



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 515

*February 13, 2014*

*Questions regarding the reporting requirements for a registered lobbyist under section 305.005(m) of the Government Code. (AOR-581, AOR-582)*

The Texas Ethics Commission (commission) has received questions concerning the requirements for a registered lobbyist (registrant) to disclose each person who compensates or reimburses the registrant for services from political contributions.

A registrant is required to file with the commission a registration that discloses certain information about the registrant and each person who reimburses, retains, or employs the registrant to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action and on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.005(f). During the 2013 regular legislative session, section 305.005 of the Government Code was amended as follows:

The registration form must include the full name and address of each person who compensates or reimburses the registrant or person acting as an agent for the registrant for services, including political consulting services, rendered by the registrant from:

- (1) a political contribution as defined by Title 15, Election Code;
  - (2) interest received from a political contribution as defined by Title 15, Election Code;
- or
- (3) an asset purchased with a political contribution as defined by Title 15, Election Code.

Gov't Code § 305.005(m).<sup>1</sup> Act of May 9, 2013, 83rd Leg., R.S., ch. 147 (H.B. 1422), §1, 2013 Tex. Gen. Laws 574. The requestors of this advisory opinion ask whether this statute requires a registrant to disclose additional information in two related scenarios.

In the first scenario, a registrant lobbies on behalf of an entity as either an employee or independent contractor. The registrant does not provide political consulting services to candidates or officeholders. The entity, however, provides services to legislative candidates and officeholders who use political contributions to pay the entity for those services. The entity compensates the registrant from funds that include revenue received from those candidates and officeholders. The requestor asks whether under the new requirement, the registrant must disclose the candidates and officeholders who use political contributions to pay the entity for services. The requestor also asks whether the disclosure requirement applies only to compensation or reimbursement for political consulting services that are personally provided by the registrant.

In the second scenario, a registrant is employed by a corporation that provides various campaign services to candidates. In some instances, the registrant may assist in providing political consulting services to the candidates on behalf of the corporation. The corporation receives compensation from the candidates who use political contributions to pay the corporation. The requestor proposes that the corporation deposits this compensation with other revenues in its treasury and uses funds in the same account to compensate the registrant

as an employee of the corporation. The requestor asks whether the registrant is required to disclose that the corporation, or the corporation's clients, compensates or reimburses the registrant from funds that may include political contributions.

### **Types of Services to Which Disclosure Applies**

According to the plain language of the statute at issue, the disclosure requirement applies when a registrant is compensated or reimbursed "for services, including political consulting services." We think the statutory reference to "political consulting services" was intended to provide one example of a type of service to which the disclosure requirement applies, and we find no indication that the legislature intended to limit the requirement to political consulting services only. *See* Gov't Code § 311.005(13) ("Includes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are included."). Thus, a registrant must disclose in a registration the full name and address of any person who compensates or reimburses the registrant for any kind of services rendered by the registrant from political contributions.

### **Compensation or Reimbursement for Services to Which Disclosure Applies**

The relevant statutory language of the disclosure requirement states that a registrant must disclose "each person who ... compensates or reimburses the registrant ... for services ... rendered by the registrant from a political contribution." The statute clearly requires a registrant to disclose the name of a candidate or officeholder who uses political contributions to directly pay the registrant for services rendered by the registrant to that person.

However, the statute does not specifically address funds paid to the registrant's employer as described in the second scenario.<sup>2</sup> It has been suggested that the disclosure requirement should not apply in circumstances in which a person uses political contributions to pay a registrant's employer because the registrant would be receiving compensation from the employer's profits, not from political contributions. The legislative history of H.B. 1422 indicates that the legislature intended the law, in part, to minimize possible conflicts of interest involving registrants and members of the legislature by requiring registrants to disclose the services they provide to legislators in exchange for compensation that is paid from political contributions. Senate Comm. on State Affairs and House Comm. on Elections, Bill Analyses, Tex. H.B. 1422, 83rd Leg., R.S. (2013).<sup>3</sup>

If a candidate or officeholder uses political contributions to compensate or reimburse an entity for services that are performed by an entity employee who is also a registrant, the contributions may indirectly benefit the registrant. We think that requiring a registrant to disclose that compensation or reimbursement is consistent with the statute's intended purpose.<sup>4</sup> Therefore, in our opinion, a registrant who receives compensation or reimbursement from an entity for services that the registrant renders to a candidate or officeholder must disclose the full name and address of that candidate or officeholder if the candidate or officeholder uses political contributions to compensate the entity for the registrant's services. The disclosure requirement equally applies to a registrant who receives compensation or reimbursement from an entity as a contractor for performing services for a candidate or officeholder who uses political contributions to pay the entity for those services. However, a registrant is not required to disclose compensation or reimbursement paid by a candidate or officeholder to an entity for services provided by someone other than the registrant or a person acting as an agent of the registrant.

## **SUMMARY**

A registrant must disclose in a registration the full name and address of a candidate or officeholder who uses political contributions to compensate or reimburse the registrant for services rendered by the registrant. A registrant must also disclose the full name and address of a candidate or officeholder who uses political contributions to compensate or reimburse an entity that employs or hires the registrant to render services for the candidate or officeholder. A registrant is not required to disclose compensation or reimbursement received by an entity for services rendered by someone other than the registrant or a person acting as an agent of the registrant.

<sup>1</sup> Title 15 of the Election Code defines a “political contribution” as a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). A campaign contribution is a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Id. § 251.001(3). An officeholder contribution is a contribution to an officeholder or political committee that is offered or 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).

<sup>2</sup> Section 305.005(m) of the Government Code specifically requires disclosure of compensation paid to an agent for the registrant for services rendered by the registrant. Section 305.005(j) requires a registrant who is employed, reimbursed, or retained by a business entity engaged in the representation of clients for the purpose of influencing legislation or administrative action to disclose each client on whose behalf the registrant communicated directly with a member of the legislative or executive branch. *See also* Ethics Commission Rules § 34.65.

<sup>3</sup> *See also* Hearings on H.B. 1422 Before the Senate Comm. on State Affairs, 83rd Leg., R.S. (May 2, 2013) and Before the House Comm. on Elections, 83rd Leg., R.S. (March 4, 2013) (audio recordings available from Senate Staff Services and House Communications Video/Audio Services, respectively).

<sup>4</sup> In construing a statute, we may consider that legislative history, regardless of whether the statute is ambiguous on its face. Gov’t Code § 311.023.