



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 479

February 12, 2008

Whether a general-purpose political committee may ask a candidate for the house of representatives questions concerning candidates for speaker of the house of representatives and whether the committee may base its decision to support or not to support the candidate for the house of representatives on the responses to those questions. (AOR – 542)

The Texas Ethics Commission (commission) has been asked whether Chapter 302 of the Government Code prohibits a Texas general-purpose political committee (committee) from asking a candidate for the house of representatives certain questions concerning candidates for speaker of the house of representatives and whether the committee may base its decision to support or not support the candidate for state representative on the responses to those questions.

The request letter states that the committee supports candidates from both major political parties and that it is interested in supporting candidates for the house of representatives that share the same or similar philosophy as the committee's contributors. The following are the specific questions presented by the requestor:

In light of Chapter 302 of the Government Code, may a representative of the committee ask a candidate for the house of representatives the following questions?

1. Will the candidate support or oppose any particular speaker candidate?
2. Has the candidate signed a pledge card to support any particular speaker candidate?
3. Will the candidate likely vote for a speaker candidate who has a particular political philosophy or voting record?
4. Is the candidate intending to or has the candidate agreed to support any speaker candidate?

The requestor also asks the following questions:

1. May the committee's decision to support or not support a candidate for the house of representatives be based solely on whether that candidate will support or oppose any particular speaker candidate?
2. May a committee's decision to support or not support a candidate for the house of representatives be based solely on whether that candidate has or has not signed a pledge card to support any particular speaker candidate?
3. May the committee consider the response to question number four listed above as one factor together with numerous other factors (such as demographics, policy position of all the candidates, funding sources, campaign staff, other candidates in the race, funding availability, and sources for other candidates, the work ethic of the candidate, the candidate's campaign staff, voting history of the district, etc.) in determining whether to support the candidate?

Chapter 302 of the Government Code regulates the election for the office of Speaker of the Texas House of Representatives and contains the legislative bribery prohibitions.

Section 302.032 of the Government Code states in pertinent part:

A person commits an offense if, with the intent to influence a member of or a candidate for the house of representatives in casting a vote for speaker of the house of representatives, the person:

(1) promises or agrees to cause:

...

(E) economic benefit to a person; or

(2) threatens to cause:

...

(E) the withholding of economic benefit from a person.

Gov't Code § 302.032.

Section 302.033 of the Government Code states in pertinent part:

A member of or candidate for the house of representatives commits an offense if, on the representation or understanding that the member or candidate will cast a vote for a particular person for speaker of the house of representatives, the member or candidate solicits, accepts, or agrees to accept:

...

(5) economic benefit to or withholding of economic benefit from a person.

Gov't Code § 302.033.

The term "economic benefit" means anything reasonably regarded as economic gain or advantage, including a campaign contribution. *Id.* § 302.031. A political contribution as defined by Title 15 of the Election Code¹ is an economic benefit.

An offense of the legislative bribery provisions is a felony punishable by imprisonment for not less than two years nor more than five years. *Id.* § 302.034.

It is clear that the legislature anticipated and intended to allow discussions regarding the speaker's race and specifically does not prohibit "a person from contacting or communicating with a member of or candidate for the house of representatives about a legislative matter; or a member of or candidate for the house from discussing, taking a position on, or advocating any action on a substantive issue in a speaker's race or any other legislative matter."*Id.* § 302.035.

We recognize that most general-purpose committees have as a principal purpose making political expenditures in the form of political contributions to candidates. Election Code §§ 251.001(12) and (14). What the committee may not do, however, is promise or agree to cause economic benefit to a person or threaten to cause the withholding of economic benefit from a person. Placing a candidate to whom the specific questions listed above

are asked on notice that the committee will base its decision on whether or not to support the candidate on the candidate's responses to those specific questions would constitute legislative bribery under Section 302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues. 1 T.A.C. § 8.3(c).

Similarly, a member of or candidate for the house of representatives commits an offense if, on the representation or understanding that the member or candidate will cast a vote for a particular person for speaker of the house of representatives, the member or candidate solicits, accepts, or agrees to accept an economic benefit or withholding of the economic benefit from a person. Gov't Code § 302.033.

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. Gov't Code § 571.097. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

Whether particular conduct crosses the line in violation of the legislative bribery provisions in Chapter 302 of the Government Code is for a trier of facts to decide after a consideration of all the relevant facts.

SUMMARY

Placing a candidate on notice that a general-purpose committee will base its decision on whether or not to support the candidate on the candidate's responses to the specific questions listed above would constitute legislative bribery under Section 302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues.

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

¹ There are two types of political contributions: campaign contributions and officeholder contributions. Elec. Code §§ 251.001(3), (4), (5). A campaign contribution is a contribution to a candidate or political committee offered or 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).