

Texas Rule Proposes to Expand Campaign Finance Disclosure for Nonprofit Groups

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The Texas Ethics Commission has embarked on a rulemaking that could have profound consequences for 501(c)(4) and other nonprofit organizations that are politically active in the state. As Texas law currently stands, nonprofit groups that make independent expenditures must file reports, but dues-funded groups often disclose only those donors who specifically intend their payments to aid Texas political activity.

A rulemaking proposed in January could change all that. As proposed by Texas attorney Steve Bresnen, a payment to a group would be “presumed to be a campaign contribution if all or part of the [payment] is used by the recipient to make a campaign expenditure or a political contribution.” Thus, a nonprofit group that uses dues payments to fund an independent expenditure—or what Texas terms a “direct campaign expenditure”—would need to disclose its donors regardless of whether those donors specifically intended to support Texas political activity. This proposal, Mr. Bresnen has explained, “is intended to result in contributors to dark money entities being disclosed in the same manner as PAC contributors.”

The proposed rule would exempt transactions that are “made in a bona fide exchange for consideration in the ordinary course of business,” including:

- Wages, salary, or benefits associated with employment;
- Payment for services rendered, or to be rendered;
- The sale, lease, or rental of goods or other property; and
- Commercial transactions.

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

On February 13, the Ethics Commission approved the rulemaking request for public comment. The rule could be adopted, at the earliest, on April 6, 2014.