



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 398

June 12, 1998

Whether a corporation would be making a prohibited political contribution if the corporation sold a product to a candidate for campaign use at a rate lower than the corporation's normal wholesale rate. (AOR-436)

A candidate has asked whether a proposed transaction between the candidate and a corporate producer of a packaged food product would involve a prohibited corporate campaign contribution. The candidate proposes to distribute the food product with his campaign material to illustrate the candidate's campaign slogan. The producer's normal business practice is to sell the food product at wholesale to retailers. The candidate would like to purchase the food product at a price below the producer's normal wholesale price.

As a general rule, a discount to a candidate is a campaign contribution. See [Ethics Advisory Opinion No. 35](#) (1992).¹ Campaign contributions from corporations are prohibited. Elec. Code § 253.094. The requestor takes the position, however, that the discount in question would not be a corporation contribution because the "proposal and the negotiations were conducted as any other business transaction, both sides seeking an economic benefit." The requestor cites [Ethics Advisory Opinion No. 143](#) (1993) in support of that position.

The facts at issue in [Ethics Advisory Opinion No. 143](#) (1993) did not involve a corporate discount; rather the facts in that opinion raised the question of whether *any transfer* between a corporation and a candidate is a prohibited contribution if the transfer is made in connection with the candidate's campaign. In response to that question we stated:

The definition of contribution in title 15 includes any transfer and, taken literally, does not except a transfer of a thing of value that is made as part of an arm's-length commercial transaction. However, we do not believe that the legislature intended that all commercial transactions involving political candidates, officeholders, or committees result in title 15 contributions when the transaction is connected with a campaign. If this were so, then a company that sells paper cups to a political committee for the going commercial rate, knowing that the goods are to be used for campaign purposes, might be making a political contribution. Such a result, in our opinion, runs counter to both the common understanding of "political contribution" and the legislature's intent.

Instead, we believe that by specifying that the transfer be made with the intent that it be used in connection with a campaign or to defray officeholder expenses, the legislature meant to exclude transfers made in connection with normal business transactions. Although a carnival corporation contracting to be a part of a fundraiser in some sense "intends" that the candidate use the share of proceeds it remits to him in connection with a campaign, the corporation's principal intent in making the contract is to take advantage of a situation that seems likely to yield an audience and profits for itself.

We stress that an exchange of consideration between a candidate and a corporation will not *by itself* change the character of the transfer from a prohibited political contribution to a permissible commercial transaction. It is critical that the terms of the transaction reflect the usual and normal

practice of the industry, and be typical of the terms the commercial party offers to political and non-political entities alike.

[Ethics Advisory Opinion No. 143](#) (1993) at 2-3.

The requestor argues that the proposed discount from the producer is not a campaign contribution because the food producer demonstrated interest in the proposal for business reasons. In [Ethics Advisory Opinion No. 143](#), however, we emphasized that to avoid the prohibition on corporate campaign contributions it is critical that the terms of a contract between a corporation and a candidate be typical of the terms the corporation offers to political and non-political customers. Because the corporate producer described in the request letter has no history of comparable transactions with other non-political customers, we cannot conclude that the proposed transaction is permissible.

SUMMARY

To avoid the prohibition on corporate campaign contributions it is critical that the terms of a contract between a corporation and a candidate be typical of the terms the corporation offers to political and non-political customers.

¹ A discount such as a volume discount that is available to all similarly situated purchasers is not a contribution.