



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 21, 1997

The Honorable Steven C. Hilbig
Bexar County Criminal District Attorney
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

Letter Opinion No. 97-094

Re: Whether a candidate/officeholder is required to report a particular transaction as a contribution and/or expenditure (ID# 38882)

Dear Mr. Hilbig:

You describe a situation in which a candidate/officeholder enters into a verbal agreement during his 1992 campaign to pay "a fair and reasonable fee" for campaign services to his campaign treasurer, if and when sufficient funds are left in his campaign account. You state that the candidate/officeholder did not disclose this agreement to receive campaign services on his 1992 campaign finance report. He did, however, report expenditures made in 1993, 1994, and 1995, corresponding to dates when payments were formally requested, of numerous payments to his campaign treasurer for "contract services owed for 92 campaign." You ask whether the candidate/officeholder violated the Texas Election Code by failing to disclose this agreement on his 1992 campaign finance report.

Each candidate and each officeholder is required to maintain a record of all reportable activity. Elec. Code § 254.001(a). "Reportable activity" is defined as a political contribution, political expenditure, or other activity required to be reported under title 15 of the Election Code. *Id.* § 251.001(11). A "political contribution" means a campaign contribution or an officeholder contribution that is given either to a candidate for use in connection with a campaign for elective office or to an officeholder to defray expenses incurred while performing duties of office that are not reimbursable with public funds. *Id.* § 251.001(3) - (5). A "political expenditure" means a campaign expenditure or an officeholder expenditure that is made by any person in connection with a campaign for elective office or to defray expenses incurred by an officeholder while performing duties of office that are not reimbursable with public funds. *Id.* § 251.001(6) - (10). Each report filed under chapter 254 of the Election Code must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period.¹ *Id.* § 254.031(a)(6).

A contribution is defined as "a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer." *Id.* § 251.001(2). A political contribution consisting of an

¹Candidates and officeholders are required to file campaign finance reports semi-annually on July 15 and January 15. See Elec. Code § 254.063. Additional reports are required of a candidate who has an opponent on the ballot. *Id.* § 254.064.

individual's personal service is not required to be reported if the individual receives no compensation for the service. *Id.* § 254.033. The campaign treasurer's service was not a reportable contribution for 1992 because the treasurer did not and could not, based on the agreement to pay "if and when sufficient funds are left" in the campaign account, receive any compensation. Even though the campaign treasurer's service may have been a contribution, it was not reportable and thus, there was no violation of the Election Code.

An expenditure is defined as "a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment." *Id.* § 251.001(6). You relate that the candidate/officeholder reported payments to his campaign treasurer for "contract services owed for 92 campaign" as expenditures on campaign finance reports filed in 1993, 1994, and 1995. For reporting purposes, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. *Id.* § 254.035(a). In this particular situation, the candidate/officeholder made payments to his campaign treasurer and reported the payments as expenditures when he was able to readily determine the amount of the expenditures.

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A political contribution consisting of an individual's personal service is not required to be reported if the individual receives no compensation for the service. Regardless of whether the service provided by the campaign treasurer was a contribution or not, it was not a reportable contribution. For purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. Based on the facts presented, the candidate/officeholder did not violate the Texas Election Code.