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Update on Texas Campaign Regulations

In recent months, Texas campaign finance laws have changed, via administrative rules and advisory opinions. These administrative changes are important for those involved in Texas political activity, from the campaigns themselves to those donors and outside groups looking to be active.

Online Political Advertising

Many campaigns these days use online advertising to spread the campaign's message. Frequently, these ads contain a campaign logo, a short statement about the candidate or issue, or both. When a user clicks on the ad, the individual is usually taken to a website or page advertising the candidate. While these ads are widely used, many people forget one basic requirement for all political advertising: that it must contain a political advertising disclaimer statement. Recently, the Texas Ethics Commission adopted an advisory opinion about these types of ads. In its advisory opinion, the Commission said that including the phrase "Pol Ad" in the text would satisfy the disclaimer requirement, but only if, when a person clicked on the ad, they were taken to a website where the full political advertising statement is displayed. Absent this opinion, the full political advertising disclaimer would be required.

While not discussed in the opinion, it is worth noting that all campaign websites, from those paid for by the campaign itself to the pages the campaign establishes on Facebook, should probably include the political advertising disclaimer on them. Further, those campaigns with Twitter accounts should, on their Twitter bios, include the disclaimer statement.

Corporate Political Activity

After the U.S. Supreme Court issued its recent opinion in *Citizens United v. FEC*, corporations

have had the constitutional right to spend corporate funds on independent advertising supporting or opposing candidates. An open question existed as to whether, and how, Texas would regulate those expenditures (called direct campaign expenditures). At its April meeting, the Texas Ethics Commission adopted an advisory opinion answering those questions. After clearly stating corporations may not contribute directly to candidates (including in-kind contributions), the Ethics Commission established some rules of the road for corporate political activity. Basically, corporations are treated like any other person authorized to make direct campaign expenditures. They have disclosure requirements about how much money they spend and where they spend it, and any political advertising must include the political advertising disclaimer. The Ethics Commission is in the process of promulgating rules clarifying these reporting requirements. At this time, it is still an open question whether a corporation may work in concert with another person in making these expenditures. You can find a more detailed discussion of this opinion by [clicking here](#).

Reporting Political Expenditures

At its April meeting, the Texas Ethics Commission finalized new rules on reporting political expenditures. These rules are effective for all expenditures made on or after July 1, 2010 (which means they did not apply to the July 15, 2010 semi-annual campaign finance report). Once effective, filers will need to include both a category and a description for each expenditure. The filing software will contain a list of pre-set categories, such as advertising expense, consulting expense, or legal services. After selecting the relevant category for an expense, the filer must then list a description describing the campaign or

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Update on Texas Campaign Regulations (cont'd.)

officeholder purpose for each expense, such as “campaign office rent” or “legal fees for campaign/officeholder matters.”

Upcoming Deadlines**October 4, 2010**

30-day report due for November election.

October 25, 2010

8-day report due for November election.

About Locke Lord Bissell & Liddell LLP

Locke Lord has experience working with campaign finance laws and regulations, ranging everywhere from local and statewide 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 D. Miller is chair of Locke Lord's Public Law group. 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 E. Davis is a partner in Locke Lord'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'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.