

Authors

Robert D. Miller
512-305-4867
rmiller@lockelord.com

James E. Davis
512-305-4708
jdavis@lockelord.com

Gardner Pate
512-305-4856
gpate@lockelord.com

www.lockelord.com

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Update on Texas Campaign Regulations

With the conclusion of the 2009 regular Texas legislative session, the political season is starting to pick up. State officeholders are able to start accepting political contributions on June 22, and the semi-annual campaign finance report is due July 15.

This *Client Alert* covers areas of interest for political campaigns and political committees in complying with Texas laws. Locke Lord Bissell & Liddell has extensive experience in all of these areas, and we are available to assist our clients with compliance.

Transportation, Lodging and Meals

At the Texas Ethics Commission's June 2009 meeting, the commissioners considered, but did not adopt, an advisory opinion that could have far-reaching consequences. The opinion would have limited the ability of officeholders to participate in meetings where they give presentations related to their official duties. Essentially, the opinion would make the provision of transportation, lodging, and meals given to a person in exchange for their making such a presentation a political contribution, as opposed to a gift. Such a ruling would, in practice, restrict an officeholder's ability to participate in functions put on by nonprofit corporations, such as a Rotary Club. Because corporations cannot make political contributions, the officeholder would be unable to either accept transportation to the event or accept a meal offered at the event. While the Commission did not adopt the opinion, commissioners will be taking it up again at their August 2009 meeting. It may be prudent to revisit your policies on these types of events.

Descriptions of Expenditures

Over the past several years, the Texas Ethics Commission has made a concerted effort to clarify the laws under its jurisdiction via both rules and advisory opinions. Along those lines, at the Commission's June 2009 meeting, commissioners discussed the descriptions of expenditures for reporting purposes on campaign

finance statements. The Commission's general counsel stated these descriptions are the source of many complaints. At the request of the Chairman, the Commission's staff agreed to work on recommendations of rules related to the types of information required to be included in an expense description. The Commission could, in theory, adopt rules before the end of the year, making them applicable to the January 2010 campaign finance report. Although we cannot yet know what types of information could be required, we recommend campaigns and political committees keep detailed records of their expenditures starting July 1, in anticipation of any new reporting requirements.

Ticket Valuation

In early 2009, the Commission considered rules to determine the value of tickets to entertainment events, such as sporting events. These rules would, in practice, prevent lobbyists from bringing officeholders to many sporting events, such as professional and college football and basketball games. This is important because no officeholder wants to accept a gift the donor is prohibited from making. Locke Lord and others have been actively involved in the rulemaking process. At its June 2009 meeting, the Commission voted on adopting one set of rules; however, the vote failed. It is currently unclear whether the Commission will continue to pursue these rules.

Corporate Support of PACs

This session, the legislature passed HB 2525, which clarifies the use of corporate funds for political expenses. While this bill does not change the law prohibiting corporations from supporting a candidate's political campaign, it clarifies a corporation's ability to pay expenses related to the corporation's own PAC. For instance, the law, as amended, now specifically allows corporations to pay for office space, office equipment, legal and accounting fees, and it specifically prohibits corporations paying for political consulting to support or oppose a

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Update on Texas Campaign Regulations (cont'd.)

candidate, partisan voter registration, or recruiting candidates.

Special Session Fundraising

As reported in the news, it is highly likely there will be a special session. The moratorium on contributions applies only to the regular legislative session, not to special sessions, so officeholders and candidates may raise money during special sessions. There is, however, a special reporting requirement for special sessions. A statewide officeholder, member of the legislature, or candidate for either a statewide office or for the legislature must file a special session report 30 days after the special session ends. The report covers the period beginning the day the governor signs the proclamation calling for a special session and ending the last day of the special session. The report contains only political contributions accepted during the period.

Reminder About the July 15 Report

On July 15, the semi-annual campaign finance report is due. As a reminder, the report will cover the period between January 1, 2009 and June 30, 2009. For those hoping to show a significant amount of political contributions maintained, keep in mind the Commission's rule on that figure. By rule, the amount of political contributions maintained is the amount of funds and current value of investment assets in a campaign account as of the last day of the reporting period. If you make a deposit that is not credited to your account until July 1, those funds will not be included in political contributions maintained. Similarly, if you write a check but the check is not cashed by June 30, those funds will be included in political contributions maintained.

About Locke Lord Bissell & Liddell LLP

Locke Lord has attorneys with experience working with campaign finance laws and regulations, ranging everywhere from local and state-wide political campaigns to groups providing pure issue advertising. The firm currently represents political campaigns, political committees, and

prominent consultants and lobbyists. In addition to working with our clients to comply with the campaign finance laws, Locke Lord also monitors activities at the Texas Ethics Commission to keep our clients updated on proposed rules. During the legislative session, Locke Lord monitors campaign finance legislation, letting our clients know of potential statutory changes they may wish to comment on.

About the Authors

Robert Miller is chair of Locke Lord Bissell & Liddell's Public Law section. Listed in *Best Lawyers in America for Government Relations Law* in 2007 and named one of the Top 12 lobbyists in Texas by *Capitol Inside*, he has demonstrated his skill and dedication by lobbying local, state, and federal governments on behalf of public and private concerns for more than twenty years.

James Davis is a partner in Locke Lord Bissell & Liddell's Litigation department in the Austin office. Mr. Davis has broad experience in government, political, and commercial litigation matters. He has substantial experience in representing businesses in disputes with state and local government entities.

Gardner Pate is an associate in Locke Lord Bissell & Liddell's Public Law group. He has extensive experience in the areas of Texas campaign finance laws and Texas lobbyist regulations, and consults clients ranging from local and state-wide political campaigns and political committees to political consultants and trade groups.