



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 464

*September 9, 2005*

*Whether a legislative advertising disclosure statement is required to be included on segments of radio broadcasts and on articles that are available on a website and that are included in an e-mail newsletter. (AOR-525)*

A non-profit corporation has asked whether the requirement to include a legislative advertising disclosure statement pursuant to section 305.027 of the Government Code applies in several circumstances.

In the first circumstance, the requestor produces a daily radio program and sends it to various radio stations around the country. The radio stations broadcast the program to the public. Some radio stations require the requestor to pay for airtime, while others do not. The requestor wants to include in its Texas broadcast a short segment approximately 30 to 60 seconds in length encouraging listeners to call their state legislators to support specific legislation. The requestor states that the segments are not a "paid advertisement," as that term is commonly understood, but just a part of its regular Texas broadcast, and suggests that these segments are similar to editorials in a daily newspaper.

Section 305.027 of the Government Code provides, in relevant part, the following:

a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not indicate in the advertising:

(1) that it is legislative advertising;

(2) the full name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster and the name of the person, if any, that the individual represents; and

(3) in the case of advertising that is printed or published, the address of the individual who personally entered into the agreement with the printer or publisher and the address of the person, if any, that the individual represents.

...

(e) In this section, "legislative advertising" means a communication that supports, opposes, or proposes legislation and that:

(1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication.

There would clearly be a contract or agreement between the requestor and a radio station to broadcast the requestor's program and the 30 to 60 second segment added to the program. Additionally, the segment at issue supports legislation. The remaining issue is whether the requestor's communication, which in our opinion includes the regular program and the added 30 to 60 second segment, is broadcast in return for consideration.

In some instances, the requestor pays a radio station to broadcast the communication. We conclude that in those instances the communication is broadcast in return for consideration. Because the segment supports legislation and is part of a communication that is broadcast in return for consideration, it falls within the definition of legislative advertising.

Therefore, because the requestor would be entering into a contract or agreement to broadcast the segment, the segment must include the disclosure statement required by section 305.027 of the Government Code.<sup>1</sup>

In other instances, the requestor does not pay a radio station to broadcast the communication. Without more facts, it is not possible to determine whether the communication is broadcast in return for consideration. If a radio station receives nothing in return for broadcasting the communication, there is no consideration. If there is no consideration, the communication does not fall within the definition of legislative advertising and therefore does not need to include the legislative advertising disclosure statement.

In the second circumstance, the requestor prepares articles that are made available on the requestor's website and that are included in the requestor's daily e-mail newsletter. The requestor does not specify whether the articles support, oppose, or propose legislation. The requestor pays an Internet service provider for server space for the requestor's website and for sending e-mail.

The definition of legislative advertising includes a communication that appears in a pamphlet, circular, flier, or similar form of written communication. The definition of legislative advertising, however, does not specifically include a communication available on a website or a communication made by e-mail.

In 2003, the legislature amended section 251.001(16) of the Election Code to include in the definition of political advertising a communication that appears on a website. Acts 2003, 78th Leg., R.S., ch. 249, § 2.01, at p. 1135; Elec. Code § 251.001(1). The legislature, however, did not add that type of communication to the definition of legislative advertising. Therefore, in our opinion the legislature did not intend the definition of legislative advertising to include a communication that appears on a website or a communication made by e-mail. Thus, those communications are not required to include a legislative advertising disclosure statement. This commission will ask the legislature to clarify whether it intended to include in the definition of legislative advertising a communication that appears on a website and a communication made by e-mail.

## SUMMARY

A radio segment supporting or opposing legislation that is part of a communication that is broadcast in return for consideration must include a legislative advertising disclosure statement. Articles supporting or opposing legislation that appear on a website or that are made by e-mail are not required to include a legislative advertising disclosure statement.

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<sup>1</sup>In our opinion, the segment and a newspaper editorial are not analogous in this instance because a newspaper editorial is not published in return for consideration.

The requestor asserts a constitutional argument, stating that the statute is unconstitutionally overbroad based on the Supreme Court's holding in *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995). The *McIntyre* case involved the constitutionality of an Ohio statute regulating political advertising. Both the facts and the law at issue were different from the facts and law at issue here. The Texas Ethics Commission has the authority to issue advisory opinions about certain Texas statutes. The commission assumes that the statutes are constitutional in the absence of a court decision that clearly states that a particular statute is unconstitutional.