



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 377

November 14, 1997

Questions about lobby registration in connection with events paid for by contributions from "councils" that support various units of a public university. (AOR-414)

The Texas Ethics Commission has been asked about the application of the Texas lobby law, Government Code chapter 305, to certain expenditures made to support academic departments of a public university. The expenditures are made from accounts held by a private, nonprofit foundation that solicits, receives, and administers private funds for use by the university. The funds in the account come from dues and other contributions from members of private "councils" that exist to support specific academic departments of the university. The funds in the accounts may be used at the discretion of "an official of the university," not at the discretion of a council. The foundation's only discretion in regard to the use of the funds is its authority to deny payment of expenditures that are not in support of the university.

The request letter states that university officials occasionally choose to use funds in a "council account" to sponsor a meal or reception for legislators and legislative staff members and representatives of the university at which members of the council act as hosts. The question raised in the request letter is whether expenditures for such a purpose trigger required lobby registration by either the council or the foundation.

An entity is required to register under the lobby law if the entity makes more than \$500 in certain types of expenditures in a calendar quarter. 1 T.A.C. § 34.41(a). Expenditures for food, beverages, or entertainment that are made to communicate with legislators or legislative staff members to influence legislation count toward the registration threshold. Therefore, if either the foundation or the council made more than \$500 in such expenditures in a calendar quarter, the expenditures would trigger required lobby registration. The key issue in this situation is who is "making the expenditures" in question.

The facts described in the request letter indicate that the university is making the expenditures, not the council or the foundation. Apparently neither the council nor the foundation has discretion in the use of the money. Rather, the council members make gifts subject only to the restriction that the gifts be used to support a particular university department, and the foundation simply ensures that the funds are in fact used to support the university. Because neither the council nor the foundation exercises discretion about the use of the funds in question, neither the council nor the foundation is "making the expenditures" for purposes of the lobby law. In this case, it is the university that is making the expenditures in question. *See also* [Ethics Advisory Opinion Nos. 113 \(1993\)](#), [99 \(1992\)](#); *cf.* [Ethics Advisory Opinion No. 91 \(1992\)](#) (regarding donated funds earmarked for a specific purpose). The university is exempt from required lobby registration. 1 T.A.C. § 34.41(b); [Ethics Advisory Opinion No. 69](#), at n.1 (1992); *see* [Ethics Advisory Opinion Nos. 69, 60, 31 \(1992\)](#) (regarding acceptance of benefits).

If the council earmarks contributions from its members to be used for the type of meals or receptions described in the request letter, the expenditures would be made by the council for purposes of determining whether the council is required to register under the lobby law. [Ethics Advisory Opinion No. 91 \(1992\)](#). A particular expenditure may be attributed to more than one person for purposes of determining whether lobby registration is required. *See* 1 T.A.C. § 34.11.

SUMMARY

A group that makes contributions for the use of university academic departments is not making expenditures that count toward lobby registration under Government Code section 305.003(a)(1) as long as the group does not earmark the contributions to be used for an expenditure or expenditures described in Government Code section 305.006(b).

An entity that holds and disburses funds used for an expenditure or expenditures described in Government Code section 305.006(b) is not "making expenditures" for purposes of Government Code section 305.003(a)(1) as long as the group's only discretion in regard to disbursement of the funds is to ensure that the funds are used to support a university.