



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 597

December 18, 2023

ISSUE

Whether certain communications with a member of the legislative or executive branch to engender goodwill are communications to “influence legislative or administrative action.” (*AOR-694*).

SUMMARY

A “communication to influence legislative or administrative action” includes any communication to establish (*i.e.* bring about, effect) goodwill that is made for the purpose of later communicating with the member to influence legislation or administrative action. This is true regardless of whether prior feelings of goodwill exist.

FACTS

The requestor is a “former legislator who wishes to conduct his activities in a manner that ensures compliance with the Texas lobby law and the Commission’s advisory opinions and rules.” To that end, the requestor asks whether communications to “maintain” goodwill with a state official are considered communications to influence legislative or administrative action for the purpose of Chapter 305 of the Government Code (the lobby law).

ANALYSIS

The lobby law generally regulates direct communications with “one or more members of the executive branch to influence legislation or administrative action.” Tex. Gov’t Code § 305.003(a)(1).

Since nearly its inception, the Texas Ethics Commission has considered communications to generate goodwill with legislative or executive branch officials to be made to “influence legislation or administrative action.” Tex. Ethics Comm’n Op. No. 4 (1992); *See also* Tex. Ethics Comm’n Op. No. 34 (1992) (weekly “parties are communications to generate goodwill toward the host on the part of members of the legislative branch. Such communications are therefore to influence legislative action”); Tex. Ethics Comm’n Op. No. 46 (1992); Tex. Ethics Comm’n Op. No. 94 (1992).

The Commission has used different terms to describe communications made to engender or generate goodwill in advisory opinions, including “to create goodwill” or to “generate or maintain” goodwill. Tex. Ethics Comm’n Op. Nos. 467 (2006), 517 (2014), 113 (1993).

In 2015, the 84th Legislature codified the Commission’s interpretation regarding goodwill communications by adding Section 305.002(2-a) to the Lobby Code, which reads:

“Communicates directly with a member of the legislative or executive branch to influence legislation or administrative action” or any variation of the phrase includes establishing goodwill with the member for the purpose of later communicating with the member to influence legislation or administrative action.

Act of May 27, 2015, 84th Leg., R.S., ch. 1262, 2015 Tex. Gen. Laws 4272, (codified at Tex. Gov’t Code § 305.002(2-a)).

The requestor contends that by using the word “establishing” with respect to goodwill, the legislature meant to exclude communications made to “maintain” goodwill. To further his argument, the requestor points to a dictionary definition of “establish” to mean “bring about, effect.”

The requestor seems to conceptualize goodwill as a fixed binary where either goodwill exists or does not. In his view, once he has established goodwill with a member of the legislature, a subsequent communication meant to engender further feelings of goodwill is to “maintain,” not establish, goodwill. As a consequence, he contends a communication to “maintain” goodwill is not covered by the lobby law. This is not so.

Goodwill is not a fixed state. Instead, it is an “*attitude*” or “a kindly *feeling* of approval or support.” Merriam-Webster Dictionary Online available at <https://www.merriam-webster.com/dictionary/goodwill>; *See also Oxford English Dictionary* available at <https://www.oed.com/search/dictionary/?scope=Entries&q=Goodwill>. Attitudes and feelings can be fleeting and subject to change in response to changed circumstances or even just the passage of time.

Goodwill is also not a binary that is either established or not. One can have strong or weak feelings of goodwill toward a person. Even if some feelings of goodwill can be said to be “established,” subsequent communications may “bring about” or “effect” more or stronger positive feelings. If those communications to bring about more feelings of goodwill are made for the purpose of later communicating with the member to influence legislation or administrative action, they are regulated as lobby communications. Tex. Gov’t Code § 305.002(2-a). The idea of goodwill not existing as a binary, but as a feeling that can be added to or subtracted from, is consistent with how the term “goodwill” is used in other contexts. For example, in business, “goodwill” is “a term encompassing all intangible value associated with a business” that is routinely quantified and assigned a monetary value. *See, e.g., Welder v. Green*, 985 S.W.2d 170, 179 (Tex. App.—Corpus Christi 1998, pet. denied).

Under the plain language of the statute, whether a communication is made to influence legislation or administrative action turns on the lobbyist's purpose in making the communication. As properly understood, a "communication to influence legislative or administrative action" includes any communication to establish (i.e. bring about, effect) goodwill that is *made for the purpose* of later communicating with the member to influence legislation or administrative action. This is true regardless of whether prior feelings of goodwill exist.