



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 467

January 13, 2006

Whether certain corporate expenditures for a lobbyist to attend a political fundraiser golf tournament are permissible. (AOR - 530)

The Texas Ethics Commission has been asked to consider whether certain corporate expenditures made on behalf of an individual registered as a lobbyist under chapter 305 of the Government Code to attend a political fundraiser for a candidate or officeholder are permissible expenditures under chapter 305 of the Government Code or prohibited under title 15 of the Election Code.

The following are the specific expenditures at issue: the lobbyist's transportation, the lobbyist's lodging, the lobbyist's food and beverages, the lobbyists' entry fees to the golf tournament, and other expenditures related to the event. The corporation would directly make the expenditures or would reimburse the lobbyist for the expenditures. The request letter states that the only intent with which the expenditures would be made and the only intent with which the lobbyist would be attending the fundraiser is to influence legislation or to generate or maintain goodwill for the purpose of influencing potential future legislation.

It is illegal both for a corporation to make a political contribution to a candidate or officeholder and for a candidate or officeholder to knowingly accept a contribution he or she knows to be prohibited. Elec. Code §§ 253.003(b), 253.094. A political contribution is a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement to make such a transfer *that is offered or given with the intent that it be used in connection with a campaign* or to defray officeholder expenses that are not reimbursable with public money. *Id.* § 251.001(2), (3), (5) (emphasis added). If an expenditure is required to be reported under section 305.006(b) of the Government Code, it is not a "contribution" for purposes of title 15 and is therefore not regulated as a political contribution. Elec. Code § 251.001(2)(B).

Section 305.006(b) of the Government Code requires a lobby activities report to include the following:

The total expenditures under a category listed in this subsection that the registrant made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action and that are directly attributable, as that term is used in Section 305.0062(b), to a member of the legislative or executive branch or the immediate family of a member of the legislative or executive branch. The report must also include expenditures for the direct communications under a category listed in this subsection that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant. The expenditures must be reported in the following categories:

- (1) transportation and lodging;
- (2) food and beverages;
- (3) entertainment;
- (4) gifts, other than awards and mementos;

(5) awards and mementos; and

Gov't Code § 305.006(b). *See generally*, [Ethics Advisory Opinion No. 46](#) (1992); [Ethics Advisory Opinion No. 4](#) (1992) (communications to generate goodwill may be communications to influence).

The expenditures for the lobbyist's own travel, lodging, food and beverage, and entry fees, are not required to be reported under section 305.006(b) of the Government Code, and therefore, are not automatically excluded from the definition of contribution for purposes of title 15 of the Election Code. However, if the expenditures were not made with the intent that they be used in connection with a campaign for an elective office or made with the intent to assist an elective officeholder, they are not regulated by title 15 of the Election Code. Ethics Advisory Opinion No. 46 (1992). Additionally, chapter 305 of the Government Code does not prohibit a corporation from making the expenditures for the lobbyist's own transportation, lobbyist lodging, and food and beverages.

As to the entry fee, a person registered as lobbyist, or a person on the registrant's behalf and with the registrant's consent or ratification may not give cash to the following: state senators, state representatives, other elected or appointed state officers, legislative agency employees, and executive agency employees. Gov't Code § 305.024(a). Therefore, it is illegal for a corporation to pay the lobbyist's entry fee to the golf tournament that is being held for any of the individuals listed above.¹

Whether the corporation may make other expenditures related to the event if the expenditures are made with the intent to influence legislation or to generate or maintain goodwill for the purpose of influencing potential future legislation will depend on the specific expenditures.

The commission has been asked whether the expenditures listed above are permissible under chapter 305 of the Government Code if a corporate employee while on corporate time makes the expenditures. The fact that the corporate employee while on corporate time makes the expenditures instead of the corporation making the expenditures does not change the result to the questions discussed above.

SUMMARY

The lobby law does not prohibit a corporation from making the expenditures for a lobbyist's own transportation, lobbyist lodging, and food and beverages to attend a political fundraiser. If the expenditures were not made with the intent that they be used in connection with a campaign for an elective office or made with the intent to assist an elective officeholder, they are not regulated by title 15 of the Election Code. A corporation may not pay a lobbyist's entry fee to the golf tournament. The fact that the corporate employee while on corporate time makes the expenditures instead of the corporation making the expenditures does not change the result to the questions discussed above.

¹If the fundraiser is not for a state senator, state representative, other elected or appointed state officers, legislative agency employee, or an executive agency employee, a gift of cash would nonetheless be prohibited by section 36.08 of the Penal Code, which contains a number of restrictions on gifts to public servants. Penal Code § 36.08. The definition of a public servant includes an officer of government and a candidate for nomination or election to a public office. *Id.* § 1.07(41). The exceptions to the restrictions do not include a gift of cash in any amount. *Id.* § 36.10.