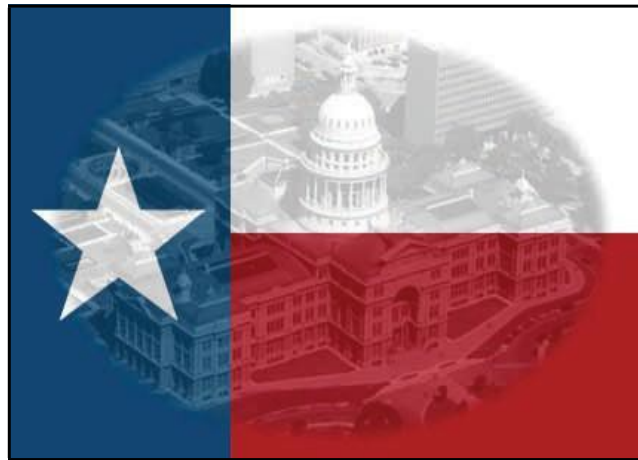




# **TEXAS ETHICS COMMISSION**

## **BIENNIAL REPORT**

### **2017 – 2018**



**DECEMBER 2018**

**TEXAS ETHICS COMMISSION  
BIENNIAL REPORT  
2017-2018**

**A REPORT TO THE  
OFFICE OF THE GOVERNOR  
AND THE 86TH TEXAS LEGISLATURE**

**STEVEN D. WOLENS, CHAIR  
CHAD M. CRAYCRAFT, VICE CHAIR  
RANDALL H. ERBEN, COMMISSIONER  
CHRIS FLOOD, COMMISSIONER  
MARY K. "KATIE" KENNEDY, COMMISSIONER  
PATRICK W. MIZELL, COMMISSIONER  
RICHARD SCHMIDT, COMMISSIONER  
JOSEPH O. SLOVACEK, COMMISSIONER**

**SEANA WILLING  
EXECUTIVE DIRECTOR**

**DECEMBER 2018**

# Texas Ethics Commission

## Table of Contents

I. ADVISORY OPINIONS.....	1
II. COMMISSION ACTIVITY SUMMARY .....	3
A. SWORN COMPLAINTS .....	3
B. CIVIL PENALTIES .....	5
III. STATUTORY CHANGE RECOMMENDATIONS .....	8
APPENDIX A.....	9
APPENDIX B.....	31

**TEXAS ETHICS COMMISSION  
BIENNIAL REPORT  
2017-2018**

**I. ADVISORY OPINIONS**

The Texas Ethics Commission issued five advisory opinions in 2017 and three advisory opinions in 2018. The Ethics Advisory Opinion (EAO) number and caption are listed below. The full opinions are found at Appendix A.

**2017 OPINIONS**

- |                    |  |
|--------------------|--|
| <b>EAO No. 541</b> | A prepaid debit card or gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code.  |
| <b>EAO No. 542</b> | Under the facts presented, a legislative caucus would not be required to disclose the misappropriation of its funds by a former employee as an expenditure or disclose the return of those funds by the former employee as a contribution. The legislative moratorium on contributions to the caucus from nonmembers would not prohibit the caucus from accepting the return of those misappropriated funds by the former employee.                              |
| <b>EAO No. 543</b> | Based on the requestor's facts described in this opinion, the executive director of a state agency would not receive an "honorarium" for purposes of section 36.07(a) of the Penal Code or a "benefit" for purposes of section 36.08 of the Penal Code by accepting a reimbursement of certain travel expenses that are payable by the state agency. The executive director would not be required to report the reimbursement on a personal financial statement. |
| <b>EAO No. 544</b> | The inspector general for the Health and Human Services Commission is a "state officer" required to file a personal financial statement under Chapter 572 of the Government Code.  |
| <b>EAO No. 545</b> | Section 572.069 of the Government Code prohibits a former state employee from providing the services described before the second anniversary of the date on which the employee's service or employment with the state agency ends.   |

## **2018 OPINIONS**

### **EAO No. 546**

A judge may use political contributions to pay the costs associated with membership in an organization that helps its members develop leadership skills if the judge's primary purpose in paying the costs is to facilitate the duties or activities of the judicial office.

### **EAO No. 547**

Under the facts presented, a candidate may use political contributions to pay for childcare expenses to facilitate the candidate's participation in campaign activities.

### **EAO No. 548**

Section 255.006 of the Election Code does not prohibit an associate judge from wearing judicial robes or referring to the judge in political advertising as "Associate Judge, 1000th District Court, Texas County."

## **II. COMMISSION ACTIVITY SUMMARY**

### **A. SWORN COMPLAINTS**

During 2017-2018, a total of 574 sworn complaints were filed with the Texas Ethics Commission. In 2017, 200 sworn complaints were filed; in 2018, 374 sworn complaints were filed (as of December 17, 2018). The following chart shows the number of sworn complaints processed according to the type of resolution as described in Section 571.073(2)(A)-(G), Government Code.

<b>Type of Resolution</b>	<b>2017</b>	<b>2018</b>
Number of sworn complaints dismissed for noncompliance with statutory form requirements	73	154
Number of sworn complaints dismissed for lack of jurisdiction	15	63
Number of sworn complaints dismissed after a finding of no credible evidence of a violation	11	24
Number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the Commission has occurred	2	4
Number of sworn complaints dismissed after a finding of no credible evidence of a violation; and dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the Commission has occurred	1	0
Number of sworn complaints dismissed after a finding of no credible evidence of a violation; and dismissed with no finding	0	4
Dismiss with no finding	2	17
Number of sworn complaints resolved by the Commission through an agreed order <sup>1</sup>	100	137
Number of sworn complaints resolved by the Commission through a Final Order	8	3

<sup>1</sup> For purposes of these calculations, an agreed order includes any resolution that requires a respondent's signature.

For those sworn complaints in which the Texas Ethics Commission issued an order finding a violation,<sup>2</sup> the following chart shows the amount of the resulting penalty.

<b>Penalty Amount</b>	<b>Sworn Complaint Orders 2017</b>	<b>Sworn Complaint Orders 2018</b>
\$100.00	1	1
\$150.00		1
\$200.00	2	3
\$250.00	6	12
\$300.00	3	
\$400.00		1
\$500.00	13	16
\$600.00	1	
\$680.00	1	
\$750.00	1	
\$900.00	1	
\$1,000.00	8	2
\$1,500.00	5	3
\$1,700.00	1	
\$1,900.00		1
\$2,000.00		1
\$2,500.00	4	1
\$3,000.00		2
\$3,250.00	1	
\$3,400.00	1	
\$3,937.50	1	
\$5,000.00	1	2
\$10,000.00		2
\$15,000.00		1

<sup>2</sup> For purposes of these calculations, “an order finding a violation” includes an agreed resolution requiring a respondent’s signature and a final order that does not require a respondent’s signature. In addition to these orders, the Commission resolved 47 complaints in 2017 and 77 complaints in 2018 (as of December 17, 2018) with an Assurance of Voluntary Compliance (AVOC) that did not include a finding of a violation. In 2017, \$11,300 in penalties were assessed pursuant to an AVOC; in 2018, AVOCs resulted in \$1,200 in assessed penalties.

## **B. CIVIL PENALTIES**

The attached spreadsheets show summary information for fiscal years 2017 and 2018 pertaining to civil penalties imposed by the Texas Ethics Commission for failure to timely file a statement or report. Specifically, the information is organized by the type of report required to be filed with the commission and the filer categories required to file each type of report. For each filer category, the summary shows:

- the number and amount of civil penalties (fines) that were assessed for failure to timely file the report;
- the number and amount of fines waived by the Commission;
- the number and amount of fines due that were not waived by the Commission;
- the number and amount of fines fully paid;
- the number and amount of fines partially paid; and
- the number and amount of fines which have not yet been paid.

The Texas Ethics Commission is authorized to impose a civil penalty for a report that is not filed or is filed after the statutory deadline. The late-filing penalty is \$500 for most reports. For a report due eight days before an election or for the first semiannual report due after a primary or general election, the late filing penalty is \$500 for the first day the report is late and \$100 a day for each day thereafter that the report is late.



