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Update on Texas Campaign Regulations

Since our last update on Texas campaign regulations, there have been major developments, both in Texas and nationwide. The Texas Ethics Commission ("TEC") has been active in rulemakings, while the U.S. Supreme Court issued a ruling that has significant ramifications for campaign finance laws in the future.

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

Reporting Political Expenditures

Last June, we reported on the TEC's proposal to further regulate what types of information must be included in the description of an expenditure. At its December 2009 meeting, the TEC adopted rules, which set forth two requirements for descriptions. For every expenditure, the person making the expenditure must place it into one of 19 categories, such as advertising expense, consulting expense, event expense, or legal services. After categorizing the expenditure, the person must provide an additional description that makes the reason for the expenditure clear. For example, instead of just describing an expenditure as "rent," the candidate should list it as "campaign office rent," and instead of just describing legal fees as "legal fees," the description should be "legal fees for campaign/officeholder matters." The rules will not take effect until after the July 2010 semi-annual report is due.

Corporate Political Activities

Recently, the United States Supreme Court ruled that it was unconstitutional to prohibit corporations from engaging in third party advertising (advertising not coordinated with a candidate) either supporting or opposing a candidate. See the *Client Alert* where we analyzed this case.

At its February meeting, the TEC discussed the impact of the case. The TEC, after reviewing comments we and others submitted about the matter, decided to form a subcommittee of three commissioners to determine what impact the ruling will have on Texas laws. We will monitor the subcommittee's activities and remain involved in the process. At this time, there is no clear guidance on the extent to which this case will open opportunities for corporations to participate in Texas elections, or how corporations would report such expenditures. For this reason, we encourage our clients to be patient until the TEC provides guidance.

Helpful Reminders

With campaign season upon us, we encourage our clients to review our previous updates for compliance help. Our March 2008 *Client Alert* outlined the rules for reporting expenditures by credit card, the restrictions on contribu-

tions from out-of-state political committees, and the restrictions on automated telephone calls. The June 2008 *Client Alert* discussed how to report political contributions maintained, as well as the prohibition on contributions from partnerships and limited liability companies.

Upcoming Deadlines

February 16: Personal Financial Statements are due for all candidates whose names will appear on the ballot in 2010.

February 22: 8-Day Reports are due for opposed candidates on the March primary ballot, as well as political committees who have supported or opposed those candidates.

April 5: 8-Day Reports are due for opposed candidates in the April primary runoff election, as well as political committees who have supported or opposed those candidates.

April 30: Personal Financial Statements are due for all officeholders except those required to file on February 16.

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 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 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 section. He has extensive experience in the areas of Texas campaign finance laws and Texas lobbyist regulations, and consults clients ranging from local and statewide political campaigns and political committees to political consultants and trade groups.

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