



TEXAS ETHICS COMMISSION

BIENNIAL REPORT 2019 – 2020



DECEMBER 2020

**TEXAS ETHICS COMMISSION
BIENNIAL REPORT
2019-2020**

**A REPORT TO THE OFFICE OF THE
GOVERNOR
AND THE 87TH LEGISLATURE**

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

**ANNE TEMPLE PETERS
EXECUTIVE DIRECTOR**

DECEMBER 2020

Texas Ethics Commission

Table of Contents

I. ADVISORY OPINIONS.....	4
II. COMMISSION ACTIVITY SUMMARY	6
A. SWORN COMPLAINTS	6
B. CIVIL PENALTIES	8
III. STATUTORY CHANGE RECOMMENDATIONS	11
APPENDIX A.....	12
APPENDIX B.....	48

display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising.

EAO No. 553

Neither section 36.07 of the Penal Code nor section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political committee's meetings provided that the officeholder renders services at the meeting that are not merely perfunctory.

EAO No. 554

A contribution from a federal political committee to a federal Super PAC is a political expenditure made in connection with elections voted on in Texas only if the federal political committee intends for the contribution to be used to support or oppose a candidate or measure in an election voted on in Texas. Conversely, a contribution to a Super PAC for a general or unspecified purpose is not a political expenditure made in connection with elections voted on in Texas.

EAO No. 555

A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with producing an educational podcast for practicing lawyers.

EAO No. 556

To be “present” for purposes of Texas Government Code Sections 305.006(f) or 305.024(a), a registered lobbyist must share a physical location with the recipient of the expenditure.

EAO No. 557

An apparel company providing goods and services to candidates, political parties, and political committees before receiving payment from those purchasing the campaign apparel does not make a political contribution if the company offers the same terms “to political and non-political entities alike.”

EAO No. 558

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.

II. COMMISSION ACTIVITY SUMMARY

A. SWORN COMPLAINTS

During 2019-2020, a total of 462 sworn complaints were filed with the Texas Ethics Commission. In 2019, 188 sworn complaints were filed; in 2020, 274 sworn complaints were filed. The following chart shows the number of sworn complaints processed according to the type of resolution as described in Section 571.073(2)(A)-(G), Government Code.

Type of Resolution	2019	2020
Number of sworn complaints dismissed for noncompliance with statutory form requirements	107	150
Number of sworn complaints dismissed for lack of jurisdiction	29	62
Number of sworn complaints dismissed after a finding of no credible evidence of a violation	11	17
Number of sworn complaints dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the Commission has occurred	1	0
Number of sworn complaints dismissed after a finding of no credible evidence of a violation; and dismissed after a finding of a lack of sufficient evidence to determine whether a violation within the jurisdiction of the Commission has occurred	0	0
Number of sworn complaints dismissed after a finding of no credible evidence of a violation; and dismissed with no finding	2	0
Dismiss with no finding	4	2
Number of sworn complaints resolved by the Commission through an agreed order ¹	71	101
Number of sworn complaints resolved by the Commission through a Final Order	12	5

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

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

Penalty Amount	Sworn Complaint Orders 2019	Sworn Complaint Orders 2020
\$100.00	2	
\$150.00		1
\$200.00		1
\$250.00	4	7
\$300.00	2	
\$400.00	1	1
\$500.00	6	9
\$600.00		1
\$750.00		2
\$1,000.00	1	1
\$1,500.00	2	1
\$2,000.00		
\$2,500.00	3	2
\$3,000.00	1	
\$5,000.00	4	1

² For purposes of these calculations, “an order finding a violation” includes an agreed resolution requiring a respondent’s signature and a final order that does not require a respondent’s signature. This does not include complaints resolved with an Assurance of Voluntary Compliance (AVOC) that did not include a finding of a violation.

B. CIVIL PENALTIES

The attached spreadsheets show summary information for fiscal years 2019 and 2020 pertaining to civil penalties imposed by the Texas Ethics Commission for failure to timely file a statement or report. Specifically, the information is organized by the type of report required to be filed with the commission and the filer categories required to file each type of report. For each filer category, the summary shows:

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

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

Amounts stated in the following charts may be revised later in an addendum to this report, to reflect updated information or determinations made by staff.

TEXAS ETHICS COMMISSION
SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2019*