**TEXAS ETHICS COMMISSION**  
**SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2017\***

REPORT	CIVIL PENALTIES		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
TYPE	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
<b>Personal Financial Statements</b>	100	\$50,000.00	56	\$27,400.00	51	\$22,600.00	26	\$10,550.00	1	\$195.30	25	\$11,854.70
<b>Semiannual Reports</b>												
Candidates/Officeholders	114	\$160,400.00	53	\$46,700.00	78	\$113,700.00	21	\$7,800.00	2	\$4,914.24	55	\$100,985.76
Specific-purpose Committees	17	\$9,500.00	12	\$5,650.00	8	\$3,850.00	4	\$1,100.00	0	\$0.00	4	\$2,750.00
Judicial Candidates/Officeholders	59	\$39,300.00	33	\$17,200.00	37	\$22,100.00	21	\$7,900.00	1	\$500.00	15	\$13,700.00
Judicial Specific-purpose Committees	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	269	\$175,150.00	197	\$121,599.00	85	\$53,551.00	25	\$11,050.00	1	\$202.82	59	\$42,298.18
County Executive Committees	8	\$5,400.00	6	\$3,500.00	5	\$1,900.00	3	\$1,200.00	0	\$0.00	2	\$700.00
<b>Monthly Reports</b>												
General-purpose Committees	167	\$83,500.00	132	\$65,800.00	37	\$17,700.00	18	\$8,200.00	0	\$0.00	19	\$9,500.00
<b>30th Day Before Election Reports</b>												
Candidates/Officeholders	13	\$6,500.00	3	\$950.00	12	\$5,550.00	3	\$1,050.00	0	\$0.00	9	\$4,500.00
Specific-purpose Committees	5	\$2,500.00	4	\$1,600.00	5	\$900.00	5	\$900.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	2	\$1,000.00	1	\$350.00	2	\$650.00	1	\$150.00	0	\$0.00	1	\$500.00
Judicial Specific-purpose Committees	1	\$500.00	1	\$350.00	1	\$150.00	1	\$150.00	0	\$0.00	0	\$0.00
General-purpose Committees	37	\$18,500.00	22	\$9,700.00	23	\$8,800.00	12	\$5,000.00	0	\$0.00	11	\$3,800.00
County Executive Committees	2	\$1,000.00	1	\$300.00	2	\$700.00	2	\$700.00	0	\$0.00	0	\$0.00
<b>8th Day Before Election Reports</b>												
Candidates/Officeholders	28	\$138,100.00	19	\$86,200.00	12	\$51,900.00	5	\$11,300.00	0	\$0.00	7	\$40,600.00
Specific-purpose Committees	9	\$35,700.00	9	\$34,400.00	7	\$1,300.00	7	\$1,300.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	19	\$91,400.00	14	\$44,700.00	9	\$46,700.00	4	\$3,150.00	0	\$0.00	5	\$43,550.00
Judicial Specific-purpose Committees	2	\$16,400.00	2	\$16,400.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	89	\$242,550.00	77	\$209,550.00	42	\$33,000.00	32	\$20,800.00	0	\$0.00	10	\$12,200.00
County Executive Committees	4	\$19,400.00	4	\$18,700.00	1	\$700.00	1	\$700.00	0	\$0.00	0	\$0.00
<b>Pre-election (Daily) Reports</b>												
Candidates/Officeholders	2	\$1,000.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00	1	\$500.00
GPAC & SPAC Contributions Reports	1	\$500.00	0	\$0.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
GPAC Expenditures Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Special Session Reports</b>												
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Totals</b>	<b>949</b>	<b>\$1,098,800.00</b>	<b>648</b>	<b>\$712,049.00</b>	<b>419</b>	<b>\$386,751.00</b>	<b>192</b>	<b>\$93,500.00</b>	<b>5</b>	<b>\$5,812.36</b>	<b>223</b>	<b>\$287,438.64</b>

**TEXAS ETHICS COMMISSION**  
**SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2018\***

REPORT	CIVIL PENALTIES		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
TYPE	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
<b>Personal Financial Statements</b>	249	\$126,000.00	153	\$68,300.00	139	\$57,700.00	67	\$21,800.00	0	\$0.00	72	\$35,900.00
<b>Semiannual Reports</b>												
Candidates/Officeholders	228	\$142,500.00	109	\$57,900.00	132	\$84,600.00	29	\$14,500.00	0	\$0.00	103	\$70,100.00
Specific-purpose Committees	26	\$22,500.00	15	\$7,900.00	11	\$14,600.00	7	\$3,199.00	0	\$0.00	4	\$11,401.00
Judicial Candidates/Officeholders	97	\$62,400.00	53	\$27,400.00	59	\$35,000.00	29	\$15,700.00	1	\$150.00	30	\$19,150.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	162	\$114,000.00	106	\$68,200.00	59	\$45,800.00	22	\$10,000.00	1	\$202.82	37	\$35,597.18
County Executive Committees	6	\$3,000.00	3	\$1,500.00	3	\$1,500.00	0	\$0.00	0	\$0.00	3	\$1,500.00
<b>Monthly Reports</b>												
General-purpose Committees	194	\$97,000.00	155	\$77,000.00	42	\$20,000.00	16	\$7,000.00	0	\$0.00	26	\$13,000.00
<b>30th Day Before Election Reports</b>												
Candidates/Officeholders	38	\$19,000.00	23	\$9,250.00	28	\$9,750.00	14	\$2,850.00	0	\$0.00	14	\$2,850.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	21	10000	7	2900	17	\$7,100.00	14	5600	0	\$0.00	3	\$1,500.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	24	\$12,000.00	15	\$6,400.00	14	\$5,600.00	12	\$4,600.00	0	\$0.00	2	\$1,000.00
County Executive Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>8th Day Before Election Reports</b>												
Candidates/Officeholders	38	\$125,100.00	19	\$55,150.00	26	\$69,950.00	15	\$8,000.00	0	\$0.00	11	\$61,950.00
Specific-purpose Committees	4	\$11,500.00	3	\$9,500.00	4	\$2,000.00	4	\$2,000.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	12	\$20,900.00	8	\$15,800.00	11	\$5,100.00	10	\$4,600.00	0	\$0.00	1	\$500.00
Judicial Specific-purpose Committees	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	49	\$111,600.00	40	\$93,650.00	27	\$17,950.00	21	\$12,950.00	0	\$0.00	6	\$5,000.00
County Executive Committees	1	\$1,200.00	1	\$700.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
<b>Pre-election (Daily) Reports</b>												
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC & SPAC Contributions Reports	1	500	0	0	1	\$500.00	1	500	0	0	0	\$0.00
GPAC Expenditures Reports	0	0	0	0	0	\$0.00	0	0	0	0	0	\$0.00
<b>Special Session Reports</b>												
Candidates/Officeholders	25	\$12,500.00	17	\$8,050.00	10	\$4,450.00	6	\$2,450.00	0	\$0.00	4	\$2,000.00
Specific-purpose Committees	4	\$2,000.00	4	\$2,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
<b>Totals</b>	<b>1,180</b>	<b>\$894,200.00</b>	<b>732</b>	<b>\$512,100.00</b>	<b>584</b>	<b>\$382,100.00</b>	<b>268</b>	<b>\$116,249.00</b>	<b>2</b>	<b>\$352.82</b>	<b>316</b>	<b>\$261,448.18</b>

### **III. STATUTORY CHANGE RECOMMENDATIONS**

At its December 13, 2018 meeting, the Texas Ethics Commission approved recommendations for statutory changes that are found at Appendix B. Commission staff is available to provide background information and other assistance in connection with bills that would affect the laws under the Commission's jurisdiction.

**APPENDIX A**

**TEXAS ETHICS COMMISSION**

**ADVISORY OPINIONS**  
**2017 - 2018**



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 541

---

*February 15, 2017*

*Whether a gift card to an online retailer is considered to be cash or a negotiable instrument for purposes of section 36.10(a)(6) of the Penal Code, and related questions. (AOR-619)*

The Texas Ethics Commission has been asked whether a gift card to an online retail store is considered cash or a negotiable instrument for purposes of section 36.10(a)(6) of the Penal Code, and other related questions.

### **Background**

The requestor of this opinion is an employee of a state agency that contracted with an information technology company ("IT company") to provide paperless filing software to the agency. The IT company also provided to agency employees a training program for the filing software, and employees participated in the training during agency work hours. The requestor states that the IT company would like to give each agency employee who completed the training program a gift card to an online retailer with a value ranging from \$20 to \$60. The gift card could be used to purchase goods or services from the retailer in an amount equal to its value. The requestor asks us to assume that the IT company is not required to register as a lobbyist under Chapter 305 of the Government Code and is not regulated by the agency, and that the only law at issue in this opinion is section 36.10(a)(6) of the Penal Code.

### **Penal Code Restrictions**

Section 36.08 of the Penal Code, in relevant part, prohibits a state employee who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government from accepting any benefit from a person the state employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his or her discretion. Penal Code

§ 36.08(d).<sup>1</sup> Under the requestor's facts, the gift card would be offered to agency employees by the IT company that is interested in a contract with the agency. Therefore, we assume that the employees exercise discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government and that section 36.08(d) of the Penal Code prohibits the employees from accepting a benefit from the IT company.<sup>2</sup>

A “benefit” includes “anything reasonably regarded as pecuniary gain or pecuniary advantage.” *Id.* § 36.01(3). The gift card to an online retailer is a benefit. *See* Ethics Advisory Opinion Nos. 97 (1992) (an engraved clock worth \$50 is a benefit), 60 (1992) (a \$60 restaurant meal is a benefit). However, there is an exception to the prohibitions in section 36.08 of the Penal Code for “an item with a value of less than \$50, *excluding cash* or a negotiable instrument as described by Section 3.104, Business & Commerce Code.” *Id.* § 36.10(a)(6) (emphasis added).<sup>3</sup> The issue in this opinion is whether the gift cards are “cash” for purposes of that exception. If the gift cards are considered “cash,” then the exception would not permit the agency employees to accept the gift cards.

