



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 527

*June 11, 2015*

*Whether a general-purpose committee may use political contributions accepted from a corporation to make contributions to a political party. (AOR-598)*

The Texas Ethics Commission has been asked whether a general-purpose committee may use corporate contributions to make contributions to a statewide political party and, if permissible, how such expenditures must be reported.

The requestor of this opinion states that the committee has “accepted corporate contributions in accordance with the rules established under [campaign finance law] and applicable [commission] advisory opinions” and wishes to use some of the contributions to pay for administrative costs incurred by the political party. The requestor states that the contributions “are maintained in a bank account separate from the [committee]’s general purpose account.”<sup>1</sup> The requestor states that the contemplated expenditures would not be used to support or oppose candidates or measures.

Title 15 of the Election Code, the state campaign finance law, strictly regulates political contributions made by corporations to political committees.<sup>2</sup> A corporation is prohibited from making a political contribution that is not authorized by subchapter D, chapter 253, of the Election Code. Elec. Code § 253.094(a). A corporation may not make a political contribution to a candidate or officeholder, but may make one or more political expenditures to finance the establishment or administration of a general-purpose committee and may make an expenditure for the maintenance and operation of a general-purpose committee, including certain listed purposes.<sup>3</sup> *Id.* § 253.100(a).<sup>4</sup>

A corporation may also make a contribution from its own property to a political party to be used only to defray normal overhead and administrative or operating costs incurred by the party or administer a primary election or convention held by the party. *Id.* §§ 253.104(a), 257.002(a). Similarly, the corporate contribution accepted by the political party may only be used for those purposes. *Id.* §§ 257.002(a), .006. Such contributions may not be made or accepted during the period beginning on the 60th day before the date of a general election for state and county officers and continuing through the day of the election. *Id.* §§ 253.104(c), 257.004(a).<sup>5</sup> A political party must also maintain such contributions in a separate account. *Id.* § 257.002(b). The political party must report all contributions and expenditures made to and from the account with the same information that would be required as if the contributions or expenditures were political contributions or political expenditures. *Id.* § 257.003.

In Ethics Advisory Opinion No. 176, we held that a political party may accept contributions from corporations, or from general-purpose committees established by corporations, for the purpose of obtaining a permanent party headquarters. Ethics Advisory Opinion No. 176 (1993) (EAO 176). We also held that a general-purpose committee established or administered by one or more corporations may contribute to a political party’s efforts to raise money for a headquarters, but that the committee could not use funds it accepts from a corporation to contribute to a political party. *Id.* at n.4.

The specific question presented by the requestor is whether the committee may use political contributions it accepted from one or more corporations for its own administration to contribute to the political party for the party's administrative costs.<sup>6</sup> As we previously held in EAO 176, the answer is no. Title 15 restricts the transfer of corporate treasury funds into the political process. See Ethics Advisory Opinion Nos. 383 (1997) (corporate contribution restrictions apply to a limited liability company owned in whole or in part by a corporation), 221 (1994) (corporate contribution restrictions apply to a partnership with one or more corporate partners). We have previously recognized that the Texas Legislature intended the laws under our jurisdiction to prohibit political expenditures made by corporations to the full extent allowed by the United States Constitution, as interpreted by the United States Supreme Court. Ethics Advisory Opinion No. 489 (2010).<sup>7</sup> Such restrictions apply to political contributions made by a corporation to a general-purpose committee and limit the committee's subsequent use of such funds for political purposes. Title 15 does not specifically authorize a corporation to contribute to a general-purpose committee for the purpose of subsequently contributing those funds to a political party. Additionally, a contribution by a general-purpose committee to a political party for the party's own administrative costs would not be made for the establishment, administration, maintenance, or operation of the committee. Thus, we find no authority for a general-purpose committee to use the corporate contributions in question to make a contribution to a political party for the party's administrative expenses.

