



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 551

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*November 20, 2019*

### ISSUE

*Whether an expenditure made through a periodic bill for the placement of Internet political advertising, the amount of which is based on the number of views or clicks the Internet advertising receives during the billing period, is reported under the "utility bill" reporting provisions, where the total cost is not known until the end of the billing cycle. (SP-17)*

### SUMMARY

If under normal business practices the total cost for Internet political advertising during a periodic billing cycle is not known until the end of the billing cycle, the date of the expenditure for reporting purposes is the date the advertiser receives the periodic bill, consistent with section 254.035(b) of the Election Code and section 20.57(b) of the Texas Ethics Commission's Rules.

### ANALYSIS

The Texas Ethics Commission ("Commission"), on its own initiative, issues this advisory opinion to address whether expenses for placing political advertising on the Internet that accrue as the advertising reaches more people and are periodically billed to advertisers must be reported as either multiple daily expenditures or as one expenditure when the periodic bill is received.

Certain Internet advertising products, such as Google Ads, allow an advertiser to make an ad appear in the search results of another Internet user's search by associating the advertiser's ad with certain search terms. The cost to the advertiser is dependent on, among other things, how many people see and click on the ad. The actual number of clicks the ad receives and the number of times the ad appears is out of the control of the advertiser, but the advertiser is able to cap the total cost of running the ad. When the cap is reached, the ad stops appearing. Even though an advertiser is able to monitor the number of clicks, views, and costs in almost real time, the total costs to the advertiser cannot be known until the close of the billing period.

Generally, “[t]he date of a political expenditure is the date the amount is readily determinable by the person making the expenditure . . . .” Ethics Commission Rules § 20.57(a); see also Elec. Code § 254.035(a). Under the “utility bill” exception, if the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b). By rule, the Commission further explains that this "utility bill" exception is applicable when "under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill," and provides as examples electricity bills and long-distance telephone bills.<sup>1</sup> Ethics Commission Rules § 20.57(b).

In our opinion, the "utility bill" exception in section 254.035(b) of the Election Code and section 20.57(b) of the Ethics Commission Rules applies to expenditures for Internet advertising, such as Google Ads, where the normal business practice is such that the total amount of the charges during the billing cycle is dependent on usage outside of the advertiser’s control and therefore is not known until the end of that billing cycle. For example, Candidate A enrolls in Google Ads and directs Google to make a link to Candidate A’s campaign webpage appear in Google search results for Candidate A’s name. Candidate A’s bill increases every time someone sees or clicks on the link Candidate A paid Google to serve to its users. Candidate A would not know the total monthly bill until the billing period ends. In that manner, the charges for the advertising are analogous to a telephone bill or electricity bill. Therefore, the date of the expenditure for reporting purposes for Internet advertising, where the actual total cost during a billing cycle cannot be known or readily ascertainable until the end of the billing cycle, is the date the advertiser receives the periodic bill.

Certain other Internet advertising models, such as one used by Facebook, requires an advance payment. In such cases, the date of a political expenditure is the date the payment is made.

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<sup>1</sup> There is another exception for expenditures made by credit card. *See id.* § 254.035(c),(d) (stating the amount of a political expenditure made by credit card is readily determinable on the date the person receives the credit card statement that includes the expenditure for semiannual reports). The date of an expenditure made by credit card during a pre-election reporting period is the date the credit card is charged. *See id.*; Ethics Commission Rules § 20.57.