



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 471

September 22, 2006

Whether an incorporated statewide organization may invite elected officials to address the organization's membership. (AOR - 536)

The Texas Ethics Commission has been asked to consider whether an incorporated organization with incorporated chapters may invite elected officials to address the organization's membership regarding issues of interest to the membership.

The request letter states that the elected officials whom the organization intends to invite have insight into the legislative proposals that may impact the organization and its members. The request letter also states that the intent of the organization is not to make a political contribution but rather to "educate" its membership by directly presenting the views of the state policymakers on relevant issues. Some of the officials have an opponent on the upcoming ballot and the request letter asks whether the organization is required to invite the opponent.

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 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. *Id.* § 251.001(2). There are two types of political contributions: campaign contributions and officeholder contributions. *Id.* § 251.001(3), (4), (5). A campaign contribution is a contribution to a candidate or political committee given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3). An officeholder contribution is a contribution to an officeholder or political committee offered or given with the intent that it be used to defray expenses incurred by the officeholder in performing a duty or engaging in an activity in connection with the office as long as those expenses are not reimbursable with public money. *Id.* § 251.001(4).

Anytime an officeholder benefits from money spent by a corporation, a fact question arises as to whether the corporation has made a political contribution to the officeholder. We recognize that in some circumstances an officeholder receives a thing of value if the officeholder is given the opportunity to attend an event and that whether the opportunity constitutes a political contribution depends on the intent with which the opportunity is provided.

In a 1993 advisory opinion, we concluded that a commercial sponsor that would be providing funding for a television program for a state representative with the intent that the state representative use the time to explain his position on legislative matters would be making an officeholder contribution. [Ethics Advisory Opinion No. 144](#) (1993). That conclusion was based on the fact that the officeholder essentially created and controlled the television program as a forum to communicate with his constituents. *Id.* We cautioned that the opinion did not apply to a situation in which the officeholder is merely a featured guest on an independently established program. *Id.*

In a 1996 advisory opinion, we concluded that a nonprofit organization would not be making a political contribution by providing an officeholder an opportunity to appear at the organization's fundraiser if the intent of

the organization was not to make a political contribution but rather that the officeholder's presence was desirable at the fundraiser as a "draw" for others to attend the fundraiser. [Ethics Advisory Opinion No. 346 \(1996\)](#).

The request letter states that the intent of the organization is not to make a political contribution but rather to "educate" its membership by directly presenting the views of an officeholder on issues of interest to the membership. The organization's stated intent is evidence that the organization does not intend to make a political contribution. However, actual intent may be determined by evidence other than the stated intent. Nevertheless, we conclude that if the intent of the organization is as stated in the request letter, and, if the officeholder does not create or control the presentation as a forum to communicate with his or her constituents or potential voters, then the organization would not be making a political contribution by providing the officeholder the opportunity to speak to the organization's membership. In our opinion, the officeholder would not be creating or controlling a presentation as a forum to communicate with his or her constituents or potential voters if the organization sets out to the officeholder the issues of interest to the membership and the officeholder addresses only those issues. We caution, however, that the organization would be making a prohibited political contribution by allowing the officeholder to essentially create or control the speaking engagement as a forum to communicate with his or her constituents or potential voters.

If the corporation does not make a political contribution to the officeholder, the laws under the Texas Ethics Commission's jurisdiction do not require the organization to invite the officeholder's opponent to the speaking engagement.

SUMMARY

Whether the provision of an opportunity to address a corporation's membership constitutes a political contribution depends on the intent with which the opportunity is provided. Intent is determined by facts, including the level of involvement of the officeholder to whom the opportunity is provided.