

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

Chad M. Craycraft, Chair
Mary K. “Katie” Kennedy, Vice Chair
Randall H. Erben
Chris Flood

Patrick W. Mizell
Richard S. Schmidt
Joseph O. Slovacek
Steven D. Wolens

MEETING AGENDA

Date and Time: 9:00 a.m., Wednesday, December 2, 2020
Via online broadcast

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON
THE DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2020

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
 - A. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345th Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
 - B. Discussion of personnel matters

For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.

- C. Reconvene in open session.
- 3. Discussion regarding dates for next quarterly Commission meeting.
- 4. Approve minutes for the following meetings:
 - o Public Meeting – September 15, 2020; and
 - o Prehearing Conference in Sworn Complaint No. SC-3180254, In the Matter of Robert L. “Bob” Hall, III, Respondent.

ADMINISTRATIVE APPEALS OF FINES

- 5. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:
 - 1. Nicole Booth, Lobbyist (00083524)
 - 2. IEA Political Action Committee, treasurer Shakeel Ahmed (00080061)
 - 3. Timothy Ottinger, Lobbyist (00069333)
 - 4. Rockwall Republican County Executive Committee General Purpose PAC, Treasurer Peter Flores (00056027)

ADVISORY OPINIONS

- 6. Draft Advisory Opinion No. AOR-637: Whether a for-profit limited liability company (LLC) may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission.

This opinion construes Title 15 of the Election Code and 1 Tex. Admin. Code § 18.31.

RULEMAKING

Rule Adoption

- 7. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code §§ 18.23 and 18.24,

For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.

regarding changes to administrative waiver rules.

8. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 50.1 (Legislative Per Diem) relating to the legislative per diem required to be set under Article III, Section 24a, of the Texas Constitution.

Rule Publication

9. Discussion and possible action on the proposal and publication in the Texas Register of amendments to 1 Tex. Admin. Code § 20.434 (Alternate Reporting Requirements for General-Purpose Committees) to correct errors in cross-references to other rules.
10. Discussion and possible action on the proposal and publication in the Texas Register of amendments to 1 Tex. Admin. Code § 18.15 (Additional Fine), regarding procedures for increasing fines.

OTHER POLICY MATTERS

11. Discussion regarding recommendations for statutory changes to the 87th Legislature as required by Tex. Gov't Code § 571.073.
12. 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: Anne Temple Peters, 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.

The draft meeting minutes will be available on our website the day before the meeting, at <https://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:

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether a for-profit limited liability company (LLC) may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission. (AOR-637)

SUMMARY

A limited liability company that, for the purpose of making a profit, operates a contribution-processing website platform that serves as an intermediary between a person intending to make a political contribution to a specific candidate and the candidate receiving the political contribution does not make a political contribution and thus does not need to appoint a campaign treasurer or file campaign finance reports. However, the intermediary must collect and provide information about each contribution to the recipients of those contributions so that the recipients can comply with their reporting obligations. The recipients must report the full amount given to the intermediary as political contributions and separately report any deductions for processing fees or commissions as political expenditures.

FACTS

The requestor, a for-profit limited liability company with no corporate member or manager, has asked the Commission whether it may operate a contribution-processing website platform to be used by third parties to solicit, collect, and disperse political contributions to candidates as designated by third parties without having to register and report with the Commission. The requestor's intent is to create a website platform that would "encourage individual grassroots citizens to create a single online portal where they can solicit contributions for the candidates of their choice." For purposes of this opinion, the requestor asks the Commission to assume the following facts:

1. The contribution-processing website platform is capable of having various candidates of different political affiliations for each election cycle of multiple political subdivisions.
2. The LLC will market its contribution-processing website platform to political fundraisers as well as citizens interested in supporting candidates.
3. Fundraisers, including professionals and other individuals will be the "sales" force to gain traffic in the form of potential contributors to the contribution-processing website platform.

