



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 340

September 13, 1996

Questions concerning the activities in which an incorporated association may engage with respect to candidates for state office. (AOR-378)

The Texas Ethics Commission has been asked several questions concerning the activities in which an incorporated association may engage with respect to candidates for state office. Specifically, the requestor asks the following:

May the association allow state candidates or their representatives to address the association's "restricted class" at association meetings, conventions and other functions? May the speaker request contributions to his campaign? Must every state candidate for a particular office be invited? May the association set up a "phone bank" to urge its restricted class to vote for particular candidates or conduct a partisan get-out-the-vote drive aimed at its restricted class? May the association announce PAC [political committee] endorsements through a press release through its regular press contacts?

As a general rule, title 15 of the Election Code prohibits corporations from making political contributions or political expenditures. Elec. Code § 253.094. There are several exceptions to this rule, however. One exception allows a corporation to finance the establishment or administration of a general-purpose political committee, as well as the solicitation of contributions from the corporation's stockholders, members, employees and the families of the stockholders, members, and employees, to a political committee it establishes or administers. *Id.* § 253.100(a), (b). Another allows a corporation to make "direct campaign expenditures" to communicate with its stockholders or members, and the families of its stockholders and members. *Id.* § 253.098(a); see [Ethics Advisory Opinion No. 225](#) (1994) (noting that class of individuals corporation may make direct campaign expenditures to communicate with is more restricted than class it may solicit for contributions to its political committee). Because none of the requestor's questions involve corporate expenditures to establish or administer a political committee or to solicit contributions to its political committee from its "solicitable class," we assume that the "restricted class" to which the requestor refers is the restricted class of Election Code section 253.098: the corporation's stockholders or members, and the families of the stockholders and members. ¹

The requestor's first three questions involve the use of corporate resources to provide a forum for a candidate for elective office. As such, the questions do not concern "direct expenditures" by the corporation. A direct campaign expenditure is defined by the Election Code as a campaign expenditure that is not a contribution to a candidate or a political committee. Elec. Code § 251.001(8). A political expenditure made with the prior consent or approval of a candidate, however, is a contribution to the candidate. See 1 T.A.C. § 20.1; [Ethics Advisory Opinion No. 336](#) (1996) at 2 n.1. Therefore, the use of corporate resources to allow a particular candidate or a particular candidate's representative to address an audience and advocate his election would be a prohibited corporate contribution to the candidate. This would be true regardless of whether the candidate explicitly solicited contributions to his campaign.

The requestor asks whether the candidate appearance would be permissible if each candidate for a particular office were invited to speak. In [Ethics Advisory Opinion Nos. 336](#) and [327](#) (1996), the commission dealt with

the use of corporate expenditures to provide a forum for all candidates in a particular race to present themselves. In [Ethics Advisory Opinion No. 327](#), we determined that a corporation providing Internet services may create and maintain a site on the Internet for posting the credentials and photos of Texas political candidates, provided that the corporation does not include endorsements of any candidate and makes the site available to all candidates on an equal basis. In [Ethics Advisory Opinion No. 336](#) (citing [Ethics Advisory Opinion No. 327](#)), we concluded that a corporation may make candidates' campaign material available to corporate employees if it provides each candidate with the same opportunity to provide information, and handles the information provided in such a way that no candidate is given more advantageous treatment than any other. Similarly, we do not believe a corporate contribution would result if a corporation invited all candidates for a particular office to address a corporate audience, if all candidates were given the same opportunity to appear, and the corporation did not endorse any particular candidate or present any candidate in a more advantageous way than any other candidate.

The requestor also asks whether an incorporated association may set up a "phone bank" to urge the restricted class identified in Election Code section 253.098 to vote for a particular candidate or to conduct a partisan get-out-the-vote drive aimed at its restricted class. Under Election Code section 253.098, such expenditures are permissible only if they are direct expenditures--that is, expenditures made without the prior consent, approval, or cooperation of the candidate benefitted. If there is candidate involvement with the phone bank, the expenditures would be prohibited political contributions to the candidate.

The requestor's final question is whether an incorporated association that has established a general-purpose political committee may announce the committee's endorsements of particular candidates in a press release issued through the corporation's regular press contacts.² Assuming that the preparation and issuance of a press release would involve the use of corporate resources, a press release to the general public would be a prohibited corporate expenditure under Texas law.

SUMMARY

An incorporated association may make expenditures for candidate appearances before the association's members or stockholders only if all candidates for the office are given the same opportunity to appear and are presented on an equal footing. An incorporated association may make expenditures to set up a phone bank to urge members or stockholders and their families to vote for particular candidates, or to conduct a partisan get-out-the-vote drive directed at those individuals, only if the candidates benefitted have not given their prior consent or approval. Corporate expenditures incurred in issuing a press release through the corporation's usual press contacts announcing endorsements of candidates by a political committee established by the corporation are prohibited political expenditures.

¹ An expenditure incurred in issuing a press release about the political committee's political endorsements is not an "administrative expense" of a political committee under Election Code section 253.100(a). In [Ethics Advisory Opinion No. 132](#) (1993), we explained that expenses that are directly tied to a political committee's support for or opposition to candidates or measures are not administrative expenses. See also [Ethics Advisory Opinion No. 216](#) (1994).

² The Federal Election Commission has issued an advisory opinion stating that corporate funds may be used to announce a corporation's endorsement of a candidate or candidates to members of its restricted class and to its usual press contacts, despite the general federal ban on corporate political expenditures. Fed. Election Comm'n AO 1984-23.