



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 491

April 21, 2010

Whether an advertisement supporting or opposing a candidate that is paid for by a political committee and that appears on an Internet social networking website is required to include a political advertising disclosure statement if the social networking website limits the amount of space or number of characters or text that can be used in the advertisement. (AOR-554)

The campaign treasurer of a general-purpose political committee has asked the Texas Ethics Commission whether an advertisement supporting or opposing a candidate that is paid for by the political committee and that appears on an Internet social networking website is required to include a political advertising disclosure statement if the social networking website limits the amount of space or number of characters or text that can be used in the advertisement.

The requestor states that the political committee will be accepting contributions and making expenditures to purchase advertisements on social networking websites to help publicize a particular candidate. According to the requestor, the proposed type of advertisement would be made visible on a third-party website that is commonly referred to as a social networking website. The requestor states that any user of the website may purchase an advertisement and its content would be determined solely by the purchaser, subject to regulations of the website that would prohibit offensive material. A person who views the social networking website and interfaces with the advertisement by "clicking on" or otherwise activating the advertisement would be directed to another website determined by the purchaser of the advertisement.

The proposed advertisement is a rectangular space in which a picture of a candidate for a public office appears along with supportive statements about the candidate and a statement to vote for that candidate. The requestor would determine the picture, text, and any other content of the advertisement, including the specific website to which a person who clicks on the advertisement would be directed. The requestor would use the advertisement to support a candidate and direct a person who clicks on the advertisement to the candidate's campaign website.

The requestor also states that the social networking website limits the amount of characters permitted in an advertisement to 135 and states that including the full political advertising disclosure statement required by section 255.001 of the Election Code would not be feasible. Based upon the limitations of space in the advertisement, the requestor asks whether the political committee would be required to include a political advertising disclosure statement in each advertisement.

Section 255.001 of the Election Code provides, in relevant part, the following:

- (a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:
 - (1) that it is political advertising; and
 - (2) the full name of:

- (A) the person who paid for the political advertising;
- (B) the political committee authorizing the political advertising; or
- (C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

Elec. Code § 255.001

"Political advertising," for purposes of that provision, is defined as follows:

[A] communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

- (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (B) appears:
 - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) *on an Internet website.*

Id. § 251.001(16) (emphasis added).

The advertisement proposed by the requestor would be a communication that supports or opposes a candidate for public office and would appear on an Internet website. Thus, the advertisement would constitute political advertising. Additionally, the advertisement would be deemed to contain express advocacy because it would be authorized by a political committee. Therefore, the plain language of section 255.001(a) would require the advertisement to include a disclosure statement. However, due to the spatial constraints imposed on such an advertisement by the networking website, it may be difficult for the advertisement to include the full required disclosure statement. We have not previously addressed whether the political advertising disclosure requirement would apply to an Internet website in these circumstances.

Section 255.001(d) includes exceptions to the political advertising disclosure requirement. It states:

- (d) This section does not apply to:
 - (1) tickets or invitations to political fund-raising events;
 - (2) campaign buttons, pins, hats, or similar campaign materials; or
 - (3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

Id. § 255.001(d).¹ An Ethics Commission rule provides that the disclosure statement is not required on, "campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical." 1 TAC § 26.1(c).

The exceptions to the disclosure requirement provided by section 255.001(d) of the Election Code and the commission rule do not address an Internet website. Given that an Internet website and an advertisement on an Internet website are electronic media that were likely not contemplated by the exceptions, these communications do not appear to be similar to campaign buttons, pins, or hats for purposes of the disclosure requirement. However, the proposed advertisement is clearly a space subject to certain restrictions imposed by the social networking website that, in some cases, would make the printing or display of a full disclosure in the advertisement impractical without extensively limiting the amount of space available for the advertiser's political message.

In our opinion, under such constraints it is reasonable to allow the full disclosure to appear in a way that varies from the standard in order to permit more space for an advertiser to include a desired political message. To that end, the advertisement proposed by the requestor may comply with the disclosure requirement if either: 1) the full disclosure statement required by section 255.001(a) of the Election Code appears on the face of the advertisement or, in the alternative, 2) a direct link² to another Internet landing page that displays the full disclosure statement appears on the face of the advertisement and the direct link contains the words "political advertising," "pol ad," or another recognizable abbreviation. (In other words, the link must take the Internet user directly to the page that contains the full disclosure statement.)³ If the advertisement includes a direct link in order to comply with the disclosure requirement, the Internet landing page to which the direct link refers must be operational and freely accessible during the time the advertisement is visible on the social networking website.

As a commission, we aim to interpret the laws within our jurisdiction with an eye towards reasonableness and practicality in light of continual changes and advancements in technology. We think that the alternative method for providing a political advertising disclosure statement achieves that goal.

SUMMARY

The advertisement proposed by the requestor of this advisory opinion may comply with the disclosure requirement under section 255.001(a) of the Election Code if either: 1) the full disclosure statement appears on the face of the advertisement or, in the alternative, 2) a direct link to another Internet landing page that displays the full disclosure statement appears on the face of the advertisement and the direct link contains the words "political advertising," "pol ad," or another recognizable abbreviation. (In other words, the link must take the Internet user directly to the page that contains the full disclosure statement.) If the advertisement includes a direct link in order to comply with the disclosure requirement, the Internet landing page to which the direct link refers must be operational and freely accessible during the time the advertisement is visible on the social networking website.

¹ In several advisory opinions, we have considered whether the exception provided by section 255.001(d)(2) of the Election Code for campaign buttons, pins, hats, or similar campaign materials also applies to such materials as lapel stickers and emery boards or to materials intended to be worn. Ethics Advisory Opinion Nos. 435 (2001), 457 (2004). See also Ethics Advisory Opinion No. 184 (1994) (addressing legislative history of section 255.001(d) of the Election Code). Our previous advisory opinions have not addressed the requirement to include a disclosure statement on an Internet website.

² "Link" is shortened from "hyperlink." A hyperlink is defined as "[a]n element on a webpage – usually a word, phrase, or graphic, but sometimes a single pixel – that, when clicked on, takes the user to another part of the same website or to a different website." Black's Law Dictionary 759 (8th ed. 2004).

³ The disclosure statement required by Section 255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must appear on one line of text or on successive lines of text on the face of the political advertising. 1 TAC § 26.1(a).