



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2020

Mr. Gregory S. Davidson
Chairman, State Policy Committee
State Employee Charitable Campaign
1910 East Martin Luther King Jr. Boulevard
Austin, Texas 78702

Opinion No. KP-0282

Re: Whether activities of the State Employee Charitable Campaign constitute a taxpayer resource transaction under section 2272.003 of the Government Code (RQ-0308-KP)

Dear Mr. Davidson:

You ask whether the activities of the State Employee Charitable Campaign constitute a taxpayer resource transaction under Government Code section 2272.003.¹

The Legislature provided state employees with the ability to make voluntary charitable contributions to eligible organizations by authorizing “a deduction each pay period from the employee’s salary or wage payment” through the State Employee Charitable Campaign (the “Campaign”). TEX. GOV’T CODE § 659.132(a); *see also id.* § 659.133(a) (explaining that participation is voluntary). The Campaign is organized and operated by the Campaign Policy Committee (the “Policy Committee”), composed of members appointed by the Governor, Lieutenant Governor, and Comptroller. *Id.* § 659.140(b). The Legislature tasked the Policy Committee with establishing the organization and structure of the Campaign at both state and local levels, selecting the state campaign manager, and determining the eligibility of agencies and charitable organizations for participation in the Campaign, among other roles. *Id.* § 659.140(e)(1), (4), (6).

To receive donations through the Campaign, a charitable organization must meet certain statutory requirements and must apply “during the annual eligibility determination period specified by the committee.” *Id.* §§ 659.146(a), (c), .147(a). The Policy Committee votes to approve charitable organizations each spring for the Campaign the following autumn. *Id.* §§ 659.138 (requiring the Campaign “be conducted each autumn”), 659.146(c) (“The state policy committee may approve an affiliated charitable organization . . .”), 659.147(b) (“The state policy committee . . . shall review each application and may approve a charitable organization for participation . . .”); *see also* 34 TEX. ADMIN. CODE § 5.48(n)(2)(A) (requiring the Policy Committee to “establish an annual application, eligibility determination, and appeals period for statewide or local participation” in the Campaign). The Policy Committee may appoint a local

¹*See* Letter from Mr. Gregory S. Davidson, Chairman, State Policy Comm., State Emp. Charitable Campaign, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 18, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

employee committee to assist it with evaluating applications from organizations that seek to participate in the Campaign only in a local campaign area. TEX. GOV'T CODE § 659.140(e)(1)(B).

During the Campaign, state employees may authorize a deduction from their salary or wages each pay period for designated charitable organizations.² *Id.* § 659.132(a). The deduction “is effective for a maximum of one campaign year.” *Id.* § 659.137(b). The deduction authorization directs the Comptroller to distribute the funds to the state or local campaign managers, which then distribute funds to the eligible charities. *Id.* § 659.132(g); 34 TEX. ADMIN. CODE § 5.48(i)(1)(A) (prohibiting the Comptroller from paying deducted amounts directly to an eligible local charitable organization); *see also* Tex. Att’y Gen. Op. No. GA-0565 (2007) at 1–2 (explaining state versus local activity). You question whether any of these activities are impacted by the enactment of Senate Bill 22 during the past legislative session. *See* Request Letter at 1.

The Eighty-sixth Legislature passed Senate Bill 22 to prohibit “certain transactions between a governmental entity and an abortion provider or affiliate of the provider.”³ The bill added Government Code chapter 2272,⁴ which generally provides that “a governmental entity may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider.”⁵ TEX. GOV'T CODE § 2272.003(a).

To determine whether Senate Bill 22 impacts the Campaign’s activities, we must first analyze whether the Campaign qualifies as a governmental entity under subsection 2272.001(4). That section defines “governmental entity” to include a “state agency” in any branch of state government. *Id.* § 2272.001(4). Various statutes throughout Texas law define “state agency” in different ways for specific purposes. *See, e.g.,* TEX. CIV. PRAC. & REM. CODE § 114.001(3) (defining state agency for purposes of adjudicating contract claims with state agencies); TEX. GOV'T CODE § 2103.001 (defining “state agency” for purposes of state accounting and fiscal management). But chapter 2272 does not define the term “state agency” for purposes of that chapter. When a statute does not define a term, courts apply the “common, ordinary meaning unless a contrary meaning is apparent from the statute’s language.” *Tex. State Bd. of Exam’rs of Marriage & Family Therapists v. Tex. Med. Ass’n*, 511 S.W.3d 28, 34–35 (Tex. 2017). To determine a statutory term’s common meaning, courts typically look first to the dictionary definitions and then “consider the term’s usage in other statutes, court decisions, and similar authorities.” *Id.* at 35.

²The Comptroller and Policy Committee must approve the deduction authorization forms. 34 TEX. ADMIN. CODE § 5.48(f)(1).

³Act of May 24, 2019, 86th Leg., R.S., ch. 501, § 1, 2019 Tex. Sess. Law Serv. 1341 (codified at TEX. GOV'T CODE §§ 2272.001–.005).

