



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 188

March 25, 1994

*Whether a legislative advertising disclosure statement is required in particular circumstances.
(AOR-210)*

The Texas Ethics Commission has been asked several questions relating to the legislative advertising disclosure requirement set out at Government Code section 305.027. That section provides, in pertinent part, the following:

(a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not indicate in the advertising:

(1) that it is legislative advertising;

(2) the full name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster and the name of the person, if any, that the individual represents; and

(3) in the case of advertising that is printed or published, the address of the individual who personally entered into the agreement with the printer or publisher and the address of the person, if any, that the individual represents.

....

(e) In this section, "legislative advertising" means a communication that supports, opposes, or proposes legislation and that:

(1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of communication.

Although the commission has recently issued opinions relating to political advertising under title 15 of the Election Code, *see Ethics Advisory Opinions Nos. 184, 183* (1994), this is the first opinion addressing legislative advertising.¹ The requestor has asked us to respond to questions stemming from three different situations. The first posits a legislator who wishes to distribute to several other legislators a newspaper editorial he has read. Under one alternative, he stops at a printing shop and has several copies of the editorial printed; under the other alternative, he makes photocopies of the article in his office. The requestor asks whether the copies must include a legislative advertising disclosure statement in either case.

In our opinion, the disclosure information would not be required under either alternative. The communication in question does not fall within the definition of legislative advertising, because it consists solely of a newspaper editorial. In *Ethics Advisory Opinion No. 183*, we interpreted the almost identical definition of political advertising in Election Code section 251.001(16). We concluded that because newspaper editorials are not published in return for consideration, they are outside the statutory definition of political advertising, even if

they support or oppose a candidate, officeholder, measure, or political committee. This conclusion applies to legislative advertising as well. We do not believe the mere act of reprinting a newspaper editorial transforms the editorial into legislative advertising.²

The requestor next asks whether an individual who pays to have a newspaper editorial or "bill information" photocopied for friends or a neighborhood club would be required to include a disclosure requirement, and whether the disclosure would be required only after the individual had spent more than a certain dollar limit. As already discussed, the copies of the editorial, standing alone, would not be legislative advertising. By "bill information," the requestor means information explaining the contents and import of a particular bill. If the bill information also expressed support of or opposition to the bill, it would fall within the definition of legislative advertising (unless it was printed, without consideration, in a newspaper, magazine, or other periodical) and would be required to carry a disclosure statement. The agreement with the owner of the photocopier machine to make copies of the information would trigger the disclosure requirement under section 305.027.³ The requirement does not depend on whether the agreement to print or publish the material involves the exchange of a certain amount of money.⁴

In the third situation presented in the request, a nonprofit AIDS support group prints fliers for a rally to generate public support for AIDS issues. The requestor asks under what circumstances the fliers would have to carry the legislative advertising disclosure. Specifically, we are asked whether the disclosure would be necessary even when AIDS is not the subject of current legislation or when the legislature is not in session, or whether the disclosure requirement is triggered only when the fliers support, oppose, or propose a specific piece of legislation before the Texas Legislature.

The requestor is concerned about the scope of the term "legislation" as used in Government Code section 305.027. The term "legislation" is defined for purposes of chapter 305 of the Government Code as the following:

- (A) a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature;
- (B) any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or
- (C) any matter pending in a constitutional convention or that may be the subject of action by a constitutional convention.

Gov't Code § 305.002(6). The requestor is concerned that under this definition, "virtually every informational piece on any topic would be subject to the legislative advertising disclaimer." We believe the term "legislation" as used in section 305.027 has the meaning given in section 305.002(6), but we do not agree with the requestor's view of the effect of this definition. A merely informational piece on a topic would not be subject to the requirement. Although the definition of legislation is broad, the disclosure requirement applies only when a communication supports, opposes, or proposes legislation. We do not interpret the statute to require a disclosure statement on communications that merely support or oppose a general point of view on a given topic; rather, the communication must support, oppose, or propose specific action on the part of the legislature or a constitutional convention. Under our view of section 305.027, whether the legislature is in session at the time of the communication is irrelevant. The requirement applies to communications proposing legislation, which can of course occur during or between legislative sessions.⁵

SUMMARY

A photocopy or reprint of a newspaper editorial supporting, opposing, or proposing legislation does not need to include a legislative advertising disclosure statement. The legislative advertising disclosure requirement is triggered whenever legislative advertising is printed, published, or broadcast pursuant to a contract or other agreement, regardless of the amount of consideration offered or received in connection with the agreement. A legislative advertising disclosure is required only for communications that support, propose, or oppose specific

legislation; communications that merely support or oppose a general point of view on a given topic do not need to carry the disclosure. The disclosure may be required on communications whether or not the legislature is currently in session.

¹ Despite the similarities between the provisions on political advertising in title 15 of the Election Code and the provisions on legislative advertising in the Government Code, there are significant differences as well. For example, messages on buttons are not excepted from the disclosure requirements under the Government Code, as they are under the Election Code. Legislative advertising must bear the names of both the individual who personally entered into the contract or agreement to disseminate the communication and the person, if any, that the individual represents; political advertising must carry the name of one or the other. Moreover, the Government Code makes it clear that the actual broadcaster, printer, or publisher of legislative advertising may commit an offense by agreeing to publish the material presented by the sponsor of the communication. We answer the questions presented here assuming the provision at issue is valid under the United States and Texas Constitutions. The First Amendment to the U.S. Constitution may limit the government's power to require certain disclosure statements on political literature. See, e.g., *Talley v. California*, 362 U.S. 60 (1960); *Printing Indus. of Gulf Coast v. Hill*, 382 F. Supp. 801 (S.D. Tex. 1974), vacated and remanded for reconsideration as to mootness, 422 U.S. 937 (S.D. Tex. 1975).

² We note that the result might be different if the material distributed contained other communications that were within the definition of legislative advertising.

³ The statute does not indicate that the "agreement" triggering the requirement must be formal or that it must involve consideration (except that the absence of consideration in connection with communications published in a newspaper, magazine, or periodical would take the communication outside the definition of legislative advertising).

⁴ The requestor states that the application of section 305.027 "appears to hinge upon the wording 'in return for consideration.'" We interpret the provision differently. The words "in return for consideration" appear only in that part of the definition dealing with communications appearing in newspapers and other periodicals or broadcast by radio or television. The element of consideration thus appears to be relevant only for deciding whether a communication printed in a newspaper or other periodical or broadcast is legislative advertising. Actually, application of the disclosure requirement hinges on whether there is a contract or other agreement to publish legislative advertising. As noted in the footnote above, the statute does not state whether there must be consideration for such an agreement.

⁵ The requestor also raises two issues that are matters of federal rather than Texas law. First, he questions whether nonprofit groups forced to include legislative advertising disclosure statements on their materials would jeopardize their tax-exempt status under section 501(c)(3) of the Internal Revenue Code. Although we do not have authority to interpret Internal Revenue Code provisions, we note that the Internal Revenue Code allows a section 501(c)(3) organization to engage in a limited amount of activity to influence legislation. See 26 U.S.C. § 501(c)(3), (h). Second, the requestor asks whether the disclosure statement is required on communications addressing federal legislation. Federal law, and not the Texas Election Code, controls in the case of such communications. See, *KVUE, Inc. v. Moore*, 709 F.2d 922, 931-37 (5th Cir. 1983), *aff'd* 465 U.S. 1092 (1984) (Texas statute requiring identification of sponsors of political advertisements is preempted by federal law to extent it seeks to regulate federal candidates or committees).