the newsletter were not published in return for consideration, they do not constitute "political advertising." Therefore, the regular newsletter is not required to carry a political advertising disclosure.

The second type of "newsletter" at issue here does constitute political advertising. This publication was not intended to be, nor can it be seen as, simply another issue of the regular newsletter. It differs from the regular newsletter in appearance, area of distribution, and content. Furthermore, it was produced to persuade voters to support the publisher's views in regard to a particular election. Therefore, this publication is within the definition of political advertising in section 251.001(16) and should bear the information required by section 255.001: the name and address of the person who entered into the contract to print the communication (i.e., the requestor), and a statement that the material is political advertising.<sup>1</sup>

### SUMMARY

Communications supporting or opposing candidates, officeholders, or measures that appear in a newspaper, magazine, or periodical do not constitute political advertising if the publisher receives no consideration for publishing them. If such communications appear in a publication other than a newspaper, magazine, or periodical, they constitute political advertising and must be accompanied by the political advertising disclosure information set out in Election Code section 255.001.

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<sup>1</sup> We note that under section 255.001, the disclosure requirement comes into play only if a person enters into a contract or other agreement to print, publish, or broadcast political advertising. Our answer is premised on the assumption that the person responsible for the special newsletter contracted with another to actually do the printing.