DRAFT

4. Fundraisers will be paid a “commission” for their efforts which will be a portion of the money paid by each contributor who uses the contribution-processing website platform to submit a contribution to a candidate of the contributor’s choice.
5. The LLC intends to profit from processing fees for each payment made by a contributor using the contribution-processing website platform.
6. The LLC will forward the contribution, less the fundraising “commission” and the processing fee, to the candidate chosen by the contributor, providing the candidate with each contributor’s information, including the date of the contribution, the contributor’s name, address, occupation, job title, and employer, as needed in order for the candidate to comply with campaign finance reporting laws.
7. The LLC does not have the intention of making a contribution to the candidate, but merely to profit off of facilitating the contributor’s payment.
8. The amount provided by the LLC to the candidate is the net difference between the amount of money submitted by the contributor to the LLC through the contribution-processing website platform and the amount of the deducted “commission” and processing fee.
9. The contribution-processing website platform contains terms and conditions that inform each contributor that a portion of the money submitted by the contributor will be for processing fees as well as a “commission” to a third party.
10. There is no official contract between the fundraisers and the LLC. Individuals who act as fundraisers merely agree to the terms and conditions of the website platform.

The requestor contends that it does not have the intent to make political contributions and thus is not required to file a campaign treasurer appointment or any campaign finance reports with the Commission. Moreover, the requestor contends that it would only be required to provide candidates with the “net result”—subtracting both its processing fees and the fundraiser’s commission—as the contribution amount.

ANALYSIS

The LLC is not required to appoint a campaign treasurer or file campaign finance reports, but it must provide contributor information to participating candidates.

The Texas Election Code defines “contribution” as any “direct or indirect transfer of money, goods, services, or any other thing of value...” Tex. Elec. Code § 251.001(2). A contribution is a reportable “political contribution” only if the person making the contribution intends for the contribution to be used either: (1) “in connection with a campaign for elective office or on a measure” or (2) to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* at §§ 251.001(3)-(5) (defining “campaign contribution,” “officeholder contribution,” and “political contribution”). Here, when the LLC facilitates the transfer of money from a contributor to a candidate, it does not intend to make contributions for either of these purposes. Instead, it is serving as an intermediary for *others*’ contributions, and intends only to profit by processing transfers, regardless of how the contributions will be used by their recipients.

DRAFT

Consequently, the LLC itself is not making any political contributions as defined by the Election Code.¹

However, that does not mean there is nothing to report in connection with the LLC's transfers. Under the facts as presented, users of the LLC's website choose particular candidates to which they want to contribute, and the LLC facilitates those transfers.² When, as here, a person serves as an intermediary for another's political contribution, that person must disclose "in writing to the recipient [of the contribution] the name and address of the person actually making the contribution in order for the recipient to make the proper disclosure." Tex. Elec. Code § 253.001(a) (prohibiting contributions or expenditures in another's name); Tex. Ethics Comm'n Op. No. 557 (2020). In addition to collecting the names and addresses of contributors, the LLC may also need to collect contributors' principal occupation, job title, and any other information the participating candidates may need to satisfy their reporting requirements. *See* Tex. Elec. Code §§ 254.0611, 254.0612, 254.1211, 254.1212, 254.151; 1 Tex. Admin. Code § 18.31.

Candidates must report the full amount of the contribution without subtracting amounts for the LLC's processing fees or the fundraisers commission.

The Commission disagrees with requestor's contention that it only needs to inform participating candidates of the "net" amount of a contribution (*i.e.* after subtracting both its processing fees and the fundraiser's commission). As stated in two of the Commission's prior opinions, candidates must report the entire amount of an intended contribution, *including* any amounts deducted or retained by intermediaries. *See* Tex. Ethics Comm'n Op. No. 557 (2020) (costs for apparel design, manufacturing, marketing, and fulfillment); Tex. Ethics Comm'n Op. No. 514 (2013) (credit card fees). The candidate must also separately report as political expenditures any amounts deducted by intermediaries. *Id.* Here, the candidate would need to report the full amount sent by the contributor to the LLC as a political contribution, and also report as political expenditures payment to the LLC for processing the contribution and providing other services and, if the candidate separately compensates any fundraiser, the fundraiser's commission.

¹ The requestor specifies that the LLC is a "limited liability company with no corporate member or manager," but its corporate structure is irrelevant because the LLC is not making any political contributions. *See* Tex. Elec. Code § 253.094 (prohibiting political contributions from corporations).

² Under different facts, it is possible that the "fundraiser" would be a political committee with its own reporting requirements.

EXHIBIT A

Text of Proposed Rule Amendments

The proposed new language is indicated by underlined text.

The deleted language is by ~~striketrough~~ text.

1 **CHAPTER 18. GENERAL RULES CONCERNING REPORTS**

2 **§ 18.23. Administrative Waiver of Fine**

3 (a) A filer may request the executive director to waive a late fine by submitting an affidavit to the
4 executive director that states facts that establish that:

5 ...

