



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 447

April 10, 2003

The scope of the “solicitable class” of a nonprofit corporation whose members include limited liability companies, partnerships, and sole proprietorships. (AOR-499)

The Texas Ethics Commission has been asked to consider questions about the “solicitable class” of a nonprofit corporation whose members include limited liability companies, partnerships, and sole proprietorships.

The Texas Election Code contains a general prohibition on political expenditures by corporations.¹ Elec. Code § 253.094. There are, however, a number of exceptions to that general prohibition. One of those exceptions provides:

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted [by the corporation] from the stockholders, employees, or families of stockholders or employees of one or more corporations.

Id. § 253.100. In past opinions, we have referred to the persons a corporation may solicit under that provision as the corporation’s “solicitable class.” *See generally* [Ethics Advisory Opinion Nos. 225, 223](#) (1994), [163](#) (1993).

Under Texas law, nonprofit corporations do not have stockholders but may have members. *See generally* V.T.C.S. art. 1396-2.08. The solicitation provision in section 253.100(b) lists stockholders as part of the solicitable class but does not list members. In Ethics Advisory Opinion No. 163 (1993), however, we concluded that, for purposes of section 253.100(b), members of a nonprofit corporation are considered to be stockholders.

The members of the nonprofit corporation at issue in Ethics Advisory Opinion No. 163 were themselves corporations and were therefore subject to the restrictions on corporate political contributions in Election Code section 253.094. Consequently, the members of that nonprofit corporation were not free to make political contributions in response to a solicitation. Because the right to solicit is meaningful only if the persons solicited are free to respond, we concluded that when the members of a corporation are themselves corporations, the solicitation could extend to the next “level.” In other words, we concluded that if the members of a nonprofit corporation are themselves incorporated, the corporation may finance the solicitation of contributions to its general-purpose committee from stockholders (or members), employees, and families of stockholders (or members) and employees of its incorporated members.

The requestor asks whether Ethics Advisory Opinion No. 163 also stands for the proposition that a corporation may make political expenditures to finance the solicitation of political contributions to its general-purpose political committee from (1) the partners and families of the partners of a member that is a partnership; (2) the members and families of the members of a member of the corporation that is a limited liability company; and (3) the sole proprietor and family of the sole proprietor of a member of the corporation that is a sole proprietorship.² In essence, the requestor is asking whether the conclusion of Ethics Advisory Opinion No. 163 applies in any case in which a corporate member or stockholder is a business entity rather than an individual. Ethics Advisory Opinion No. 163 does not support that conclusion. Ethics Advisory Opinion No. 163 applies only in a case in which a corporate stockholder or member is subject to the restrictions in section 253.094 of the Election Code. If a stockholder or member of a corporation is a business entity not subject to those restrictions,

the corporation's solicitable class does not include the owners or employees of the business or to the families of the owners and employees. The political committee itself, of course, may solicit contributions from the owners or employees of the business or the families of the owners and employees.

SUMMARY

If a stockholder or member of a corporation is a business entity not subject to the restrictions in Election Code section 253.094, the corporation's solicitable class under Election Code section 253.100(b) does not include the owners or employees of the business entity or the families of the owners or employees.

¹ The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or law of another state or nation. Elec. Code § 253.091. It also applies to banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies, regardless of whether they are incorporated. *Id.* § 253.093.

² Texas law does not recognize a distinction between an individual and his sole proprietorship. *Warehouse Partners v. Gardner*, 910 S.W.2d 19 (Tex. App.--Dallas 1995, writ denied). Therefore, a corporation may make political expenditures to finance the solicitation of political contributions to its general-purpose political committee from a stockholder or member that is a sole proprietorship and from the family of a stockholder or member that is a sole proprietorship.