

TEXAS ETHICS COMMISSION  
P.O. Box 12070, Austin, Texas 78711-2070  
(512) 463-5800

Paul W. Hobby, Chair  
Chase Untermeyer, Vice Chair  
Hugh C. Akin  
Jim Clancy

Wilhelmina Delco  
Tom Harrison  
Bob Long  
Tom Ramsay

## AGENDA

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Date and Time:	8:30 a.m., Friday, April 8, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
  
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Closed Meeting.** Discussion of pending litigation to seek legal advice relating to the following:
  - A. Cause No. 14-06508-16; *Texas Ethics Commission v. Michael Quinn Sullivan*; in the 158<sup>th</sup> District Court of Denton County, Texas; and related cases: Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-0917, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
  
  - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*, in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
  
  - C. Cause No. D-1-GN-14-001252; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*; in the 53<sup>rd</sup> Judicial District Court of Travis County, Texas; and related case, Cause

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*For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.*

No. 03-16-00019-CV; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*, in the Third Court of Appeals, Austin, Texas.

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
- E. Civil Action No. 5:14-cv-00133-C; *Texas Home School Coalition Association, Inc. v. Matthew D. Powell, in his official capacity as District Attorney of Lubbock County, et al.*; in the United States District Court for the Northern District of Texas, Lubbock Division.
- F. Cause No. D-1-GN-16-000149, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*; in the 261<sup>st</sup> Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00139-CV, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- G. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201<sup>st</sup> Judicial District Court of Travis County, Texas.
- H. Civil Case No. 1:14-cv-00994-LY; *Lake Travis Citizens Council v. Natalia Ashley, in her official capacity as Executive Director of the Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division.

**3. Reconvene in open session.**

4. Adjourn.

**CERTIFICATION:** I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

Certifying Official & Agency Liaison: Natalia Luna Ashley,  
Executive Director

**NOTICE:** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, the Texas Ethics Commission will provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, and large print or Braille documents. In determining the type of auxiliary aid or service, the Commission will give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify Margie Castellanos at (512) 463-5800 or RELAY Texas at (800) 735-2989 two days before this meeting so that appropriate arrangements can be made. Please also contact Ms. Castellanos if you need assistance in having English translated into Spanish.

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## AGENDA

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Date and Time:	10:15 a.m., Friday, April 8, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. Comments by the Commissioners.
3. Approve minutes for the following meetings:
  - Executive Session (discussion of pending litigation) – February 1, 2016; and
  - Public Meeting – February 1, 2016.

### RULEMAKING RELATED TO HOUSE BILL 1295

4. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3(d) (Definitions), defining interested party for purposes of House Bill 1295 to clarify that an interested party is a person with a controlling interest or a person who is an intermediary.
5. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3 (Definitions), adding a definition for “value” of a contract.
6. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3 (Definitions), amending the definitions of “contract,” “controlling interest,” and “intermediary” and adding a definition for “signed.”
7. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.5 (Disclosure of Interested Parties Form), to clarify that a description of a contract includes

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*For more information, contact Natalia Luna Ashley, Executive Director, at (512) 463-5800.*

property that does not constitute a service or goods and to amend the timing of notification to the Commission of receipt of a completed disclosure form and certification of filing.

### **OTHER RULEMAKING**

8. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.53 (Commission Initiated Complaint).
9. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of amendments to the following Ethics Commission Rules impacted by House Bill 1114, 84<sup>th</sup> Legislative Session, Regular Session: Ethics Commission Rules §§ 20.3 (Reports Filed with the Commission), 20.7 (Reports Filed with other Local Filing Authorities), and 20.315 (Termination of Campaign Treasurer Appointment).
10. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of amendments to the following Ethics Commission Rules impacted by House Bill 3517, 84<sup>th</sup> Legislative Session, Regular Session: Ethics Commission Rules §§ 34.1(5) (Definition of Independent Contractor), 34.46 (Registration under Section 305.0041 of the Government Code), and 34.73 (Reporting by Independent Contractor).
11. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules § 34.14 (Expenditures for Fact-Finding Trips), defining the meaning of “fact finding trip” for purposes of the lobby law.
12. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 8.7 (Request for An Advisory Opinion), adding that Advisory Opinion Requests must include the name of the person making the request and the name of the person on whose behalf the request is made, if applicable.
13. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.1 (Definitions), adding a definition for “school district.”
14. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 34.5 (Certain Compensation Excluded), regarding the exclusion of certain compensation from

the calculation to determine whether a person has exceeded the threshold that requires lobby registration.

### **ADVISORY OPINIONS**

#### **Discussion and possible action in response to the following Advisory Opinions:**

15. Discussion of Advisory Opinion Request Nos. AOR-596 and AOR-597: Application of Chapter 305 of the Government Code to an attorney's activities in response to certain invitations from members of the legislative branch to discuss pending legislation on behalf of the attorney's clients.

These opinion requests construe Chapter 34 of the Ethics Commission Rules and Chapter 305 of the Government Code.

16. Discussion of Advisory Opinion Request No. AOR-608: Whether a judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at a legal conference.

This opinion request construes Section 253.035 of the Election Code.

17. Discussion of Advisory Opinion Request No. AOR-609: Whether a legislator may accept a tax deduction for donating property to the state.

This opinion request construes Chapter 39 of the Penal Code.

18. Discussion of Advisory Opinion Request No. AOR-610: Whether a communication relating to a measure election complies with section 255.003 of the Election Code.

This opinion request construes Chapter 255 of the Election Code.

### **OTHER POLICY MATTERS**

19. Discussion and possible action on the Commission's roll out of a Twitter account.
20. Update on the facial compliance reviews process and facial compliance reviews conducted since the last meeting.

