



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 630

September 17, 2025

ISSUE

Whether certain Public Service Announcements (PSAs) produced by a nonprofit corporation and featuring Texas state elected officials would trigger any campaign finance reporting requirements or require a political advertising disclosure statement. (AOR-733)

SUMMARY

The PSAs described by the requestor do not appear to be “in connection with an election” and therefore expenses for them would not constitute a campaign expenditure by the nonprofit or a contribution to the officeholders featured in the PSAs.

The PSAs likely would not require a political advertising disclosure statement because, as described by the requestor, the communications would not contain express advocacy. However, whether a communication is political advertising can only be answered when the communication is viewed as a whole and the communications at issue in this request do not yet exist.

Based on the facts presented, and assuming the PSAs would not meet the definition of political advertising, appearing in the PSAs does not provide a pecuniary gain or advantage to the officeholders. Therefore, being allowed to appear in a PSA does not appear to implicate the Chapter 36 gift restrictions.

FACTS

The requestor is a nonprofit advocacy organization that is tax exempt under Section 501(c)(4) of the Internal Revenue Code. The requestor is considering producing PSAs in the form of paid broadcast, cable, satellite, and digital television/video and radio/audio ads. The PSAs would advertise the availability of Education Savings Accounts (ESAs) in Texas that were created by the recent enactment of Texas Senate Bill 2 (89th RS).

The PSAs would feature Texas state elected officials discussing the availability and key features of the ESA program and:

1. Would identify the participating officials by name and official title;
2. Would not mention any of the participating officials’ role in crafting, passing, or signing the ESA legislation into law;
3. Would not mention any of the participating officials’ personal support for the ESA program;

4. Would not discuss or mention any of the participating officials' reelections or any of their electoral opponents;
5. Would be scripted and produced by the requestor, and the requestor would have ultimate editorial control over the ads;
6. Would range from 15 to 60 seconds in length;
7. The ads could stop running within 30 days before any contested election in which the participating officials are seeking reelection; and
8. Each ad could feature a variety of elected officials, who would all be featured with roughly the same degree of prominence, rather than featuring one elected official exclusively.

The requestor states the PSAs would be entirely factual and focus solely on the already-enacted ESA program's features and how Texas parents could utilize the ESAs for their children's education expenses.

The requestor asks the Commission to confirm the requestor's understanding that these PSAs would not trigger any campaign finance reporting requirements or restrictions under the jurisdiction of the Commission.

ANALYSIS

Not all communications that feature an elected official are political advertisements. Likewise, not all costs associated with the production and publication of such communications are necessarily political expenditures or political contributions simply because an elected official appears in the communication.

However, it is not hard to imagine a putative "PSA" that features an elected official touting a legislative accomplishment that is broadcast in the weeks before a contested election that could be subject to no other reasonable interpretation than to urge election of the candidate.

After all, the foundational campaign finance cases involved courts attempting to draw the line between issue advocacy and electoral advocacy dressed up as issue ads designed to avoid the regulations applicable at the time. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 41, 96 S.Ct. 612, 645 (1976) (construing the term "relative to a clearly identified candidate...advocating the election or defeat of such candidate" to mean "expenditures for communications that in express terms advocate[d] the election or defeat of a clearly identified candidate"). The *Buckley* court introduced the so called "magic words" of express advocacy (such as such as "Elect John Smith" or "Vote Against Jane Doe") to draw a bright line between communications that were subject to federal campaign finance regulations and those that were not. *McConnell v. FEC*, 540 U.S. 93, 126, 124 S. Ct. 619, 650 (2003) (citing *Buckley*, 424 U.S. at 44 n.52) The Court clarified that a communication can be "marginally less direct" than using the *Buckley* magic words so long as its essential nature "goes beyond issue discussion to express electoral advocacy." *Fed. Election Com. v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986).

Later, the Court acknowledged “the most effective campaign ads, like the most effective commercials for products . . . , avoid the [*Buckley*] magic words [expressly advocating the election or defeat of a candidate].” *McConnell v. FEC*, 540 U.S. 93, 127, 124 S. Ct. 619, 651 (2003). Instead, federal regulations could reach ads that were “the functional equivalent of express advocacy” where the ad “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.*; See also, *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469-70, 127 S. Ct. 2652, 2667 (2007). This general framework was adopted by the Texas Supreme Court and is reflected in the TEC’s rule defining the term “in connection with a campaign.” See *Osterberg v. Peca*, 12 S.W.3d 31, 51 (Tex. 2000) (construing direct campaign expenditures to mean expenditures containing express electoral advocacy); 1 Tex. Admin Code 20.1(8).

