



Update on Texas Campaign Regulations

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

The Texas Legislature adjourned *sine die* on May 27, ending the 83rd Regular Legislative Session. June 16 marked the end of Governor Perry's veto period, meaning that all legislation from the 83rd Regular Legislative Session has now run its course. During the session, legislators enacted several reforms to Texas campaign finance and lobby laws that may impact your activities.

Ethics Commission Overhaul

One of the most talked about bills in the campaign finance and lobby law world was SB 219, the Texas Ethics Commission sunset bill. This piece of legislation, which passed the Legislature in the final week of session, was vetoed by Governor Perry. In his veto message, Governor Perry took issue with several parts of the bill, including a provision requiring sitting Railroad Commissioners who become candidates for another office to resign their position, a requirement that campaign finance filers pay an annual fee to support the Ethics Commission's technology needs, and a provision that would have limited journalistic privilege (which allows journalists to refuse to testify in certain legal proceedings) by individuals who control a PAC or make direct campaign expenditures.

SB 219 had other provisions in the bill that could have proven beneficial to candidates, officeholders, and lobbyists alike. Among those provisions was one aimed at removing the stigma associated with a technical filing error. That provision would have removed any reference in the law to a "complaint," terming it instead an "inquiry," and would have created a three-tier system to resolve those inquiries. Other notable provisions included changes to lobbyist disclosure and registration requirements, updating the political advertising disclosures for the Internet age, and defining candidate or measure-related "robo-calls" as political advertising.

These issues and others are likely to be addressed in the interim. SB 1773 establishes a select committee to make recommendations for substantive changes to campaign finance laws, lobby laws, and personal financial statement laws. The nine member select committee is composed of three senators and one member of the public, all chosen by the Lieutenant Governor; three representatives and one member of the public, all chosen by the Speaker of the House; and the presiding officer of the Texas Ethics Commission. The select committee is required to submit its recommendations to the Legislature in December 2014.

Robo-calls

This session, the Legislature updated Utilities Code Chapter 55, regulating Automated Dial Announcing Devices (ADADs), which are used to make so-called "robo-calls." Chapter 55 already provided certain restrictions on making robo-calls, including requirements for message length, disclosure, and prohibited hours of operation. This law applied only to "telephone solicitation or collection" calls, making it not clearly applicable to political calls. However, the Public Utilities Commission long ago adopted rules defining a telephone solicitation as an unsolicited telephone call. This session, the Legislature inserted that definition into the statute itself, making it clear that if you make a robo-call the recipient has not asked to receive, you must comply with the various regulations in Chapter 55.

Lobby Laws

While many changes to the lobby laws died as a result of the Ethics Commission sunset bill's veto, two important changes did become law.

Registration

Many Texas lobbyists perform paid work for campaigns. Rep. Charlie Geren and Sen. Kevin Eltife passed a bill, HB 1422, that requires lobbyists to disclose certain information about that campaign work on their lobby registration statement. Going forward, lobby registration statements will include a place where lobbyists must report each person who, out of campaign or PAC funds, compensates or reimburses the lobbyist (or an agent on behalf of the lobbyist) for any services.

Joint Expenditures

Several sessions ago, the Legislature specifically allowed lobbyists to split expenditures with other registered lobbyists, and stated that the reportable amount of a split expenditure was the amount paid by each lobbyist. As written, the law said that if you split an expenditure with a non-lobbyist, the portion paid by the non-lobbyist would not be a lobby expenditure. While lobby expenditures are generally exempted from the ban on gifts and the bribery laws and are not reported by the recipient, non-lobby expenditures enjoy no such protections. This change ensures the non-lobbyist portion of expenditures, as long as it is reported by a lobbyist, enjoys the same protections as the expenditures made directly by a lobbyist.

Ethics Commission Activities

Fundraising via Text Messages

Earlier this year, the Ethics Commission adopted Ethics Advisory Opinion 510. This opinion allowed, under limited circumstances, political committees to solicit and accept political contributions made via text message. Any person interested in pursuing this type of fundraising should consult legal counsel about the restrictions and requirements to engage in such an activity.

Software Upgrades

The Texas Ethics Commission received an appropriation of over \$3,000,000 to upgrade its software for campaign finance filers, lobbyists, and personal financial statement filers. The Ethics Commission is currently in the bidding process for the new software. As part of the process, the Ethics Commission is examining the current campaign finance reporting forms, and may create a new, streamlined form for all campaign finance reports.

In late May, the Ethics Commission held a workshop, open to the public, to discuss the new forms. Part of the revision of forms includes the potential to add new reporting requirements, such as specifically listing all expenditures incurred but not yet paid, as well as a cash basis accounting system for political contributions maintained. At this point, the Ethics Commission has not taken any formal action, but those changes are possible in the months ahead.

Definition of Political Advertising

Years ago, the Ethics Commission adopted a rule that specifically exempted emails from being considered political advertising. The practical effect of this rule is that e-mails do not need the political advertising disclaimer. In each of the past few legislative sessions, the Legislature has considered, but not acted on, making a change to the law that would include emails as political advertising. We expect the Ethics Commission to propose a rule at its next meeting making some campaign-related emails political advertising.

About Locke Lord

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. For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact one of the 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