



MEMORANDUM

To: Senaida San Miguel, Project Manager
Sunset Advisory Commission

From: Tom Forbes, President
Professional Advocacy Association of Texas

Date: November 15, 2024

RE: Texas Ethics Commission Review

Thank you for the opportunity to provide suggestions for changes to the statutes administered by the Texas Ethics Commission. The Professional Advocacy Association of Texas (PAAT) is an association whose members are lobbyists and governmental affairs professionals.

Below are the primary topics to bring to your attention. The topics are listed below and discussed on the following pages.

- Legislative Advertising Disclaimer
- Restrictions on Expenditures – Two versions of Section 305.024(a)
- Providing Food and Beverages To A Legislative Caucus During the Session
- Reporting Political Contributions and Expenditures Made Using a Credit Card

Thank you again for the opportunity to provide comments. Please let us know if you have any questions.

Sunset Topic

Legislative Advertising Disclaimer

Issue

The law establishing the requirement that a disclaimer be placed on legislative advertising is difficult to understand and applies to any person, not just registrants under the Lobby Law. Under that law, any person who contracts with another to produce legislative advertising must include a disclaimer on that advertising. Printed materials that do not involve a contract (written or implied), such as those duplicated on a person's own copy machine as opposed to a print shop or other person's copy machine, are not required to contain the legislative advertising disclaimer. A violation of the legislative advertising provision could subject a person to an Ethics Commission complaint or a Class A Misdemeanor complaint.

Because materials distributed on the floor of the House or Senate by a member of that body are generally not duplicated on a member's personal copy machine, it is arguable that such materials must contain the legislative advertising disclaimer.

Solution

Clarify that materials reproduced by a legislator for distribution on the floor of the House or Senate do not need to include a legislative advertising disclaimer, unless otherwise required. Amend the law to provide an exception to the legislative advertising disclaimer for material distributed by a legislator on the floor of the House or Senate. The member must already sign the document as approval for distribution on the floor of the House or Senate.

SECTION _____. Section 305.027, Government Code, is amended by adding Subsection (f) to read as follows:

(f) In this section, "legislative advertising" does not include material that is printed or published by a member of the legislative branch and that is only disseminated by a member of the legislature on the floor of either house of the legislature.

Sunset Topic

Two versions of Section 305.024(a), Government Code

Issue

Two bills (SB 1011 and HB 1508) were passed in the 2005 Legislative Session affecting Section 305.024(a) of the Government Code (The Lobby Law). Both sections appear in current law and it is confusing.

Solution

Amend Section 305.024(a) and try to keep all provisions. Below is an option for a new Section 305.024(a) when trying to reconcile the two current versions.

SECTION _____. Section 305.024, Government Code, is amended by striking both subsections (a) and inserting the following:

(a) Except as provided by Section 305.025, a person registered under Section 305.005 or a person on the registrant's behalf and with the registrant's consent or ratification may not offer, confer, or agree to confer:

(1) to an individual described by Section 305.0062(a) (1), (2), (3),

(4), or (5):

(A) a loan, including the guarantee or endorsement of a loan; or

(B) a gift of cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or

(2) to an individual described by Section 305.0062(a) (1), (2), (3),

(4), (5), (6), or (7):

(A) an expenditure for transportation and lodging;

(B) an expenditure or series of expenditures for entertainment that in the aggregate exceed \$500 in a calendar year;

(C) an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year;

(D) an expenditure for an award or memento that exceeds \$500; or

(E) an expenditure described by Section 305.006(b) (1), (2), (3),
or (6) unless:

(1) the registrant is present at the event; or

(2) the expenditure is for a gift of food or beverages
required to be reported under Section 305.006(b) (4) in
accordance with Section 305.0061(e-1).

Sunset Topic

Providing Food and Beverages To A Legislative Caucus during the Session

Issue

Currently legislative caucuses are subject to the moratorium and may not receive contributions from non-caucus members during the regular legislative session. The moratorium covers a contribution-in-kind such as food and beverages for caucus events (e.g. caucus meetings).

Solution

To avoid an inadvertent violation of the law when it is not clear that an event is a caucus event, the law should be changed to allow a caucus to accept a contribution-in-kind during the session only if it is in the form of food and beverages and only if the expenditure for food and beverages is made and reported in accordance with Chapter 305, Government Code.

One option for reporting these expenditures is to create a separate category for reporting that is in the same manner as an “event to which all legislators are invited” in Sections 305.0062(a)(8) and 305.0062(d).

SECTION _____. Sections 305.0062(a) and (d), Government Code, are amended to read as follows:

(a) The report filed under Section 305.006 must also contain the total expenditures described by Section 305.006(b) that are directly attributable to members of the legislative or executive branch. The expenditures must be stated in only one of the following categories:

- (1) state senators;
- (2) state representatives;
- (3) elected or appointed state officers, other than those described by Subdivision (1) or (2);
- (4) legislative agency employees;
- (5) executive agency employees;

(6) the immediate family of a member of the legislative or executive branch;

(7) guests, when invited by an individual described by Subdivision (1), (2), (3), (4), or (5); ~~and~~

(8) events to which all legislators are invited; and

(9) food and beverages provided to legislative caucus during regular legislative session.

(d) If a registrant cannot reasonably determine the amount of an expenditure under Section 305.006(b) that is directly attributable to a member of the legislative or executive branch as required by Subsection (a), the registrant shall apportion the expenditure made by that registrant or by others on the registrant's behalf and with the registrant's consent or ratification according to the total number of persons in attendance. However, if an expenditure is for:

(1) an event to which all legislators are invited, the registrant shall report the expenditure under Subsection (a) (8) and not under any other subdivision of that subsection or any other provision of this chapter, or

(2) food and beverages provided to a legislative caucus during the regular legislative session, the registrant shall report the expenditure under Subsection (a) (9) and not under any other subdivision of that subsection or any other provision of this chapter. In this section, "legislative caucus" has the meaning assigned by Section 253.0341, Election Code.

Sunset Topic

Reporting Political Contributions and Expenditures Made Using Credit Card

Issue

During the 88th Regular Session, HB 3372 was passed which provided a method to calculate the amount of a contribution accepted when the contributor used a credit card and how to calculate the corresponding processing fee. The bill also provided what to do if the contributor paid the amount of the processing fee as part of the contributor's contribution. HB 3372 as passed only applied to candidates and officeholders.

Solution

Section 254.044, Election Code, should be amended to also apply to political committees, including specific-purpose committees and general-purpose committees.

SECTION 1. Section 254.044, Election Code, is amended to read as follows:

Sec. 254.044. REPORTING OF POLITICAL CONTRIBUTIONS AND EXPENDITURES

MADE USING CREDIT CARD. (a) A candidate, ~~or~~ officeholder, or political committee who accepts a political contribution made using a credit card shall:

(1) for a political contribution for which a processing fee is deducted by the credit card issuer from the political contribution amount:

(A) report as a political contribution the full amount, including the deducted amount; and

(B) report as a political expenditure the deducted amount; and

(2) for a political contribution for which a processing fee is paid by the person making the political contribution in excess of the political contribution amount, report only as a political contribution the full amount the candidate, ~~or~~ officeholder, or political

committee accepts, not including the amount paid in excess of the political contribution amount.

(b) A candidate, ~~or~~ officeholder, or political committee who accepts a political contribution described by Subsection (a) (2) is not required to report the excess amount paid as a processing fee by the person making the political contribution.