6 (6) the filer of the campaign finance report:

7 (A) had filed all previous reports by the applicable deadline;

8 (B) had no new contributions, expenditures, or loans to report during the filing
9 period; and

10 (C) filed the report no later than 30 days after the filer first learned ~~[was notified]~~
11 that the report was~~[appeared to be]~~ late;

12 (7) the filer reasonably relied on incorrect information given to the filer by the agency; or

13 (8) other administrative error by the agency.

14 **§18.24. General Guidelines for Other Administrative Waiver or Reduction of Fine**

15 ...

16 (b) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of
17 this title, a late report will be classified by report type, as follows:

18 (1) Any report that is not a critical report as defined under paragraph (2) of this
19 subsection will be classified as Report Type I and considered under §18.25 of this title.

20 (2) A critical report will be classified as Report Type II and considered under §18.26 of
21 this title. A "critical report" is:

22 (A) a campaign finance pre-election report due 30 days before an election;

23 (B) a campaign finance pre-election report due 8 days before an election;

- 1 (C) a runoff report;
- 2 (D) a daily special pre-election report required under §254.038 or §254.039,
3 Election Code; or
- 4 (E) a semiannual report subject to the higher statutory fine under §254.042, Election
5 Code.~~;~~~~or~~
- 6 [~~(F) a personal financial statement required under §572.027, Government Code, if~~
7 ~~the filer is a candidate with an opponent on the ballot in a primary election.~~]

8 (c) For purposes of determining a waiver or reduction of a late fine under §18.25 and §18.26 of
9 this title, a filer requesting a waiver or reduction of a late fine will be categorized by filer type, as
10 follows:

11 (1) Category A includes candidates for and officeholders of the following offices and
12 specific-purpose committees supporting candidates for and officeholders of the following
13 offices:

- 14 (A) statewide office;
- 15 (B) legislative office;
- 16 (C) district judge;
- 17 (D) state appellate court justice;
- 18 (E) State Board of Education member; and
- 19 (F) Secretary of State.

20 (2) Category B includes all filers not categorized in Category A, as defined by paragraph
21 (1) of this subsection, or Category C, as defined by paragraph (3) of this subsection.
22 Examples of Category B filers include the following filer types:

- 23 (A) lobbyists;
- 24 (B) salaried non-elected officials;
- 25 (C) candidates for and officeholders of district attorney;
- 26 (D) candidates for and officeholders of political party chair; ~~and~~
- 27 (E) political committees with \$3,000 or more in annual activity in the calendar
28 year in which the late report was due; and
- 29 (F) a legislative caucus.

1 (3) Category C includes:

2 (A) unsalaried appointed board members and officials; and

3 (B) political committees with less than \$3,000 in annual activity in the calendar
4 year in which the late report was due.

5 (d) For purposes of a reduction of a late fine under § 18.25 and §18.26 of this title, ~~[the following~~
6 ~~explanations will be accepted as showing]~~ good cause includes, but is not limited to, the
7 following:

8 (1) The report was filed no later than three days after the date it was due~~[more than one~~
9 ~~date late].~~

10 (2) The filer filed the report within five days after first learning the report was late from a
11 late notice sent by the commission. ~~[The report was filed within seven days of receipt of a~~
12 ~~late notice.]~~

13 (3) The report was not a critical report and was prepared and placed in the mail on time
14 but not postmarked by the deadline.

15 (4) The filer had technical difficulties after regular business hours, but the report was
16 filed no later than~~[on]~~ the next business day after~~[that]~~ the commission's technical
17 support staff fixed the technical difficulty~~[was at work].~~

18 ~~[(5) The filer's address changed and the filer did not receive notice of the filing~~
19 ~~deadline.]~~

20 (5)~~[(6)]~~ There are no funds in the filer's campaign or officeholder account and the filer is
21 unemployed.

22 (6)~~[(7)]~~ A first-time filer that is required to file campaign finance reports with a county
23 filing authority and personal financial statements with the commission, who mistakenly
24 files the personal financial statement with the county on the filing deadline and then
25 correctly files with the commission within seven days of realizing the mistake.

