



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 519

*August 21, 2014*

*Whether a candidate may accept an in-kind political contribution from an out-of-state political committee. (AOR-587)*

The Texas Ethics Commission (“commission”) has been asked whether a candidate for public office in Texas may accept an in-kind political contribution from an out-of-state political committee that is not currently registered with the Federal Election Commission.

An out-of-state political committee is a political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee’s total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

Elec. Code § 251.001(15).<sup>1</sup>

“Political contribution” means a campaign contribution or officeholder contribution. *Id.* § 251.001(5). A contribution is, in relevant part, a direct or indirect transfer of money, goods, services, or any other thing of value. Elec. Code § 251.001(2). A contribution of goods, services, or any other thing of value, except money, is an in-kind contribution. 1 T.A.C. 20.1(8).

Title 15 of the Election Code does not prohibit a candidate from accepting an in-kind political contribution from an out-of-state political committee if the contribution is made from a permissible source and the candidate properly complies with applicable disclosure requirements.<sup>2</sup> To determine what disclosure requirements apply, the candidate must determine whether the total amount of political contributions accepted from the out-of-state committee during the reporting period exceeds \$500, including the fair market value of the in-kind contribution and any monetary contributions.<sup>3</sup> Before accepting political contributions totaling more than \$500 in a reporting period, including the value of any in-kind contributions, from an out-of-state political committee, a candidate must receive certain information from the out-of-state political committee.<sup>4</sup> A candidate must also include certain information about the out-of-state political committee in a campaign finance report covering the period in which a contribution is accepted.<sup>5</sup>

### SUMMARY

Title 15 of the Election Code does not prohibit a candidate from accepting an in-kind political contribution from an out-of-state political committee if the contribution is made from a permissible source and the candidate properly complies with the applicable disclosure requirements.

<sup>1</sup> Generally, an out-of-state political committee is not required to file a campaign treasurer appointment or campaign finance reports with the commission. Elec. Code § 251.005(a).

<sup>2</sup> We assume that the contribution is not made from corporate or labor organization resources. *See, e.g.*, Elec. Code § 253.094(a) (prohibiting a political contribution to a candidate from a corporation or labor organization).

<sup>3</sup> For reporting purposes, the value of an in-kind contribution is the fair market value. *Id.* § 20.51(a).

<sup>4</sup> In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee: (1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or (2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. Elec. Code § 253.032(a); 1 T.A.C. §§ 22.7(a), (b).

<sup>5</sup> A candidate, officeholder, or political committee shall include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies. Elec. Code § 253.032(d); 1 T.A.C. § 22.7(c). *See also* 1 T.A.C. § 22.7(d) (addressing disclosure requirements when accepting political contributions from an out-of-state political committee exceeding \$500 in successive reporting periods).

A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted: (1) the same information for the out-of-state political committee required for general-purpose committees by Sections 252.002 and 252.003; or (2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. Elec. Code § 253.032(e); 1 T.A.C. § 22.7(e) (listing the information that must be included).

A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission may comply with the additional disclosure requirements by entering the out-of-state committee's federal PAC identification number in the appropriate place on the report. 1 T.A.C. § 20.29(a). A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee that is not required to file its statement of organization with the Federal Elections Commission may comply with the additional disclosure requirements by: (1) entering the required information on the report filed by electronic transfer; or (2) timely filing a paper copy of the required information. *Id.* § 20.29(b).

The additional disclosure requirements do not apply to a contribution from an out-of-state political committee if the committee appointed a campaign treasurer under Chapter 252 before the contribution was made and is subject to the reporting requirements of Chapter 254. Elec. Code § 253.032(b); 1 T.A.C. § 22.7(f).