



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 475

June 29, 2007

Whether an incorporated local organization that is a member of an incorporated statewide organization may make donations to charities that match the amount of political contributions made by individual members of the local organization to the statewide organization's general-purpose political committee. (AOR – 537)

The Texas Ethics Commission has been asked whether an incorporated trade association (“association”) and its corporate members may undertake a particular “charitable match solicitation program.” The requestor states that the association is exempt from taxation under section 501(c)(6) of the Internal Revenue Code, has a membership consisting of federal and state-chartered dues-paying corporations throughout the state of Texas, and represents the interests of seven million individuals who are members of the association’s corporate members.

Under the proposed program, each corporate member of the association would make contributions to one of three or fewer charities selected in advance by the respective corporate member that match, “dollar-for-dollar,” the political contributions made by its individual members to the association’s general-purpose political committee. The requestor states that the “solicitation program” would be advertised to the solicitable class of each participating corporate member and that the association and/or the corporate members would inform the individual contributors and the recipient charities that the individuals may not receive any tax benefits as a result of the corporate member’s donation to a charity. The requestor also states that the association and/or the corporate members will also advise both the charities and the individual contributors that the contributors may not receive any financial or tangible benefit from the charities in exchange for the matching donation by the corporate member. The requestor asks whether such a solicitation program would be permissible under Texas law and contends that such a program should be permissible based on the Federal Election Commission’s approval of similar programs.¹ If a dollar-for-dollar match is not allowed, the requestor asked whether a match of a lesser amount would be permissible.

Under Texas law, corporations are generally prohibited from making political expenditures. *See* Elec. Code § 253.094. Costs incurred in generating contributions to a political committee are political expenditures. [Ethics Advisory Opinion No. 362](#) (1997). A corporation may, however, make political expenditures to finance the costs of soliciting political contributions to a general-purpose political committee assisted by the corporation from the members, employees, and stockholders of the corporation, and from the families of members, employees, and stockholders of the corporation. Elec. Code § 253.100(b). An incorporated member of a nonprofit trade association who pays membership dues to the association may also finance the solicitation of contributions to the association’s general-purpose political committee from its members, stockholders, and employees, and from the families of their members, stockholders, and employees. [Ethics Advisory Opinion Nos. 217](#) (1994), [163](#) (1993). In the case at hand, the “solicitable class” is at least seven million individuals. The legal issue in this opinion is whether making the charitable contributions according to the proposed solicitation program constitutes payment of a “solicitation cost” for purposes of section 253.100(b) of the Election Code.

Previous advisory opinions have not considered a program of the sort proposed by the requestor. We have determined that costs of food, beverages, invitations, and green fees for a fundraising event, as well as “small token prizes” for winning a skill contest at the event, are permissible solicitation costs. [Ethics Advisory Opinion No. 280](#) (1995). Expenses to set up a payroll deduction plan also constitute permissible solicitation costs. [Ethics Advisory Opinion No. 217](#) (1994). We must recognize, however, that not all inducements to contribute to a political committee are permissible solicitation costs for purposes of this exception.

We have previously stated that, in considering whether a prize or award to a corporate employee or group of corporate employees is a permissible solicitation cost, it is important to consider whether the award is tantamount to a reimbursement to the employees for their contributions. [Ethics Advisory Opinion No. 362](#) (1997). If the award is, in essence, reimbursement for contributions, payment of the award would not be a permissible solicitation cost but would instead be a prohibited contribution to the political committee from the corporation. *Id.* An additional, but no less important, consideration is whether a particular expenditure is likely to lead to abuse of the “solicitation costs” exception. [Ethics Advisory Opinion No. 280](#) (1995).

In the program at issue, the corporate members of the association would use matching charitable contributions as a means of encouraging individual members to make political contributions to the association’s political committee. Each individual member would be able to choose, out of a list of charities determined by the respective corporate member, which of the available charities would receive the corporate member’s contribution. It would be difficult to determine whether the charitable contribution made by the corporate member was made to replace contributions that individual members would otherwise have made to the charity. A replacement, in our opinion, would be tantamount to a reimbursement to the individual members, which we have previously said is not permissible. Consequently, we think that such a program may be likely to lead to abuse of the solicitation costs exception provided by section 253.100(b) of the Election Code.² It is our opinion that it would be unreasonable to interpret the solicitation costs exception to permit a corporation to make expenditures according to such a program. Therefore, the making of the charitable contributions according to the proposed solicitation program is not a permissible “solicitation cost” for purposes of section 253.100(b) of the Election Code.

The requestor also asks whether a program that uses a match less than “dollar-for-dollar” would be permissible. The basis of our opinion is not the amount spent by a corporation in relation to the amount spent by an individual member, but rather the likelihood of abuse that such a program would allow. A corporation may not solicit contributions to a political committee by making a charitable contribution in any amount.

SUMMARY

The making of charitable contributions according to the proposed solicitation program is not a permissible solicitation expense for purposes of section 253.100(b) of the Election Code.

¹ We are aware that we have consulted federal law for guidance regarding campaign finance issues that arise under Texas law; however, federal law does not compel a particular conclusion in this case.

² The requestor states that such a program is permissible under Texas law based upon the Federal Election Commission’s approval of similar programs. We note that although federal law may be consulted for guidance regarding campaign finance issues that arise under Texas law and that we are aware that we have consulted federal law for guidance in the past, federal law does not compel a particular conclusion in this case.