### **Meaning of “Cash” in Section 36.10 of the Penal Code**

The Penal Code does not define the term “cash,” and we are not aware of another Texas statute defining the term. However, in *Hardy v. State*, the Supreme Court of Texas examined the meaning of “cash” when considering whether a gift certificate to a retailer valued at five dollars was a “noncash merchandise prize” under section 47.01(4)(8) of the Penal Code.<sup>4</sup> *Hardy v. State*, 102 S.W.3d 123 (Tex. 2003). In *Hardy*, the court defined “cash” as either “ready money (as coin, specie, paper money, an instrument, token, or anything else being used as a medium of exchange)” or “money or its equivalent paid immediately or promptly after purchasing.” 102 S.W.3d at 131 (quoting Webster’s Third New Int’l Dictionary 346 (1961)) (internal quotations omitted). The court stated that the gift certificates were “an equivalent of money” redeemable for merchandise that “may be used in precisely the same manner as five-dollar bills.” *Id.* The court reasoned that the gift certificates did not qualify as “noncash merchandise prizes” because they operated “in the same manner as legal tender in a retail establishment.” *Id.*

---

<sup>1</sup> *See also* § 36.09, Penal Code (a person may not offer a benefit to a public servant who he knows is prohibited by law from accepting it).

<sup>2</sup> The facts presented by the requestor do not implicate either the bribery or honoraria provisions in chapter 36 of the Penal Code. Penal Code §§ 36.02(a), 36.07. Thus, we consider only the application of the gift prohibitions in section 36.08 of the Penal Code to the requestor’s circumstances.

<sup>3</sup> Section 36.10 of the Penal Code includes several additional exceptions to the benefit prohibitions in section 36.08. However, the requestor limits this opinion to section 36.10(a)(6), and we therefore do not address the possible application of other exceptions.

<sup>4</sup> Section 47.01(4)(b) of the Penal Code provides an exception to the definition of a gambling device for certain machines that reward players “exclusively with noncash merchandise prizes, toys, or novelties.” Penal Code § 47.01(4)(8).

at 132. Thus, the court held that the gift certificates were rewards of “‘cash’ or its equivalent.” *Id.* See also Tex. Att’y Gen. Op. No. GA-0812 (2010) (concluding gift certificates redeemable only at bingo establishments are not noncash prizes because they are redeemable for merchandise that would otherwise cost money); Tex. Att’y Gen. Op. No. GA-0527 (2007) (concluding that a stored-value card is a money equivalent because the amount of value stored on the card equates to an amount or value that can be exchanged for merchandise).

Regarding the gift cards to the online retailer, the question is whether the gift cards are considered “cash” for purposes of section 36.10(a)(6) of the Penal Code. We note that the legislature did not define the term “cash,” but we think it is reasonable to interpret it in a manner consistent with the *Hardy* opinion. Accordingly, we think the term “cash” includes a gift card that operates in the same manner as legal tender in a retail establishment, including an online retailer, and that equates to an amount or value that can be exchanged for merchandise or services of an equivalent value that otherwise would have cost money. Thus, in our opinion, a gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code.<sup>5</sup> Therefore, the state employees may not accept the gift cards offered by the IT company under that exception.

The requestor also asks whether a prepaid debit card is cash for purposes of section 36.10(a)(6) of the Penal Code. We do not see any material distinction between a prepaid debit card that can be used at a variety of retail establishments and a gift card that is limited to a specific retail establishment. Thus, a prepaid debit card is also cash for purposes of section 36.10(a)(6) of the Penal Code.<sup>6</sup>

## SUMMARY

A prepaid debit card or gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code.

---

<sup>5</sup> Because we conclude that a gift card is “cash” for purposes of section 36.10(a)(6) of the Penal Code, we do not address whether a gift card is a “negotiable instrument as described by Section 3.104, Business & Commerce Code.” *Id.* § 36.10(a)(6).

<sup>6</sup> We conclude that a prepaid debit card or gift card is considered to be cash for purposes of section 36.10(a)(6) of the Penal Code, and we therefore do not need to address the requestor’s remaining questions.



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 542

---

*March 30, 2017*

*Regarding the reporting requirements and the legislative moratorium on contributions as applied to the misappropriation and return of legislative caucus contributions. (AOR-620)*

A legislative caucus<sup>1</sup> asks the Texas Ethics Commission (commission) whether the misappropriation and return of the caucus's contributions must be reported. Secondly, the caucus asks whether the return of the contributions violates the statutory moratorium on contributions from non-members of the caucus.

The caucus states that a caucus employee misappropriated funds in the caucus's bank account over a period of three years by making various unauthorized expenditures for air travel, hotel accommodations, dining, ground transportation, and cash advances without the prior knowledge or consent of the caucus. The caucus terminated the employee and took necessary steps to secure its accounts and ensure that no further access was granted to the employee. The caucus asks the following questions:

1. Whether the misappropriation of the funds belonging to the caucus is a reportable expenditure.
2. Whether the return of the funds is a reportable contribution.
3. Whether the caucus may accept the return of the funds during the legislative moratorium.

<sup>1</sup> A legislative caucus is defined as an organization that is composed exclusively of members of the legislature, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common. The term includes an entity established by or for a legislative caucus to conduct research, education, or any other caucus activity. An organization whose only nonlegislator members are the lieutenant governor or the governor remains a "legislative caucus." Elec. Code § 253.0341(e).



## Analysis

### Reporting by the Legislative Caucus

Section 254.0311 of the Election Code requires a legislative caucus to file semiannual reports with the commission including, in part, “the amount of expenditures ... that are made during the reporting period,” including an itemization of expenditures that in the aggregate exceed \$50 and other total amounts of expenditures made during the reporting period. Elec. Code § 254.0311(b)(3)-(5). A report must also include, in part, “the amount of contributions ... that are accepted during the reporting period by the legislative caucus” from persons who are not caucus members. *Id.* § 254.0311(b)(1). A report must also include “the total amount or a specific listing of contributions of \$50 or less accepted from persons other than caucus members” and “the total amount of all contributions accepted.” *Id.* § 254.0311(b)(4), (5).

An “expenditure” is defined, in part, as “a payment of money or any other thing of value.” *Id.* § 251.001(6). The disclosure requirement applies to expenditures made by a caucus. In our opinion, a misappropriation of caucus funds that occurs without authorization by the caucus is not an expenditure made by the caucus. Thus, the misappropriation in such circumstances is not a reportable expenditure.

Similarly, the disclosure requirement applies to a contribution accepted by the caucus. A “contribution” is defined, in part, as “a direct or indirect *transfer* of money, goods, services, or any other thing of value.” *Id.* § 251.001(2) (emphasis added). We do not think a return of funds to a caucus is a “transfer” to the caucus if the caucus had not relinquished control or ownership over the funds.<sup>2</sup> Thus, the misappropriation and return of caucus funds is not a contribution to the caucus. Accordingly, the caucus would not be required to report the return of the funds as a contribution.

### Legislative Moratorium on Contributions from Nonmembers

Section 253.0341 of the Election Code prohibits a legislative caucus from knowingly accepting a contribution from a person who is not a member of the caucus during the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment. *Id.* § 253.0341(b).<sup>3</sup> The issue is whether the return of the misappropriated funds to the caucus during that period is prohibited.

As stated previously, the return of the funds in these circumstances does not constitute a “contribution” to the caucus. Therefore, section 253.0341 of the Election Code would not

<sup>2</sup> A “transfer” is defined, in part, as “[a]ny mode of disposing of or parting with an asset or an interest in an asset” and “[a] conveyance of property or title from one person to another.” Black’s Law Dictionary 1727 (10th ed. 2014).

<sup>3</sup> A contribution received during that period shall be refused and returned to the contributor not later than the 30th day after the date of receipt. *Id.* § 253.0341(b).

prohibit the caucus from receiving and accepting the return of its misappropriated funds by the former employee during the legislative moratorium.

### **SUMMARY**

Under the facts presented, a legislative caucus would not be required to disclose the misappropriation of its funds by a former employee as an expenditure or disclose the return of those funds by the former employee as a contribution. The legislative moratorium on contributions to the caucus from nonmembers would not prohibit the caucus from accepting the return of those misappropriated funds by the former employee.



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 543

---

*May 17, 2017*

*Whether reimbursements for certain travel expenses to the executive director of a state agency are prohibited honoraria or benefits under chapter 36 of the Penal Code, and whether the reimbursements are required to be reported on a personal financial statement. (AOR-621)*

The Texas Ethics Commission (commission) has been asked whether the reimbursements of certain travel expenses to the executive director of a state agency are permissible and whether the reimbursements must be reported on a personal financial statement.

### Facts

The requestor of this opinion is the executive director (director) of a state agency that regulates a particular industry. The director states that a national voluntary association has as members government agencies with jurisdiction to administer laws within the states, the District of Columbia, and United States territories regulating the industry. The executive heads of the agencies are voting members of the association.<sup>1</sup> The association's board of directors is an executive committee that includes the executive heads of these agencies, including the director. The executive committee is responsible for the association's management and budget and has additional powers, including the authority to expend the association's funds and administer the association's annual national conference. The director is a member of the executive committee and attends the executive committee's biannual meetings.