REPORT TYPE	CIVIL PENALTIES		HB89 WAIVERS		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Personal Financial Statements	134	\$67,000.00	0	\$0.00	102	\$49,500.00	46	\$17,500.00	29	\$9,800.00	1	\$346.35	17	\$7,353.65
Semiannual Reports														
Candidates/Officeholders	146	\$227,400.00	0	\$0.00	53	\$49,950.00	107	\$177,450.00	27	\$11,550.00	1	\$300.00	80	\$165,600.00
Specific-purpose Committees	23	\$19,200.00	0	\$0.00	14	\$13,800.00	13	\$5,400.00	7	\$2,400.00	0	\$0.00	6	\$3,000.00
Judicial Candidates/Officeholders	61	\$39,800.00	0	\$0.00	35	\$16,750.00	38	\$23,050.00	22	\$12,450.00	0	\$0.00	16	\$10,600.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	224	\$127,600.00	109	\$54,500.00	23	\$10,900.00	95	\$62,200.00	30	\$14,200.00	3	\$1,400.00	65	\$46,600.00
County Executive Committees	4	\$2,000.00	0	\$0.00	3	\$1,500.00	1	\$500.00	0	\$0.00	0	\$0.00	1	\$500.00
Monthly Reports														
General-purpose Committees	143	\$71,500.00	117	\$58,500.00	6	\$2,800.00	21	\$10,200.00	14	\$6,700.00	0	\$0.00	7	\$3,500.00
30th Day Before Election Reports														
Candidates/Officeholders	23	\$11,500.00	0	\$0.00	8	\$2,200.00	21	\$9,300.00	11	\$4,400.00	0	\$0.00	10	\$4,900.00
Specific-purpose Committees	1	\$500.00	0	\$0.00	1	\$500.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	7	\$3,500.00	0	\$0.00	1	\$100.00	7	\$3,400.00	6	\$2,900.00	0	\$0.00	1	\$500.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	31	\$26,700.00	2	\$1,000.00	5	\$11,300.00	28	\$14,400.00	26	\$11,900.00	0	\$0.00	2	\$2,500.00
County Executive Committees	4	\$2,000.00	0	\$0.00	3	\$1,100.00	3	\$900.00	3	\$900.00	0	\$0.00	0	\$0.00
8th Day Before Election Reports														
Candidates/Officeholders	25	\$91,800.00	0	\$0.00	11	\$21,600.00	20	\$70,200.00	8	\$5,300.00	1	\$615.67	12	\$64,284.33
Specific-purpose Committees	5	\$2,900.00	0	\$0.00	3	\$1,400.00	5	\$1,500.00	4	\$1,000.00	0	\$0.00	1	\$500.00
Judicial Candidates/Officeholders	7	\$14,200.00	0	\$0.00	5	\$3,250.00	5	\$10,950.00	4	\$950.00	0	\$0.00	1	\$10,000.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	48	\$84,300.00	7	\$22,500.00	20	\$35,050.00	37	\$26,750.00	31	\$19,850.00	2	\$2,300.00	6	\$4,600.00
County Executive Committees	2	\$1,000.00	0	\$0.00	1	\$200.00	2	\$800.00	2	\$800.00	0	\$0.00	0	\$0.00
Daily Pre-election Reports														
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC & SPAC Contributions Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC Expenditures Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Special Session Reports														
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Totals	888	\$792,900.00	235	\$136,500.00	294	\$221,900.00	449	\$434,500.00	224	\$105,100.00	8	\$4,962.02	225	\$324,437.98

*as of 12/30/2020

TEXAS ETHICS COMMISSION
SUMMARY OF FINES FOR LATE FILINGS ASSESSED IN FISCAL YEAR 2020*

REPORT TYPE	CIVIL PENALTIES		HB89 WAIVERS		FINES WAIVED		FINES DUE		PAID IN FULL		PAID - PARTIAL		NOT PAID	
	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$	#	\$
Personal Financial Statements	309	\$154,500.00	0	\$0.00	150	\$71,000.00	180	\$83,500.00	48	\$19,550.00	1	\$300.00	132	\$63,650.00
Semiannual Reports														
Candidates/Officeholders	182	\$241,100.00	0	\$0.00	50	\$35,800.00	141	\$205,300.00	13	\$5,700.00	0	\$0.00	128	\$199,600.00
Specific-purpose Committees	32	\$16,500.00	0	\$0.00	13	\$6,150.00	23	\$10,350.00	6	\$1,750.00	0	\$0.00	17	\$8,600.00
Judicial Candidates/Officeholders	74	\$88,200.00	0	\$0.00	30	\$18,100.00	51	\$70,100.00	16	\$8,800.00	2	\$800.00	35	\$60,500.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	323	\$167,700.00	178	\$89,000.00	23	\$9,850.00	129	\$68,850.00	20	\$8,350.00	0	\$0.00	109	\$60,500.00
County Executive Committees	4	\$2,000.00	0	\$0.00	1	\$450.00	4	\$1,550.00	2	\$550.00	0	\$0.00	2	\$1,000.00
Monthly Reports														
General-purpose Committees	182	\$91,000.00	126	\$63,000.00	17	\$7,900.00	44	\$20,600.00	16	\$6,600.00	0	\$0.00	28	\$14,000.00
30th Day Before Election Reports														
Candidates/Officeholders	36	\$18,000.00	0	\$0.00	11	\$3,750.00	32	\$14,250.00	9	\$4,000.00	1	\$100.00	23	\$10,150.00
Specific-purpose Committees	1	\$500.00	0	\$0.00	0	\$0.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
Judicial Candidates/Officeholders	10	\$500.00	0	\$0.00	6	\$240.00	7	\$2,600.00	4	\$110.00	1	\$150.00	3	\$1,350.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	15	\$7,500.00	2	\$1,000.00	7	\$2,700.00	11	\$3,800.00	11	\$3,800.00	0	\$0.00	0	\$0.00
County Executive Committees	1	\$500.00	0	\$0.00	0	\$0.00	1	\$500.00	1	\$500.00	0	\$0.00	0	\$0.00
8th Day Before Election Reports														
Candidates/Officeholders	43	\$159,700.00	0	\$0.00	10	\$13,850.00	39	\$145,850.00	6	\$1,500.00	0	\$0.00	33	\$144,350.00
Specific-purpose Committees	7	\$8,600.00	0	\$0.00	5	\$6,450.00	7	\$2,150.00	4	\$1,400.00	0	\$0.00	3	\$750.00
Judicial Candidates/Officeholders	9	\$28,000.00	0	\$0.00	3	\$2,000.00	9	\$26,000.00	4	\$3,500.00	0	\$0.00	5	\$22,500.00
Judicial Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
General-purpose Committees	29	\$48,000.00	7	\$8,300.00	14	\$20,900.00	19	\$18,800.00	14	\$5,800.00	0	\$0.00	5	\$13,000.00
County Executive Committees	2	\$1,000.00	0	\$0.00	2	\$1,000.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Daily Pre-election Reports														
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC & SPAC Contributions Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
GPAC Expenditures Reports	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Special Session Reports														
Candidates/Officeholders	0	\$0.00	0	\$0.00	0	\$0.00	10	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Specific-purpose Committees	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Totals	1,259	\$1,037,800.00	313	\$161,300.00	342	\$202,300.00	708	\$674,700.00	175	\$73,400.00	5	\$1,350.00	523	\$599,950.00