21. Discussion and possible action regarding the level of disclosure of political expenditures made to political consultants and comments submitted in response to the Commission's request for public comment on the matter.
22. Briefing, discussion, and possible action to waive or reduce certain penalties assessed for campaign finance reports, lobby reports and personal financial statements filed late due to issues with the new electronic filing application for the following individuals and political committees:

Baker, Kendall L. (80530)

Flynn, Dan (32881)

Harkrider, Mark D. (31035)

Landtroop, Jr., James F. 'Jim' (56964)

Lozano, Jose M. 'J.M.' (65802)

Miles, Borris Lee (52983)

Mixson, Craig M. (67842)

Odom, Mike (70669)

O'Hare, Timothy J. (80070)

Phillips, Fredericka M. (66411)

Stickland, Jonathan S. (67904)

Tarrant, Elizabeth R. (80357)

Thompson, Laura R. (80388)

Wagoner, Donald R., Treasurer, 'SAFPP-PAC' San Antonio Fire & Police Pensioners Association – PAC (67949)

23. Briefing, discussion, and possible action on appeals to determinations made under Texas Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following political committee:

Miller, Roy E., Treasurer, 'WAREPAC' Texas Warehouse Assn. (31074)

24. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report as originally filed substantially complied with the applicable law for the following political committees:

Baumgartner, Darell Sean, Treasurer, 'TCFA PAC' Texas Consumer Finance Association Political Action Committee (17165)

Casheb, Joseph, Treasurer, Goode Casheb Jones Riklin Choate & Watson Committee For Responsible Government (16887)

Fitzpatrick, Kimberly L., Treasurer, 'RWA' Republican Women of Arlington (16985)

Thompson, Jay A., Treasurer, 'AFACT' Association of Fire & Casualty Companies of Texas PAC (17277)

25. Comments by the Executive Director.
26. Communication to the Commission from the public.
27. Adjourn.

**CERTIFICATION:** I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

Certifying Official & Agency Liaison: Natalia Luna Ashley,  
Executive Director

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**The draft meeting minutes are currently available on our website at *www.ethics.state.tx.us/DraftMinutes*. If you would like a copy of the draft minutes, please provide your email address below, and return this sheet to Ethics Commission staff at the meeting.**

**Email address:**

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### **Text of Proposed Rule**

The proposed new language is indicated by underlined text.  
The deleted language is indicated by [~~striketrough~~] text.

## **Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

### **§ 46.3. Definitions**

- (a) "Contract" includes an amended, extended, or renewed contract.
- (b) "Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.
- (c) "Controlling interest" means:
- (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
  - (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
  - (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
- (d) "Interested party" means:
- (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or
  - (2) an intermediary [~~a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser, or attorney for the business entity~~].
- (e) "Intermediary," for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person's participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.3. Definitions**

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(XX) "Value" of a contract is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract.

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**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.3. Definitions**

(a) “Contract,” for purposes of this rule, means an enforceable agreement between the governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, whichever is earlier, and includes an amended, extended, or renewed contract.

(b) “Business entity” includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

(c) “Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity.

(d) “Interested party” means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) an intermediary.

(e) “Intermediary,” for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

(1) receives compensation from the business entity for the person’s participation;

(2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and

(3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

(f) “Signed” includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

### Text of Proposed Rule

The proposed new language is indicated by underlined text.

The deleted language is indicated by ~~strikethrough~~ text.

## Chapter 46. DISCLOSURE OF INTERESTED PARTIES

### §46.5. Disclosure of Interested Parties Form

(a) A disclosure of interested parties form required by section 2252.908 of the Government Code must be filed on an electronic form prescribed by the commission that contains the following:

(1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;

(2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;

(3) The name of each interested party and the city, state, and country of the place of business of each interested party;

(4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the services, goods, or other property ~~[services]~~ used by the governmental entity or state agency provided under the contract; and

(5) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

(b) The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed.

(c) A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the ~~[contract for which the form was filed binds all parties to the contract]~~ governmental entity or state agency receives the disclosure.

(d) The commission shall make each disclosure of interested parties form filed with the commission under section 2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.

# CERTIFICATE OF INTERESTED PARTIES

# FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	<b>OFFICE USE ONLY</b>
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b>	
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> <i>services, other property</i>	

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

### **Text of Proposed Rule**

The proposed new language is indicated by underlined text.

#### **CHAPTER 12. SWORN COMPLAINTS**

##### **SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

###### **§12.53.Commission Initiated Complaint.**

(a) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(b) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(c) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.



**Text of Proposed Rules**

The proposed new language is indicated by underlined text.  
The deleted language is indicated by [~~striketrough~~] text.

**Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES**

**Subchapter A. GENERAL RULES**

**§ 20.3. Reports Filed with the Commission**

The Ethics Commission is the appropriate filing authority for reports filed by:

- (1) a candidate for one of the following offices:
  - (A) a statewide office;
  - (B) a district office filled by voters in more than one county;
  - (C) a seat in the state legislature;
  - (D) a seat on the State Board of Education;
  - (E) an office of a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county; or
  - (F) a judicial district office filled by voters of only one county, subject to Section 20.5(b);
- (2) a person holding an office listed in paragraph (1) of this section;
- (3) the secretary of state;
- (4) a specific-purpose committee supporting or opposing a candidate or officeholder required to file with the commission; or
- (5) a specific-purpose committee supporting or opposing:
  - (A) a measure to be submitted to the voters of the entire state; or

(B) a measure that concerns a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county;

(6) a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district; or

(7) [(6)] a general-purpose committee.

## **§ 20.7. Reports Filed with Other Local Filing Authority**

(a) Except as provided by Section 20.3(6) of this title (relating to Reports Filed with the Commission), the [The] secretary of a political subdivision (or the presiding officer if the political subdivision has no secretary) is the appropriate filing authority for reports filed by:

(1) a candidate for an office of a political subdivision other than a county;

(2) a person holding an office of a political subdivision other than a county; or

(3) a specific-purpose committee supporting or opposing a measure to be submitted at an election ordered by the authority of a political subdivision other than a county.

(b) The campaign treasurer of a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district should file with the commission a file-stamped copy of any campaign treasurer appointment filed with the appropriate local filing authority.

## **§ 20.315. Termination of Campaign Treasurer Appointment**

(a) A specific-purpose committee may terminate a campaign treasurer appointment at any time by:

(1) notifying the filing authority in writing of the termination;

(2) filing a campaign treasurer appointment for a successor campaign treasurer; or

(3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing.

(c) Except as provided by subsection (e) of this section, if the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

(e) For purposes of the termination report required by Section 20.317 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns as provided by subsection (b) of this section.