Furthermore, we note that the campaign finance law requires the campaign treasurer of any general-purpose committee to disclose its political contributions, political expenditures, and nonpolitical expenditures made from political contributions. *Id.* §§ 254.031, .151. Similarly, the chair of a political party must disclose contributions the party accepts from a corporation, including the name of the corporation, and any expenditure it makes from such contributions. *Id.* § 257.003; 1 Tex. Admin. Code §§ 50.521-.531.<sup>8</sup> A general-purpose committee that makes an expenditure from corporate contributions is not required to disclose to the recipient of the expenditure that the expenditure is made from corporate funds, nor is there a requirement to disclose the name of the corporation providing the funds. The restrictions on corporate contributions to political committees and political parties, and on subsequent transfers of corporate funds from political committees to political parties, further the purposes of title 15 by limiting the possibility of circumventing contribution limits and disclosure requirements by corporations, political committees, and political parties.

Considering the facts as presented by the requestor, and in accordance with our previous determination regarding this issue, the general-purpose committee may not use its corporate contributions to make a contribution to the political party for the party's administrative costs.

## SUMMARY

A general-purpose committee may not use political contributions accepted from a corporation for its own administration to make a contribution to a political party for the party's administrative costs.

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<sup>1</sup> For purposes of this opinion, we assume that the contributions at issue were made by one or more corporations for the specific purpose of financing the establishment or administration of the committee in accordance with section 253.100(a) of the Election Code.

<sup>2</sup> See Elec. Code ch. 253, subch. D.

<sup>3</sup> Permissible expenditures include: (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. *Id.* § 253.100(a).

Section 253.100 does not permit a corporation to make an expenditure for the following purposes: (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. *Id.* § 253.100(d).

<sup>4</sup> A corporation may also make political expenditures to finance the solicitation of political contributions to a general-purpose committee it assists under section 253.100(a) of the Election Code from certain persons. *Id.* § 253.100(b).

<sup>5</sup> A political party may not make an expenditure from a corporate contribution during the same period. *Id.* § 257.004(a).

<sup>6</sup> We assume that none of the contributions made to, nor any of the expenditures contemplated by, the committee are or would be made in the name of or on behalf of a corporation or any other person. See Elec. Code § 253.001(a) (prohibiting a person from knowingly making or authorizing a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure), .001(b) (prohibiting a person from knowingly making or authorizing a political expenditure in the name of or on behalf of another unless the person discloses in writing to the person on whose behalf the expenditure is made the name and address of the person actually making the expenditure in order for the person on whose behalf the expenditure is made to make the proper disclosure).

<sup>7</sup> Section 253.094 of the Election Code previously prohibited a corporation from making a political contribution or political expenditure that is not authorized by chapter 253, subchapter D, of the Election Code. Following the United States Supreme Court decision *Citizens United v. Federal Election Commission*, the statute was amended to only prohibit a corporation from making an unauthorized political contribution. Acts 2011, 82nd Leg., R.S., ch. 1009, § 2 (eff. June 17, 2011). *Citizens United* held that a federal law restricting “corporate independent expenditures” was unconstitutional. *Citizens United v. Federal Election Commission*, 558 U.S. 310, 365-66 (2010). However, the Court did not prohibit restrictions on or disclosure requirements for political contributions made by corporations. *Id.* at 367-72. *Citizens United* also distinguished its holding regarding independent expenditures from the separate issue of restricting contributions to political parties. *Id.* at 360-61 (citing *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003) (recognizing that certain donations to political parties were made to gain access to federal elected officials)). This opinion concerns restrictions on political committees using corporate funds to contribute to a political party, not independent expenditures, which are analogous to direct campaign expenditures in Texas law. See Elec. Code § 251.001(8) (defining a direct campaign expenditure as a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure).

<sup>8</sup> The campaign treasurer of an executive committee established by a political party must file separate campaign finance reports. See Elec. Code §§ 253.031(d), 253.163; 1 Tex. Admin. Code §§ 20.501, 20.503, 20.551-.561.