

The State of Texas
Texas House of Representatives



HOUSE COMMITTEE ON ELECTIONS

LEO BERMAN
CHAIRMAN

DWAYNE BOHAC
VICE CHAIR

March 18, 2008

The Honorable Greg Abbott
Attorney General of Texas
209 West 14th St.
Austin, Texas 78711

FILE # 11L-45587-08
I.D. # 45587

Subject: Opinion Request

RQ-0688-GA

Dear General Abbott:

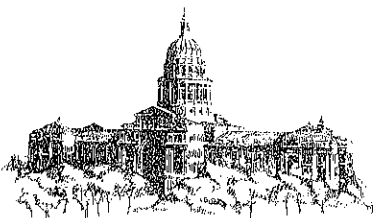
As Chairman of the House Committee on Elections, which has jurisdiction over campaign finance issues, I respectfully request an opinion from you on a legal issue regarding the use of state resources to collect and distribute campaign contributions:

Is it permissible for government resources to be utilized to process government paycheck deductions for political campaign donations?

It has come to my attention that possible numerous governmental entities are processing paycheck deductions for political action committees.

One example involves the Texas State Teachers Association ("TSTA"), which according to its website consists of 65,000 teachers, educational support professionals, administrators and retired members. (See <http://www.tsta.org/Pressroom/current/TSTA%20FACT%20SHEET.doc>)

Affiliated with TSTA is the TSTA Political Action Committee ("TSTA-PAC"), which collects political contributions from TSTA members to be bundled and donated to political candidates that support TSTA policies. (See <http://www.tsta.org/legislative/update/pac.shtml>)



MEMBERS: RAFAEL ANCHIA • LON BURNAM • KIRK ENGLAND, CBO • JOE FARIAS • CHARLIE HOWARD

P.O. Box 2910, AUSTIN, TEXAS 78768-2910 • ROOM E2.144 • (512) 463-0772

The TSTA membership application form contains a section entitled Payroll Deduction Authorization, which enables a new member to authorize their school district employer to make certain monthly deductions from their paycheck. (See <http://www.tsta.org/includes/images/Fallform.pdf>) Most of the listed deductions involve various TSTA membership dues. However, also listed are deductions for "TSTA-PAC" and "National Education Association Fund for Children and Public Education" ("NEA-PAC") with suggested amounts of \$9.00 and \$15.00, respectively. The form is clear that these deductions are for "...contributions for political purposes, including, but not limited to, making contributions to and expenditures on behalf of friends of public education who are candidates for federal office."

Alternately, an existing TSTA member can authorize a payroll deduction for TSTA-PAC contributions by filling out a TSTA "Continuing Contributor Form", which contains a similar deduction authorization. (See <http://www.tsta.org/legislative/update/PACnew.pdf>)

These TSTA forms are forwarded to local school districts, which process the payroll deduction authorizations. The school districts then, every month, deduct political contributions from teachers paychecks and distribute the political contributions to TSTA-PAC and NEA-PAC.

Hence, school district employees and resources, funded by taxpayer dollars, are being actively used on a regular basis to collect and distribute political contributions. Obviously, this practice raises serious legal concerns.

Government Code § 659.002(a) provides that "A state agency may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law."

Chapter 659 does indeed authorize certain deductions from state employee paychecks, such as deductions for charitable contributions, deposits with credit unions, retirement and benefits, and certain specified state employee organizations.

In addition, Education Code § 22.001(a) does provide that "A school district employee is entitled to have an amount deducted from the employee's salary for *membership fees or dues* to a professional organization." (emphasis added)

Hence, it does appear that a payroll deduction for TSTA membership fees and dues is in fact authorized by law. However, I find nowhere where state law authorizes a payroll deduction (processed by public employees and public resources on public time) for political contributions to TSTA-PAC, NEA-PAC, or any other political action committee.

In fact, this use of public resources to collect and distribute political donations would appear to be a criminal misapplication of state resources which violates Penal Code §

39.02. (See Texas Penal Code § 39.02, Texas Ethics Advisory Opinion No. 172 (1993), Texas Ethics Advisory Opinion No. 386 (1997).)

As the Texas Ethics Commission ruled in EAO-172, "The use of state equipment or state employees' work time to handle campaign contributions or expenditures is a misapplication of state property."

In addition, Texas Government Code § 556.004 forbids government entities from utilizing public resources for political activities.

Finally, the Appropriations Act contains riders prohibiting the use of appropriated funds for other than state purposes, or to affect the outcome of an election. (See General Appropriations Act, 80th Leg., art. IX, § 6.24 (Political Aid and Legislative Influence Prohibited) and § 6.25 (Limitations on Use of Appropriated Funds).)

Therefore, although it is legal for school districts to process paycheck deductions for TSTA dues, it does not appear to be legal for school districts to process deductions for political contributions.

Otherwise, we would have to conclude that school districts could, and perhaps must, also process paycheck deductions for any number of other political causes in the interest of fairness: National Rifle Association, Pro-Life, Pro-Choice, AARP, etc.

I expect that you will agree with this legal analysis, and I hope that you will advise school districts to cease this activity and begin requiring TSTA to submit paycheck deduction forms only for membership dues. TSTA is free to collect campaign money from teachers, but they should do so within the law: on their own time and with their own resources, without requiring Texas taxpayers to foot the bill for their campaign fundraising.

It is my belief that other governmental entities are probably processing paycheck deductions for other political action committees as well, so that your opinion on this matter will apply in various situations.

Thank you in advance for your attention to this issue.

Sincerely,

A handwritten signature in black ink that reads "Leo Berman". The signature is written in a cursive, flowing style.

Leo Berman