(f) Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to subsection (e) of this section.

(g) A termination of a specific-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the specific-purpose committee. A specific-purpose committee can be dissolved only by filing a dissolution report.

(h) For purposes of this section, the appropriate filing authority for a campaign treasurer appointment of a specific-purpose committee created to support or oppose a measure on the issuance of bonds by a school district is the secretary of the school board (or the presiding officer if the school board has no secretary), except that the commission is the appropriate filing authority for a dissolution report.

**Text of Proposed Rules**

The deleted language is indicated by [strikethrough] text.

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.1. Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Communicates directly with, or any variation of that phrase--In Government Code, Chapter 305, and in this chapter includes communication by facsimile transmission.

(2) Expenditure--In Government Code, Chapter 305, and in this chapter does not include a payment of less than \$200 that is fully reimbursed by the member of the legislative or executive branch who benefits from the expenditure if the member of the legislative or executive branch fully reimburses the person making the payment before the date the person would otherwise be required to report the payment.

(3) Lobby activity--Direct communication with and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action.

(4) Registrant--In Government Code, Chapter 305, and in this chapter means a person who is required to register as well as a person who has registered regardless of whether that person's registration was required.

~~[(5) Independent contractor--In Section 305.022 of the Government Code and this chapter, means a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by Section 305.022(e) of the Government Code, of a vendor.]~~

### **~~§ 34.46. Registration under Section 305.0041 of the Government Code~~**

~~(a) For purposes of the \$75 registration fee set by Section 305.005(c)(2) of the Government Code, a person is required to register under Section 305.0041 of the Government Code if:~~

~~(1) the person is an independent contractor;~~

~~(2) the person's only direct communication as a registrant is with a member of the executive branch to influence administrative action as an independent contractor;~~

~~(3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions and the amount of the purchasing decision does not exceed \$10 million; and~~

~~(4) the person is also required to register under the compensation or reimbursement threshold in Section 305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by Section 305.003(a)(1) of the Government Code.~~

~~(b) A person required to register under Section 305.0041 of the Government Code is considered a registrant for purposes of this chapter and Chapter 305 of the Government Code.~~

~~(c) An independent contractor who is required to register as a lobbyist under Chapter 305 of the Government Code but who does not meet all the criteria in subsection (a) of this section is subject to the \$750 registration fee set by Section 305.005(c)(3) of the Government Code.~~

~~(d) An independent contractor who qualifies for the \$75 registration fee under subsection (a) of this section, but that before the end of the calendar year ceases to meet the criteria under subsection (a) of this section, becomes subject to the \$750 registration fee set by Section 305.005(c)(3) of the Government Code.]~~

### **~~§ 34.73. Reporting by Independent Contractor~~**

~~(a) In addition to the contents required by Section 305.005 of the Government Code and this chapter, a registration filed by an independent contractor whose compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions must:~~

~~(1) disclose the vendor as a client;~~

~~(2) indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions;~~

~~(3) disclose the amount of the sales commission or such fee;~~

~~(4) disclose the amount of the purchasing decision;~~

~~(5) if the amount of the sales commission or such fee is based on a percentage of the sale, disclose the amount of the percentage; and~~

~~(6) describe the product or service that is the subject of the communication.~~

~~(b) If the amount of the sales commission or such fee is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the sales commission or such fee and the method under which that amount will be computed.~~

~~(c) If the amount of the purchasing decision is not known at the time of the reporting, the registration described by subsection (a) of this section must disclose a reasonable estimate of the maximum amount of the purchasing decision and the method under which that amount will be computed.]~~

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.14. Expenditures for Fact-Finding Trips**

(a) For purposes of Section 305.025(3), Government Code, an expenditure for transportation or lodging provided to a member of the legislative or executive branch is for a fact-finding trip only if:

(1) the expenditure is necessary for the member to obtain facts that directly relate to the member's official duties;

(2) the member cannot obtain the facts by any means, electronic or otherwise, without the expenditure; and

(3) the expenditure is not for the member's attendance at a merely ceremonial event or pleasure trip.

(b) If an expenditure made for transportation or lodging for a fact-finding trip is required to be disclosed on a lobby activities report by Section 305.0061(a), Government Code, the purpose of the transportation or lodging must include a description of the facts that the expenditure was necessary to obtain under subsection (a) of this section.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.  
The deleted language is indicated by [~~striketrough~~] text.

**Chapter 8. ADVISORY OPINIONS**

**§ 8.7. Request for an Advisory Opinion**

(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request, including the name of the person making the request and, if applicable, the name of the person on whose behalf the request is made.

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, or faxed to the commission at the agency office.



**Text of Proposed Rule**

The proposed new language is indicated by underlined text.

**Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES**

**Subchapter A. GENERAL RULES**

**§ 20.1. Definitions**

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) through (22) (No change.)

(23) School district--For purposes of sections 20.3 (relating to Reports Filed with the Commission), 20.7 (relating to Reports Filed with Other Local Filing Authority), and 20.315 (relating to Termination of Campaign Treasurer Appointment) of this title, the term includes a junior college district.

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.  
The deleted language is indicated by [~~striketrough~~] text.

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.5. Certain Compensation Excluded**

(a) Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code § 305.003(a)(2)~~[, and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305,]~~ and this chapter:

- (1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;
- (2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;
- (3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;
- (4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;
- (5) providing to a member of the legislative or executive branch information consisting of facts or data that the member requested in writing regarding legislation or administrative action , when the request was not solicited by or on behalf of the person providing the information;

(6) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(7) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(8) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or

(9) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member).

(b) Subsection (a) of this section does not apply to a registrant. A registrant's activity described by subsection (a) is subject to disclosure under chapter 305 of the Government Code and this title.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*April 8, 2016*

*Application of chapter 305 of the Government Code to an attorney's activities in response to certain invitations from members of the legislative branch to discuss pending legislation on behalf of the attorney's clients. (AOR-596, AOR-597)*

The Texas Ethics Commission (“commission”) has been asked about two scenarios in which an attorney is invited by a member of the legislative branch to discuss pending legislation on behalf of the attorney’s clients. In each scenario, the attorney’s clients are opposed to four specific bills pending before the legislator’s committee. The question is whether the attorney would be required to register as a lobbyist under chapter 305 of the Government Code, the state lobby law, in order to accept either invitation.

