



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 611

September 24, 2024

ISSUE

Would a statewide political party be able to use funds from corporations or labor organizations to pay a contractor's invoice when the contractor was hired to develop administrative tools and a hiring plan? (AOR-712)

SUMMARY

The political party may use funds from corporations or labor organizations to pay a contractor's invoice because the contractor provided normal administrative services.

FACTS

The requestor represents a political party. The requestor would like to use funds from corporations or labor organizations to pay a contractor's invoice. Specifically, the requestor stated that the contractor would be "developing administrative tools (spreadsheets, budgets, etc.) and a hiring plan related to [the] party's coordinated campaign." The spreadsheets would be used to track budget and cash flow.

ANALYSIS

A political party that accepts a contribution authorized by Section 253.104 of the Election Code may use the contribution to defray normal overhead and administrative or operating costs incurred by the party. Tex. Elec. Code § 257.002(a)(1). The TEC has interpreted the phrase "normal overhead and administrative or operating costs" to include expenditures for office space, utilities, and other usual costs of operating an organization. *See* Tex. Ethics Comm'n Op. No. 176 (1993) (political party may use corporate donations to purchase a building for a permanent party headquarters) (affirmed by H.B. 2525, 81st Leg., R.S. (2009) (amending Tex. Elec. Code § 253.100(a), (c); adding Tex. Elec. Code § 253.100(d), (e))).

In Advisory Opinion No. 604, the TEC found the key distinction that made expenditures "normal overhead and administrative or operating costs" was "whether the expense is attributable to general ongoing operational costs as opposed to spending more directly attributable to expenditures advocating in connection with an election." *See* Tex. Ethics Comm'n Op. No. 604 (2024), (citing Tex. Ethics Comm'n Op. No. 272). More specifically, in order to qualify as "overhead" an expenditure must not be directly attributable to a single activity of the party. *Id.*

Section 253.100 of the Election Code provides a list of expenditures that qualify as “maintenance and operation” costs, including “salaries for *routine* clerical, data entry, and administrative assistance necessary for the proper administrative operation of the committee” and “*routine* administrative expenses incurred in establishing and administering a general-purpose political committee.” Tex. Elec. Code § 253.100(a)(6), (8) (emphasis added). While Section 253.100 applies to general-purpose political committees, it is relevant in construing “normal overhead and administrative or operating costs.”

The requestor differentiates between administrative work, which is what the requestor believes that contractor would be doing, and election activity. The requestor categorizes “election activity” to include “voter contact, messaging discussion” or activity related to federal elections. The requestor asserts the contractor has not engaged in “election activity.”

The budgets, spreadsheets, and hiring plan that the contractor would produce, based on the facts presented in this opinion, are comparable to office space (Advisory Opinion No. 176) or a storage container (Advisory Opinion No. 604) in that costs are attributable to general operation of the party rather than specific election activity. Therefore, the party can use funds from corporations or labor organizations to pay the contractor’s invoice.

However, the specific nature of the creation of budgets and a hiring plan will determine whether they are “maintenance and operation” costs. For example, a hiring plan to determine proper overall staffing levels for a political party is a permissible maintenance and operation cost because it is not directly “attributable to expenditures advocating in connection with an election.” *See* Tex. Ethics Comm’n Op. No 604 (2024). On the other hand, a hiring plan tied to a specific campaign or a hiring plan specific to the fundraising or electoral advocacy functions of a political party would be not be maintenance or operations costs.