



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 242

January 13, 1995

Reporting requirements under title 15 for a nonprofit corporation formed to produce an informational newsletter for distribution to residents of a city council member's district. (AOR-273)

The Texas Ethics Commission has been asked about the application of the campaign finance law to the publication of a newsletter for distribution to residents of a city council member's district. The city council member would like to distribute a newsletter containing information about city services, current municipal issues, and related matters to district residents. The request letter states the following:

It has been suggested that various benefactors might be willing to fund the cost of the printing of the newsletter by a nonprofit corporation formed for that purpose. Although the newsletter might contain mention of City officials and their functions and activities, it is not intended as a political mailing and would not contain any candidate endorsements or other political messages. It is anticipated that the publication would be supervised by various civic organization officials with assistance from the Council member or his staff who might receive credit for their effort.

The requestor asks whether the laws relating to the reporting of officeholder contributions and expenditures would apply to the proposed arrangement.

The request letter raises two issues under title 15. The first is whether the proposed funding mechanism for the newsletter would result in a reportable political contribution to the council member. Title 15 of the Election Code defines a contribution as "a direct or indirect transfer of money, goods, services, or any other thing of value . . ." Elec. Code § 251.001(2). An "officeholder contribution" is defined as

a contribution to an officeholder . . . that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

Id. § 251.001(4). It is clear from the request that the officeholder wishes to produce and distribute the newsletter as an officeholder activity and that he cannot be reimbursed from public money to do so. Any expenditures by the officeholder for this purpose would be officeholder expenditures for purposes of title 15. By the same token, any expenditures by a group or an individual to produce the newsletter for and in conjunction with the officeholder would be officeholder contributions. As such, the expenditures would be subject to the campaign finance reporting requirements. *See generally* Elec. Code ch. 254 (political reporting).

The second issue is about the use of a nonprofit corporation established by various benefactors to produce the newsletter. The Election Code generally prohibits both for-profit and nonprofit corporations from making political contributions or expenditures. *Id.* § 253.094. The "benefactors" in the request letter, however, seem to constitute a political committee under title 15.¹ A political committee may choose to incorporate solely for liability purposes without running afoul of the corporate prohibition against corporate activity. *Id.* § 253.092. To

do so, the committee must provide in its official incorporation documents that it is a political committee incorporating for liability purposes only and that its only principal purpose is accepting political contributions and making political expenditures. 1 T.A.C. § 24.1(d). Therefore, if the "benefactors" form a political committee and incorporate for liability purposes only, the incorporated political committee may produce the newsletter for the council member. Otherwise, a corporation formed by the benefactors could not produce the newsletter for the council member without violating the prohibition on corporate political activity.

SUMMARY

A nonprofit corporation formed to produce an informational newsletter for distribution to a city council member's constituents must form a political committee, since such a publication would constitute an officeholder contribution.

¹ A group of persons that has the principal purpose of assisting an identified officeholder is, by definition, a specific-purpose political committee. Elec. Code § 251.001(12), (13). Once a specific-purpose political committee exceeds \$500 in political contributions received or political expenditures made, it must file an Appointment of Campaign Treasurer with the same filing authority with whom the officeholder files title 15 reports. Id. § 253.031.