A person is required to register as a lobbyist if the person is compensated or reimbursed more than \$1,000 in a calendar quarter, excluding reimbursement for certain types of expenses, to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. Gov’t Code § 305.003(a)(2); 1 Tex. Admin. Code § 34.43(a).<sup>1</sup> A person is also required to register if the person’s compensation exceeds the amount triggering registration and the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. Gov’t Code § 305.003(b). A person is not required to register if the person does not receive any compensation or reimbursement, and does not make any expenditures, to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

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<sup>1</sup> A person is also required to register if the person makes total expenditures of more than \$500 in a calendar quarter for certain activities to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action. Gov’t Code § 305.003(a)(1); 1 Tex. Admin. Code § 34.41(a). Because the requests for this opinion do not describe any expenditures, we do not consider the application of the expenditure threshold in this opinion.

## DRAFT

In each scenario,<sup>2</sup> the requestor of this opinion, who is an attorney, states that he has testified before a legislative committee in opposition to pending legislation on behalf of clients. The attorney states, in relevant part:

Given that [...] I am retained by the clients for which I testified, in an amount in excess of the limit found in Commission Rule § 34.43, and attending a meeting with [a legislator] would be a direct communication with a legislator to influence his decision on the pending legislation, would I be required to register?

Based on these circumstances, the attorney would be required to register as a lobbyist by receiving compensation from others in excess of the registration threshold to communicate directly with members of the legislative branch to influence legislation, unless his activities are within one of the exceptions to required registration and reporting.

The lobby law and commission rules exempt certain activities from the requirement to register. *See* Gov't Code §§ 305.003, .004, .0041; 1 Tex. Admin. Code § 34.43. Section 34.5 of the commission rules also provides that compensation received for certain activities is not included for purposes of calculating the registration threshold under section 305.003(a)(2) of the Government Code and chapter 34 of the commission's rules. 1 Tex. Admin. Code § 34.5.<sup>3</sup> Thus, compensation received for an activity covered by rule 34.5 would not require a person to register.<sup>4</sup>

One activity covered by rule 34.5 is receiving compensation or reimbursement for “providing to a member of the legislative or executive branch information consisting of

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<sup>2</sup> The requests for this opinion were submitted by two separate individuals who present the same question with different facts.

<sup>3</sup> The exemptions to the requirement to register are distinct from exemptions that apply to the contents of a registration that is actually filed. Once a person actually registers or is required to register, the registration exemptions no longer apply to the person's lobby activity within the same calendar year. The registrant must then include in the registration certain information pertaining to any person who reimburses, retains, or employs the person for the purpose of communicating directly with a member of the legislative or executive branch, as provided by section 305.005 of the Government Code. However, the lobby law provides a few exceptions regarding the actual contents of a registration. *See, e.g.*, Gov't Code § 305.0041(b) (a registrant who performs certain activities is not required to provide certain information in the registrant's registration related to those activities). There are no facts indicating that any of the exemptions to the disclosure requirements are applicable in the circumstances presented by the requestors of this opinion.

<sup>4</sup> This rule only exempts compensation that is received for the activities specifically covered by the rule and only for purposes of determining whether a person has exceeded the compensation threshold that requires registration. The rule does not exempt compensation or reimbursement that is received by a person who has already registered or who is otherwise required to register because the person has exceeded either the expenditure or compensation thresholds. A person would exceed the compensation threshold by, for example, receiving compensation over the \$1,000 threshold in a calendar quarter to engage in other lobby activity that is not covered by an exemption, including such activity that the person engages in as part of the person's regular employment. We anticipate future rulemaking action to clarify the application of rule 34.5 in this regard.

## DRAFT

facts or data that the member requested in writing regarding legislation or administrative action, when the request was not solicited by or on behalf of the person providing the information.” *Id.* § 34.5(a)(5).<sup>5</sup> The question is whether, in either scenario, the attorney would be providing facts or data to a member in response to the member’s written request that the attorney did not solicit.<sup>6</sup>

### Scenario 1

In the first scenario, a legislator asked the attorney, during his testimony, if the attorney had come to the legislator’s office to talk about the bills. The attorney responded that he had not and that he believed that doing so, without a specific request, would require him to register as a lobbyist. In response to his statements, the legislator delivered a written invitation to the attorney that stated:

You are welcome to discuss [bill number] or any other legislation in my office at any time. I invite your input. If you need help bring anyone you need.

By its plain language, the invitation is a blanket invitation to discuss any legislation with a legislator and does not request facts or data. Accordingly, any compensation received by the attorney for accepting the invitation and communicating with the legislator to influence legislation would be included in calculating whether the attorney exceeded the compensation and reimbursement threshold. Additionally, if the attorney’s compensation exceeds the amount triggering registration and the attorney communicates with the legislator to influence legislation as part of his regular employment, then the attorney would be required to register. Of course, if an individual is acting as a resource for a member of the legislative or executive branch without any expectation of compensation or reimbursement, no such calculation would be necessary. However, considering the specific facts presented, including the amount of compensation paid by the attorney’s clients and assuming that no other exception applies, the attorney would be required to register as a lobbyist by accepting such an invitation from the legislator to discuss pending legislation with the intent to influence legislation.

### Scenario 2

In the second scenario, an attorney testified at a legislative committee hearing on behalf of clients in opposition to four specific bills pending before the committee. After the hearing, the attorney received a written invitation from a member of the committee

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<sup>5</sup> There are no facts indicating that any other exception to the registration requirements applies.

<sup>6</sup> Neither requestor provided any facts indicating that the invitations at issue were solicited by him or on his behalf. Whether any particular request for information is solicited by or on behalf of the person providing the information is a question of fact.

## **DRAFT**

inviting the attorney to the member's office to discuss the same four bills. The letter is addressed to the attorney and states, in part, that it was a "personal, formal invitation to gather your advice on these bills."

