

TEC Overview

Texas Ethics Commission – April 2021

Creation of Texas Ethics Commission

- **Constitutional state regulatory agency created in 1991**
 - Texas Constitution: Art. III, Sec. 24a
 - Ballot proposition passed Nov. 5, 1991
 - Offices in Austin
 - 34.4 FTEs (currently budgeted)

- **TEC employees are divided into four main sections:**
 - Legal Department, which is further divided into:
 - Legal Guidance/Opinions (rules and advisory opinions)
 - Enforcement (complaints and facial compliance)
 - Disclosure Filings
 - Computer Services, which includes Technical Support
 - Administration

General Duties of Texas Ethics Commission

- TEC has the powers and duties provided by law
 - Determined by Texas Legislature
- TEC sets legislators' per diem
- TEC may recommend legislators' salary
 - If recommendation made, voters must still approve

Commissioners

- 8 appointed members
 - Lists of prospective members are provided by Texas House and Senate members of each major political party
 - 4 by Governor, two from each party
 - 2 by Speaker of the House, one from each party
 - 2 by Lt. Governor, one from each party
 - Statewide appointments
- 4 year terms
- Can serve for 1 term and a partial 2nd term; ineligible for reappointment
- Must meet at least quarterly

Commissioners

Bi-partisan design: 6 votes needed

- ⦿ Adopt rules
- ⦿ Decide complaints (except dismissal after a formal hearing)
- ⦿ Initiate review (complaint)
- ⦿ Issue subpoenas
- ⦿ Audit a report
- ⦿ Initiate civil enforcement
- ⦿ Refer to prosecutor

Commissioners

Bi-partisan design: 5 votes needed for other actions

- ⦿ Publish rules for public comment
- ⦿ Dismiss complaint after formal hearing
- ⦿ Issue advisory opinions (EAOs)
- ⦿ Waive, reduce, increase civil penalty (late reports)
- ⦿ Terminate treasurer appointment

Texas Ethics Commission

Purpose of Enabling Legislation:

“To protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances.”

Tex. Gov't Code § 571.001

Texas Ethics Commission

TEC's enabling legislation shall be construed to:

- ⦿ Control and reduce cost of elections;
- ⦿ Eliminate opportunities for undue influence;
- ⦿ Disclose fully information regarding campaign spending and lobbying;
- ⦿ Enhance potential for individual participation in electoral and governmental processes; and
- ⦿ Ensure the public's confidence and trust in its government.

Tex. Gov't Code § 571.001

Four Main Groups of Ethics Laws

- Title 15, Election Code (Chapters 251 – 259)
 - Campaign Finance and Political Advertising
- Chapters 36 and 39, Penal Code
 - Bribery, Prohibited Gifts and Honoraria
 - Misuse of Government Property
- Chapter 305, Gov't Code
 - Lobby laws
- Chapter 572, Gov't Code
 - Personal Financial Disclosure
 - Revolving Door

What TEC Doesn't Do

What we DON'T do:

- ⦿ Anything to do with federal elections
- ⦿ Disciplinary actions concerning the ethics or morals of public officeholders
- ⦿ Disciplinary actions concerning the ethics or morals of lawyers or judges
- ⦿ Determining whether an individual is eligible to run for a public office
- ⦿ Timing and placement of campaign signs

How Ethics Laws Work

Governmental ethics laws exist to promote confidence in our system of government and a sense of fair play

- ⦿ Limit outside influence
- ⦿ Require public disclosure of financial activity
- ⦿ Ensure public resources are used for public purposes only

How Ethics Laws Work

Limit outside influence:

- No personal use of contributions
- No corporation or labor organization contributions to a candidate or officeholder
- Legislative moratorium
 - No contributions during regular session
- Judicial candidates
 - Fundraising window: 210 days before ballot application – 120 days after election
 - Contribution limits
- Lobbyist gift restrictions

How Ethics Laws Work

Require public disclosure, via Campaign Finance, Lobby, Personal Financial Disclosure

- Campaign finance disclosure deters actual corruption and avoids appearance of corruption (*Buckley v. Valeo*, 424 U.S. 1 (1976))
 - “Sunlight is said to be the best of disinfectants” – Justice Louis D. Brandeis
- 2013 Sunset Advisory Commission report
 - Given the few limits state law places on campaign contributions and expenditures, Texas’ approach to ethics relies on disclosure to shine a light on political financial activity for the public to see and judge

How Ethics Laws Work

- Disclosure aids detection of violations
 - Contributions accepted and spent
 - Recordkeeping requirements
- Personal Financial Statements (PFSs)
- Lobby Registration and Activity Reports

