



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 542

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*March 30, 2017*

*Regarding the reporting requirements and the legislative moratorium on contributions as applied to the misappropriation and return of legislative caucus contributions. (AOR-620)*

A legislative caucus<sup>1</sup> asks the Texas Ethics Commission (commission) whether the misappropriation and return of the caucus's contributions must be reported. Secondly, the caucus asks whether the return of the contributions violates the statutory moratorium on contributions from non-members of the caucus.

The caucus states that a caucus employee misappropriated funds in the caucus's bank account over a period of three years by making various unauthorized expenditures for air travel, hotel accommodations, dining, ground transportation, and cash advances without the prior knowledge or consent of the caucus. The caucus terminated the employee and took necessary steps to secure its accounts and ensure that no further access was granted to the employee. The caucus asks the following questions:

1. Whether the misappropriation of the funds belonging to the caucus is a reportable expenditure.
2. Whether the return of the funds is a reportable contribution.
3. Whether the caucus may accept the return of the funds during the legislative moratorium.

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<sup>1</sup> A legislative caucus is defined as an organization that is composed exclusively of members of the legislature, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. The term includes an entity established by or for a legislative caucus to conduct research, education, or any other caucus activity. An organization whose only nonlegislator members are the lieutenant governor or the governor remains a "legislative caucus." Elec. Code § 253.0341(e).

## Analysis

### Reporting by the Legislative Caucus

Section 254.0311 of the Election Code requires a legislative caucus to file semiannual reports with the commission including, in part, “the amount of expenditures ... that are made during the reporting period,” including an itemization of expenditures that in the aggregate exceed \$50 and other total amounts of expenditures made during the reporting period. Elec. Code § 254.0311(b)(3)-(5). A report must also include, in part, “the amount of contributions ... that are accepted during the reporting period by the legislative caucus” from persons who are not caucus members. *Id.* § 254.0311(b)(1). A report must also include “the total amount or a specific listing of contributions of \$50 or less accepted from persons other than caucus members” and “the total amount of all contributions accepted.” *Id.* § 254.0311(b)(4), (5).

An “expenditure” is defined, in part, as “a payment of money or any other thing of value.” *Id.* § 251.001(6). The disclosure requirement applies to expenditures made by a caucus. In our opinion, a misappropriation of caucus funds that occurs without authorization by the caucus is not an expenditure made by the caucus. Thus, the misappropriation in such circumstances is not a reportable expenditure.

Similarly, the disclosure requirement applies to a contribution accepted by the caucus. A “contribution” is defined, in part, as “a direct or indirect *transfer* of money, goods, services, or any other thing of value.” *Id.* § 251.001(2) (emphasis added). We do not think a return of funds to a caucus is a “transfer” to the caucus if the caucus had not relinquished control or ownership over the funds.<sup>2</sup> Thus, the misappropriation and return of caucus funds is not a contribution to the caucus. Accordingly, the caucus would not be required to report the return of the funds as a contribution.

### Legislative Moratorium on Contributions from Nonmembers

Section 253.0341 of the Election Code prohibits a legislative caucus from knowingly accepting a contribution from a person who is not a member of the caucus during the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment. *Id.* § 253.0341(b).<sup>3</sup> The issue is whether the return of the misappropriated funds to the caucus during that period is prohibited.

As stated previously, the return of the funds in these circumstances does not constitute a “contribution” to the caucus. Therefore, section 253.0341 of the Election Code would not

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<sup>2</sup> A “transfer” is defined, in part, as “[a]ny mode of disposing of or parting with an asset or an interest in an asset” and “[a] conveyance of property or title from one person to another.” Black’s Law Dictionary 1727 (10th ed. 2014).

<sup>3</sup> A contribution received during that period shall be refused and returned to the contributor not later than the 30th day after the date of receipt. *Id.* § 253.0341(b).

prohibit the caucus from receiving and accepting the return of its misappropriated funds by the former employee during the legislative moratorium.

### **SUMMARY**

Under the facts presented, a legislative caucus would not be required to disclose the misappropriation of its funds by a former employee as an expenditure or disclose the return of those funds by the former employee as a contribution. The legislative moratorium on contributions to the caucus from nonmembers would not prohibit the caucus from accepting the return of those misappropriated funds by the former employee.