In these circumstances, the invitation was made by a member of a legislative committee to an individual who communicated with the committee at a public hearing regarding four specific bills pending before the committee. The invitation is a request for "advice" on bills and does not request facts or data. Accordingly, any compensation received by the attorney for accepting the invitation and communicating with the legislator to influence legislation would be included in calculating whether the attorney exceeded the compensation and reimbursement threshold. Similar to the first scenario, if the attorney's compensation exceeds the amount triggering registration and the attorney communicates with the legislator to influence legislation as part of his regular employment, then the attorney would be required to register. Assuming that no other exception applies, the attorney would be required to register as a lobbyist by accepting such an invitation from the legislator to discuss pending legislation with the intent to influence legislation.

## **SUMMARY**

Under the facts as described in this opinion, an attorney who accepts an invitation from a member of the legislative branch to discuss pending legislation with the intent to influence legislation, and who receives compensation in excess of \$1,000 in a calendar quarter, would be required to register as a lobbyist under chapter 305 of the Government Code.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*April 8, 2016*

*Whether a judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at a legal conference.  
(AOR-608)*

The Texas Ethics Commission (“commission”) has been asked whether a judicial officeholder may use political contributions to pay travel expenses to teach at a legal conference.

Conference

The requestor of this opinion states that the judge has been invited by a nongovernmental, nonprofit organization to teach at a legal conference in an underdeveloped country in Africa. The organization was founded by Africans in Africa and has organized similar conferences throughout the continent for over twenty years. The organization works with attorneys and other leaders from the communities in which the conferences occur to develop and present a program that promotes ethical leadership and equips the leaders to transform the communities through effective dispute resolution and relationship reconciliation programs.

The conference will be held over a five-day period. The judge does not plan to be in Africa any longer than the term of the conference, except for one or two days at either end of the conference for transportation purposes. The judge’s attendance at the conference is not a vacation, safari, or frivolous excursion, and the judge would travel to the conference to work. The conference is aimed at assisting local attorneys in identifying barriers to justice and developing plans and procedures for overcoming those barriers. The judge was invited because the organization believes that having a Texas state judge of the judge’s stature on the faculty will have an extremely positive impact on the attorneys, the conference, and the entire community.

The judge views the conference as a tremendous educational opportunity for him and for the overseas attorneys. The judge believes his interactions with local attorneys will broaden his perspectives on the rule of law and the role of the judicial system in promoting social justice and stability, and thereby make him a better, more thoughtful judge with a more developed perspective on the disputes that appear on his docket. The judge expects to learn how to better increase public trust and confidence in the legal system in the United States as well as Africa. The judge also believes the experience will



## DRAFT

make him a better candidate for office because he expects his ability to communicate what a judge actually does will be vastly improved.

The requestor states that the organization receives financial support from various sources, but its resources are insufficient to pay for its faculty travel expenses. The judge would like to use political contributions to pay for his reasonable and necessary travel expenses to attend the conference and asks whether such a use would be a “personal use.”

### Personal Use of Political Contributions

A candidate for or holder of a judicial office may not convert political contributions to personal use. Elec. Code § 253.035(a). “Personal use” means “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). “Personal use” does not include “payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder.” *Id.* § 253.035(d)(1). Whether any particular activity is connected with the performance of duties or activities as an officeholder is a fact question. Ethics Advisory Opinion No. 247 (1995).

In a previous opinion, we stated that it would not be a personal use for a judicial officeholder to use political contributions to attend a legal seminar that is connected to the judge’s performance of official duties. Ethics Advisory Opinion No. 267 (1995). *See also* Ethics Advisory Opinion Nos. 279 (1995) (a senior judge may use political contributions for continuing legal education courses), 247 (1995) (a judge may use political contributions to pay a person to assist the judge in the preparation of a thesis required for a Masters of Law in the Judicial Process). In our opinion, a judge’s attendance to teach at the conference described in this request would be connected to the judge’s performance of official duties or activities. Therefore, based on the requestor’s facts, a judge may use political contributions to pay for the judge’s reasonable and necessary travel expenses to teach at the conference.<sup>1</sup>

## SUMMARY

A judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at the legal conference described in this request.

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<sup>1</sup> We note that a candidate or officeholder may not use political contributions to pay for family recreation or entertainment. Ethics Advisory Opinion No. 405 (1998). The requestor’s facts indicate the judge would not participate in such activities.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*April 8, 2016*

*Whether a legislator may accept a tax deduction for donating property to the state. (AOR-609)*

The Texas Ethics Commission (“commission”) has been asked whether a legislator may accept a tax deduction under certain circumstances. The requestor of this opinion states:

A member of the legislature owns property of x value. The member decides to donate that property to a state entity, in this example, the Texas Department of Transportation. The member’s donation to the state would qualify as a tax-deductible donation. Would the member be able to take the deduction or is that prohibited?

The requestor also asks whether it would permissible for a legislator to accept a qualifying tax deduction for a donation of money in any amount to the state.

The laws under the commission’s authority include chapter 36 of the Penal Code, which prohibits a legislator from soliciting, accepting, or agreeing to accept a benefit from any person unless a specific exception under section 36.10 of the Penal Code applies.<sup>1</sup> Penal Code § 36.08(f); *see also id.* § 36.09(a) (a person may not offer, confer, or agree to confer a benefit on a public servant that he knows the public servant is prohibited by law from accepting). 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); *see also* Ethics Advisory Opinion Nos. 254 (1995) (payments of money are benefits), 60 (1992) (a benefit is anything reasonably regarded as monetary gain or advantage).

A tax deduction is generally defined as “an amount subtracted from gross income when calculating adjusted gross income, or from adjusted gross income, when calculating taxable income.” Black’s Law Dictionary 501 (10th ed. 2014). Depending upon the applicable tax laws, a tax deduction may therefore result in a reduction of the amount of

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<sup>1</sup> For purposes of this opinion, we assume that the tax deduction in question is neither a political contribution regulated by title 15 of the Election Code nor a lobby expenditure regulated by Chapter 305 of the Government Code. Thus, we consider only the application of chapter 36 of the Penal Code to the circumstances described by the requestor.