Personal Financial Statements

- Filed by state officers and candidates for state office, many state agency board members and executive directors, state party chairs, etc.
- Also filed by some city and county officials, depending on population
 - not in TEC's jurisdiction
 - Tex. Local Gov't Code Chapters 145 and 159
- Must disclose sources of occupation, stocks, bonds, mutual funds, gifts, business ownership, personal notes, real property interests, conflicts between official duties and personal activities, etc.
- Not available on TEC website, but subject to Public Information Act requests
- Typical due dates:
 - April 30th for officeholders; TEC filers can ask for 60 day extension
 - February 12th for candidates; no extension
 - New appointees to major state agencies – due 30 days after appointment; no extension
 - New executive head of a state agency – due 45 days after assuming duties; no extension

Tex. Gov't Code Chap. 572

Lobbyists

- Communicates directly with member of legislature or executive branch to influence legislation or administrative action
- Three thresholds to watch:
 - Compensation and reimbursement: more than \$1,620 per calendar quarter---
 - Time: more than 40 hours per calendar quarter (someone who crosses the compensation threshold but doesn't spend that much time on it does not have to register); or
 - Expenditures: more than \$810 per calendar quarter
- File monthly, unless your total expenditures are \$1,860 or less – then file annually
- Register every year; registration automatically expires at the end of each year
- \$750 to register unless your only client(s) are nonprofits, then it is \$150

Tex. Gov't Code Chap. 305; 1 Tex. Admin. Code Chap. 34

How Ethics Laws Work

Ensure public resources are used for public purposes: Restrictions on improper use of government property

- ⦿ Tex. Elec. Code § 255.003 and Penal Code § 39.02
- ⦿ No campaign use (EAO 386, 431, 550)
- ⦿ No personal use of campaign contributions
 - Tex. Elec. Code § 253.035
 - EAO 522

How Ethics Laws Work

Reports serve an important function:

- Must be accurate (sworn to), because inaccuracies can be enforced
- Filers must be aware of their activities
 - Must consider disclosure before accepting contributions
 - Same with personal activities (investments, debts)
- Public can question inappropriate activity
 - Who supports the candidate?
 - How does a candidate spend their campaign money?
 - Political advertising disclosure statement
- Press can report about it
- Discrepancies can lead to complaints

Penalties

- Most ethics laws carry criminal and/or civil penalties for violations
- Violations may result in:
 - Termination of employment
 - Monetary penalties
 - Criminal penalties (including jail time)
 - Other action

TEC Duties

- Filing authority for public reports
- Assist public servants, candidates, PACs, general public regarding ethics laws
- Civil enforcement
 - Fines for late reports
 - Complaints
- Rulemaking
- Advisory Opinions

TEC: Filing Authority

- Filing authority for reports
 - Campaign finance
 - Lobby
 - Personal Financial Statements
 - Disclosure of Interested Parties (1295)
 - Representation Before State Agency
- Public information
- Most filed (or retained) electronically

Campaign Finance Filers

Two main types of campaign finance filers:

- ◎ Candidates and officeholders
- ◎ Political Action Committees (PACs)
 - Can take corporation/labor organization contributions
 - Two types:
 - GPAC (general-purpose political action committee)
 - SPAC (specific-purpose political action committee)

TEC: Filing Authority

- Most reports available online
- Campaign finance
 - Searchable on website
 - Downloadable database
 - Lists of candidates, PACs, caucuses
- Lobby
 - Searchable reports
 - Lobby Activity report database
 - Other lists (since 1999)

Where to Find Reports on TEC Website



Texas Ethics Commission

Promoting Public Confidence in Government

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Resources ▾

Opinions/Statutes/Rules ▾

Filing Reports ▾

Training ▾

Forms/Instructions ▾

Search ▾

Home

- Campaign Finance Reports
- Lobby Registrations/Activity Reports
- TEC Opinions
- 1295 Acknowledged Certificates
- Sworn Complaints
- Delinquent Filers

Next Commission Mtg: Mar 11-12, 2021

▶ Play

⏸ Pause

Home

Administrative Penalties

- Statutory fines for late reports
 - \$500 – most reports
 - Can be increased to \$10,000 if more than 30 days late and penalty remains unpaid
 - \$500 + \$100 for each additional day up to \$10,000
 - 8-day pre-election and first semiannual due after election
- Can file affidavit to request waiver or reduction
 - 1 Tex. Admin. Code §§18.19 – 18.26
- Delinquent filers on TEC website and Texas Register

Civil Enforcement

● Audits – Facial Compliance

● Complaints

- Any Texas resident can file complaint
- TEC can initiate
- Statute of Limitations of 2 years for most allegations
- Almost entirely confidential
 - Open orders posted to website
 - Formal hearings are public
- Fines up to \$5,000 or triple amount at issue for most violations
- SC Numbers: 378 in 2018
188 in 2019
274 in 2020

Rulemaking

- TEC authorized to adopt rules to:
 - Administer Chapter 571, Gov't Code
 - Administer and clarify any other law administered and/or enforced by TEC
- Rules in Title 1, Texas Admin. Code: Chapters 6 - 50
- Administrative Procedures Act applies
- Public comments welcome on proposed rules

