



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 485

October 15, 2009

Whether House Bill No. 2525 adopted during the regular session of the 81st Legislature prohibits a corporation from making expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under section 253.100(a) of the Election Code from the employees or families of employees of one or more corporations. (AOR-549)

The Texas Ethics Commission has been asked to consider the effects of amendments to title 15 of the Election Code that were made by the legislature during the 81st regular session when it adopted House Bill No. 2525 (HB 2525).¹ Specifically, section 253.100 of the Election Code was amended to enumerate specific expenditures that would or would not be permissible under that section.

Prior to the amendments, section 253.100 permitted a corporation to make certain political expenditures. It stated:

- (a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee.
- (b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, *employees*, or families of stockholders *or employees* of one or more corporations.
- (c) A labor organization may engage in activity authorized for a corporation by Subsections (a) and (b). For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

Elec. Code § 253.100 (emphasis added). In this prior form, subsection 253.100(a) permitted a corporation to make political expenditures to establish or assist a general-purpose committee. Subsection 253.100(b) permitted a corporation to use its resources to solicit political contributions to a general-purpose committee that it assists under section 253.100(a) from the corporation's stockholders, employees, or families of stockholders or employees. Section 253.100(c) provided that a labor organization may engage in the activity authorized for a corporation under sections 253.100(a) and (b).

As amended by HB 2525, section 253.100 now states:

- (a) A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose committee. *In addition to any other expenditure that is considered permissible under this section, a corporation may make an expenditure for the maintenance and operation of a general-purpose committee, including an expenditure for:*

(1) office space maintenance and repairs;

(2) telephone and Internet services;

(3) office equipment;

(4) utilities;

(5) general office and meeting supplies;

(6) salaries for routine clerical, data entry, and administrative assistance necessary for the proper administrative operation of the committee;

(7) legal and accounting fees for the committee's compliance with this title;

(8) routine administrative expenses incurred in establishing and administering a general-purpose political committee;

(9) management and supervision of the committee, including expenses incurred in holding meetings of the committee's governing body to interview candidates and make endorsements relating to the committee's support;

(10) the recording of committee decisions;

(11) expenses incurred in hosting candidate forums in which all candidates for a particular office in an election are invited to participate on the same terms; or

(12) expenses incurred in preparing and delivering committee contributions.

(b) A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under Subsection (a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

(c) A labor organization may engage in activity authorized for a corporation *by this section*. For purposes of this section, the members of a labor organization are considered to be corporate stockholders.

(d) A corporation or labor organization may not make expenditures under this section for:

(1) political consulting to support or oppose a candidate;

(2) telephoning or telephone banks to communicate with the public;

(3) brochures and direct mail supporting or opposing a candidate;

(4) partisan voter registration and get-out-the-vote drives;

(5) political fund-raising other than from its stockholders or members, as applicable, or the families of its stockholders or members;

(6) voter identification efforts, voter lists, or voter databases that include persons other than its stockholders or members, as applicable, or the families of its stockholders or members;

(7) polling designed to support or oppose a candidate other than of its stockholders or members, as applicable, or the families of its stockholders or members; or

(8) recruiting candidates.

(e) Subsection (d) does not apply to a corporation or labor organization making an expenditure to communicate with its stockholders or members, as applicable, or with the families of its stockholders or members as provided by Section 253.098.²

Elec. Code § 253.100, as amended by HB 2525 (changes in emphasis).

Section 253.100(a), as amended, now includes a list of permissible political expenditures by a corporation to finance the establishment or administration of a general-purpose committee. The list of expenditures does not include expenditures for political fundraising or for the solicitation of political contributions to a general-purpose committee. *See also*, Ethics Advisory Opinion No. 132 (1993) (determining that certain costs attributable to the solicitation of contributions or other support for a general-purpose committee, or for candidates or measures supported by the committee, would not be administrative expenses).

HB 2525 also added section 253.100(d), which provides a list of expenditures that a corporation *may not* make under section 253.100. The list of expenditures includes “political fund-raising other than from its stockholders or members, as applicable, or the families of its stockholders or members.” Elec. Code § 253.100(d)(5).

The requestor of this advisory opinion asks whether the addition of section 253.100(d)(5) in the list of expenditures that are not permitted by section 253.100 has nullified the provisions in subsection 253.100(b) with respect to employees and families of employees. A possible statutory conflict arises because section 253.100(b) states that a corporation may solicit political contributions to a general-purpose committee that it assists from the corporation’s stockholders, *employees*, or families of stockholders *or employees*, but section 253.100(d)(5) now states that a corporation is *not* permitted by section 253.100 to make expenditures for “political fund-raising other than from its stockholders or members . . . or the families of its stockholders or members.” In other words, the issue is whether by not including the terms “employees” and “families of . . . employees” in section 253.100(d)(5), the legislature intended to prohibit a corporation from soliciting political contributions to its general-purpose committee from its employees and their families.

In construing sections 253.100(b) and 253.100(d)(5), we are required to determine and give effect to the intent of the legislature.³ With any statute, it is presumed that the entire statute is intended to be effective, and in a case where there is an apparent conflict between a general provision and a special provision, effect is to be given to both if possible. Gov’t Code §§ 311.021(2), 311.026(a). If the conflict between the general provision and the special provision is irreconcilable, the special provision prevails. *Id.* § 311.026(b).

In our opinion, the legislature did not intend section 253.100(d) to prohibit a corporation from making expenditures to solicit political contributions from its employees or the families of its employees to a general-purpose committee that it assists under section 253.100(a). By amending section 253.100 and leaving section 253.100(b) completely intact, we think the legislature intended that section 253.100(b) remain fully in effect. Furthermore, if the legislature intended to prohibit what section 253.100(b) specifically states is permissible—that a corporation may solicit political contributions to a general-purpose committee it assists from its employees and their families—the legislature could have done so expressly by amending section 253.100(b) to remove the language relating to employees and their families. In addition, as a special provision relating to permissible political expenditures by corporations, section 253.100(b) must prevail to the extent that it cannot be reconciled with section 253.100(d)(5). In our opinion, the legislature did not intend HB 2525 to modify section 253.100(b), and section 253.100(b) remains fully in effect as it is written. Therefore, a corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under section 253.100(a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

SUMMARY

As amended by House Bill No. 2525, section 253.100(d)(5) of the Election Code does not prohibit a corporation from making expenditures to solicit political contributions from its employees or the families of its employees to a general-purpose committee that it assists under section 253.100(a). As provided by section 253.100(b) of the

Election Code, a corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose committee assisted under section 253.100(a) from the stockholders, employees, or families of stockholders or employees of one or more corporations.

¹ Act of June 3, 2009, 81st Leg., R.S., ch. 1306, § 1, 2009 Tex. Gen. Laws 4095 (effective September 1, 2009).

² Section 253.098(a) states:

A corporation or labor organization may make one or more direct campaign expenditures from its own property for the purpose of communicating directly with its stockholders or members, as applicable, or with the families of its stockholders or members.

³ Leland v. Brandal, 257 S.W.3d 204 (Tex. 2008).