The difficult line drawing exercise in determining whether an ad is a political advertisement when it features an officeholder extolling a program that the officeholder may have made a central part of their political platform, is perhaps why some jurisdictions opted to pass PSA-specific legislation. E.g. RCW 42.17A.575 (2024); N.Y. Comp. Codes R. & Regs. tit. 19, § 940.

Texas law makes no specific distinction for PSAs. Instead, whether, and to what extent, campaign finance regulations apply to a third-party funding the creation and publication of a PSA that features an elected official will be decided with reference to the definitions in Texas law of “campaign expenditure,” “campaign contribution,” “officeholder contribution,” and “political advertising.” Tex. Elec. Code § 251.001(3), (4), (7) (16).

Campaign Expenditure/Contribution

Broadly speaking, whether the cost associated with a communication is a political expenditure will turn on whether the cost was incurred “*in connection with a campaign* for elective office.” Tex. Elec. Code § 251.001(3) Similarly, a “campaign contribution” is a thing of value “offered or given with the intent that it be used *in connection with a campaign* for elective office or on a measure.” *Id.* 251.001(7).

Under TEC rule, an expenditure for a communication “is made *in connection with a campaign* for an elective office” if the communication contains the *Buckley* “magic words” of express advocacy (e.g. “vote for,” “elect,” “support,” “vote against,” “defeat,”) related to a clearly identified candidate, regardless of when the communication is published relative to an election. 1 Tex. Admin. Code § 20.1(18)(A)(i).

An expenditure for a communication that does not contain the *Buckley* magic words is nevertheless “in connection with a campaign” if the communication is:

- refers to a clearly identified candidate;
- distributed within 30 days of a contested election for office sought by the candidate;
- targets a mass audience or group in the geographical area the candidate seeks to represent; and
- includes words, whether displayed, written, or spoken; images of the candidate or candidate’s opponent; or sounds of the voice of the candidate or candidate’s opponent that, without consideration of the intent of the person making the communication, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate.

Id. § 20.1(18)(A)(ii).

A campaign contribution to a candidate or a political committee is also a campaign expenditure. *Id.* § 20.1(18)(A)(iv). It is a campaign contribution to provide a candidate the opportunity to appear in a communication that is “in connection” with their campaign. *See* Tex. Elec. Code § 251.001(8). Corporations are generally prohibited from making campaign contributions to candidates. *Id.* § 253.094.

The requestor states the PSA would not contain the *Buckley* magic words of express advocacy. The requestor also states that the ad could stop running within 30 days before a contested election. A communication, as described by the request, by a non-candidate or political committee that lacks the *Buckley* magic words is not a campaign contribution or campaign expenditure.

The requestor asserts that the PSAs described in his request also are not political expenditures or contributions even if the PSAs features an officeholder in a contested election and it is published within 30 days of the election. That is likely true.

The proposed PSAs would focus solely on the ESA program’s availability and features, would not mention any of the participating officials’ role in crafting, passing, or signing the ESA legislation into law and would not mention any of the participating officials’ personal support for the ESA program. Based on the requestor’s description, it does appear that the ESA would be susceptible to a reasonable interpretation other than to urge the election of a candidate—namely that parents of school-aged children should consider taking advantage of the ESA program. Therefore, the ESAs described in the request likely would not be “in connection with an election” and consequently not a campaign expenditure or campaign contribution.

However, we caution that it is not possible to say with perfect certainty an ad would be susceptible to no other interpretation but to urge the election or defeat of a candidate without seeing or hearing the ad.

Officeholder Contribution

A corporation is prohibited from making an officeholder contribution to a candidate. *Id.* § 253.094.

“Officeholder contribution” means a contribution to an officeholder that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. Tex. Elec. Code § 251.001(4).