III. STATUTORY CHANGE RECOMMENDATIONS

At its December 2, 2020 meeting, the Texas Ethics Commission approved recommendations for statutory changes that are found at Appendix B. Commission staff is available to provide background information and other assistance in connection with bills that would affect the laws under the Commission's jurisdiction.

APPENDIX A
TEXAS ETHICS COMMISSION
ADVISORY OPINIONS
2019 - 2020



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 549

March 22, 2019

ISSUE

Whether the secretary of state is a statewide officeholder for purposes of Title 15 of the Election Code. (SP-16)

SUMMARY

The secretary of state is not a “statewide officeholder” or “holder of a statewide office” for purposes of Title 15 of the Election Code (“Title 15”).¹

ANALYSIS

The Texas Ethics Commission (“Commission”), on its own initiative, issues this advisory opinion in response to inquiries concerning whether the secretary of state is a “statewide officeholder” or “holder of a statewide office” for purposes of Title 15. Title 15 contains certain restrictions and reporting requirements that apply to a “statewide officeholder” or “holder of a statewide office in the executive branch.”²

We note that section 251.002 of the Election Code states, “[t]he provisions of this title applicable to an officeholder apply only to a person who holds an elective public office and to the secretary of state.” Elec. Code § 251.002(a). Thus, the secretary of state is an officeholder and is thereby

¹ Title 15 consists of chapters 251 to 258 in the Election Code.

² See Elec. Code §§ 253.034 (prohibiting a statewide officeholder from accepting political contributions beginning on the 30th day before, and through the end of, a regular legislative session); 253.042 (limiting the amount a statewide officeholder may spend from political contributions to reimburse the officeholder for political expenditures made from personal funds); 254.0391 (requiring a statewide officeholder who accepts a political contribution during a special legislative session to file a separate report to disclose the contribution); 254.0612 and 254.0912 (requiring a holder of a statewide office in the executive branch to disclose additional information regarding political contributions from a person that in the aggregate total \$500 or more).

subjected to the same provisions that apply generally to officeholders under Title 15.³ However, the restrictions that we address in this opinion are those specifically applicable to a “statewide officeholder.”

The secretary of state is an office with statewide jurisdiction to exercise certain constitutional and statutory powers.⁴ However, the Election Code defines the term “statewide office,” as it appears in the Election Code, as “an office of the federal or state government that is voted on statewide.” Elec. Code § 1.005(19). We previously applied that definition to hold that, for purposes of section 253.034 of the Election Code, a member of the State Board of Education is not a “statewide officeholder” because such a member is elected from a multi-county district, not statewide. Ethics Advisory Opinion No. 234 (1994). We similarly apply that definition in this opinion to determine whether the secretary of state is a statewide officeholder or holder of a statewide office in the executive branch for purposes of Title 15.⁵

The Texas Constitution provides that the secretary of state shall be appointed by the Governor and is not elected by the qualified voters of the state. Tex. Const. art. IV, §§ 2, 21. We therefore conclude that the secretary of state is not a statewide officeholder or a holder of a statewide office in the executive branch for purposes of Title 15.

³ The provisions applicable to an officeholder include, for example, the prohibition on converting political contributions to personal use (section 253.035, Election Code) and the requirement to file semiannual campaign finance reports (section 254.093, Election Code). We do not address those provisions in this opinion.

⁴ *See, e.g.*, Tex. Const. art. IV, §§ 3, 21; ch. 405, Gov’t Code; Elec. Code § 31.001 (secretary of state is the chief election officer of the state).

⁵ Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. Gov’t. Code § 311.011(b).



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 550

*June 28, 2019**

ISSUE

Whether a public officer may use government resources for political advertising. (SP-14)

BACKGROUND

The Texas Ethics Commission (“Commission”) has been asked on numerous occasions about the permissibility of a public officer’s¹ use of government resources for political advertising. For example, we have been asked whether a public officer may be interviewed in his or her government office for use in a campaign video.

In the circumstances described above, the government resources come into the public officer’s custody or possession by virtue of holding the public office.

SUMMARY

A public officer, including a statewide officer, legislator, county officer, municipal officer, or school district officer, would be prohibited from using government resources, such as the officer’s office in a government building, to create a photograph, video, or other communication for political advertising because the officer has custody or possession of the government resources by virtue of holding the public office.