⁴Through House Bill 1999, the Legislature enacted new laws related to construction liability claims, and it also labeled those laws as chapter 2272 with duplicative section numbers to those in Senate Bill 22. *See* Act of May 23, 2019, 86th Leg., R.S., ch. 1287, § 1, 2019 Tex. Sess. Law Serv. 3803 (codified at TEX. GOV'T CODE §§ 2272.001–.009). This opinion addresses the chapter 2272 titled “Prohibited Transactions” and its corresponding provisions.

⁵The law makes an exception for “a taxpayer resource transaction that is subject to a federal law in conflict with Subsection (a) as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.” TEX. GOV'T CODE § 2272.003(b).

The term “agency” is commonly understood to refer to “a department or other administrative unit of government.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 40 (2002); *see also* MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 24 (11th ed. 2004) (defining “agency” as “an administrative division (as of a government)”); *see also* Tex. Att’y Gen. Op. No. MW-43 (1979) at 3 (explaining the common definition of “agency” as “a person or thing through which power is exerted or an end is achieved” (quotation marks omitted)). Statutes using “state agency” for other purposes define the term to include governmental entities “created by the constitution or a statute of this state” that possess authority “not limited to a geographical portion of the state.” *See, e.g.*, TEX. GOV’T CODE § 2052.201(4); TEX. CIV. PRAC. & REM. CODE § 105.001(3).

The Legislature created the Campaign by statute to administer a program for state employee charitable contributions. *See* Tex. Att’y Gen. LO-94-064 (1994) at 3 (concluding that the Policy Committee “has supervision or control of public business or policy”). The Campaign serves state employees throughout Texas and is not limited to a geographical portion of the State. TEX. GOV’T CODE § 659.146(c). Moreover, the Legislature made applicable to the Policy Committee multiple state statutes governing state agencies. *See id.* § 659.140(f), (g), (i) (making the Policy Committee subject to the Open Meetings Act, the Public Information Act, and the Sunset Act). Thus, under both the dictionary definitions of state agency and use of the term in other statutes, a court would likely conclude that the Campaign is a state agency for purposes of section 2272.003(a) of the Government Code, and therefore qualifies as a governmental entity.

We next consider whether the Campaign’s activities involve abortion providers or affiliates as defined in subsections 2272.001(2) and (3). The Legislature defined “abortion provider” as either “a facility licensed under Chapter 245, Health and Safety Code” or “an ambulatory surgical center licensed under Chapter 243, Health and Safety Code, that is used to perform more than 50 abortions in any 12-month period.” *Id.* § 2272.001(2). It defined “affiliate” as

a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

- (A) common ownership, management, or control between the parties to the relationship;
- (B) a franchise granted by the person or entity to the affiliate;
or
- (C) the granting or extension of a license or other agreement authorizing the affiliate to use the other person’s or entity’s brand name, trademark, service mark, or other registered identification mark.

Id. § 2272.001(3). To the extent the Campaign approves eligible charities that also qualify as abortion providers or affiliates under these definitions, its activities implicate Senate Bill 22.

Finally, we consider whether the Campaign's activities involve a "taxpayer resource transaction." The Legislature defined "taxpayer resource transaction" to include the "donation of money, . . . services, . . . or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return." *Id.* § 2272.001(5). By defining the phrase broadly to include "any other transaction," the Legislature intended to include any "exchange or transfer of goods, services, or funds" that meets the other statutory requirements. MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 1327 (11th ed. 2004).

An eligible charity's application to participate in the Campaign, and the Policy Committee's subsequent approval of the charity, involves a transaction that conveys value to the charity in the form of both employee donations and the service of processing those donations through the state payroll system. *See* 34 TEX. ADMIN. CODE § 5.48(i)(2) ("the Comptroller shall pay deducted amounts to a local campaign manager or a statewide federation or fund"). Processing the authorized donations utilizes state employee time as well as use of the state payroll system and the electronic funds transfer system.⁶ *See* TEX. GOV'T CODE § 659.140(e-1) (requiring the Comptroller to "provide administrative support" to the Policy Committee); 34 TEX. ADMIN. CODE § 5.48(a)(6) (defining the "Comptroller's electronic funds transfer system"), (i)(2) (requiring the Comptroller to pay deducted amounts by electronic funds transfer). The employees and systems are funded by state or local tax revenue. The transaction between the Policy Committee and an approved charitable organization therefore involves a taxpayer resource transaction. Section 2272.003 of the Government Code thus prohibits the Policy Committee from approving abortion providers or affiliates as eligible charitable organizations for the Campaign.

⁶State employee participation in the Campaign is voluntary, and a state agency may not reimburse a state employee for expenses incurred while acting as a representative of a charitable organization. *Id.* § 659.133(a); 34 TEX. ADMIN. CODE § 5.48(d)(2). However, state agencies donate employees' time to participate in the Campaign and provide administrative support.

S U M M A R Y

Section 2272.003 of the Government Code prohibits the State Employee Charitable Campaign and its Policy Committee from entering into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider.

The Policy Committee's approval of abortion providers or affiliates as charitable organizations eligible to participate in the Campaign constitutes a taxpayer resource transaction. Section 2272.003 of the Government Code thus prohibits the Policy Committee from approving abortion providers or affiliates as eligible charitable organizations for the Campaign.

Very truly yours,

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

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy Attorney General for Legal Counsel

VIRGINIA K. HOELSCHER
Chair, Opinion Committee