



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 529

August 7, 2015

*Regarding the legislative advertising disclosure requirements for legislative advertising that is broadcast pursuant to a contract personally signed by an individual on behalf of a corporation.
(AOR-600)*

The Texas Ethics Commission (“commission”) has been asked about the disclosure requirements for legislative advertising in particular circumstances. The requestor of this opinion states that a nonprofit corporation intends to purchase legislative advertising to be broadcast on radio or television. The requestor states that the corporation’s bylaws “provide that the [b]oard of [d]irectors may authorize any officer or agent of the corporation to enter into certain contracts by executing and delivering a contractual instrument in the name and on behalf of the corporation.” The board of directors has authorized an officer or agent of the corporation to “enter into the requisite contract on behalf of the corporation” to purchase the advertising. The corporation will be a party to the contract or agreement, but the individual signing the contract will not be a party to the contract and, pursuant to the corporation’s bylaws, will not incur personal liability to the corporation by signing the contract. The payment for the legislative advertising will be issued in the name of the corporation.

The requestor asks the following two questions, based on the presented facts:

1. If a corporation enters into a contract for legislative advertising, does section 305.027 of the Government Code require that the signatory’s personal name be included in the legislative advertising disclaimer?
2. If the signatory’s personal name is required to be included in the legislative advertising but is knowingly omitted from the disclaimer, which “person” has committed the offense established by section 305.027(a) - the signatory or the corporation?

Section 305.027 of the Government Code provides, in relevant part, the following:

(a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not indicate in the advertising:

- (1) that it is legislative advertising;
- (2) the full name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster and the name of the person, if any, that the individual represents; and
- (3) in the case of advertising that is printed or published, the address of the individual who personally entered into the agreement with the printer or publisher and the address of the person, if any, that the individual represents.

...

(e) In this section, “legislative advertising” means a communication that supports, opposes, or proposes legislation and that:

- (1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication.

Gov’t. Code §§ 305.027(a), (e).

Regarding the first question, the relevant statutory language requires legislative advertising to include “the full name of *the individual who personally entered into the contract*” with the broadcaster, as well as the name of the person whom the individual represents. Id. § 305.027(a)(2) (emphasis added). The legislature has not defined the phrase “enter into a contract” for purposes of that requirement.¹ However, in our opinion, the statute clearly anticipates that an individual can *personally* enter into a contract on behalf of another and requires disclosure of the names of both persons in those circumstances. Thus, the name of the individual who personally enters into the contract on behalf of the corporation must appear in the disclosure statement, in addition to the name of the corporation.²

Regarding the second question, the requestor suggests that, in the circumstances presented, only the corporation would be legally responsible for ensuring that the legislative advertising includes the required disclosure. According to the statute’s plain language, the disclosure requirement would apply to a person, which includes an individual or a corporation,³ who knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising that does not include the required disclosure. Therefore, in our opinion, an individual or corporation who knowingly enters into such a contract commits a violation if the advertising does not include the required disclosure.⁴

SUMMARY

Section 305.027 of the Government Code requires legislative advertising to indicate the name of an individual who personally enters into a contract on behalf of a nonprofit corporation to broadcast the advertising, in addition to the name of the corporation. An individual or corporation who knowingly enters into such a contract commits a violation if the advertising does not include the required disclosure.

¹ To “enter” a contract can mean to “become a party to” the contract. See Black’s Law Dictionary 572 (8th ed. 2004). However, “entering into” a contract is not exclusively understood in such narrow terms. See, e.g., *Ex parte Chambers*, 898 S.W.2d 257, 258 (Tex. 1995) (referring to a corporate employee “enter[ing] into an agreement” in connection with his employment with a corporation); *Fortenberry v. Cavanaugh*, 2008 Tex. App. LEXIS 8872, 8 (Tex. App.—Austin Nov. 26, 2008) (mem. op.) (multiple references to an employee entering into contracts on behalf of a corporation); *Digital Ally, Inc. v. Z3 Technology, LLC*, 754 F.3d 802, 813-14 (10th Cir. 2014) (discussing a vice president’s authority to “enter into” a contract on behalf of a corporation); *Flexfab, L.L.C., v. United States*, 424 F.3d 1254, 1260-61 (D.C. Cir. 2005) (discussing federal employees’ authority to “enter into” and sign contracts on behalf of federal agencies). As indicated by the requestor’s facts, a corporation may also adopt bylaws that specifically authorize an agent to “enter into” a contract on its behalf. See also, *Fortenberry*, 2008 Tex. App. LEXIS 2272, at 42.

² The requestor suggests that the disclosure must include the name of only the corporation because the corporation is the party to the contract and the individual signing the contract does not incur liability to the corporation by signing the contract. However, there is no indication that the legislature intended to limit the disclosure statement to the name of the party to a contract

³ “Person” means an individual, corporation, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert. Gov’t Code § 305.002(8).

⁴ The legislature has provided an exception for the broadcaster, printer, or publisher of the advertising or a professional advertising agent seeking to procure the advertising on behalf of the sponsor of the advertising if certain notice is provided to the sponsor. *Id.* §§ 305.027(b)-(d).