¹ “Public officer” includes an officer of the state or a county, municipality, city, or political subdivision, as defined in section 1.07(a) of the Penal Code and section 1.005 of the Election Code. This opinion applies to a state officer who is a district officer of the state government, such as a legislator (*see* Elec. Code § 1.005(4)), or who is a statewide officer (*see id.* § 1.005(19)). This opinion also applies to an officer of a county, city, school district, or other subordinate self-governing entity. *See id.* § 1.005(13).

* The Commission voted to reconsider and amend this opinion by striking a footnote limiting the scope of the opinion. That change took effect June 1, 2020.

ANALYSIS

The Commission, on its own initiative, issues this advisory opinion to address whether a public officer may use government resources, such as the public officer's office, to create a photograph, video, or other communication for political advertising. We also address whether a public officer may similarly use government resources that are equally accessible to the public. To resolve this question, we must address sections 39.02(a)(2) and 39.02(a)(1) of the Penal Code and section 255.003(a) of the Election Code, which restrict the use of government resources for political advertising.

Use of Government Resources for Political Advertising

Section 39.02(a)(2), Penal Code

Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit² or harm or defraud another, intentionally or knowingly “misuse[] government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.” Penal Code § 39.02(a)(2). A public servant, as defined in the Penal Code, includes a public officer, among other enumerated persons.³ Because the questions addressed by the Commission relate to public officers, this opinion applies to that class of public servants.

A “misuse” means:

[T]o deal with government property contrary to:

- (A) an agreement under which the public servant holds the property;
- (B) a contract of employment or oath of office of a public servant;
- (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- (D) a limited purpose for which the property is delivered or received.

Id. § 39.01(2).

² “Benefit” is defined, in pertinent part, as “anything reasonably regarded as economic gain or advantage.” Penal Code § 1.07(a)(7).

³ “Public servant” also includes an employee or agent of government, a juror or grand juror, an arbitrator or referee, a notary public, and a candidate for nomination or election public office. Penal Code § 1.07(a)(41).

The use of government resources for an individual public servant's benefit is a misuse contrary to the state constitutional requirements that public money be used for a public purpose. Tex. Const. art. III, §§ 51, 52(a).⁴ Therefore, the use of government resources for an individual public servant's private campaign purposes would be a misuse. Section 39.02(a)(2) of the Penal Code applies only to a misuse of government resources that have "come into the public servant's custody or possession by virtue of the public servant's office or employment." A public officer would have custody or possession⁵ of an office or other government resources by virtue of having exclusive control over those resources as a public officer. The public officer's use of a government office, which is restricted to the custody or possession of that officer, for political advertising would confer a benefit to the individual public servant for private campaign purposes and would violate section 39.02(a)(2) of the Penal Code.

Regarding government resources, such as the public area of a government facility, in our opinion, such an area would not be in the "custody or possession" of a public officer. Such an area would be equally accessible to those not having custody or possession of the government resources. Therefore, section 39.02(a)(2) of the Penal Code would not prohibit a public officer from using the public areas of a government building to create a communication for political advertising.

Regarding the specific example about which we have been asked, a public officer occupying the public officer's government office would have custody or possession of the government office by virtue of holding the public office. The government office would not be equally accessible to the public. We conclude that section 39.02(a)(2) would prohibit the public officer from using the public officer's government office to create any communication for political advertising, such as an interview for a campaign video. In our opinion, the best practices for public officers are to remove themselves from government facilities and decline to use other government resources, of which they have custody or possession, for campaign activity, including political advertising. We

⁴ Tex. Const. art. III, §§ 51 (legislature may not authorize grant of public money to any individual, association, municipal or other corporation), 52(a) (legislature may not authorize any county, city, town or other political corporation or subdivision of the state to grant public money or thing of value in aid of or to any individual, association, or corporation). *See also* Ethics Advisory Opinion Nos. 386 (1997) (use of state equipment or state employees to handle campaign contributions or prepare campaign finance reports for officeholders is a misuse of government resources), 172 (1993) (state employees' work time may not be used to handle campaign contributions or expenditures); Gov't Code § 556.004 (prohibiting use of legislatively appropriated money and other resources for campaign purposes); *Texans Uniting for Reform & Freedom v. Saenz*, 319 S.W.3d 914 (Tex. App. – Austin 2010), *petition denied*, 2011 Tex. LEXIS 59 (Tex., Jan. 14, 2011) (legislature intended section 556.004 of the Government Code to prohibit state officers and employees from using their official authority to affect the result of an election, to affect the nomination of a candidate, or to achieve purposes similar in kind or nature to achieving or aiding the nomination or election of candidates); Attorney General Opinion Nos. DM-431 (1997), JM-685 (1993) (both holding that governmental entity may not pay costs in connection with election contest involving government officeholder), MW-36 (1979) (public body has no authority to contribute public funds to or on behalf of an individual or organization).

⁵ "Custody" is defined as "[t]he care and control of a thing or person for inspection, preservation, or security." Black's Law Dictionary 467 (10th ed. 2014). "Possession" is defined as "[t]he fact of having or holding property in one's power; the exercise of dominion over property," and "[t]he right under which one may exercise control over something to the exclusion of all others." *Id.* at 1351. In the Penal Code, "possession" is more generally defined as "actual care, custody, control, or management." Penal Code § 1.07(a)(39).

conclude that public officers may permissibly use government resources that are equally accessible to the general public, and they should relocate to publicly accessible areas, when creating photographs, videos, or other communications for political advertising.

