



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***

## ETHICS ADVISORY OPINION NO. 336

*August 16, 1996*

*Whether a corporation may make candidates' campaign material available to corporate employees.  
(AOR-366)*

The Texas Ethics Commission has been asked to consider whether a corporation may make candidates' campaign material available to corporate employees. The request letter sets out the details of the corporation's plan:

A corporation, which is not affiliated with and does not support any political action committee, wishes to stimulate voter activity among its employees on a non-partisan and equal-opportunity basis. In furthering this goal, it would like to contact all candidates for certain offices and offer to make their informational campaign material (such as brochures, position papers, etc.) available to its employees.

(A) The corporation would prepare a "Voter Information Packet" that would include basic information about all candidates for an office (such as occupation, education, endorsements, campaign manager's name and telephone number, etc.). The Packet would be distributed to employees along with a message from the corporation indicating that additional information could be obtained from a designated employee.

(B) Upon request, the designated employee of the corporation would send to the requesting employee a copy of the campaign materials provided by the candidate(s).

(C) The corporation would also place the campaign material in a central place, available to any employee who wanted it.

We anticipate that the campaign material would contain "express advocacy" for each of the candidates who responded to the offer, but the advocacy would be from the campaign, not the corporation. The campaign material for all candidates for each office would be available to employees on an equal basis.

Texas law generally prohibits corporations from making political contributions to candidates. Elec. Code § 253.094. Also, Texas law prohibits corporations from making independent expenditures<sup>1</sup> to expressly advocate the election or defeat of a candidate. *Id.*; [Ethics Advisory Opinion No. 198](#) (1994).<sup>2</sup> The issues raised by this request for an advisory opinion are whether the corporation is making a political contribution to one or more candidates and, if not, whether the corporation is making independent campaign expenditures that expressly advocate the election or defeat of a candidate.

We first consider whether the corporation is making a campaign contribution to a candidate. A "campaign contribution" is a transfer of any thing of value to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. Elec. Code § 251.001(2), (3). If a corporation invited one candidate in a contested election to provide campaign material for display and distribution by the corporation to

corporate employees, the corporation would unquestionably be making a prohibited corporation campaign contribution. This commission stated in a recent opinion, however, that a corporation that provides to all candidates in an election an equal opportunity to display campaign information on the Internet is not making a campaign contribution. [Ethics Advisory Opinion No. 327](#) (1996). This is because, in the context of providing a forum for campaign information, we interpret the phrase "with the intent . . . [to] be used in connection with a campaign" in the definition of "campaign contribution" to mean intent that the forum influence the outcome of the election in a particular direction. See [Ethics Advisory Opinion No. 37](#) (1992). Therefore, providing candidates the same opportunity to make campaign materials available to corporate employees does not constitute a campaign contribution. We caution, however, that "the same opportunity" means not only that all candidates must be given the opportunity to provide information, but also that the corporate communications to each candidate regarding the opportunity to provide information must be essentially the same. In other words, the corporation may not advise a candidate about the type of information or presentation that is likely to appeal to corporate employees without giving the same information to all candidates. Further, corporate handling of the information must be essentially the same. For example, the corporation must respond to employee requests for information about different candidates in the same way and must display candidate materials in the same manner. Whether a particular transaction involving a corporation and candidates for an elective office results in a contribution to one or more of the candidates is a fact question that depends on the way in which the transaction actually takes place.

The second issue is whether the corporation would be making an independent expenditure for communications that expressly advocate the election or defeat of a specific candidate.<sup>3</sup> Again, whether a communication expressly advocates the election or defeat of a specific candidate will always depend on the specific nature of the communication. This commission therefore cannot give advance approval to a general plan, but we can consider the narrow issue of whether "express advocacy" contained in candidates' campaign materials provided by the candidates becomes "express advocacy" by the corporation simply because the corporation displays and distributes the material. As with the first issue raised, the answer to this question depends on whether each candidate in the election is given the same opportunity to provide information. If the opportunity provided to each candidate is in fact the same, then in our opinion the corporation would not be expressly advocating the support or defeat of any of those candidates.

## SUMMARY

A corporation that provides all candidates the same opportunity to make campaign materials available to corporate employees would not be making a campaign contribution. In this context "the same opportunity" means not only that all candidates must be given the opportunity to provide information, but also that the corporate communications to each candidate regarding the opportunity to provide information must be essentially the same and that the corporation must handle each candidate's information in the same way.

---

<sup>1</sup> Although the term "independent campaign expenditure" is not used in Texas law, it is often more easily grasped than the term "direct expenditure," which Texas law uses to describe a campaign expenditure made without the prior consent or approval of the candidate benefitted. See Elec. Code § 251.001(8); 1 T.A.C. § 20.1. A campaign expenditure made with the prior consent or approval of the candidate benefitted is a contribution to that candidate.

<sup>2</sup> A corporation that violates these prohibitions commits a third-degree felony. Elec. Code § 253.094. Also, the Ethics Commission may impose fines in sworn complaint proceedings for violations of those provisions. See Gov't Code §§ 571.122, .173.

<sup>3</sup> It is only necessary to reach this question if it is clear that the corporation has not made a contribution to a candidate.