The director describes a scenario in which the association reimburses the director for travel expenses to attend the executive committee meetings. The expenses include airfare to attend the meetings, which would be paid by the state agency, and expenses incurred by the director for meals and ground transportation. The association would reimburse the director for the airfare, meals, and ground transportation expenses, and the director would then reimburse the state agency for the airfare expense.<sup>2</sup> The director states that the state agency can legally pay for the travel expenses at issue and accept reimbursement for the expenses as a gift.<sup>3</sup>

---

<sup>1</sup> The association also has non-voting associate members, including other government regulatory organizations, trade associations, professional and service organizations representing industry businesses, and industry businesses.

<sup>2</sup> The director states that the association would also provide lodging for the director by paying a hotel directly.

<sup>3</sup> The director states that one of the director's job duties is to represent the agency to stakeholders, other agencies, legislative members, the industry, and the public. The director refers to section 660.003 of the Government Code,

## Penal Code Restrictions

The director asks whether the reimbursement for the travel expenses are prohibited “honoraria” or “benefits” under chapter 36 of the Penal Code.

A public servant is prohibited from accepting an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant’s official position or duties. Penal Code § 36.07(a). Additionally, section 36.08 of the Penal Code prohibits a public servant from accepting a benefit from a person who is subject to the public servant’s jurisdiction. *Id.* § 36.08.<sup>4</sup> A “benefit” is anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest. *Id.* § 36.01(3).

According to the facts presented, the state agency would be permitted to pay the travel expenses. In several opinions, we have held that a state agency employee who, at the direction of their employing agency, attends a seminar that is related to their work for the agency does not receive a “benefit” if the seminar fee is waived or if the employee receives food, transportation, or lodging to attend the seminar. *See* Ethics Advisory Opinion Nos. 130, n. 2 (1993) (agency with authority to accept gifts may accept a waiver of fees for an employee to attend a seminar relevant to the employee’s work for the agency, and acceptance of food provided at seminar would likely be permissible if the agency can pay for the food in those circumstances); 118 (1993) (state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a “benefit”); 63 (1992) (state employee accepting tuition, food, transportation, and lodging payable by the agency at a seminar relevant to the employee’s job, and at the direction of the agency, is not receiving a “benefit” and chapter 36 of the Penal Code does not apply because the benefit would be to the state); and 51 (1992) (state employee who, at the direction of his employing agency, attends a seminar to acquire information relevant to his job is not obtaining a “benefit”).<sup>5</sup> In those circumstances, the benefit would be to the employee’s agency.

Based on the facts presented, the benefit of the reimbursement would be to the state agency, and the director would not receive a “benefit” for purposes of section 36.08 of the Penal Code by accepting the reimbursement.<sup>6</sup> Likewise, the director would not receive an “honorarium” for

---

which authorizes a state agency to pay a travel expense when certain conditions are met, including if the purpose of the travel clearly involves official state business and is consistent with the agency’s legal authority. *See* Gov’t Code § 660.003(e)(2). Based on those representations, we assume that the agency has authority to pay such expenses and to accept reimbursement for the expenses. *See generally* Ethics Advisory Opinion No. 31 (1992).

<sup>4</sup> The prohibition on accepting benefits depends on the specific circumstances, including the public servant’s agency and official duties and the relationship that the person offering the gift has to the public servant or the agency. *See generally* Penal Code § 36.08.

<sup>5</sup> *See also* Ethics Advisory Opinion No. 368 (1997) (waiver of a fee for a county judge to attend a legal seminar would be a benefit to the county, not to the judge, if the cost to attend the seminar would be reimbursable with county funds); Ethics Advisory Opinion No. 31 (1992) (private company presenting a program for state agency employees in their official capacity would be an expenditure to benefit the agency, not a lobby expenditure).

<sup>6</sup> Whether a particular state agency may accept gifts is governed by law outside the commission’s jurisdiction. Ethics Advisory Opinion No. 130 (1993). It is also for the particular agency to determine whether any reporting requirements apply to the acceptance of a gift.

purposes of section 36.07(a) of the Penal Code by accepting the reimbursement because the benefit would be to the state agency.<sup>7</sup>

### **Personal Financial Statement Reporting Requirements**

Section 572.023(b) of the Government Code requires a personal financial statement (PFS) to include an account of the financial activity of the individual required to file the statement for the preceding calendar year. Gov't Code § 572.023(a). The PFS must include the identification of a person or other organization from which the individual receives a gift of anything of value in excess of \$250 and a description of each gift. *Id.* § 572.023(b)(7).

The PFS also must include the identification of any person providing transportation, meals, or lodging expenses, and the amount of the expenses, permitted under section 36.07(b) of the Penal Code.<sup>8</sup> *Id.* § 572.023(b)(11). Section 36.07(b) of the Penal Code provides that the prohibition on accepting honoraria does not apply to transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event. Penal Code § 36.07(b). Payments of such expenses are required to be reported under section 572.023(b)(11) of the Government Code only if they are “honoraria.”<sup>9</sup> Ethics Advisory Opinion No. 370 (1997).

Based on the facts presented, the reimbursement of the travel expenses at issue would be a benefit to the state agency and would not be a gift or honorarium to the director for purposes of section 36.07(a) of the Penal Code, and therefore would not be required to be reported as a gift, permissible honorarium, or otherwise on the director's PFS.

### **SUMMARY**

Based on the requestor's facts described in this opinion, the executive director of a state agency would not receive an “honorarium” for purposes of section 36.07(a) of the Penal Code or a “benefit” for purposes of section 36.08 of the Penal Code by accepting a reimbursement of certain travel expenses that are payable by the state agency. The executive director would not be required to report the reimbursement on a personal financial statement.

---

<sup>7</sup> See also Tex. Att'y Gen. Op. No. GA-0256, at 3 (2004) (an honorarium falls within the definition of “benefit”).

<sup>8</sup> The PFS must also include various sources of income, certain types of assets and liabilities, and other activities, none of which are at issue in this opinion.

<sup>9</sup> Information required by section 572.023(b)(11) of the Government Code is reported on Part XIII of the PFS form.



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 544

---

July 11, 2017

*Whether the inspector general for the Health and Human Services Commission is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code. (SP-13)*

This opinion addresses whether the inspector general for the Health and Human Services Commission (“HHSC”) is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.<sup>1</sup>

A state officer must file a personal financial statement with the Texas Ethics Commission. Gov’t Code § 572.026. The term “state officer” includes an “appointed officer,” which includes an “*officer of a state agency* who is appointed for a term of office specified by the Texas Constitution or a statute of this state.” *Id.* §§ 572.002(1)(C), (9), (12) (emphasis added). The issue is whether the inspector general is an appointed “officer of a state agency” and, therefore, a state officer.

HHSC is a state agency, and the office of the inspector general (“the office”) is created within HHSC and assigned certain statutory responsibilities. *Id.* §§ 531.002, .102(a). The inspector general is appointed by the governor to serve for a statutory one-year term. *Id.* § 531.102(a-1). However, HHSC’s enabling statutes identify the inspector general as the “director of the office” rather than an “officer.” *Id.* § 531.102(a-1). The location of the office within HHSC, as an agency consisting of several other divisions, raises the question whether the inspector general is an “officer of a state agency” for purposes of Chapter 572.

In a prior opinion, we addressed whether a member of the board of directors of a state agency is an “appointed officer” when the agency’s statute identified its members as “directors” rather than “officers.” Ethics Advisory Opinion No. 70 (1992).<sup>2</sup> In resolving that issue, we considered legal authorities defining the term “state officer,” noting generally that the duties of the position rather than the title one holds determine whether a person is an officer. *Id.* A person is a “state officer” if the person exercises any sovereign function of government for the benefit of the public largely independent of anyone else’s control. *Id.* (citing *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d

---

<sup>1</sup> The office of inspector general was established in 2003. Act of June 2, 2003, 78th R.S., ch. 198, § 2.19(a), 2003 Tex. Gen. Laws 651.

<sup>2</sup> The opinion considered a nearly identical definition in a predecessor statute. See V.T.C.S. art. 6252-9b, § 2(1).



578, 583 (Tex. 1955)).<sup>3</sup> Factors in determining whether an official exercises a sovereign function of government include: (1) the scope and significance of the official's duties; (2) whether the duties are primarily provisional or ongoing; and (3) whether the official performs those duties in his own right, "exercising discretion without the oversight of others." Tex. Att'y Gen. Op. No. GA-0584 (2007) (addressing the meaning of "state officer" for purposes of impeachment under article XV, section 7 of the Texas Constitution and chapter 665 of the Government Code).

The office of the inspector general is responsible for preventing and detecting fraud, waste, and abuse in the delivery of all health and human services throughout Texas. Gov't Code § 531.102(a). The office enforces state laws relating to the provision of such services and has the authority to perform audits, reviews, inspections, and investigations. *Id.* §§ 531.102, .113, .118. The office may also conduct a performance audit on any program or project administered by HHSC or any agreement entered into by HHSC, including the performance of HHSC or a health and human services agency. *Id.* § 531.1025. Thus, the inspector general, as director of the office, has authority that is significant in its scope, continuous in nature, and extends statewide.