Ethics Advisory Opinions

- TEC can issue opinions on laws under our jurisdiction
 - Requires 5 votes by Commissioners to pass
- 560 opinions issued to date
- Can be defense to prosecution
 - Must be reasonable reliance
- Can be initiated by TEC or requested by certain individuals

Ethics Advisory Opinions

Not all opinions can be issued

- ⦿ TEC cannot answer (insufficient facts, no jurisdiction)
- ⦿ Can be answered by statute or rule
- ⦿ Already answered by TEC
- ⦿ Insufficient votes to adopt
- ⦿ Concerns subject matter of pending litigation

Ethics Advisory Opinions

- Request for opinion must:
 - Be in writing
 - Ask about application of law to requestor
 - Real or hypothetical fact situation
 - Provide sufficient detail and be clearly stated
 - Include name of requestor or person for whom requested
- Name of requestor confidential
 - Can be waived
- opinions@ethics.state.tx.us

Tex. Gov't Code § 571.093; 1 Tex. Admin. Code §§ 8.5, 8.7, 8.19

Ethics Advisory Opinions

- **Consider before requesting**
 - TEC can only address law as applied to requestor
 - Call TEC first:
 - Might already be answered
 - Opinions take longer than phone call (often must be voted on at a Commission meeting)

Legal Guidance and Opinions

Provide guidance and assistance: Legal, Technical

- Public servants: Elected and non-elected
- Candidates, PACs, others
- Lobbyists
- General public

Legal Guidance and Opinions

- Available by phone (512-463-5800) or reception@ethics.state.tx.us
- If you need to contact TEC, your first stop should be the TEC Website
 - www.ethics.state.tx.us
 - FAQs for new and outgoing filers
 - Filing schedules
 - Forms, Instructions, Guides
 - Judicial Campaign Fairness Act tips
 - Advisory Opinions
 - All TEC statutes and rules
 - More

Legal Guidance and Opinions

If you still need to contact TEC:

- ◎ reception@ethics.state.tx.us
- ◎ 512-463-5800
- ◎ Don't wait until the last minute; be aware of filing deadlines
- ◎ Have your facts ready
- ◎ Be patient
- ◎ Be friendly

TEC Website: ethics.state.tx.us

The screenshot shows the homepage of the Texas Ethics Commission website. At the top left is the TEC logo with the text "Texas Ethics Commission" and "Promoting Public Confidence in Government". To the right is a search bar with "ENHANCED BY Google" and a search button. Below this is a navigation menu with items: Resources, Opinions/Statutes/Rules, Filing Reports, Training, Forms/Instructions, Search, and Home. The main banner features a large clock face with the text "Next Commission Mtg: Mar 11-12, 2021" and "Play" and "Pause" buttons. Below the banner is a "Home" section with a "Quick Help" sidebar on the left containing links like "LOGIN to Electronic Filing Application", "Upcoming Deadlines", "Filing Schedules", "Enforcement & Compliance", "Commission Meetings", "Customer Satisfaction Survey", "Job Opportunities", "Calendar", and "87th Legislature Bill Tracking". The main content area has a "COVID-19" section with text about office hours and a link to an "Unsworn Declaration" form. Below that is a section titled "I want to ..." with three icons: a document with a dollar sign, a judge's bench, and a briefcase.

Texas Ethics Commission

Promoting Public Confidence in Government

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Resources Opinions/Statutes/Rules Filing Reports Training Forms/Instructions Search Home

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Play Pause

Home

Quick Help

LOGIN to Electronic Filing Application

Upcoming Deadlines

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Customer Satisfaction Survey

Job Opportunities

Calendar

87th Legislature Bill Tracking

COVID-19




The Texas Ethics Commission (TEC) is working to serve you during our regular office hours (8am-5pm, Monday through Friday). The TEC office is attending the 512-463-5800 telephone. TEC is also operating over email until further notice. Email your questions to reception@ethics.state.tx.us. TEC will be monitoring this mailbox during our regular office hours. TEC will respond to emails as quickly as possible.

Our office in the Sam Houston Building is closed to the public at this time.

Impact to local filers and local filing authorities:

- Unsworn Declaration that be can be used in lieu of a notary on a campaign finance report or personal financial statement (click for form)

I want to ...



Resources

- Commission provides detailed guides for candidates, which can be found online at <https://www.ethics.state.tx.us/resources/cf/>
- FAQs for candidates:
https://www.ethics.state.tx.us/resources/FAQs/FAQ_COH_Legal.php
- Icon: I Want to “Campaign in Texas”:
<https://www.ethics.state.tx.us/resources/cf/StartEndCampaign.php>
- Updated filing schedules for filing campaign finance reports can be found at:
https://www.ethics.state.tx.us/filinginfo/schedules/filing_schedules.php
- If you or your client ever have a question, give the Commission a call at (512) 463-5800.