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Patrick M. Rose
TEXAS STATE REPRESENTATIVE
DISTRICT 45

COUNTIES:
BLANCO
CALDWELL
HAYS

February 26, 2007

RQ-0574-GA

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

RE: Request an Attorney General's Opinion

Dear General Abbott:

A question has arisen relating to the 10% fee addressed in the Government Code, Section 659.148 (c). Is the fee addressed in this Section based upon the total expenses incurred by the State Campaign Manager and local Campaign Managers as a proportion of the total amount raised through the State Employee Charitable Campaign? It has come to my attention that there is uncertainty on the interpretation of this Section and it requires clarification.

Please find this letter as a request for an opinion from your office regarding this matter. Enclosed is a memorandum on the issue that was forwarded to my office that I found informative. I thank you for your attention to this matter and please do not hesitate to contact me with any questions or if I may be of assistance to you.

Sincerely,

Patrick M. Rose

Patrick M. Rose

ISSUE

Is the 10% fee addressed in the Government Code Section 659.148 (c) based upon the total expenses incurred by the State Campaign Manager and local Campaign Managers as a proportion of the total amount raised through the State Employee Charitable Campaign?

FACTS

The Texas State Employee Charitable Campaign authorizes state employees to contribute to eligible charitable organizations through payroll deduction. For purpose of administering the campaign and soliciting donations from state employees, the state is divided into campaign areas with each area managed by a Local Campaign Manager selected by a Local Employee Committee.

In the course of administering the campaign and soliciting donations, Local Campaign Managers incur expenses in the form of campaign materials, personnel, travel for required statewide training, travel to train local campaign coordinators and other relevant and reasonable expenses. Local Campaign Managers present a budget for consideration by a local employee committee made up of state employees. The Government Code Section 659.148 (c) limits expenses to 10% of the amount raised. The State Policy Committee may elect to allow expenses over 10%.

Since the first campaign in 1994, the State Policy Committee has allowed Local Campaign Managers to seek reimbursement up to 15% of the local campaign amount raised. If a local campaign area incurred expenses over 15%, a request submitted to the State Policy Committee for a higher reimbursement rate would be required.

For the 2005 campaign solicitation period, the State Policy Committee adopted a more restrictive practice in campaign expense management now requiring each campaign area to seek approval from the State Policy Committee if a local campaign area's expenses exceed 10%.

For the 2006 SECC charitable solicitation period, fifteen campaign areas incurred expenses at or below 10% while six campaign areas incurred expenses over 10%. The current State Policy Committee has interpreted 659.148 (c) to be applied for each campaign area limits to campaign expenses no greater than 10% of amount raised within the campaign area as opposed to calculating total statewide campaign expenses as a proportion of the total amount raised statewide. The statute states:

A fee under Subsection (b) must be based on the combined expenses of the state campaign manager and each local campaign manager and may not exceed 10 percent of the total amount collected in the state employee charitable campaign unless the state policy committee approves a higher amount to accommodate reasonable documented costs.

Under the State Policy Committee's interpretation, each Local Campaign Manager's expenses may not exceed 10% of the amount raised within a campaign unless authorized by the State Policy Committee.

The State Campaign Manager with the State Advisory and State Policy committees have established methods to reduce printing expense for approved campaign materials. Centralized production and group buying have reduced costs.

Local employee committees and local campaign managers create frugal budgets that allow for the unified solicitation of state employees. However, the interpretation is a deterrent for organizations to come forward and manage campaign areas where the capacity of those areas does not provide for the opportunity to raise enough money through charitable contributions from the state employee charitable campaign to adequately cover printing and other hard costs or soft costs such as personnel costs and maintain an expense rate at or below 10% of the amount raised.

In preparation for the 2007 campaign solicitation period, the Midland based campaign area which includes 12 very large and rural counties in West Texas will not have a campaign manager. Without a campaign manager, a campaign cannot realistically be conducted.

The campaign area based from Wichita Falls that includes 10 counties will continue for 2007 but the campaign manager is concerned that it will not be able to continue unless it has its costs reimbursed. The current local campaign manager has sent a letter to the State Policy Committee stating that unless its costs are reimbursed it cannot seek to be the local campaign manager in 2008 and encouraged the State Policy Committee to find a replacement.

One of the costs that aren't required by statute of campaign managers is the cost associated with a financial audit. The corporate boards of the nonprofits managing local SECC campaign areas as well as other funds under their management require financial audits. These audits will include funds managed by the nonprofit as it carries out its duty as the local campaign manager. The auditor will apply charges for the SECC management portion of the nonprofit's operation. Within the accounting industry, donated or pro-bono audits aren't conducted by reputable audit or CPA firms due to peer review and ensuring the independent opinion of the auditor.

Without opportunity to seek reimbursement for reasonable expenses and under the supervision of a local employee committee, an eligible organization may choose not to present an application to be a local campaign manager if it means they will have to provide unsupported resources to carry out the duties as defined in the statute. As a result, a campaign area will not be able to select a campaign manager and state employees will not have as easy an opportunity to give through payroll deduction.

§ 659.148[0]. FEES.

(a) A campaign manager may not charge a fee to the comptroller, a state agency, or a state employee for the services the campaign manager provides in connection with a state employee charitable campaign.

(b) A campaign manager may charge a reasonable and necessary fee for actual campaign expenses to the participating charitable organizations in the same proportion that the contributions to that charitable organization bear to the total of contributions in the state employee charitable campaign.

(c) A fee under Subsection (b) must be based on the combined expenses of the state campaign manager and each local campaign manager and may not exceed 10 percent of the total amount collected in the state employee charitable campaign unless the state policy committee approves a higher amount to accommodate reasonable documented costs.

(d) Except as provided by this subsection, the comptroller shall charge an administrative fee to cover costs incurred by the comptroller and employing state agencies in the implementation of this subchapter to the charitable organizations participating in the first state employee charitable campaign conducted under this subchapter in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. Except as provided by this subsection, the comptroller shall charge an administrative fee to cover costs incurred by the comptroller and employing state agencies in the administration of this subchapter to the charitable organizations in each subsequent state employee charitable campaign in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. The comptroller may decline to charge an administrative fee if the comptroller determines the costs that would be covered by the fee are insignificant. The comptroller shall determine the most efficient and effective method of collecting the administrative fee and shall adopt rules for the implementation of this section.

(e) An institution of higher education that is authorized to operate a payroll system reimbursable from the state treasury shall charge an administrative fee to the participating charitable organizations to cover the actual costs incurred in the administration of this subchapter. The fee shall be assessed and collected annually and shall be charged in the same proportion that the contributions to the charitable organization bear to the total contributions in that campaign.

Added by Acts 1995, 74th Leg., ch. 76, § 5.17(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1035, § 39, eff. June 19, 1997.