The office also exercises discretion without the oversight of others. By statute, HHSC and its executive commissioner are required to provide administrative support to the office and to adopt rules and policies in consultation with the office, including objectives, priorities, and performance standards.<sup>4</sup> However, investigations conducted by the office are independent of HHSC and its executive commissioner. *Id.* § 531.102(a-6). Additionally, the office has authority to issue a subpoena in connection with an investigation and to impose a payment hold on a Medicaid provider under certain circumstances. *Id.* §§ 531.102(g)(2), .1021. Thus, it appears that the involvement of other HHSC officers and staff does not supersede the office's discretion in meeting its statutory duties and obligations. Therefore, in our opinion, the inspector general exercises a portion of the sovereign power of government largely independent of anyone else's control.<sup>5</sup>

In our opinion, based on the foregoing, the inspector general for HHSC is an officer of a state agency who is appointed for a term of office specified by statute and, thus, is an "appointed

---

<sup>3</sup> See also *Knox v. Johnson*, 141 S.W.2d 698, 700 (Tex. Civ. App.—Austin 1940, writ ref'd) ("[A] position is a public office when it is created by law, with duties cast on the incumbent which involve an exercise of some portion of the sovereign power and in the performance of which the public is concerned, and which also are continuing in their nature and not occasional or intermittent."). The attorney general has opined that the principal considerations in determining whether an official is a "state officer" are whether the official exercises a sovereign function of government and serves for a fixed term of office. Tex. Att'y Gen. Op. No. GA-0584 at 22.

<sup>4</sup> See *id.* §§ 531.102(a-2), (a-3), (b), (e), (n), (p), (q), (v). The office is also required to coordinate with the executive commissioner regarding numerous functions, including audits and oversight, in part to minimize the duplication of activities. *Id.* §§ 531.102(a-5), (q), (w). HHSC's internal audit division is also required to regularly audit the office. *Id.* § 531.102(a-4).

<sup>5</sup> We also note that the inspector general serves for a term of office fixed by law and that the inspector general has, in practice, executed the constitutional oath of office and remained subject to confirmation by the Texas Senate. See Tex. Att'y Gen. Op. No. GA-0584 at 10 (service for a term fixed by law and taking the constitutional oath are additional factors supporting a person's status as a state officer).

officer.”<sup>6</sup> Therefore, the inspector general is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.<sup>7</sup>

An additional question that has arisen is whether the principal deputy inspector general who assumes the responsibilities of the inspector general is also a “state officer.” Provided that the deputy has not been appointed as the inspector general by the governor, the individual is not a “state officer” and is therefore not required to file a personal financial statement under Chapter 572. *See* Ethics Advisory Opinion No 265 (1995).

## **SUMMARY**

The inspector general for the Health and Human Services Commission is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.

---

<sup>6</sup> A “salaried appointed officer” is an appointed officer who receives or is authorized to receive a salary for state service but not a per diem or other form of compensation. *Id.* § 572.002(9). Chapter 572 includes specific deadlines for a salaried appointed officer to file a personal financial statement. *See* Gov’t Code § 572.026.

<sup>7</sup> A personal financial statement will only be required for a person appointed to the office after the date of this opinion.





# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 545

---

*September 28, 2017*

*Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services. (AOR-622)*

The Texas Ethics Commission has been asked whether the “revolving door” law in section 572.069 of the Government Code would prohibit the requestor of this opinion, who is a state employee (“the requestor”), from departing the state agency where the requestor is currently employed and providing certain services to two for-profit businesses (“clients”).

The requestor states that the state agency published a request for proposals (“RFP”), seeking a vendor to provide information technology services. The requestor reviewed and scored the bid proposals submitted in response to the RFP. The first of the two clients submitted a proposal, in which the second client was listed as a subcontractor. The requestor states that the requestor did not participate any further in the RFP or participate in negotiation with vendors or the vendor selection. The requestor also states that the requestor would provide the services as a “consultant” employed by a staffing agency and assigned to the clients. In addition, the requestor states that the services would be in furtherance of the executed state agency contract for which the requestor reviewed and scored bid proposals.

### Revolving Door Law

Section 572.069 of the Government Code states:

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

Gov't Code § 572.069.<sup>1</sup>

---

<sup>1</sup> In the 2017 regular legislative session, the Legislature amended this section to prohibit a former state officer or employee of a state agency who, during the period of state service or employment, participated on behalf of a state agency in a procurement or contract negotiation involving a person, from accepting employment from that person before the second anniversary of the date the “contract is signed or the procurement is terminated or withdrawn.”

## Participation and Involvement

The first question is whether the requestor participated on behalf of a state agency<sup>2</sup> in a procurement or contract negotiation involving the clients. In our opinion, the requestor participated in a procurement on behalf of a state agency by scoring and evaluating bid proposals for a state agency contract. Further, the procurement involved both clients because they were identified in the proposal as providing services under the contract. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting employment from either client before the second anniversary of the date the employee's employment with the state agency ceases.

## Accepting Employment

The second question is whether the requestor would "accept employment" from either client by providing the services at issue, which depends upon the specific circumstances surrounding the requestor's working arrangement with the staffing agency and the two clients. The facts indicate the following:

- The staffing agency would consider the requestor its employee, pay the requestor's salary, and provide for workplace benefits;
- The staffing agency would assign the requestor to work for the clients on a "consultant basis;"
- The requestor would provide services for the clients in furtherance of the clients' obligations under the state agency contract;
- The length of the requestor's employment with the staffing agency would be contingent on the duration of the state agency contract and could be modified by the clients;
- The requestor would retain the right to terminate employment before completion of the contract without liability for its completion;
- The clients would give the requestor instructions concerning when, where, and how the work would be performed;
- The clients would provide the requestor with training as needed;
- The clients would furnish the requestor with a computer;
- The clients and staffing agency would jointly control the requestor's schedule; and
- All hours worked and paid would require the approval of both the clients and staffing agency.

When a statute uses the terms "employee" or "employed," or otherwise refers to an "employment" relationship, courts will use the common law test of employment unless the

---

S.B. 533, Act of May 30, 2017, 85th Leg., R.S., § 1 (eff. September 1, 2017) (emphasis added). We address the requestor's facts under the current law.

<sup>2</sup> We assume for purposes of this opinion that the agency is a "state agency" as defined by section 572.002(10) of the Government Code.

statute dictates otherwise.<sup>3</sup> Chapter 572 of the Government Code does not define the term “employment” or indicate that the Legislature intended the term “employment” in section 572.069 to be interpreted differently from how that term is understood in the common law. Therefore, we will in this case use the common law test of employment to determine whether a prohibited employment relationship would exist.

Under the common law test, generally, an individual renders services as an employee of an employer if:

- (1) The individual acts, at least in part, to serve the interests of the employer;
- (2) The employer consents to receive the individual’s services; and
- (3) The employer controls the manner and means by which the individual renders services, or the employer otherwise effectively prevents the individual from rendering those services as an independent businessperson.<sup>4</sup>

Under the “right to control” test,<sup>5</sup> an employer’s right or ability to control the manner and means by which an individual renders services is sufficient to establish an employment relationship.<sup>6</sup>

In our opinion, based on the facts presented, the requestor would be acting to serve the interests of the clients, who would be consenting to receive the services. The clients would also have the right or ability to control the manner and means by which the requestor would render the services. Thus, an employment relationship would exist between the requestor and the clients. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting the described employment arrangement before the second anniversary of the date on which the requestor’s service or employment with the state agency ceases.

## SUMMARY

Section 572.069 of the Government Code prohibits a former state employee from providing the services described before the second anniversary of the date on which the employee’s service or employment with the state agency ceases.

---

<sup>3</sup> See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322 (1992). See also *Kelley v. Southern Pacific Co.*, 419 U.S. 318, 323-24 (1974); Attorney General Opinion Nos. GA-0292, at 3-4 (2005) (GA-0292) (applying common law test to determine meaning of “employed by” in statute), DM-409, at 4-5 (1996) (DM-409) (applying common law test to define “employee” in indemnification statute).

<sup>4</sup> Restatement (Third) of Employment Law: Conditions for Existence of Employment Relationship § 1.01(a) (2015).

<sup>5</sup> See GA-0292, at 4 (test to determine whether a person is an employee rather than independent contractor is whether the employer has a right to control the progress, details, and methods of operations of the work); DM-409, at 5 (1996) (considering whether employer has right to control details of work). See also Comment *d* to Restatement (Third) of Employment Law § 1.01.

<sup>6</sup> An individual may also be the employee of more than one employer. *St. Joseph Hosp. v. Wolff*, 94 S.W. 3d 513, 538 (Tex. 2002). An individual is an employee of two or more joint employers if: (i) the individual renders services to at least one of the employers and (ii) that employer and the other joint employers each control or supervise such rendering of services. Restatement (Third) of Employment Law: Employees of Two or More Employers § 1.04(b) (2015).



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 546

---

*January 31, 2018*

*Whether a judge may use political contributions to pay the costs associated with membership in an organization that helps its members develop leadership skills.  
(AOR-624)*

### SUMMARY

A judge may use political contributions to pay the costs associated with membership in an organization that helps its members develop leadership skills if the judge's primary purpose in paying the costs is to facilitate the duties or activities of the judicial office.