## DRAFT

tax payable by an individual.<sup>2</sup> To the extent that a reduction in the amount of tax owed is a “benefit” for purposes of the prohibition in section 36.08(f) of the Penal Code, a legislator would be prohibited from accepting such a benefit unless there is an applicable exception in section 36.10 of the Penal Code.

Section 36.10 of the Penal Code provides an exception for:

a fee prescribed by law to be received by a public servant or *any other benefit to which the public servant is lawfully entitled* or for which he gives legitimate consideration in a capacity other than as a public servant.

Penal Code § 36.10(a)(1) (emphasis added). In our opinion, the exception for “any other benefit to which the public servant is lawfully entitled” would apply to the circumstances described by the requestor if the applicable federal or Texas tax laws entitle the legislator to receive a deduction that reduces the legislator’s taxable income and the amount of the legislator’s payable tax. Additionally, we assume that the valuation of the donation is not connected to the legislator’s status as a public servant. If the legislator is lawfully entitled to the deduction in those circumstances, chapter 36 of the Penal Code would not prohibit the legislator from accepting the deduction.

## SUMMARY

A legislator may accept a tax deduction for the donation of property or money to the state if the legislator is lawfully entitled to receive the deduction under the applicable federal or Texas tax laws and the valuation of the donation is not connected to the legislator’s status as a public servant.

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<sup>2</sup> For federal income tax purposes, certain charitable contributions made within the taxable year may be allowable as a deduction. 26 U.S.C. § 170.

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**ETHICS ADVISORY OPINION NO. \_\_\_\_**

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*April 8, 2016*

*Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-610)*

The Texas Ethics Commission has been asked to consider whether a communication relating to a measure election complies with section 255.003 of the Election Code.

An emergency services district (“the district”) has ordered an election to adopt a sales and use tax in the district pursuant to chapter 775 of the Health and Safety Code. A city (“the city”) located wholly within the district would like to release certain information in the form of a brochure to answer questions posed by citizens regarding the election. The city expects to release the brochure in a variety of ways, including on its city website and its social media website(s). The city asks whether it may distribute the brochure in its entirety and distribute certain portions of the brochure individually. A copy of the brochure is attached to this opinion as an appendix.

The measure on the ballot is the following:

The adoption of a local sales and use tax in Williamson County Emergency Services District No. 3 at the rate of two percent.

Section 255.003 of the Election Code provides, in relevant part, as follows:

(a) An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.

**DRAFT**

(b) Subsection (a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

(b-1) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that:

(1) the officer or employee knows is false; and

(2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

(c) A person who violates Subsection (a) or (b-1) commits an offense. An offense under this section is a Class A misdemeanor.

Elec. Code § 255.003. A “measure” is a question or proposal submitted in an election for an expression of the voters’ will. *Id.* § 251.001(19).

The initial question in determining compliance with section 255.003 is whether the brochure constitutes political advertising for purposes of section 255.003(a). Political advertising is defined by section 251.001(16) of the Election Code as follows:

“Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

## DRAFT

- (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
  
- (ii) on an Internet website.

*Id.* § 251.001(16).

The critical question in determining whether the brochure constitutes “political advertising” is whether the information supports or opposes a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure. Ethics Advisory Opinion No. 476 (2007).

The brochure at issue includes facts about the district and the city, such as the current property and sales tax rates, estimated sales tax revenue if the measure passes, certain budgetary figures for the district and the city, prospective growth figures, land use information, and how the sales tax revenue is used. The brochure also explains certain effects if the measure passes, including that the city would be unable to collect a sales tax in future areas annexed by the city within district boundaries because those areas would already be assessed the maximum local sales tax rate of two percent, which would be collected by the district.

The brochure includes information beyond a factual description of the measure. However, in our opinion, the brochure provides information and discussion of a measure without promoting the outcome of the measure and therefore does not constitute political advertising as the term is defined in section 251.001(16) of the Election Code. Therefore, the use of public funds for the brochure would not violate section 255.003(a) of the Election Code.

## **DRAFT**

The second question is whether the city may separately distribute any of the individual sections of the brochure that are numbered five, six, eight, and nine. In our opinion, none of those individual sections would individually constitute political advertising. Therefore, the use of public funds to distribute those individual sections would not violate section 255.003(a) of the Election Code.

The remaining question in determining compliance under section 255.003 is whether using public funds to distribute the brochure is permissible under section 255.003(b-1). In our opinion, the information in the brochure is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Therefore, for the use of public funds to distribute the brochure to be permissible under section 255.003(b-1), an officer or employee of the city authorizing the use may not do so knowing that the brochure contains information that is false.<sup>1</sup> Whether or not an officer or employee provides such authorization is a fact question that cannot be resolved in an advisory opinion.

## **SUMMARY**

For purposes of section 255.003 of the Election Code, the attached brochure is not political advertising and, therefore, public funds may be used to distribute the brochure unless an officer or employee of the city authorizing such use of public funds knows that the brochure contains false information.

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<sup>1</sup> The prohibition in section 255.003(b-1) also applies to the specific individual sections of the brochure that the city would like to distribute individually, which are numbered five, six, eight, and nine.

**TEXAS ETHICS COMMISSION  
MEMORANDUM**

**TO: Commissioners, Texas Ethics Commission**  
**FROM: Amy S. Barden, Senior Legal Assistant**  
**DATE: March 31, 2016**  
**SUBJECT: Waiver Requests related to Transition to the New Electronic Filing System**  
**Meeting Date: April 8, 2016**

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**CAMPAIGN FINANCE REPORTS**

As you are aware, campaign finance filers began using the new electronic filing application to file campaign finance reports on April 28, 2015. The following campaign finance reports were filed late due to issues related to the transition to the new filing application.

**Staff Recommendation – Waiver (Items 1-3):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

**1. Donald R. Wagoner (67949)**  
**Treasurer, 'SAFPP-PAC' San Antonio Fire & Police Pensioners Association – PAC**

Report: runoff report due June 5, 2015  
 File date: June 13, 2015  
 Activity: contributions = \$11,229.00; expenditures = \$44,966.99;  
 contributions maintained = \$82,586.59  
 Previous violations: none  
 Penalty: \$500

Mr. Wagoner stated that his report was late due to the changeover to the new filing application. He stated that he attended the training class in Austin on June 5, 2015. Mr. Wagoner filed the report as soon as he logged in to the new filing application and realized he had missed the deadline.