26 ~~[(e) For purposes of a reduction of a late fine under § 18.25 and §18.26 of this title, the following~~
27 ~~explanations will not be accepted as showing good cause:~~

28 ~~(1) The filer did not know the report was due.~~

29 ~~(2) The filer forgot or the person assigned by the filer to prepare the report forgot.~~

30 ~~(3) The campaign was very time consuming.~~

31 ~~(4) The filer's job was very time consuming.~~

32 ~~(5) The filer was too overwhelmed by responsibilities to file the report on time.~~

1 ~~(6) The filer was a candidate who lost an election and did not know to terminate his or~~
2 ~~her campaign treasurer appointment and file a final report.~~

3 ~~(7) The filer left his or her position and did not know he or she was still required to file a~~
4 ~~report.]~~

5 (e) For purposes of determining whether a filer is eligible for a waiver or reduction of a late fine
6 under § 18.25 or § 18.26 of this title, a prior offense is any prior late report in which a late-filing
7 penalty was assessed except:

8 (1) the late-filing penalty for that prior late report was waived under Sections
9 18.23(a)(1)-(3) of this title; or

10 (2) no late notices were sent for that prior late report and the filer did not file a request
11 that the late-filing penalty be waived or reduced for the prior late report.

12 (f) A late fine that is reduced under §18.25 or §18.26 of this title will revert to the full amount
13 originally assessed if the reduced fine is not paid within thirty (30) calendar days from the date
14 of the letter informing the filer of the reduction.

15 (g) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a
16 request in writing to the commission.

17 (1) The request for appeal should state the filer's reasons for requesting an appeal,
18 provide any additional information needed to support the request, and state whether the
19 filer would like the opportunity to appear before the commission and offer testimony
20 regarding the appeal.

21 (2) The Executive Director may review the appeal and reconsider the determination made
22 under §18.25 or §18.26 of this title or set the appeal for a hearing before the commission.

23 (3)[(2)] After hearing a request for appeal, the commission may affirm the determination
24 made under §18.25 or §18.26 of this title or make a new determination based on facts
25 presented in the appeal.

Exhibit A

Legislative Per Diem Rule Amendment

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

The amended proposed new language is indicated by underlined text.

§ 50.1. Legislative Per Diem

(a) The legislative per diem is \$224 [~~\$221~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$224 [~~\$221~~] per diem for 2021 [~~2019~~].

DRAFT 1

EXHIBIT A

Text of Proposed New Rules and Amendments

The proposed new language is indicated by underlined text.

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

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

2 **Subchapter F. REPORTING REQUIREMENTS FOR A GENERAL-PURPOSE**
 3 **COMMITTEE**

4 **§20.434. Alternate Reporting Requirements for General-Purpose Committees**

5 (a) This section and Election Code § 254.1541 apply only to a general-purpose committee with
 6 less than \$20,000 in one or more accounts maintained by the committee in which political
 7 contributions are deposited, as of the last day of the preceding reporting period for which the
 8 committee was required to file a report.

9 (b) The alternative reporting requirement in Election Code §254.1541 applies only to
 10 contributions.

11 (c) A report by a campaign treasurer of a general-purpose committee to which this section and
 12 Election Code §254.154 apply shall include the information required by §20.433 of this title
 13 (Content of General-Purpose Committee Sworn Report of Contributions and Expenditures)
 14 except that the campaign treasurer may choose a threshold reporting amount for political
 15 contributions of \$100 instead of the threshold reporting amount of \$50 set out in §20.433~~(a)~~(11)
 16 and ~~(a)(20)(B)~~ (25)(B) of this title.

17 (d) A monthly report by a campaign treasurer of a general-purpose committee to which this
 18 section and Election Code §254.154 apply shall include the information required by §20.433 of
 19 this title (Content of General-Purpose Committee Sworn Report of Contributions and
 20 Expenditures), except that the campaign treasurer may choose a threshold reporting amount for
 21 political contributions of \$20 instead of the threshold reporting amount of \$10 set out in
 22 §20.433~~(a)~~(11) and ~~(a)(20)(B)~~ (25)(B) of this title.

§18.15. Additional Fine.
Text of Proposed Amendment

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

Chapter 18. GENERAL RULES CONCERNING REPORTS

§18.15. Additional Fine.

In addition to any other fine assessed under this chapter, the commission may vote to impose a fine of \$2,500 against a filer whose report is more than 30 days late and [~~or~~] who has not paid the penalty related to that report [~~an assessed fine~~] within 10 days after receiving the commission notice of lateness[~~, subject to the statutory limit~~].