### ANALYSIS

The Texas Ethics Commission ("Commission") has been asked whether a judge may use political contributions to pay for the costs associated with membership in a nonprofit organization and attendance at the organization's program that helps its members develop leadership skills.

The requestor has provided information describing the organization and program in question. The organization is a nonprofit corporation with the stated purpose of "provid[ing] educational services relating to the advancement of women." The particular program in which the requestor wishes to enroll consists of four sessions (80 hours total) held in various locations in Texas to provide "educational and development opportunities to Texas women who seek to advance as leaders and expand their knowledge of the diverse dynamics, issues, challenges, and opportunities that impact their work, personal lives, and communities." The costs associated with the program include programming materials, meals, activities, travel, and accommodations.

Title 15 of the Texas Election Code prohibits a candidate or officeholder from converting political contributions to personal use. Elec. Code § 253.035(a). "Personal use" is defined as "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). Thus, it is permissible for a judge to use political contributions to pay for membership in an organization if the benefits of membership are primarily connected with duties or activities of the judge's office.

Political contributions may not be used to pay for entertainment or social events that are not connected with duties or activities as a candidate or officeholder.<sup>1</sup>

The requestor is a justice of the peace. As such, the requestor has judicial, administrative, and financial duties, as well as jurisdiction over criminal and civil matters.<sup>2</sup> The requestor states that the “[l]eadership training for judges will allow us to find principles that work in the private sector and apply them to government and the judge’s office.” The requestor also states that the primary purpose in joining the organization is “to acquire skills to improve the justice system, both on and off the bench.”

We previously held that a legislator may use political contributions to pay the costs of membership in an organization that helps its members acquire leadership skills if the legislator’s primary purpose in joining such an organization is to facilitate legislative work. Ethics Advisory Opinion No. 423 (1999). Similarly, leadership training may legitimately serve the functions of a judicial office, including that of a justice of the peace. Therefore, the use of political contributions to pay the costs associated with membership in the organization would not be a conversion to personal use if the judge’s primary purpose in paying the costs is to facilitate the duties or activities of the judicial office.<sup>3</sup>

---

<sup>1</sup> Ethics Advisory Opinion No. 405 (1998).

<sup>2</sup> See Gov’t Code, ch. 27; Code Crim. P., art. 4.11.

<sup>3</sup> See Ethics Advisory Opinion Nos. 423 (1999) (legislator may use political contributions to pay the costs of membership in an organization that helps members acquire leadership skills if the legislator’s primary purpose in joining the organization is to facilitate legislative work); 247 (1995), 157 (1993) (officeholders may use political contributions to pay for educational courses if the courses are primarily intended to help officeholders with official duties or activities).



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 547

---

*June 27, 2018*

*Whether a candidate may use political contributions to pay childcare expenses incurred during a campaign. (AOR-627)*

### SUMMARY

Under the facts presented, a candidate may use political contributions to pay childcare expenses to facilitate the candidate's participation in campaign activities.

### FACTS

The requestor of this opinion is a candidate for public office who states that, since becoming a candidate for public office, she has had to pay for childcare services (daycare and babysitting) for her two young children while she attends campaign events and meetings. She describes the campaign activities, in part, as commissioners court meetings; public office hours to meet with voters; meetings with campaign volunteers; and attendance at other campaign events and blockwalking. She states that she cannot be an effective and successful candidate without the childcare services for several reasons, including that she is facilitating the meetings, she is required to be "hands-on" at the meetings, that children would be a disturbance during the meetings, that the events occur past the children's bedtime, or that outdoor temperatures are too high for the children to attend. She states that before she was a candidate, she was "a stay-at-home mom" and never incurred costs for childcare other than an occasional babysitter for personal reasons. She states that she desires to use political contributions to pay for the childcare and that a supporter intends to contribute to the candidate's campaign specifically to help defray the costs of childcare.

### ANALYSIS

A person who accepts a political contribution<sup>1</sup> as a candidate may not convert the contribution to personal use. Elec. Code § 253.035(a). "Personal use" is a use that primarily furthers individual

---

<sup>1</sup> "Political contribution" means a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).

or family purposes not connected with the performance of duties or activities as a candidate. *Id.* § 253.035(d).

The candidate's payments for childcare services further some individual or family purposes. However, we have previously recognized that "by specifying that the use must not *primarily* serve individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefits to the individual candidate." Ethics Advisory Opinion No. 149 (1993) (emphasis in original). According to the facts presented, the candidate began paying for childcare services only after becoming a candidate, and the candidate's stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign activities. Thus, in our opinion, the payments would not primarily further individual or family purposes not connected with the performance of duties or activities as a candidate and therefore would not constitute personal use.<sup>2</sup>

---

<sup>2</sup> By comparison, the use of political contributions for leadership training, seminars, or courses of study may be connected with the activities of a candidate because they facilitate activities as a candidate. *See* Ethics Advisory Opinion Nos. 546 (2018), 423 (1999), 267 (1995), 247 (1995), and 157 (1993).



# TEXAS ETHICS COMMISSION



---

## ETHICS ADVISORY OPINION NO. 548

---

*December 14, 2018*

*Whether an associate judge may wear judicial robes and use the title “associate judge” in political advertising. (SP-15)*

### SUMMARY

Section 255.006 of the Election Code does not prohibit an associate judge from wearing judicial robes or referring to the judge in political advertising as “Associate Judge, 1000th District Court, Texas County.”

### ANALYSIS

#### Use of “Associate Judge” in Political Advertising

We address in this opinion whether an associate judge, who is also a candidate for state district judge, may wear judicial robes or refer to himself in political advertising in the following manner: “John Smith, Associate Judge, 1000th District Court, Texas County.”

Section 255.006 of the Election Code states:

- (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he does not hold at the time the agreement is made.
- (b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office he does not hold at the time the representation is made.

That law generally does not prohibit a judge from using the title “judge” in political advertising or campaign communications for another judicial office as long as the communications do not suggest that the judge holds a public office the person does not hold. *See, e.g.*, Ethics Advisory Opinion No. 171 (1993) (a part-time municipal judge seeking the office of district or county court-at-law judge may use the title “judge” in political advertising); *see also* Elec. Code §§ 251.001(16), (17) (defining “political advertising” and “campaign communication”).



For purposes of this opinion, the issue is whether wearing judicial robes or the use of the title “associate judge” would represent that the judge holds a public office, not whether the judge is actually a judge. In this instance, wearing judicial robes or using a reference to the associate judge as “Associate Judge, 1000th District Court, Texas County” does not, by itself, represent that the judge holds an office the judge does not hold, and therefore would not violate section 255.006 of the Election Code.

**APPENDIX B**  
**TEXAS ETHICS COMMISSION**  
**RECOMMENDATIONS FOR STATUTORY CHANGES**

**Texas Ethics Commission  
Recommendations for Statutory Changes  
86<sup>th</sup> Legislative Session  
(Adopted December 13, 2018)**

The following recommendations from the Texas Ethics Commission (the “TEC”) are made pursuant to Section 571.073(3) of the Texas Government Code. The relevant statutes have been attached as exhibits where applicable.

**I. RECOMMENDATIONS TO REPEAL UNCONSTITUTIONAL STATUTES**

**Recommendation No. 1: Repeal Statute that Prohibits Use of Legislatively Produced Materials in Political Advertising**

Repeal Section 306.005 of the Texas Government Code, which states that a person may not use in political advertising any audio or visual materials produced by or under the direction of the legislature or of a house, committee, or agency of the legislature.

Reason: On November 29, 2016, the TEC was permanently restrained and enjoined from enforcing Section 306.005 of the Texas Government Code following a final judgment issued in Cause No. 2016-27417, *Briscoe Cain v. Untermeyer, et al.*, in the 270th District Court of Harris County, Texas (no appeal). The trial court held that the statute violated the First Amendment to the United States Constitution and Article I, Section 8 of the Texas Constitution. This amendment would conform the statute to be consistent with the trial court’s final judgment.

A draft amendment to Chapter 306 of the Government Code is found at Exhibit A, page 36.

**Recommendation No. 2: Repeal Portion of Statute that Prohibits Corporations and Labor Organizations from Contributing to Direct Campaign Expenditure Only Committees**

Amend Chapter 253 of the Texas Election Code to allow a corporation or labor organization to make a political contribution to a political committee that intends to act exclusively as a “direct campaign expenditure only committee,” also known as a “SuperPac.”

Reason: On October 16, 2013, in *Texans for Free Enterprise v. Texas Ethics Commission*, 732 F.3d 535 (5<sup>th</sup> Cir. 2013)(no appeal), the United States Court of Appeals for the Fifth Circuit affirmed a preliminary injunction enjoining the TEC from enforcing Sections 253.094(a) and 253.003(b) of the Election Code, which were declared unconstitutional under the First Amendment to the United States Constitution. A permanent injunction was issued by the trial court on December 20, 2013 (See *Texans for Free Enterprise v. Texas Ethics Commission*, 2013 U.S. Dist. LEXIS 187379). This amendment would conform the statute to be consistent with the Court’s opinion and the final judgment entered by the trial court.

A draft amendment to Title 15 of the Election Code is found at Exhibit B, page 37.