**2. Timothy J. O'Hare (80070)**  
**Candidate, County Party Chair**

Report: semiannual report due January 15, 2016  
 File date: January 16, 2016  
 Activity: contributions = \$24,780.50; expenditures = \$15,577.87;  
 contributions maintained = \$11,646.23  
 Previous violations: none  
 Penalty: \$500

Mr. O'Hare stated that on the evening of the filing deadline, he encountered technical problems trying to enter and save addresses. He filed the report with errors just past the midnight deadline. On the next business day, he contacted the Commission's technical support staff and received assistance in filing a correction. Commission staff has identified an issue when a filer uses the browser back button rather than the filing application's menus and buttons to navigate the screens, which results in errors. A reminder message regarding this issue has been added on the home page in the filing application.



**3. Kendall L. Baker (80530)**  
**Candidate, State Representative**

Report: semiannual report due January 15, 2016  
File date: January 21, 2016  
Activity: contributions = -0-; expenditures = \$2,060.00;  
contributions maintained = -0-  
Previous violations: none  
Penalty: \$500

Mr. Baker stated that he had problems with his password for the new filing application. He stated that he was able to file the report after speaking with the Commission's technical support staff.

**LOBBY REPORTS**

Lobbyists began using the new electronic filing application to file lobby registrations and lobby activities reports on September 14, 2015. The following lobby activities reports were filed late due to issues related to the transition to the new filing application.

**Staff Recommendation – Waiver (Items 4-5):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, it was the filer's first time to file a report using the new filing application.

**4. Mark D. Harkrider (31035)**  
**Lobbyist**

Report: annual lobby activities report due January 11, 2016  
File date: January 14, 2016  
Activity: lobby expenditures = \$375.00  
Previous violations: lobby activities report due January 10, 2012 (fine paid)  
Penalty: \$500

Mr. Harkrider stated that he had trouble using the new online filing application for the first time. He stated that he spoke with Commission staff who helped him reset his password and file the report.

**5. Mike Odom (70669)**  
**Lobbyist**

Report: annual lobby activities report due January 11, 2016  
File date: January 15, 2016  
Activity: none  
Previous violations: none  
Penalty: \$500

Mr. Odom stated that he believed he had completed the annual lobby activities report but it did not submit for some reason. He stated that he was contacted by Commission staff who assisted him with filing the report. Commission staff has identified an issue with filers failing to advance through all the steps to complete a filing and implemented improvements in the filing application to further clarify the process.

## PERSONAL FINANCIAL STATEMENTS

Candidates and state officers began using the new electronic filing application to file personal financial statements (PFS) on September 14, 2015. The following PFS reports were filed late due to issues related to the new filing application.

**Staff Recommendation – Waiver (Items 6-14):** Staff recommends waiver based on the fact that the PFS reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the PFS password issues. Note: A filer must log in under a specific "Filer Type" depending on the type of report (COH, PFS, etc.) being filed. For data security purposes, a filer is required to complete a *separate* Form SECURITY to set up the password for each filer type, as needed.

**6. Dan Flynn (32881)  
State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Representative Flynn stated that on February 12th he had technical complications trying to log in to the filing application. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

**7. James F. 'Jim' Landtroop, Jr. (56964)  
Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Mr. Landtroop stated that he attempted to file his PFS the same way he files his campaign finance reports but he kept getting an error message. He contacted the Commission's technical support staff on the next business day and received assistance with setting his PFS password and filing the report.

**8. Jose M. 'J.M.' Lozano (65802)  
State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Representative Lozano stated that he attempted to file his PFS the same way he files his campaign finance reports but he was unable to do so. He contacted Commission staff on the next business day and received assistance with setting his PFS password and filing the report.

**9. Borris Lee Miles (52983)**  
**State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Representative Miles stated that he had technical issues with using the new filing application. He contacted Commission staff on the next business day and received assistance with setting his PFS password and filing the report.

**10. Craig M. Mixson (67842)**  
**District Judge**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Judge Mixson stated that he attempted to log in to file his PFS but kept getting an error message and was eventually locked out of the system. He contacted Commission staff on the next business day and received assistance with setting his PFS password and filing the report.

**11. Fredericka M. Phillips (66411)**  
**Candidate, District Judge**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Ms. Phillips stated that she did not realize she needed a new password to file her PFS. When she attempted to log in she received an error message. She contacted Commission staff on the next business day and received assistance with setting her PFS password and filing the report.

**12. Jonathan S. Stickland (67904)**  
**State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: PFS due January 21, 2014 (reduced fine paid)  
Penalty: \$500

Representative Stickland stated that he had no idea he needed another password to file his PFS. He completed and faxed Form SECURITY to request his PFS password after business hours on the filing deadline. Commission staff contacted Representative Stickland on the next business day and assisted him with setting his PFS password and filing the report.

**13. Elizabeth R. Tarrant (80357)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 19, 2016  
Previous violations: none  
Penalty: \$500

Mrs. Tarrant stated that she attempted to log in to file her PFS but kept getting an error message. She contacted Commission staff and received assistance with setting her PFS password and filing the report.

**14. Laura R. Thompson (80388)**  
**Candidate, State Representative**

Report: personal financial statement due February 12, 2016  
File date: February 16, 2016  
Previous violations: none  
Penalty: \$500

Ms. Thompson stated that she attempted to log in to file her PFS but kept getting an error message. She contacted Commission staff and received assistance with setting her PFS password and filing the report.

**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO: Commissioners, Texas Ethics Commission**  
**FROM: Amy S. Barden, Senior Legal Assistant**  
**DATE: March 31, 2016**  
**SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)**  
**Meeting Date: April 8, 2016**

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The following filer submitted a request to the Commission for an appeal regarding a determination previously made under section 18.25 of the Ethics Commission Rules (relating to Administrative Waiver or Reduction of Fine). The Commission may vote to affirm the determination made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding the appeal, unless specifically noted in **bold** under the penalty.

