



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 528

*June 11, 2015*

*Whether a general-purpose committee may use political contributions accepted from a corporation to compensate a person for providing lobbying services to the corporation. (AOR-599)*

The Texas Ethics Commission has been asked whether a general-purpose committee may use a political contribution accepted from a corporation to compensate a person for providing lobbying services to the corporation and, if permissible, how the committee must report such payments of compensation.

The requestor of this opinion states that the committee is operated and maintained by the corporation and “receives contributions from corporations as permitted under [campaign finance law] for the establishment and administration of the committee” that are kept “in a separate bank account from its general purpose account.”<sup>1</sup> The requestor states that the committee wishes to use a portion of the corporate contributions to retain an individual who is required to register as a lobbyist under the state lobby law and who would “register and advocate on behalf of the [corporation].”<sup>2</sup> The requestor states that the committee’s corporate funds would be used to offset a portion of the corporation’s costs for lobbying services and that the lobbyist’s activities would be disclosed as required by the lobby law. The requestor states that the payments for the lobbyist’s services would not be made to support or oppose candidates or measures.

The campaign finance law, at title 15 of the Election Code, regulates a political committee’s activities that relate to accepting political contributions and making political expenditures.<sup>3</sup> Title 15 strictly regulates any political contribution given by a corporation to a general-purpose committee, including an expenditure made to finance the committee’s administrative expenses. *See* Elec. Code ch. 253, subch. D. Title 15 does not regulate other nonpolitical activities of political committees. Ethics Advisory Opinion Nos. 168 (1993) (EAO 168), 131 (1993) (EAO 131).

In EAO 131, we held that a contribution given to a general-purpose committee with the restriction that it be used to hire a lobbyist to influence legislators in regard to legislation would not be a political contribution. EAO 131. In that opinion, we implicitly recognized that an expenditure made by a general-purpose committee to pay a lobbyist to influence legislators in regard to legislation is not a political expenditure. As title 15 would not prohibit a corporation from giving a contribution to a general-purpose committee that is restricted to nonpolitical purposes, a corporation would equally be permitted to give a contribution to a general-purpose committee for the purpose of hiring a lobbyist. *See* EAO 168.

In the requestor’s circumstances, the committee accepted contributions from one or more corporations that were intended to be used to pay for the committee’s administrative expenses. For that reason, the contributions are political contributions and must be disclosed as political contributions.<sup>4</sup> However, the committee’s use of the contributions to hire a lobbyist would be for a nonpolitical purpose that is not regulated by title 15. Accordingly, title 15 would not prohibit the committee from using the corporate contributions to compensate the lobbyist for providing lobbying services. However, the committee’s campaign treasurer would be required to fully itemize the expenditure. Elec. Code § 254.031(a)(4); EAO 131, n.3.<sup>5</sup> In such a case, the purposes of disclosing the contributions and expenditures would be satisfied. Therefore, considering only the facts presented by the

requestor, it is our opinion that title 15 would not prohibit the committee from using a political contribution that is legally given and accepted from a corporation for the purpose of financing the establishment or administration of the committee to compensate an individual for providing lobbying services to a corporation.

The requestor also asks whether the committee's payment to the lobbyist would require the committee to register under the state lobby law.<sup>6</sup> A person<sup>7</sup> must register as a lobbyist if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than \$1,000 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.003(a)(2); 1 T.A.C. § 34.43(a). A person is also required to register if the person's compensation exceeds the amount triggering registration and the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. Gov't Code § 305.003(b).<sup>8</sup>

The requestor states that the corporate contributions to the committee were given for the specific purpose of financing the committee's administrative expenses. Assuming that is the case, and that the funds were not provided to the committee for the purpose of compensating a lobbyist, the committee would not be required to register solely by using the contributions to compensate the lobbyist.<sup>9</sup>

## SUMMARY

Title 15 does not prohibit a general-purpose committee from using a political contribution that was legally given and accepted from a corporation, for the purpose of financing the establishment or administration of the committee, to compensate an individual lobbyist for providing lobbying services to a corporation. Assuming that the contributions to the committee were given for the specific purpose of financing the committee's administrative expenses, and that the funds were not provided to the committee for the purpose of compensating a lobbyist, the committee would not be required to register solely by using the contributions to compensate the lobbyist.

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<sup>1</sup> The requestor does not specify whether any of the corporate contributions were accepted from the corporation that operates and maintains the committee. 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> We assume that none of the corporate contributions to the committee are or would be made in the name of or on behalf of 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). *See also* Ethics Advisory Opinion Nos. 108 (1992) (a contribution from a partnership does not become a corporate contribution simply because the partnership uses a corporation to manage and disburse its funds), 38 (1992) (noting a federal rule providing that a contribution directed through an intermediary or conduit is a contribution from the person directing the contribution through the conduit or intermediary).

<sup>3</sup> A campaign contribution is a direct or indirect transfer of money, goods, services, or any other thing of value 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. Elec. Code § 251.001(2), (3). An officeholder contribution is a direct or indirect transfer of money, goods, services, or any other thing of value 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(2), (4).

<sup>4</sup> Elec. Code § 254.031(a).

<sup>5</sup> The report must include the amount of each payment made during the reporting period, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. Elec. Code § 254.031(a)(4).

<sup>6</sup> The requestor suggests that the committee would be exempt from required registration by section 305.004(4). That exception applies to a person whose only activity to influence legislation or administrative action is to compensate or reimburse an individual registrant to act in the person's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.004(4). If the committee's only activity covered by the lobby law is to compensate the lobbyist to act on the *committee's behalf* to make lobby communications, then the exception would apply.

<sup>7</sup> A "person" includes an entity. Gov't Code § 305.002(8) ("person" means an individual, corporation, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert). *See also* Ethics Advisory Opinion No. 89, n.1 (1992) (an organization can, acting through its agents, communicate and may sometimes be required to register).

<sup>8</sup> A person must also register with the commission if the person makes total expenditures of more than \$500 in a calendar quarter, not including expenditures for the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.003(a)(1); 1 T.A.C. § 34.41(a). Because the request for this opinion does not describe any expenditures, we do not consider the application of the expenditure threshold in this opinion.

<sup>9</sup> Depending on the specific facts, an entity that serves another entity merely as a conduit for making lobby communications may be required to register and disclose the funds provided for that purpose. *See, e.g.*, Ethics Advisory Opinion Nos. 99 (1992) (a registered membership organization that is merely a conduit for making lobby expenditures and allowing member organizations to communicate with legislators must identify the member organizations as clients), 91 (1992) (an organization that receives funds earmarked by corporate underwriters to use for a reception to communicate with legislators may be required to disclose the underwriters as clients on its registration).