



TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES



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CHAD M. CRAYCRAFT, CHAIR

DECEMBER 2020

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**RECOMMENDATIONS FOR STATUTORY CHANGES
87TH TEXAS LEGISLATURE
PURSUANT TO GOVERNMENT CODE § 571.073**

TEXAS ETHICS COMMISSION

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**Texas Ethics Commission
Recommendations for Statutory Changes
87th Legislative Session
(Adopted at December 2, 2020 Meeting)**

The following recommendations from the Texas Ethics Commission (the “commission”) are made pursuant to Section 571.073(3) of the Texas Government Code.

Recommendation No. 1: Modernize the requirements for filing campaign finance reports.

Amend Section 254.036, Election Code, to remove any reference to filing by “diskette,” allow the use of blue ink in addition to black ink, and simplify the language regarding computer-processing.

SECTION __. Sections 254.036(a) and (b), Election Code, are amended to read as follows:

(a) Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. A report filed with the commission that is not required to be filed electronically [~~by computer diskette, modem, or other means of electronic transfer~~] must be on a form prescribed by the commission and typed or written in black or blue ink [~~or typed with black typewriter ribbon or, if the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission~~].

(b) Except as provided by Subsection (c) or (e), each report filed under this chapter with the commission must be filed electronically [~~by computer diskette, modem, or other means of electronic transfer~~], using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

Recommendation No. 2: Allow certain notices regarding sworn complaints to be emailed.

Section 571.032, Government Code, requires the commission to send certain notices by registered or certified mail, and other notices to be sent by “regular mail.” This amendment would authorize the commission to use that email address to send a notice that a sworn complaint received by the commission does not meet the form requirements, or a notice that the commission does not have jurisdiction over a violation alleged by a sworn complaint.

SECTION __. Section 571.032, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (b) or (c), each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested.

(c) Written notice under Section 571.123(c) that a sworn complaint does not comply with the form requirements or that the commission does not have jurisdiction over the violation alleged in the complaint may be sent by regular mail or electronic delivery.

Recommendation No. 3: Amend confidentiality statute to allow compliance with criminal investigations.

Section 571.140, Government Code, prohibits commission staff from disclosing any information regarding a sworn complaint except in certain limited circumstances, including, for example, when such disclosure is necessary to investigate the complaint. It is currently unclear whether commission staff are permitted to comply with those requests, even in response to a grand jury subpoena served on the commission.

SECTION __. Section 571.140(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b) or (b-1) or by Section 571.1401 or 571.171, proceedings at a preliminary review hearing performed by the commission, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint or motion are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

SECTION __. Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1401 to read as follows:

Sec. 571.1401. CERTAIN DISCLOSURE OF INFORMATION. (a) The commission may disclose to a law enforcement agency information that is confidential under Section 571.140(a) to the extent necessary for the recipient of the information to perform a duty or function that is separate from the commission's duties and functions.

(b) Information disclosed to a law enforcement agency under this section remains confidential, and the agency receiving the information shall take appropriate measures to prevent disclosure of the information.

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

Recommendation No. 4: Allow electronic communications regarding personal financial statements.

Section 572.030 of the Government Code requires the commission to “mail” a notice to each individual required to file a personal financial statement. The amendment would clarify that the commission is permitted to send the notice via email.

SECTION __. Sections 572.030(b) and (c), Government Code, are amended to read as follows:

(b) The commission shall notify ~~[mail to]~~ each individual required to file under this subchapter of ~~[a notice that]~~:

(1) the requirement ~~[states]~~ that the individual ~~[is required to]~~ file a financial statement under this subchapter;

(2) ~~[identifies]~~ the filing dates for the financial statement as provided by Sections 572.026 and 572.027; and

(3) ~~[describes]~~ the manner in which the individual may electronically file the financial statement and access instructions for filing financial statements on ~~[obtain the financial statement forms and instructions from]~~ the commission's Internet website~~[-~~

~~[-(4) states that on request of the individual, the commission will mail to the individual a copy of the financial statement forms and instructions; and~~

~~[-(5) states, if applicable, the fee for mailing the forms and instructions and the manner in which the individual may pay the fee].~~

(c) Except as provided by commission rule, the ~~[The]~~ notice required by Subsection (b) must be provided ~~[mailed]~~:

(1) before the 30th day before the deadline for filing the financial statement under Section 572.026(a) or (c), except as otherwise provided by this subsection;

(2) not later than the 15th day after the applicable deadline for filing an application for a place on the ballot or a declaration of write-in candidacy for candidates required to file under Section 572.027(a), (b), or (c);

(3) not later than the seventh day after the date of appointment for individuals required to file under Section 572.026(b), or if the legislature is in session, sooner if possible; and

(4) not later than the fifth day after the date the certificate of nomination is filed for candidates required to file under Section 572.027(d) ~~[574.027(d)]~~.

