



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 558

December 2, 2020

ISSUE

Whether a for-profit limited liability company (LLC) may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission. (AOR-637)

SUMMARY

A limited liability company that, for the purpose of making a profit, operates a contribution-processing website platform that serves as an intermediary between a person intending to make a political contribution to a specific candidate and the candidate receiving the political contribution does not make a political contribution and thus does not need to appoint a campaign treasurer or file campaign finance reports. However, the intermediary must collect and provide information about each contribution to the recipients of those contributions so that the recipients can comply with their reporting obligations. The recipients must report the full amount given to the intermediary as political contributions and separately report any deductions for processing fees or commissions as political expenditures.

FACTS

The requestor, a for-profit limited liability company with no corporate member or manager, has asked the Commission whether it may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission. The requestor's intent is to create a website platform that would "encourage individual grassroots citizens to create a single online portal where they can solicit contributions for the candidates of their choice." For purposes of this opinion, the requestor asks the Commission to assume the following facts:

1. The contribution-processing website platform is capable of having various candidates of different political affiliations for each election cycle of multiple political subdivisions.

2. The LLC will market its contribution-processing website platform to political fundraisers as well as citizens interested in supporting candidates.
3. Fundraisers, including professionals and other individuals will be the “sales” force to gain traffic in the form of potential contributors to the contribution-processing website platform.
4. Fundraisers will be paid a “commission” for their efforts which will be a portion of the money paid by each contributor who uses the contribution-processing website platform to submit a contribution to a candidate of the contributor’s choice.
5. The LLC intends to profit from processing fees for each payment made by a contributor using the contribution-processing website platform.
6. The LLC will forward the contribution, less the fundraising “commission” and the processing fee, to the candidate chosen by the contributor, providing the candidate with each contributor’s information, including the date of the contribution, the contributor’s name, address, occupation, job title, and employer, as needed in order for the candidate to comply with campaign finance reporting laws.
7. The LLC does not have the intention of making a contribution to the candidate, but merely to profit off of facilitating the contributor’s payment.
8. The amount provided by the LLC to the candidate is the net difference between the amount of money submitted by the contributor to the LLC through the contribution-processing website platform and the amount of the deducted “commission” and processing fee.
9. The contribution-processing website platform contains terms and conditions that inform each contributor that a portion of the money submitted by the contributor will be for processing fees as well as a “commission” to a third party.
10. There is no official contract between the fundraisers and the LLC. Individuals who act as fundraisers merely agree to the terms and conditions of the website platform.

The requestor contends that it does not have the intent to make political contributions and thus is not required to file a campaign treasurer appointment or any campaign finance reports with the Commission. Moreover, the requestor contends that it would only be required to provide candidates with the “net result”—subtracting both its processing fees and the fundraiser’s commission—as the contribution amount.

ANALYSIS

The LLC is not required to appoint a campaign treasurer or file campaign finance reports, but it must provide contributor information to participating candidates.

The Texas Election Code defines “contribution” as any “direct or indirect transfer of money, goods, services, or any other thing of value...” Tex. Elec. Code § 251.001(2). A contribution is a reportable “political contribution” only if the person making the contribution intends for the contribution to be used either: (1) “in connection with a campaign for elective office or on a measure” or (2) to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* at §§ 251.001(3)-(5) (defining “campaign contribution,” “officeholder contribution,” and “political contribution”). Here, when the LLC facilitates the transfer of money from a

contributor to a candidate, it does not intend to make contributions for either of these purposes. Instead, it is serving as an intermediary for *others'* contributions, and intends only to profit by processing transfers, regardless of how the contributions will be used by their recipients. Consequently, the LLC itself is not making any political contributions as defined by the Election Code.¹

However, that does not mean there is nothing to report in connection with the LLC's transfers. Under the facts as presented, users of the LLC's website choose particular candidates to which they want to contribute, and the LLC facilitates those transfers.² When, as here, a person serves as an intermediary for another's political contribution, that person must disclose "in writing to the recipient [of the contribution] the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure." Tex. Elec. Code § 253.001(a) (prohibiting contributions or expenditures in another's name); Tex. Ethics Comm'n Op. No. 557 (2020). In addition to collecting the names and addresses of contributors, the LLC may also need to collect contributors' principal occupation, job title, and any other information the participating candidates may need to satisfy their reporting requirements. *See* Tex. Elec. Code §§ 254.0611, 254.0612, 254.1211, 254.1212, 254.151; 1 Tex. Admin. Code § 18.31.

Candidates must report the full amount of the contribution without subtracting amounts for the LLC's processing fees or the fundraisers commission.

The Commission disagrees with requestor's contention that it only needs to inform participating candidates of the "net" amount of a contribution (*i.e.* after subtracting both its processing fees and the fundraiser's commission). As stated in two of the Commission's prior opinions, candidates must report the entire amount of an intended contribution, *including* any amounts deducted or retained by intermediaries. *See* Tex. Ethics Comm'n Op. No. 557 (2020) (costs for apparel design, manufacturing, marketing, and fulfillment); Tex. Ethics Comm'n Op. No. 514 (2013) (credit card fees). The candidate must also separately report as political expenditures any amounts deducted by intermediaries. *Id.* Here, the candidate would need to report the full amount sent by the contributor to the LLC as a political contribution, and also report as political expenditures payment to the LLC for processing the contribution and providing other services and, if the candidate separately compensates any fundraiser, the fundraiser's commission.

¹ The requestor specifies that the LLC is a "limited liability company with no corporate member or manager," but its corporate structure is irrelevant because the LLC is not making any political contributions. *See* Tex. Elec. Code § 253.094 (prohibiting political contributions from corporations).

² Under different facts, it is possible that the "fundraiser" would be a political committee with its own reporting requirements.