



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 514

October 30, 2013

Applicable reporting requirements in a situation in which a candidate incurs a processing fee when accepting a political contribution by credit card. (AOR-580)

The Texas Ethics Commission (commission) has been asked about the reporting requirements applicable to a candidate who accepts a political contribution by credit card for which a processing fee is incurred.

The requestor states that a candidate for public office accepts political contributions by credit card and incurs a fee when the contributions are processed¹. Based on a prior agreement between the candidate and the credit card processing company, the processing company automatically deducts the processing fee from each contribution before the candidate receives the funds. For example, a donor makes a \$100 political contribution by credit card to a candidate. After the contribution is made, the credit card processing company charges the candidate a \$5 processing fee and deducts the fee from the contribution amount, so the candidate ultimately receives \$95. The requestor has stipulated that the donor intends to make a \$100 political contribution and that there would be “campaign reply devices” by which the donor can confirm the amount that they intend to contribute. The requestor asks how the candidate should report the transaction.

A candidate must report any political contributions that he or she accepts. Elec. Code § 254.031. Political contributions are of two types: campaign contributions and officeholder contributions. Id. § 251.001(5). A campaign contribution is, in relevant part, a contribution given with the intent that it be used in connection with a campaign for an elective office. Id. § 251.001(3)². A candidate must also report any political expenditure that he or she makes. Id. § 254.031. Political expenditures are of two types: campaign expenditures and officeholder expenditures. A campaign expenditure is, in relevant part, an expenditure made by any person in connection with a campaign for an elective office³. Id. § 251.001(7).

In the facts before us, the donor intends the full \$100 contribution as a political contribution to the candidate. Accordingly, the candidate must report the \$100 as a political contribution. As to the \$5 processing fee, although the fee is deducted from the political contribution before the candidate receives the funds, the candidate is nonetheless making a political expenditure to the credit card processing company based on a prior agreement. Accordingly, the candidate must report the processing fee as a political expenditure.

SUMMARY

A candidate who accepts a political contribution by credit card must report as a political contribution the full amount that the donor intends to contribute. If, based on a prior agreement with the credit card processing company, the candidate incurs a processing fee that is deducted from the contribution, the candidate must report the processing fee as a political expenditure.

¹ The procedure outlined by the requestor would presumably contain screening measures to ensure that the political contributions are from permissible sources and are within any applicable contribution limits. In addition, the procedure would presumably allow the candidate to obtain the contributor information necessary to comply with the reporting requirements of Title 15 of the Election Code. See, e.g., Ethics Advisory Opinion No. 510 (2013).

² An officeholder contribution is a contribution to an officeholder given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. Id. § 251.001(4).

³ An officeholder expenditure is an expenditure made by any person to defray expenses that: (A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money. Id. § 251.001(9).