



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 357

January 10, 1997

*Whether a legislative caucus may continue to receive contributions of personal services during the contribution moratorium period if the agreement to provide the services was entered into before the moratorium period. (AOR-395)*

The Texas Ethics Commission has been asked whether a legislative caucus may continue to receive contributions of personal services such as accounting and legal services during the contribution moratorium period if the agreement to provide the services was entered into before the moratorium period. Election Code section 253.0341 provides that a legislative caucus may not knowingly accept from a nonmember a contribution, and shall refuse a contribution from a nonmember that is received, during the period beginning on the 30th day before the date the regular legislative session convenes and continuing through the final day of adjournment ("the moratorium period"). Elec. Code § 253.0341(a), (b). The Election Code defines a contribution, in pertinent part, as a "direct or indirect transfer of money, goods, *services*, or any other thing of value." *Id.* § 251.001(2) (emphasis added). The provision of accounting and legal services to a caucus is therefore a contribution and is prohibited during the moratorium period.

The requestor specifically asks if the caucus could receive such services during the moratorium period if the agreement to provide the services was entered into before the beginning of the moratorium period and the caucus has been receiving the services on a routine basis. Section 253.0341 provides that a legislative caucus "shall refuse" a contribution from a nonmember that is received during the moratorium period.<sup>1</sup> This rule applies even if the contribution was accepted before the moratorium began.

In [Ethics Advisory Opinion No. 239](#) (1994) the commission determined that during the moratorium a legislator could continue using office space that had been contributed before the start of the moratorium imposed on legislators under Election Code section 253.034. In that opinion we stated, "From an accountant's perspective, it may make sense to view a contribution of the long-term use of office space as a periodic contribution. In our opinion, however, section 253.034 does not view an in-kind contribution of office space in that way." A contribution of long-term use of real property or tangible personal property is distinguishable from an agreement to provide legal and accounting services. In our opinion services are received and accepted as performed. Therefore, services contributed during the moratorium period are impermissible under Election Code section 253.0341.

### SUMMARY

A legislative caucus must refuse contributions of personal services from nonmembers during the moratorium period imposed by Election Code section 253.0341 even if the agreement to provide the services was entered into before the start of the moratorium period.

<sup>1</sup> Thus, even if a contribution is accepted before the start of the moratorium period, it must be refused and returned to the contributor if it is not actually received until after the moratorium begins. A contribution made by mail, however, is not considered to be received after the moratorium if it was placed in the mail, properly addressed and with postage prepaid, before the moratorium began. Elec. Code § 253.0341(b); cf. *id.* § 253.034(b) (contributions to statewide officers during moratorium period).