Section 39.02(a)(1), Penal Code

Section 39.02(a)(1) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly “violate[] a law relating to the public servant’s office or employment.” Penal Code § 39.02(a)(1).⁶ Section 39.02(a)(2) of the Penal Code and the constitutional requirement to use public money for a public purpose are laws relating to the public officer’s office or employment. Therefore, in our opinion, a public officer would violate section 39.02(a)(1) of the Penal Code by using government resources of which the officer has custody or possession, including the government office, to create a photograph, video, or other communication for political advertising.

We caution that additional legal restrictions may apply to the use of any government resources, including other state or local laws or policies, and such restrictions may constitute law relating to a public servant’s office or employment under section 39.02(a)(1) of the Penal Code. This prohibition has a wide application and “allows for a vast array of potential means of committing the offense.” *State v. Martinez*, 548 S.W.3d 751, 759 (Tex. App. – Corpus Christi – Edinburg 2018), *reh’g denied*, 2018 Tex. App. LEXIS 5042 (Tex. App. – Corpus Christi – Edinburg June 11, 2018) (indictment alleging an offense under this provision must specify which law or laws relating to the public servant’s office or employment were allegedly violated). We cannot address the application of laws or policies that are outside our jurisdiction for an advisory opinion.⁷ Accordingly, we cannot provide assurance that section 39.02(a)(1) of the Penal Code, depending upon all applicable laws, would not prohibit a public officer from using other government resources that are generally accessible to the public to create a photograph, video, or other communication for political advertising.

Section 255.003(a), Election Code

Section 255.003(a) of the Election Code states, in pertinent part, that an officer of a political subdivision may not knowingly “spend or authorize the spending of public funds for political advertising.” Elec. Code § 255.003(a).⁸ The “spending” of public funds includes the use of a

⁶ “Law relating to a public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly: (A) imposes a duty on the public servant; or (B) governs the conduct of the public servant. *Id.* § 39.01(1). “Law” means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute. *Id.* § 1.07(a)(30).

⁷ See Gov’t Code § 571.091 (specifying the laws the commission may consider in an advisory opinion).

⁸ Section 255.003(a) of the Election Code applies to an officer of a political subdivision. “Political subdivision” includes a county, city, or school district or any other government entity that possesses authority for subordinate self-government through officers selected by it. Elec. Code § 1.005(13)(C). By contrast, section 39.02 of the Penal Code applies to any public servant. *See supra*, n. 4 (defining “public servant”).

political subdivision employee's work time or a political subdivision's equipment or facilities.⁹ "Political advertising" is defined, in pertinent part, as a communication supporting or opposing a candidate for nomination or election to a public office or a public officer that is published or broadcast in return for consideration or appears in various forms of writing or on an Internet website. *Id.* § 251.001(16).

For purposes of section 255.003(a) of the Election Code, we have concluded that the use of a facility maintained by a political subdivision, in an area that was restricted to its employees, required government resources to operate while in that restricted area, and therefore violated section 255.003(a) of the Election Code.¹⁰ Furthermore, we have found violations of section 255.003(a) of the Election Code on numerous occasions since the statute was enacted where public officers controlled the access to certain government resources.¹¹

CONCLUSION

Section 39.02(a)(2) of the Penal Code prohibits a public officer from using government resources, of which the officer has custody or possession, to create a photograph, video, or other communication for political advertising. In addition, section 255.003(a) of the Election Code prohibits a public officer, who is also an officer of a political subdivision, from using government resources, such as restricted areas of government facilities, for political advertising. These statutes do not prohibit a public officer from using government resources that are equally accessible to the public for political advertising. Section 39.02(a)(1) of the Penal Code may, depending on all applicable laws, prohibit a public officer from using publicly accessible government resources for political advertising.

⁹ See, e.g., Ethics Advisory Opinion No. 443 (2002) (placement of campaign flyers in a school district teachers' lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public), Ethics Advisory Opinion No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (this statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).

¹⁰ Ethics Advisory Opinion No. 443 (2002).

¹¹ See, e.g., *In re Brooks* (SC-3180260) (2018) (use of a county-owned vehicle dedicated to the officer's use), *In re Wilson* (SC-31712183) (2018) (use of a county Facebook page maintained by the officer), *In re Joiner* (SC-31605137) (2017) (use of newsletter headlined as from officer's desk), *In re Hawkins* (SC-31011409) (2012) (use of space in a city utility bill), *In re Downs* (SC-240588) (2004) (use of space in a city water bill), *In re McRae* (SC-240226) (2004) (use of city letterhead), *In re Clark* (SC-240225) (2004) (use of city letterhead), *In re Bowman* (SC-240218) (2004) (use of emergency services district letterhead), *In re Lord* (SC-230963) (2004) (use of city-contracted video production), *In re Williams, et. al.* (SC-211170) (2001) (use of space in city water bill and airtime on city cable channel), *In re Morgan* (SC-210541) (2001) (use of internal mail system), and *In re Williams* (SC-991032) (1999) (use of special edition of sheriff's report).



