



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 225

September 9, 1994

Questions concerning the scope of the term "members" for purposes of sections 253.098 and 253.100 of the Texas Election Code as applied to the Texas Chamber of Commerce, and whether a solicitation directed toward employees may include a campaign communication. (AOR-252)

The Texas Chamber of Commerce has asked the Texas Ethics Commission to address questions concerning the scope of the term "members" for purposes of Texas Election Code sections 253.098 and 253.100, which regulate certain political expenditures by corporations. Corporations generally may not make political expenditures. Elec. Code § 253.094; see [Ethics Advisory Opinion No. 168](#) n.4 (setting out exceptions to general rule). They may, however, make direct campaign expenditures to communicate with their stockholders or members, or with the families of their stockholders or members. Elec. Code § 253.098(a).¹ Corporations may also finance the establishment or administration costs of a general-purpose committee. *Id.* § 253.100(a). If a corporation assists a general-purpose committee in this manner, it may also finance the solicitation of contributions from its employees, stockholders or members, and their families (the "solicitable class"), as well as from the solicitable class of any of its corporate members. *Id.* § 253.100(b); see [Ethics Advisory Opinions Nos. 223](#) (1994), [163](#) (1993).²

The issue in this request is whether any person defined as a "member" in the bylaws of the Texas Chamber of Commerce, a nonprofit incorporated membership association, automatically qualifies as a "member" of the incorporated association for purposes of the title 15 provisions regulating corporate political activity. The requestor informs us that the bylaws of the Texas Chamber of Commerce provide for three different classes of membership. One class consists of various individual business entities; the second class consists of local chambers of commerce. Both of these classes pay membership dues directly to the statewide organization. The third class ("class three") consists of dues-paying members of the local organizations that make up the second class of membership but who do not pay dues directly to the statewide organization. The statewide organization provides class-three members with certain services and benefits in return for a portion of the dues the class-three members pay to the local organizations. The requestor asks whether the statewide association may make campaign expenditures to communicate with class-three members, and whether it may solicit contributions to its political committee from those members.

The Texas Election Code does not define the term "member" as used in chapter 253. The Texas Non-Profit Corporation Act defines "member" as "one having membership rights in a [nonprofit] corporation in accordance with the provisions of its articles of incorporation or its by-laws." V.T.C.S. art. 1396-1.02, § A(6). The Non-Profit Corporation Act also permits a corporation to have one or more classes of members. *Id.* art. 1396-2.08, § A. We assume the legislature was aware of the legal definition of a "member" of a corporation when it enacted the campaign finance statutes. We see no evidence in the law that the legislature intended "member" as used in chapter 253 to exclude the class-three members described in this request.³

Moreover, the Texas Chamber of Commerce could *solicit* contributions from the members of any incorporated local organizations even if those members were not also members of the statewide organization: an incorporated membership association may solicit contributions from the employees and stockholders or members (and the

families of employees and stockholders or members) of any of its incorporated members. [Ethics Advisory Opinions Nos. 223, 163.](#)⁴

The requestor also asks whether a corporation that sponsors a political committee may include a campaign communication when soliciting contributions to the committee from employees of the corporation. A corporation may solicit contributions to a political committee it assists from *employees* and stockholders or members (and their families), but the corporation may make direct campaign expenditures to communicate with only stockholders or members (and their families). In other words, employees are part of the solicitable class, but not part of the class to whom the corporation may send campaign communications. Elec. Code §§ 253.098, 253.100(b). The requestor has forwarded an example of a circular and asked whether it qualifies as a "solicitation" under section 253.100(b), even though it seeks voter support for specified candidates.

We recognize that a solicitation for political committee contributions will ordinarily include some information about how the political committee will spend the money collected. Yet we do not believe the legislature intended section 253.100(b) to broaden the scope of section 253.098 to permit a corporation to make communications that constitute express advocacy in regard to a particular candidate. *See Ethics Advisory Opinion No. 198* (1994) (limitations on corporate communications are constitutionally permissible only if the communications constitute express advocacy in regard to a clearly identified candidate). To the extent that a message included in a solicitation does not expressly advocate the election or defeat of a clearly identified candidate, the message could be sent to the corporation's employees and their families. The point at which information incidental to a solicitation crosses the line to become prohibited advocacy is a fact question that can be answered only on a case-by-case basis.

The particular circular the requestor has asked us to examine is dominated by pictures of candidates juxtaposed with exhortations to the reader to vote for these candidates on election day. Under the court decisions discussed in [Ethics Advisory Opinion No. 198](#), the circular expressly advocates the election or defeat of clearly identified candidates. At the bottom of one page, in fine print, appears a message soliciting contributions to the political committee to help the candidates supported by the organization. An expenditure for this circular would clearly be a campaign expenditure and consequently would be unlawful unless directed solely at corporate members or stockholders and their families.

SUMMARY

The individuals and entities in the three different classes of members set out in the bylaws of the Texas Chamber of Commerce, as described in the request letter, are all "members" within the meaning of sections 253.098 and 253.100(b) of the Election Code.

A solicitation for contributions sent to a corporation's employees in accordance with section 253.100(b) of the Election Code may not contain express advocacy in regard to an identified candidate.

¹ Such expenditures are not reportable under chapter 254 of the Election Code. Elec. Code § 253.098(b).

² In [Ethics Advisory Opinion No. 163](#), the commission interpreted title 15 to include corporate members and their families in the solicitable class for nonstock "membership" corporations that assist a political committee.

³ Notwithstanding our conclusion in this case, we can imagine instances in which we might find that the legislature did not intend the term "member" to encompass as broad a class as that specified in the bylaws of a membership association. For example, if a corporation defined a member as anyone who lived in Texas or anyone who had contributed to a particular candidate, without requiring the "member" to have any voluntary affiliation with the association, we would likely conclude that such members were not "members" for purposes of chapter 253 of the Election Code. In the present case, there is a demonstrable connection between the class-three members and the statewide organization that pre-exists a solicitation for contributions to the organization's political committee. *Cf.* 11 C.F.R. § 100.8(b)(4)(iv)(B) (requiring "members," for purposes of federal law restricting political activity by incorporated membership association, to have either significant financial attachment to association beyond payment of dues, or to pay regular dues and have certain level of voting rights within association). We recognize that determining the meaning of "member" will be difficult in many circumstances, and we plan to

address the issue in the future. This opinion determines the meaning of "member" only in regard to the facts described in the opinion request.

⁴ The requestor also asks whether section 253.098 permits the statewide organization to make direct campaign expenditures to communicate with its class-three members, as members of its members, just as we have interpreted section 253.100(b) to permit an incorporated association to solicit contributions from the members of its corporate members. We need not reach this issue because we have already concluded that the statewide organization may communicate with the class-three members because they are members of the organization. We do not believe, however, that the justification for extending the solicitable class under section 253.100(b) to members of corporate members would necessarily apply to campaign expenditures for corporate communications.