



Update on Texas Campaign Regulations

By: Robert D. Miller, James E. Davis and Gardner Pate

Since our last update, there have been some big changes to Texas campaign finance laws. Below is a brief update on those changes originating from both the Texas Legislature, which amended several campaign finance laws, and from the Ethics Commission itself through advisory opinions. As before, if you have any questions about these changes, please let us know.

Transportation, Lodging, and Meals: For decades, the statute allowed an officeholder to accept transportation, lodging, and meals if those benefits are accepted in connection with a conference or similar event in which the officeholder renders more than perfunctory services. In 2009, the Ethics Commission issued an advisory opinion (which it later withdrew) saying such benefits would be political contributions — meaning corporations could not make them at any time, and an officeholder could not accept them during the contribution moratorium. This criminalized previously legal activity — and limited the public's ability to hear from its elected officials at events such as chamber of commerce lunches or rotary club meetings. This session, we drafted and helped pass a bill that clarifies those benefits are not political contributions, ending the debate and overturning the opinion.

Itemization Threshold: Currently, all political expenditures that exceed \$50 per payee in any single reporting period must be itemized. Those expenditures not meeting the itemization threshold need only be listed as a single lump sum on the report cover page. This session, the legislature raised the \$50 itemization threshold to \$100 for political expenditures.

Itemization of Credits: Under current law, a candidate or political committee is not required to itemize any credits it obtains. These credits, as they were originally defined, included interest, capital gains, reimbursements, rebates, and refunds. This session, the legislature changed the law to require reporting of all such credits, and itemization of any credits above \$100 from a single source in a reporting period.

Reporting of Investments: Under current law, it was an unanswered question whether investments made with campaign funds were subject to detailed reporting. The legislature answered the question this session, and now requires reporting of all investments made with campaign funds.

Candidate Loans: Under its current interpretation, the Ethics Commission prohibited candidates from loaning money directly to their campaigns. This was circumvented by many candidates when they established a SPAC and loaned money to the SPAC — something the Commission authorized. This session, the legislature clarified the law and specifically allowed a candidate or officeholder to lend money to his or her campaign, and allowed those funds to be included in the calculation of cash on hand. However, the legislature stipulated that the candidate may not charge his campaign interest on those loans.

Reporting Safe Harbor: The legislature amended the law to state that an ethics complaint based on reporting the improper name of a contributor will not be a valid complaint if the candidate or political committee reported the name as it appeared on the contributor's check. In other words, if a candidate or



political committee correctly uses the information provided to them, they will not be held liable for a violation should a complaint be filed that the wrong name was reported on a report.

Amended Reports Safe Harbor: Under current law, when a person amends a campaign finance report, the report would be considered filed on the date of the amendment — meaning it may be considered late, even if the correction was immaterial. The legislature changed the law to provide a safe harbor for semiannual reports (not pre-election reports) originally filed in good faith and without an attempt to mislead that are amended within a week of the original filing and before any complaint was filed based on the original report. Such a report, if it met those criteria, would not be considered late.

Corporate Funds for Legal Defense: In April, the Ethics Commission adopted Ethics Advisory Opinion 497. This opinion specifically allows a general purpose political committee (not a candidate's committee) to raise corporate funds to defend itself from a lawsuit based on its activities during the election cycle — in this case, a defamation claim from a candidate the committee opposed. Previously, it was an unanswered question whether a political committee could use corporate funds to defend itself from an activity that arose out of the committee's political activity. The Commission reasoned that such a use is permissible as an administrative expense, and therefore corporate funds may be used in defense. The opinion was limited to the facts set forth in the opinion, but may be grounds for expansion later.

Direct Campaign Expenditures: After United States Supreme Court ruled in the *Citizens United*, which allowed corporations to make unlimited third-party campaign expenditures, the Ethics Commission has tried to set forth clear rules about reporting such expenditures. In the 2011 session, the legislature passed a bill, HB 2359, that streamlined and clarified the reporting requirements for such expenditures.

Reminder on Federal Activities

As a reminder, Texas political committees and campaigns that are not registered with the FEC are limited in the activities they may undertake on behalf of a federal candidate. With Governor Perry now running for President, many Texans are looking to assist his efforts. We recommend you speak with an attorney before engaging in any activity using your campaign's or political committee's funds or assets to avoid running afoul of federal campaign finance law.

Future Activities

The Ethics Commission is up for sunset review in the 2013 legislative session. We anticipate being heavily involved in the process and will keep you informed. As always, if you have any questions, do not hesitate to contact us.

About Locke Lord Bissell & Liddell LLP

Locke Lord has 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.

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