**REPORT TYPE I: NON-CRITICAL REPORTS**

**TEC Rules Determination: Sec. I-A – Levels Chart - Level 3 - \$500 Fine (Item 1):**

**1. Roy E. Miller (31074)**  
**Treasurer, 'WAREPAC' Texas Warehouse Assn.**

Report: semiannual report due July 15, 2015  
 File date: November 2, 2015 (filed in an incorrect format); January 8, 2016 (correct filing)  
 Activity: contributions = -0-; expenditures = \$360.05; contributions maintained = \$8,058.97  
 Prior offenses: January 2014 and July 2014 semiannual reports (fines waived under HB 89)  
 Penalty: \$500 – no waiver

Basis: Not a critical report; Category B filer; two prior late-filing offenses in the last five years; no good cause shown.

On January 14, 2016, the Commission sent a determination letter to Mr. Miller informing him that he is not eligible for a waiver or reduction of the \$500 late-filing penalty under the Ethics Commission Rules. The letter requested that Mr. Miller remit the payment by February 16, 2016, or submit a request for appeal.

Request for Appeal: On February 18, 2016, the Commission received the appeal. In his appeal, Mr. Miller stated that as part-time PAC treasurer he cannot afford to pay the \$500 fine and requested that the Commission waive the penalty. Mr. Miller also stated:

I believe that, although the report that I filed contained errors caused by my misunderstanding of the new software, it was filed on time. As the record shows, I made a good-faith effort to correct the report by working with the Commission's IT department. In effect, the report was corrected and resubmitted.

(As background, Mr. Miller's previous affidavit stated that he began the report in June 2015 after attending the training in Nacogdoches. He further stated that upon returning home he became involved with planning the annual PAC meeting and "simply forgot to finish the report." On November 2, 2015, Mr. Miller attempted to file the July 2015 report by correcting a previously filed July 2013 report and changing the period covered and the activity disclosed, which effectively replaced the 2013 report with 2015 information. In December 2015, Commission technical support staff tried repeatedly to offer assistance but were unable to connect at a convenient time for Mr. Miller. On January 8, 2016, Mr. Miller was finally able to correct his July 2013 report and properly file the July 2015 report.)

**TEXAS ETHICS COMMISSION**  
**MEMORANDUM**

**TO: Commissioners, Texas Ethics Commission**  
**FROM: Amy S. Barden, Senior Legal Assistant**  
**DATE: March 31, 2016**  
**SUBJECT: Corrected Reports Memo**  
**Meeting Date: April 8, 2016**

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**Substantial Compliance (Items 1-3)**

**1. Jay A. Thompson (17277)**  
**Treasurer, 'AFACT' Association of Fire & Casualty Companies of Texas PAC**

Report: 8-day pre-election report due December 1, 2014  
Correction date: December 9, 2015  
Activity report #1: contributions = \$1,000.00; expenditures = \$2,000.00;  
contributions maintained = \$29,189.31  
Activity report #2: contributions = \$1,000.00; expenditures = \$2,500.00;  
contributions maintained = \$29,189.31  
Prior corrections: none  
Penalty: \$10,000

Mr. Thompson corrected the original report to increase the amount of one expenditure by \$500. Mr. Thompson stated that the incorrect amount was due to a typographical error. The amount of the incorrectly reported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**2. Joseph Casseb (16887)**  
**Treasurer, Goode Casseb Jones Riklin Choate & Watson Committee For Responsible Government**

Report: 8-day pre-election report due October 26, 2015  
Correction date: November 12, 2015  
Activity report #1: contributions = \$3,000.00; expenditures = \$3,000.00;  
contributions maintained = \$100.00  
Activity report #2: contributions = \$1,500.00; expenditures = \$1,500.00;  
contributions maintained = \$100.00  
Prior corrections: none  
Penalty: \$2,100

Mr. Casseb corrected the original report to delete \$1,500 from the unitemized lump sum total of political contributions of \$50 or less and to delete \$1,500 from the unitemized lump sum total of political expenditures of \$100 or less. Mr. Casseb stated that he realized the totals did not match what he intended to enter. It appears that he mistakenly duplicated the activity that was itemized on the appropriate schedules by manually entering the same activity as lump sum amounts. Neither the amount of the incorrectly reported contributions nor the amount of the incorrectly reported expenditures exceeds \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

## Corrected Reports Memo

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### 3. **Kimberly L. Fitzpatrick (16985)** **Treasurer, 'RWA' Republican Women of Arlington**

Report: 8-day pre-election report due February 22, 2016  
Correction date: February 26, 2016  
Activity report #1: contributions = \$1,385.00; expenditures = \$1,191.60;  
contributions maintained = \$18,192.19  
Activity report #2: contributions = \$1,385.00; expenditures = \$1,191.60;  
contributions maintained = \$19,177.86  
Prior corrections: none  
Penalty: \$800

Mrs. Fitzpatrick corrected the original report to increase the amount of total contributions maintained by \$985.67. Mrs. Fitzpatrick stated that the ending balance of the reporting period was incorrectly calculated in the original report. The amount of the change in the total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

### **Reductions (Item 4)**

### 4. **Darell Sean Baumgartner (17165)** **Treasurer, 'TCFA PAC' Texas Consumer Finance Association Political Action Committee**

Report: 8-day pre-election report due October 27, 2014  
Correction date: August 12, 2015  
Activity report #1: contributions = \$25,550.00; expenditures = \$22,080.00;  
contributions maintained = \$247,735.95  
Activity report #2: contributions = \$33,150.00; expenditures = \$22,080.00;  
contributions maintained = \$247,735.95  
Prior corrections: none  
Penalty: \$10,000

Mr. Baumgartner corrected the original report to add eight contributions totaling \$7,000 and to increase the amount of one contribution by \$600. The resulting net increase in the total contributions is \$7,600. Mr. Baumgartner stated that a deposit slip dated July 7, 2014, containing the missing contributions was inadvertently misplaced. He also stated that one contribution was reported as \$1,200 due to a typographical error and corrected to be \$1,800. The amount of the missing and incorrectly reported contributions is over 20% of the total contributions and over \$5,000. The correction was filed nine months after the November 2014 general election. **Recommendation Based on Commission Guidelines: reduction to \$1,200.**