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 551

November 20, 2019

ISSUE

Whether an expenditure made through a periodic bill for the placement of Internet political advertising, the amount of which is based on the number of views or clicks the Internet advertising receives during the billing period, is reported under the "utility bill" reporting provisions, where the total cost is not known until the end of the billing cycle. (SP-17)

SUMMARY

If under normal business practices the total cost for Internet political advertising during a periodic billing cycle is not known until the end of the billing cycle, the date of the expenditure for reporting purposes is the date the advertiser receives the periodic bill, consistent with section 254.035(b) of the Election Code and section 20.57(b) of the Texas Ethics Commission's Rules.

ANALYSIS

The Texas Ethics Commission ("Commission"), on its own initiative, issues this advisory opinion to address whether expenses for placing political advertising on the Internet that accrue as the advertising reaches more people and are periodically billed to advertisers must be reported as either multiple daily expenditures or as one expenditure when the periodic bill is received.

Certain Internet advertising products, such as Google Ads, allow an advertiser to make an ad appear in the search results of another Internet user's search by associating the advertiser's ad with certain search terms. The cost to the advertiser is dependent on, among other things, how many people see and click on the ad. The actual number of clicks the ad receives and the number of times the ad appears is out of the control of the advertiser, but the advertiser is able to cap the total cost of running the ad. When the cap is reached, the ad stops appearing. Even though an advertiser is able to monitor the number of clicks, views, and costs in almost real time, the total costs to the advertiser cannot be known until the close of the billing period.

Generally, “[t]he date of a political expenditure is the date the amount is readily determinable by the person making the expenditure” Ethics Commission Rules § 20.57(a); see also Elec. Code § 254.035(a). Under the “utility bill” exception, if the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b). By rule, the Commission further explains that this "utility bill" exception is applicable when "under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill," and provides as examples electricity bills and long-distance telephone bills.¹ Ethics Commission Rules § 20.57(b).

In our opinion, the "utility bill" exception in section 254.035(b) of the Election Code and section 20.57(b) of the Ethics Commission Rules applies to expenditures for Internet advertising, such as Google Ads, where the normal business practice is such that the total amount of the charges during the billing cycle is dependent on usage outside of the advertiser’s control and therefore is not known until the end of that billing cycle. For example, Candidate A enrolls in Google Ads and directs Google to make a link to Candidate A’s campaign webpage appear in Google search results for Candidate A’s name. Candidate A’s bill increases every time someone sees or clicks on the link Candidate A paid Google to serve to its users. Candidate A would not know the total monthly bill until the billing period ends. In that manner, the charges for the advertising are analogous to a telephone bill or electricity bill. Therefore, the date of the expenditure for reporting purposes for Internet advertising, where the actual total cost during a billing cycle cannot be known or readily ascertainable until the end of the billing cycle, is the date the advertiser receives the periodic bill.

Certain other Internet advertising models, such as one used by Facebook, requires an advance payment. In such cases, the date of a political expenditure is the date the payment is made.

¹ There is another exception for expenditures made by credit card. *See id.* § 254.035(c),(d) (stating the amount of a political expenditure made by credit card is readily determinable on the date the person receives the credit card statement that includes the expenditure for semiannual reports). The date of an expenditure made by credit card during a pre-election reporting period is the date the credit card is charged. *See id.*; Ethics Commission Rules § 20.57.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 552

February 27, 2020

ISSUES

Whether a city employee violates section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum.

Whether a city employee has knowingly authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted. (AOR-629)

SUMMARY

1. A city employee does not violate section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum, and if the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned facility.
2. A city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum and the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned room.

3. A city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising.

FACTS

The Texas Ethics Commission (“Commission”) has been asked three separate questions by a city employee regarding the application of section 255.003(a) of the Election Code. According to the facts provided for this opinion, the city employee is the chief administrative and executive officer of the city and is responsible for the administration of all city affairs. The city owns facilities that have been used as venues for third parties to sponsor and conduct debates and forums for candidates for public office. The sponsors pay rent to the city to use the facilities and the debates and forums are open to all candidates and to the public. The debates and forums attract candidates and their supporters who wish to display or distribute political advertising materials to members of the public who may be present within a rented meeting room, in a corridor outside a rented meeting room, or in the parking lot outside a city-owned facility where the debate or forum is being conducted. The city does not prepare or pay for any of the political advertising materials, sponsor or conduct the debates, invite or contact candidates, or endorse or oppose any candidates. No city employees participate on work time in the preparation, display, placement, or distribution of any political advertising materials.

ANALYSIS

The city employee asks about the application of section 255.003(a) of the Election Code in three scenarios involving the display or distribution of political advertising on city-owned property. The law at issue in each scenario is section 255.003(a) of the Election Code, which states that “an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising.” We will separately address the application of this law to each scenario.

City Employee Allows the Display or Distribution of Political Advertising at a City-Owned Facility Rented by a Sponsor

In the first scenario, the city employee asks whether he would violate section 255.003(a) of the Election Code by allowing members of the public to display or distribute political advertising at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum.