SECTION __. Sections 572.030(d) and (e), Government Code, are repealed.

Recommendation No. 5: Resolve statutory conflicts.

1. Lobbyist expenditures:

The 79th legislature passed two different versions of Section 305.024(a) of the Government Code. One version expressly includes the exception permitted under Section 305.0061(e-1) allowing gifts under \$50 to be sent by mail or common or contract carrier, and the other version does not include that exception.

2. Sworn complaint standing:

The 81st legislature passed two different and conflicting versions of Section 571.122(b-1) of the Government Code. Specifically, one version states that a person must be a resident of the state to file a sworn complaint, while the other also grants standing to anyone who owns real property in Texas.

3. Personal financial statements:

The 85th legislature passed two different and conflicting versions of Section 572.032(a-1) of the Government Code. One version requires the commission to redact home addresses, telephone numbers, and names of dependent children for all PFS filers. The other version requires the commission to redact the home address for judges and certain members of the Texas Civil Commitment Office.

Recommendation No. 6: Remove an incorrect and unnecessary cross-reference in Title 15.

Section 254.0313(a) of the Election Code—regarding the commission’s redaction of judges’ residence information—states, “[i]n this section, ‘federal judge’ and ‘state judge’ have the meanings assigned by Section 13.021.” Another bill from the 86th Legislature moved the definitions of “federal judge” and “state judge” to Section 1.005, so the cross-reference is incorrect. Because Section 1.005 provides code-wide definitions, a cross-reference is no longer necessary.

SECTION __. Section 254.0313(a), Election Code, is repealed.

Recommendation No. 7: Clarify scope of political advertising statute.

As currently written, Section 255.001(b) of the Election Code provides that agents of candidates are expressly included, but agents of political committees are not. The amendment would expressly include agents of political committees.

SECTION __. Section 255.001(b), Election Code, is amended to read as follows:

(b) Political advertising that is authorized by a candidate or [~~an agent of a candidate, or a~~] political committee filing reports under this title or an agent of a candidate or political committee filing reports under this title shall be deemed to contain express advocacy.

Recommendation No. 8: Limit scope of statutory defense to requests for advisory opinions that present novel questions.

Amend Section 571.097(b) of the Government Code to clarify that the defense for a person who requests an advisory opinion but does not receive an opinion within the statutory deadline only applies if the request presents a question of law that cannot be answered by reference to the plain language of a statute, commission rule, or prior advisory opinion.

SECTION __. Sections 571.097(b) and (c), Government Code, are amended to read as follows:

(b) It is a defense to prosecution or to imposition of a civil penalty for the violation of a law that:

(1) the person requested a written advisory opinion from the commission relating to the application of that law to a specified existing fact situation involving the person that is the same fact situation or substantially similar to the fact situation that forms the basis of the alleged violation; and

(2) the commission did not [~~issue the opinion~~] within the time prescribed by Section 571.092:

(A) issue the opinion; or

(B) answer the request by reference to the plain language of a statute, commission rule, or advisory opinion previously issued by the commission.

(c) The defense to prosecution or imposition of a civil penalty under Subsection (b) applies only to acts giving rise to a potential violation of a law listed under Section 571.091(a) occurring in the period beginning on the date the time prescribed by Section 571.092 expires and ending on the date the commission issues the requested opinion.

Recommendation No. 9: Require corrections to be made in good faith before dismissal of sworn complaint.

Section 571.1223 of the Government Code requires the commission to dismiss a complaint every time the respondent files a corrected report before the commission accepts jurisdiction over the complaint. Using Section 571.0771(a) as a model, amend Section 571.1223 to require a filer to submit an affidavit stating that any error or omission in the statement, registration, or report as originally filed was made in good faith.

SECTION __. Section 571.1223, Government Code, is amended to read as follows:

Sec. 571.1223. DISMISSAL OF COMPLAINT FOLLOWING CORRECTED OR AMENDED STATEMENT, REGISTRATION, OR REPORT. At any stage of a proceeding under this subchapter, the commission shall dismiss a complaint to the extent the complaint alleges a statement, registration, or report violates a law or rule if:

(1) the respondent has filed a corrected or amended statement, registration, or report before the commission accepts jurisdiction over the complaint; ~~and~~

(2) the corrected or amended statement, registration, or report remedies the alleged violation; and

(3) the respondent files with the correction or amendment an affidavit stating that any error or omission in the statement, registration, or report as originally filed was made in good faith.

Recommendation No. 10: Address whether Commission should update statutory reporting and registration thresholds.

Section 571.064(b) of the Government Code, effective since 1992, requires the commission to use its rulemaking authority to adjust the statutory reporting and registration thresholds on an annual basis pursuant to a statutory formula. Specifically, this section requires the commission to adjust thresholds “upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor.” The commission began adjusting these thresholds in 2018.