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## Update on Texas Campaign Regulations

With the 2008 campaigns over, Texas lawmakers are now focusing on the 2009 legislative session. While state laws prohibit those officials from raising campaign contributions before, during, and immediately after the session, campaign finance and ethics regulations still apply to their activities. Because of some recent advisory opinions, rulings on contested matters, and numerous proposed statutory changes, the Texas Ethics Commission is poised to be active this session.

The below items are areas of interest for political campaigns and political committees in complying with Texas laws. We have extensive experience in all of these areas, and are available to assist our clients with compliance.

### Reporting of In-Kind Contributions

In 2006, a Texas Supreme Court Justice was the subject of a judicial inquiry into the role he played with the nomination of an individual to the United States Supreme Court. To assist in his defense, he retained a well-known Texas law firm. At the conclusion of the matter, the law firm discounted its bill, which was paid with the Texas Supreme Court Justice's campaign funds. Recently, the Ethics Commission fined the Justice \$29,000 after finding the discount was an in-kind contribution. Under the circumstances of this case, we expect the ruling to be appealed. In the meantime, for campaigns, this poses an interesting problem: what to do with discounts received from their vendors. The safest way is to be sure campaigns pay fair market value for the goods and services they receive. Any discounts from market value should be treated as in-kind contributions. Campaigns should also keep in mind that uncompensated personal services, such as by volunteers walking blocks or working a phone bank, are not reportable political contributions.

### Prepayment of Expenses

Texas law generally prohibits lobbyists from providing transportation and lodging to members or employees of the legislative or executive branches. In a recent advisory opinion, the Ethics

Commission stated that if the expenses are pre-paid by the recipient, they do not fall within this prohibition. In issuing this opinion, the Commission also examined how to determine the pre-payment price. While noting that prices vary based on the facts, the Commission stated the recipient must pay the fair market value, which should be based, at least in part, on the value of equivalent transportation and lodging from an arm's length transaction. In addition to this opinion allowing pre-payment, a Commission rule allows exemptions from reporting certain expenditures that are reimbursed by the recipient within a limited time frame.

### New Per Diem

At their most recent meeting, the Ethics Commission adopted a rule that raises the legislative per diem from \$151 to \$168, effective in 2009. This is an important change because of its use by the Commission to determine when a lobby expenditure is subject to detailed reporting. Generally, a lobbyist must use detailed reporting for an expenditure for food and beverage or for entertainment when the expenditure exceeds 60 percent of the legislative per diem in any given day. In 2008, that amount was \$90.60; with the increase in the per diem, the new amount is \$100.80. Thus, in 2009, a lobbyist must provide detailed reporting for those expenses only when the total amount spent, not including tax or tip, exceeds \$100.80 in any day.

### Legislative Proposals

At the same meeting, the Ethics Commission also adopted several legislative recommendations. Some of the most talked about recommendations include requiring fines be paid by candidates individually (as opposed to being paid from political contributions), clarifying the funds to be included in total political contributions maintained, and requiring campaigns and political committees to report their investments and investment gains/losses on their campaign finance reports. In addition to those recommendations, the Commission has against asked the

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legislature to clarify what is and is not an "administrative expense" that a political committee may use corporate funds to finance.

**About Locke Lord Bissell & Liddell LLP**

Locke Lord Bissell & Liddell LLP 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.