The requestor argued that the PSA related expenses are reimbursable with public funds, taking them outside of the definition of an “officeholder contribution.” We disagree that the expenses of the production and publication of the PSAs are reimbursable with public funds. Nevertheless, for a different reason we agree that the PSAs are not officeholder contributions.

The law creating the ESA program authorized the comptroller or comptroller’s designee to enter into contracts or agreements and engage in marketing, advertising, and other activities to promote, market, and advertise the development and use of the program. Tex. Educ. Code § 29.3535.

The requestor appears to assert that because a specific type of government spending is allowed to promote the ESA program, then expenditures to promote the program are generally “reimbursable with public funds.” That is not so.

The law does not allow an unspecified “public official” to produce promotional materials for ESAs with a nonprofit corporation and then seek reimbursement from the state. Nor does a nonprofit advertising the ESA program in a way the nonprofit sees fit defray costs that would otherwise be incurred by the government, as the requestor suggests. Instead, the law allows “the comptroller” to “use money from the program fund to pay for activities authorized under this section.” *Id.* The planned expenditures do not appear to be reimbursable with public funds because the costs will not be authorized by the comptroller or the comptroller’s designee.

However, an “officeholder contribution” requires the contribution be used to “defray expenses that are incurred by the officeholder.” Tex. Elec. Code § 251.001(4). Here, the costs associated with producing and publishing the PSAs are not “incurred by the officeholder.” The requestor would bear the costs of production regardless of whether the officeholders participate. In this way it is distinguishable from an officeholder expense such as travel and lodging that is covered by a third party that allows an officeholder to take a trip in connection with official duties. In the case of the trip, the transportation and lodging expenses are only incurred if the officeholder travels and are therefore “incurred by the officeholder.”

Political Advertising

The requestor asks whether PSAs of the type described in the request would be considered political advertising and require a political advertising disclosure statement.

Political advertising published by a person other than a candidate, officeholder or political committee requires a disclosure statement if the advertising contains express advocacy. Tex. Elec. Code § 255.001.

The PSAs likely would not require a political advertising disclosure statement because, as described by the requestor, the communications would not contain express advocacy. *Id.* However, whether a communication is political advertising “can be answered only when the communication is viewed as a whole.” Tex. Ethics Comm’n Op. No. 476 (2007). Therefore, it is not possible to definitively answer this question without observing the actual communication.

The requestor asked the Commission to specifically address whether this conclusion would change depending on the timing of the released PSAs.

“Political advertising” means in relevant part “a communication supporting or opposing a candidate for nomination or election to a public office.” Tex. Elec. Code §251.001(16). In some sense a communication that is temporally remote from an election is less likely to support a candidate in that election. However, the timing of an election is just one factor in considering whether a communication supports a candidate for election or nomination.

The requestor also asked the Commission to specifically address whether this conclusion would change depending on whether the PSAs feature only one elected official or multiple elected officials. An advertisement that features more than one candidate is not necessarily less likely to be political advertising than an advertisement that features one candidate.

Gift Restrictions

Finally, the requestor asks if the production and publication of the PSAs would trigger gift restrictions under Chapter 36 of the Penal Code or Chapter 305 of the Government Code.

The requestor presumes that the PSAs would not benefit the participating elected officials personally and therefore would not implicate the gift laws.

Section 36.08 of the Penal Code broadly prohibits, with exceptions, a member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature from soliciting, accepting, or agreeing to accept any benefit from any person. Tex. Penal Code § 36.08(f).

A “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” Tex. Penal Code § 36.01(3).

Based on the facts presented, and assuming the PSA would not meet the definition of political advertising, appearing in the PSA does not appear to provide a pecuniary gain or advantage to the officeholders. Therefore, being allowed to appear in a PSA does not appear to implicate the Chapter 36 gift restrictions.

Chapter 305 of the Government Code prohibits, with exceptions, a registered lobbyist or a person on the registrant's behalf and with the registrant's consent or ratification from offering, conferring, or agreeing to confer to a member of the legislative or executive branch a gift or series of gifts that in the aggregate exceed \$500 in a calendar year. Tex. Gov’t Code 305.024(a)(5).

There are no facts in the request to suggest the requestor is a registered lobbyist or acting on behalf of a registrant. Therefore, we do not reach this question. *See* Tex. Gov’t Code § 571.091; 1 Tex. Admin. Code § 8.5.