



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 331

*July 12, 1996*

*Whether a judicial candidate is required to report a transaction in which several individuals, acting together, make a direct campaign expenditure of less than \$500 to support the candidate. (AOR-374)*

The Texas Ethics Commission has been asked to consider whether a judicial candidate is required to report a transaction in which several individuals, acting together, make a direct campaign expenditure of less than \$500 to support the candidate. Title 15 of the Election Code, which governs campaign finance, distinguishes between campaign contributions and direct campaign expenditures. A campaign contribution to a candidate is a direct or indirect transfer of money, goods, services, or another thing of value to the candidate made with the intent that it be used in connection with a campaign for elective office. Elec. Code § 251.001(2), (3). A contribution does not necessarily pass into the candidate's possession. For example, a third-party might pay for a billboard supporting a candidate and make payment directly to the owner of the billboard. If the candidate gives prior consent or approval to the offer to pay for the billboard, the third-party has made (and the candidate has accepted) a campaign contribution to the candidate. The candidate is required to report the contribution on the campaign finance report covering the period in which the candidate accepted the contribution. *See generally id.* ch. 254.

A direct campaign expenditure, in contrast to a contribution, is a campaign expenditure supporting a candidate that is made without the prior consent or approval of the candidate supported. *Id.* § 251.001(8). A candidate is required to report a direct campaign expenditure made to support him or her only if the candidate receives notice under sections 253.062(a)(1), 254.128(a), or 254.161 of the Election Code. In the situation at hand, the candidate has received no such notice.

The group that made the direct campaign expenditure in question here had not filed an appointment of campaign treasurer as a political committee and apparently was not required to file. *See id.* § 253.031(b) (\$500 thresholds for appointment of campaign treasurer by political committee). Although the campaign treasurer of a political committee is required to give notice to a candidate of a direct expenditure the committee makes on a candidate's behalf, *id.* §§ 254.128(a), .161, this requirement is not applicable in this situation because there is no campaign treasurer subject to the requirement.

An individual "not acting in concert with another person" who makes a direct campaign expenditure supporting a candidate is also required to give notice to the candidate. *Id.* §

253.062(a)(1). Because the three individuals were acting in concert, this requirement is also inapplicable to the situation described.<sup>1</sup>

A candidate has no obligation to report a direct campaign expenditure (as opposed to an in-kind contribution) unless the candidate receives one of the notices described above. *See id.* § 254.061(3), (4). Although reporting of the direct expenditure in question is not required, the filer may wish to include an explanation of the expenditure with the report covering the period in which the expenditure was made.

The requestor also asks whether the 1995 Judicial Campaign Fairness Act is relevant to this situation. The 1995 Judicial Campaign Fairness Act, *id.* ch. 253, subch. F, is generally relevant to any campaign finance activity in connection with a judicial campaign covered by the act. It does not, however, add to or change reporting requirements in regard to direct campaign expenditures. *But see generally id.* §§ 253.163, .169, .171.

Finally, the requestor asks whether the name of an individual who helps the members of a specific-purpose political committee plan campaign activities is required to be reported on any document filed by the specific-purpose committee. Neither a campaign treasurer appointment for a specific-purpose committee or a report of contributions and expenditures by a specific-purpose committee is required to contain the name of an individual who does not make any contribution to the committee or receive any payments from the committee. *Cf. id.* § 252.003(a)(1) (requiring reporting about committee decision makers).

## SUMMARY

A candidate is required to report a direct campaign expenditure (as opposed to a contribution) made to support him or her only if the candidate receives notice under sections 253.062(a)(1), 254.128(a), or 254.161 of the Election Code.

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<sup>1</sup> The fact that no notice is required in the situation described may have been an unintended result of a 1993 change in the law that allowed a political committee to accept up to \$500 in contributions or make up to \$500 in expenditures before filing a campaign treasurer appointment. Acts 1993, 73d Leg., ch. 531, § 2, at 2011. Previously, a political committee could not accept any political contributions or make any political expenditures without appointing a campaign treasurer. Acts 1991, 72d Leg., ch. 304, § 5.04, at 1290, 1324.