We have stated in prior opinions that, for purposes of section 255.003(a) of the Election Code, the spending of public funds includes the use of a political subdivision’s resources, including

money, employees' work time, facilities, and equipment.¹ Addressing the first scenario, the city-owned facility is a city resource, and thus the restriction in section 255.003(a) of the Election Code applies to the city employee's use of that city-owned facility for political advertising. However, the sponsor would be paying the city for the use of that city-owned facility, which would be made available to members of the public for the display or distribution of political advertising during or in connection with the candidate debate or forum. If the sponsor uses non-public funds to pay the city for the use of the city-owned facility, and the amount paid is the standard rental rate charged by the city to others who rent the city-owned facility, then there would be no spending of public funds for political advertising. Therefore, in our opinion, the city employee does not violate section 255.003(a) of the Election Code by allowing political advertising to be displayed or distributed by members of the public at a city-owned facility during or in connection with a candidate debate or forum if the city-owned facility is rented to and paid for by the sponsor of the candidate debate or forum and the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned facility.

Political Advertising Displayed or Distributed in a City-Owned Room Rented by a Sponsor

In the second scenario, the city employee asks whether he has authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum. This scenario is substantively identical to the first scenario, except that the facts do not indicate that the city employee specifically allows the display or distribution of political advertising. However, regardless of whether the city employee allows the display or distribution of political advertising, public funds would not be spent for political advertising if the sponsor uses non-public funds to pay the city for the use of the city-owned room, and the amount paid is the standard rental rate charged by the city to others who rent the city-owned room. Thus, the city employee would not knowingly authorize the spending of public funds for political advertising under section 255.003(a) of the Election Code if political advertising is displayed or distributed by members of the public in a city-owned room that is rented to and paid for by the sponsor of a candidate debate or forum and if the sponsor uses non-public funds to pay the city its standard rental rate for the use of the city-owned room.

¹ See Ethics Advisory Opinion Nos. 550 (2019) (officer of a political subdivision may not use employees' work time or restricted areas of the political subdivision's facilities for political advertising), 532 (2015) (city officer may not modify city letterhead, created by city staff or with city equipment and which included the city's intellectual property, to create and distribute political advertising letters), 516 (2014) (city officer or employee may not use city funds to purchase and maintain a political advertising sign in a city park as part of an "adopt-a-park" program), 443 (2002) (school district employees may not use work time to distribute a candidate's campaign flyers to a restricted area of the school that is not accessible to the public), 45 (1992) (school district officer or employee may not use the district's internal mail system equipment to distribute political advertising).

Political Advertising Displayed or Distributed in a City-Owned Corridor or Parking Lot

In the third scenario, the city employee asks whether he has authorized the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum, or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted. This scenario is distinguishable from the first two scenarios in that the political advertising would be displayed or distributed in locations that are separate from the specific location that is rented by the sponsor. Thus, the use of the corridor and the parking lot would be considered the “spending of public funds” for purposes of section 255.003(a) of the Election Code. However, whether the city employee would be deemed to have authorized the spending of public funds for political advertising in this scenario depends upon the city employee’s specific actions.

According to the facts provided, the debate or forum is “open to all candidates and to the public” and the display or distribution of political advertising, to the extent that it occurs, would be conducted by members of the public, not by the city employee or any other city employee on city work time. The facts do not indicate that the city employee would take any action to prevent or allow the display or distribution of political advertising by members of the public in the corridor or parking lot, and we assume for purposes of this opinion that the city employee would take no such action. The issue, therefore, is whether the city employee would “knowingly ... authorize the spending of public funds for political advertising” by taking no action to prevent members of the public to display or distribute political advertising in the corridor or parking lot near the city-owned room that is rented by a sponsor who allows the public to access the city-owned room.

Our prior opinions regarding the spending or the authorization of the spending of public funds for political advertising have addressed scenarios in which an officer or employee of a political subdivision takes specific actions with the political subdivision’s resources to create or distribute political advertising.² The scenario before us in this opinion, however, is distinguishable from those prior scenarios in that the city employee does not take any specific action with city resources to create or distribute political advertising. The actions are taken instead by members of the public who display or distribute political advertising. A city employee taking no action in preventing the display or distribution of political advertising does not equate to the city employee “knowingly ... authoriz[ing] the spending of public funds for political advertising.”

Furthermore, we are guided in this instance by the legislative policy stated in our enabling legislation at section 571.001 of the Government Code, which is 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.”³ To achieve that purpose, we are directed to construe the law to achieve certain objectives, including “to enhance the potential for individual participation in electoral and governmental processes[] and to ensure the public’s confidence and trust in its government.”⁴

² See *supra* note 1 (summarizing prior advisory opinions).

³ Gov’t Code § 571.001.

⁴ *Id.* §§ 571.001(4),(5).

Our interpretation of section 255.003(a) of the Election Code in this instance furthers this policy, as we do not think the legislature intended section 255.003(a) of the Election Code to require an officer or employee of a political subdivision to prevent the display or distribution of political advertising by members of the public. Therefore, in our opinion, the city employee does not knowingly authorize the spending of public funds for political advertising as prohibited under section 255.003(a) of the Election Code if members of the public display or distribute political advertising in a corridor outside the city-owned room rented to and paid for by the sponsor of a candidate debate or forum or in the parking lot of the city-owned facility where the candidate debate or forum is being conducted, and the city employee takes no action to prevent the display or distribution of the political advertising.⁵

⁵ We do not conclude that a city employee must always allow the display or distribution of political advertising, but only that the city employee does not authorize the spending of public funds in the circumstances before us.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 553

February 27, 2020

ISSUES

Whether section 36.07 of the Penal Code or section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political committee's meetings. (AOR-630)

SUMMARY

Neither section 36.07 of the Penal Code nor section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political committee's meetings provided that the officeholder renders services at the meeting that are not merely perfunctory.