### **Recommendation No. 3: Repeal Statute that Requires 60-Day Waiting Period and 10-Contributor Requirements for General-Purpose Committees**

Repeal Section 253.037(a) of the Texas Election Code relating to the 60-day and 10-contributor requirements applicable to general-purpose committees. In addition, repeal Section 253.037(c) of the Election Code, which merely provides an exception to Section 253.037(a).

Reason: On August 12, 2014, in *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409 (5th Cir. 2014) (no appeal), the United States Court of Appeals for the Fifth Circuit struck down as unconstitutional portions of the Texas Election Code that required a general purpose committee to collect contributions from ten contributors and wait sixty days before exceeding \$500 in contributions and expenditures in an election. This amendment would conform the statute to be consistent with the Court's opinion.

A draft amendment to Title 15 of the Election Code is found at Exhibit C, page 38.

### **Recommendation No. 4: Repeal Statute Requiring Contribution and Expenditure Limits for Speaker Election**

Repeal Sections 302.017 and 302.019 of the Texas Government Code relating to contribution and expenditure restrictions for speaker elections.

Reason: On August 21, 2008, in *Free Market Foundation v. Reisman*, 573 F. Supp. 2d 952 (Dist. Court, WD Texas 2008) (no appeal), the United States District Court for the Western District of Texas, Austin Division, found that the contribution and expenditure restrictions for speaker elections in the Texas Government Code violated the First Amendment to the United States Constitution. This amendment would conform the statute to be consistent with the trial court's final judgment.

A draft amendment to Chapter 302 of the Government Code is found at Exhibit D, page 39.

## **II. RECOMMENDATIONS TO IMPROVE ENFORCEMENT EFFICIENCIES**

### **Recommendation No. 5: Authorize Disclosure of Confidential Information Showing Possible Criminal Violations to Texas Rangers Public Integrity Unit**

Authorize the Commission to disclose to law enforcement agencies, including the Texas Rangers Public Integrity Unit, information relating to a sworn complaint.

Reason: Section 571.171, Texas Government Code, authorizes the TEC to refer certain matters to the appropriate prosecuting attorney for criminal prosecution without violating the confidentiality restriction under Section 571.140. Prior to 2014, the TEC referred allegations of criminal violations to the Travis County District Attorney's Public Integrity Unit. After that office was disbanded in 2014, the Texas Rangers' Public Integrity Unit took over the criminal investigation of public officials. That unit now handles the referral of these matters to the appropriate prosecuting attorney for criminal prosecution. There is no provision in Chapter 571 that allows the TEC to disclose or refer matters to the Texas Rangers for criminal investigation. In order to protect the public, the TEC must be authorized to disclose information to the Texas Rangers, local law enforcement authorities, and federal law enforcement authorities.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit E, page 40.

### **Recommendation No. 6: Amend Statutes to Provide Consistency to Records Retention Requirements for Campaign Finance Reports, Lobby Reports, and Personal Financial Statements**

Amend Title 15 of the Texas Election Code and Chapter 572 of the Texas Government Code to require filers to maintain records related to information disclosed in campaign finance reports, personal financial statements, and lobby reports for a consistent period of time sufficient to take into account the applicable statute of limitations for enforcement of potential violations. The TEC recommends a four year retention period.

Reason: Recordkeeping requirements for the various reports filed with the TEC and local filing authorities range from two years (for campaign finance reports) to four years (for lobby reports). There is no record retention requirement for personal financial statements. Pursuant to TEC Rule 12.5, the TEC cannot accept jurisdiction over a sworn complaint if the alleged violation is also a criminal offense and is barred from criminal prosecution by the applicable statute of limitations, which in many cases is two years. The TEC is barred from investigating alleged violations that are not criminal offenses if the conduct occurred more than three years before the complaint was filed. Having a uniform records retention requirement for all reports that could be the subject of a sworn complaint and ensuring the retention requirement is sufficient in length to prevent records from being destroyed before the statute of limitations has expired would improve the TEC's ability to enforce election laws under its jurisdiction.

A draft amendment to Chapter 572 of the Government Code is found at Exhibit F, page 41.

## **III. RECOMMENDATIONS FOR COST SAVINGS EFFICIENCIES**

### **Recommendation No. 7: Authorize the TEC to Provide Certain Notices via Email**

Amend Section 571.032 of the Texas Government Code to allow the TEC to send certain notices electronically, including notice that a sworn complaint does not comply with the form requirements or that the TEC has no jurisdiction over a sworn complaint.

Reason: Section 571.032, Texas Government Code, requires the TEC to send all initial notices, decisions, and reports to complainants and respondents using certified mail, restricted delivery, return receipt requested. The additional cost for this method of service is \$10.05 and the average delivery time (assuming the intended recipient accepts delivery) is three to five business days. This includes notices that a sworn complaint does not comply with form requirements or that the TEC does not have jurisdiction over the alleged violation. In FY 2018, the TEC dismissed 187 sworn complaints that did not comply with the form requirements or were not within the TEC's jurisdiction. In each instance, the TEC was required to send notice of the determination to both the complainant and the respondent by certified mail, restricted delivery, return receipt requested at a cost of regular mail plus \$10.05. The TEC estimates that it spends an additional \$2,500 annually to comply with the requirement that complainants and respondents must personally sign for delivery of the written notice that a sworn complaint was not accepted by the TEC. It is neither cost-effective nor efficient to use this method to provide notice of dismissals in these instances. Authorizing the TEC to send these notices by regular mail or electronic delivery would reduce costs and provide a more efficient method of communicating this information.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit G, page 42.

#### **IV. RECOMMENDATIONS TO ASSIST FILERS**

##### **Recommendation No. 8: Allow Filers to Verify Reports Filed with the TEC with a Declaration**

Amend Section 571.077 of the Texas Government Code to allow filers who are eligible to file personal financial statements with the TEC on paper to verify the report by completing a written unsworn declaration subscribed by the filer as true under penalty of perjury.

Reason: H.B. 791 (effective 5/29/17) amended Section 572.0291 of the Texas Government Code to allow appointed officers to file personal financial statements with the TEC by certified mail. The personal financial statement form requires the filer to verify the report before a notary public. The TEC has been advised by filers that it can be costly and inconvenient to locate a notary in time to meet the statutory filing deadline. Section 132.001 of the Texas Civil Practice and Remedies Code authorizes the use of a written unsworn declaration in lieu of an affidavit. An unsworn declaration is signed by the affiant, who swears under penalty of perjury that the information contained in the document is true. Because there is no notary requirement with an unsworn declaration, filers would have a more convenient and less expensive way to verify the report in order to meet the filing deadline. The declaration would have the same force of law as a notarized affidavit. Amending Section 571.077 of the Texas Government Code to allow for the use of an unsworn declaration would make the statute consistent with Section 132.001 of the Texas Civil Practice and Remedies Code.

A draft amendment to Chapter 571 of the Government Code is found at Exhibit H, page 43.

##### **Recommendation No. 9: Allow Certain Campaign Finance Reports to be Filed in Black or Blue Ink or, Alternatively, Remove the Requirement**

Amend Section 254.036 of the Texas Election Code to allow TEC filers exempt from electronic filing of campaign finance reports to complete and file reports using blue or black ink. Alternatively, remove the requirement regarding ink color altogether.

Reason: Section 254.036 of the Texas Election Code requires paper reports filed with the TEC to be written or typed in black ink. The TEC has received repeated inquiries seeking clarification about whether paper reports printed in blue ink would be accepted and has been advised that local filing authorities are rejecting attempts to file paper reports printed in blue ink. It makes no difference to the TEC's administration of law whether a report is filed using black or blue ink.

Draft amendments to Chapter 254 of the Government Code are found at Exhibit I, page 44.

## EXHIBIT A

Repealed text is indicated by [strikethrough] text.

---

### CHAPTER 306 OF THE GOVERNMENT CODE

---

1 ~~[Sec. 306.005. USE OF LEGISLATIVELY PRODUCED AUDIO OR VISUAL MATERIALS~~  
2 ~~IN POLITICAL ADVERTISING PROHIBITED. (a) A person may not use audio or visual~~  
3 ~~materials produced by or under the direction of the legislature or of a house, committee, or~~  
4 ~~agency of the legislature in political advertising.~~  
5 ~~(b) After a formal hearing held as provided by Subchapter E, Chapter 571, the Texas Ethics~~  
6 ~~Commission may impose a civil penalty against a person who violates this section. The amount~~  
7 ~~of the penalty may not exceed \$5,000 for each violation.~~  
8 ~~(c) Subsection (a) does not prohibit describing or quoting the verbal content of the audio or~~  
9 ~~visual materials in political advertising.~~  
10 ~~(d) Subsection (a) does not apply to a photograph of a current or former member of the~~  
11 ~~legislature obtained from a house, committee, or agency of the legislature that is used in~~  
12 ~~accordance with terms and conditions established by the entity from which the photograph was~~  
13 ~~obtained.~~  
14 ~~(e) In this section:~~  
15 ~~(1) "Political advertising" has the meaning assigned by Section 251.001, Election Code.~~  
16 ~~(2) "Visual materials" means photographic, video, or other material containing a still or moving~~  
17 ~~recorded image or images.]~~

## EXHIBIT B

Proposed language is indicated by underlined text.

---

### TITLE 15 OF THE ELECTION CODE

---

1 Sec. 253.105. POLITICAL CONTRIBUTIONS TO DIRECT CAMPAIGN EXPENDITURE  
2 COMMITTEES

3  
4 (a) A corporation or labor organization may make a political contribution from its own property  
5 to a political committee that intends to act exclusively as a direct campaign expenditure only  
6 committee.

7  
8 (b) For purposes of this section, a “direct campaign expenditure only committee” is a political  
9 committee that makes direct campaign expenditures and does not make or intend to make  
10 political contributions to any candidate, officeholder, or specific-purpose committee established  
11 or controlled by a candidate or officeholder.

12  
13 (c) A direct campaign expenditure only committee’s acceptance of a political contribution from a  
14 corporation or labor organization does not constitute a violation of section 253.003(b) or  
15 253.094(a) of the Election Code if, before accepting the contribution, the committee files with  
16 the commission an affidavit stating:

17  
18 (1) the committee intends to act exclusively as a direct campaign expenditure only  
19 committee; and

20  
21 (2) the committee will not use its political contributions to make political contributions to  
22 any candidate for elective office, officeholder, or political committee that makes a  
23 political contribution to a candidate or officeholder.



## EXHIBIT C

Repealed text is indicated by ~~text~~.

---

### TITLE 15 OF THE ELECTION CODE

---

1   Sec. 253.037. RESTRICTIONS ON CONTRIBUTION OR EXPENDITURE BY GENERAL-  
2   PURPOSE COMMITTEE

3  
4   ~~[(a) A general-purpose committee may not knowingly make or authorize a political contribution~~  
5   ~~or political expenditure unless the committee has:~~

6  
7         ~~(1) filed its campaign treasurer appointment not later than the 60th day before the date the~~  
8         ~~contribution or expenditure is made; and~~

9  
10        ~~(2) accepted political contributions from at least 10 persons.]~~

11  
12   (b) A general-purpose committee may not knowingly make a political contribution to another  
13   general-purpose committee unless the other committee is listed in the campaign treasurer  
14   appointment of the contributor committee.

15  
16   ~~[(c) Subsection (a) does not apply to a political party's county executive committee that is~~  
17   ~~complying with Section 253.031 or to a general-purpose committee that accepts contributions~~  
18   ~~from a multicandidate political committee (as defined by the Federal Election Campaign Act)~~  
19   ~~that is registered with the Federal Election Commission, provided that the general-purpose~~  
20   ~~committee is in compliance with Section 253.032.]~~

21  
22   (d) A person who violates this section commits an offense. An offense under this section is a  
23   Class A misdemeanor.

## EXHIBIT D

Repealed text is indicated by ~~[strikethrough]~~ text.

---

### CHAPTER 302 OF THE GOVERNMENT CODE

---

1 ~~[Sec. 302.017. CONTRIBUTIONS AND LOANS FROM ORGANIZATIONS~~

2  
3 ~~(a) Except as provided by Subsection (b), a corporation, partnership, association, firm, union,~~  
4 ~~foundation, committee, club, or other organization or group of persons may not contribute or~~  
5 ~~lend or promise to contribute or lend money or other things of value to a speaker candidate or to~~  
6 ~~any other person, directly or indirectly, to aid or defeat the election of a speaker candidate.~~

7  
8 ~~(b) This section does not apply to a loan made in the due course of business to a speaker~~  
9 ~~candidate for campaign purposes by a corporation that is legally engaged in the business of~~  
10 ~~lending money and that has continuously conducted the business for more than one year before~~  
11 ~~making the loan to the speaker candidate.]~~

12  
13 ~~[Sec. 302.019. INDIVIDUAL CONTRIBUTIONS; CAMPAIGN EXPENDITURES~~

14  
15 ~~(a) Except as provided by Section 302.017 or 302.018, an individual other than the speaker~~  
16 ~~candidate may contribute personal services and traveling expenses to aid or defeat a speaker~~  
17 ~~candidate.~~

18  
19 ~~(b) An individual other than the speaker candidate may expend a total of not more than \$100 for~~  
20 ~~the cost of correspondence to aid or defeat the election of a speaker candidate.~~

21  
22 ~~(c) Except as provided by Subsections (a) and (b), all campaign expenditures must be made by~~  
23 ~~the speaker candidate from campaign funds.]~~

## EXHIBIT E

Proposed language is indicated by underlined text.

---

### CHAPTER 571 OF THE GOVERNMENT CODE

---

1 Sec. 571.1401. CERTAIN DISCLOSURE OF INFORMATION

2  
3 (a) To protect the public interest, the commission may disclose to a law enforcement agency  
4 information that is confidential under Section 571.140(a).

5  
6 (b) The commission may disclose information under this section only to the extent necessary for  
7 the recipient of the information to perform a duty or function that is in addition to the  
8 commission's duties and functions.

9  
10 (c) Information disclosed to a law enforcement agency under this section remains confidential,  
11 and the agency must take appropriate measures to maintain that confidentiality.

12  
13 (d) A person commits an offense if the person discloses confidential information obtained under  
14 this section. An offense under this subsection is a Class C misdemeanor.

## EXHIBIT F

Repealed text is indicated by ~~struckthrough~~ text.  
Proposed language is indicated by underlined text.

---

### CHAPTER 572 OF THE GOVERNMENT CODE; TITLE 15 OF THE ELECTION CODE

---

1    Sec. 572.0292. RETENTION OF RECORDS

2    (a) An individual required to file a personal financial statement shall maintain a record of the  
3    information that is necessary for filing the personal financial statement for at least four years  
4    beginning on the filing deadline for the personal financial statement containing the information.

5    AND

6    Sec. 254.001. RECORDKEEPING REQUIRED.

7    (d) A person required to maintain a record under this section shall preserve the record for at least  
8    four ~~two~~ years beginning on the filing deadline for the report containing the information in the  
9    record.

## EXHIBIT G

Proposed language is indicated by underlined text.

---

### CHAPTER 571 OF THE GOVERNMENT CODE

---

1 Sec. 571.032. MAILING OF NOTICES, DECISIONS, AND REPORTS. (a) Except as  
2 provided by Subsection (b) or (c), each written notice, decision, and report required to be sent  
3 under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt  
4 requested.

5 (b) After written notice under Section 571.123(b) regarding the filing of a sworn complaint has  
6 been sent to a person in the manner required by Subsection (a), the commission may send the  
7 person any additional notices regarding the complaint by regular mail or electronic delivery  
8 unless the person has notified the commission to send all notices regarding the complaint by  
9 registered or certified mail, restricted delivery, return receipt requested.

10 (c) Written notice under Section 571.123(c) that a sworn complaint does not comply with the  
11 form requirements or that the commission does not have jurisdiction under Section 571.124(f)  
12 may be sent by regular mail or electronic delivery.

## EXHIBIT H

Proposed language is indicated by underlined text.

---

### CHAPTER 571 OF THE GOVERNMENT CODE

---

1 Sec. 571.077. STATEMENTS, REGISTRATIONS, AND REPORTS CONSIDERED TO BE  
2 VERIFIED. (a) A statement, registration, or report that is filed with the commission is  
3 considered to be under oath by the person required to file the statement, registration, or report  
4 regardless of the absence of or defect in the affidavit of verification, including a signature.

5 (b) A person required to file a statement, registration, or report with the commission is subject to  
6 prosecution under Chapter 37, Penal Code, regardless of the absence of or defect in the affidavit  
7 of verification.

8 (c) This section applies to a statement, registration, or report that is filed with the commission  
9 electronically or otherwise.

10 (d) An unsworn declaration, in the format prescribed by Section 132.001 of the Texas Civil  
11 Practice and Remedies Code, may be used in lieu of an affidavit of verification when filing a  
12 paper report with the commission.  
13

## EXHIBIT I

Repealed text is indicated by ~~strikethrough~~ text.  
Proposed language is indicated by underlined text.

---

### CHAPTER 254 OF THE ELECTION CODE

---

1 Sec. 254.036. FORM OF REPORT; AFFIDAVIT; MAILING OF FORMS. (a) Each report filed  
2 under this chapter with an authority other than the commission must be in a format prescribed by  
3 the commission. A report filed with the commission that is not required to be filed by computer  
4 diskette, modem, or other means of electronic transfer must be on a form prescribed by the  
5 commission and written in black or blue ink or typed with black or blue typewriter ribbon or, if  
6 the report is a computer printout, the printout must conform to the same format and paper size as  
7 the form prescribed by the commission.

8 OR

9 Sec. 254.036. FORM OF REPORT; AFFIDAVIT; MAILING OF FORMS. (a) Each report filed  
10 under this chapter with an authority other than the commission must be in a format prescribed by  
11 the commission. A report filed with the commission that is not required to be filed electronically  
12 ~~[by computer diskette, modem, or other means of electronic transfer]~~ must be on a form  
13 prescribed by the commission ~~[and written in black or blue ink or typed with black or blue~~  
14 ~~typewriter ribbon]~~ or, if the report is a computer printout, the printout must conform to the same  
15 format and paper size as the form prescribed by the commission.