FACTS

The requestor of this opinion is an elected officeholder who is subject to the moratorium on accepting political contributions during a regular legislative session. The officeholder is also a member of a political committee. The officeholder wishes to (1) attend a multi-day meeting or series of meetings of the political committee to participate in panel discussions, subcommittee meetings, receptions, dinners, luncheons, and speeches, and (2) perform official actions directly related to the political committee's mission and purpose. The officeholder asks that we assume the participation and official actions are services that are not merely perfunctory. The officeholder would like to accept from the political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend the meeting or series of meetings and perform the official actions.

ANALYSIS

The relevant laws that we must consider are section 36.07 of the Penal Code and section 253.034 of the Election Code, which restrict certain officeholders from accepting benefits in certain circumstances.

Honorarium Prohibition

Section 36.07 of the Penal Code states, in relevant part:

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.¹

Penal Code § 36.07.

According to the facts presented in this request, the officeholder would participate in the meetings and provide services, at least in part, in the officeholder's capacity as a public servant. Thus, the honorarium prohibition in section 36.07(a) of the Penal Code would prohibit the officeholder from accepting the transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, except as provided by section 36.07(b).

The exception under section 36.07(b) applies if transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, are "in connection with a conference or similar event in which the public servant renders services."² The term

¹ "Political contribution" means a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3). "Officeholder contribution" means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).

² See, e.g., Ethics Advisory Opinion Nos. 273 (1995) (a legislator may accept expenses for travel, lodging, and meals in connection with a speaking engagement), 54 (1992) (a state agency employee may accept lunch from a nonprofit organization provided during a speaking engagement in connection with a conference or similar event), 18

“conference” is not defined in the Penal Code and we therefore construe that term according to the rules of grammar and common usage.³ Black’s Law Dictionary defines “conference,” in part, as a convention or a “meeting held to deliberate on a subject and [usually] decide how to proceed.” Black’s Law Dictionary 360 (10th ed. 2014). We also determined in Ethics Advisory Opinion No. 401 that the honorarium exception in section 36.07(b) of the Penal Code applies to expenses paid or provided to a state officer in connection with the officer’s appearance at a fundraiser to give a speech in support of a candidate for state or federal office. Ethics Advisory Opinion No. 401 (1998). Thus, in our opinion, a “conference or similar event” in section 36.07(b) of the Penal Code includes a political committee’s multi-day meeting or series of meetings. Additionally, the officeholder would be rendering services that are the same as or similar to addressing an audience or engaging in a seminar, which are examples provided by section 36.07(b). Therefore, section 36.07(a) would not prohibit the officeholder from accepting from the political committee transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, to enable such participation.

Moratorium on Accepting Political Contributions During a Regular Legislative Session

Section 253.034 of the Election Code prohibits certain officeholders, including a statewide officeholder or a member of the legislature, from knowingly accepting a political contribution that is received during the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment. However, section 36.07(b-1) of the Penal Code expressly states that transportation, lodging, and meals described by section 36.07(b) are not political contributions. Because, as discussed above, the transportation, lodging, and meals at issue, or the reimbursement for expenses for transportation, lodging, and meals, are subject to the exception provided in section 36.07(b) of the Penal Code, they are not political contributions. Therefore, section 253.034(b) of the Election Code, applicable to the officeholder, would not prohibit the officeholder from accepting from the political committee the transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, in these circumstances.

(1992) (a member of the legislative or executive branch of state government may accept payment for transportation, meals, and lodging expenses incurred in a speaking engagement at a nonprofit organization meeting), and 17 (1992) (a legislator may accept direct provision of, or reimbursement for, expenses for transportation, lodging, and meals incurred in connection with a speaking engagement at a conference or similar event).

³ Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Gov’t Code § 311.011(a). *See also* Black’s Law Dictionary at 405 (defining a convention, in part, as an “assembly or meeting of members belonging to an organization or having a common objective”).



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 554

June 19, 2020

ISSUE

Whether a contribution from a federal political committee to a federal “Super PAC”¹ is a political expenditure made “in connection with elections voted on in Texas.”² (AOR-632)

SUMMARY

In our opinion, a contribution from a federal political committee to a federal Super PAC is a political expenditure made in connection with elections voted on in Texas only if the federal political committee intends for the contribution to be used to support or oppose a candidate or measure in an election voted on in Texas. Conversely, a contribution to a Super PAC for a general or unspecified purpose is not a political expenditure made in connection with elections voted on in Texas.

FACTS

The requestor of this opinion is a federal political committee (“the committee”) that files reports with the Federal Election Commission (“the FEC”). The committee states that it makes contributions to state and local candidates in Texas as an out-of-state political committee and that it complies with reporting requirements under the Texas Election Code and Ethics Commission Rules by sending a letter to the Texas Ethics Commission (“the Commission”) specifying where the committee’s reports may be found.³ The committee would like to make contributions to

¹ The FEC describes a “Super PAC,” which is also known as an “independent expenditure only committee,” as, in part, a political committee that makes only independent expenditures that may solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. *See* Fed. Election Comm’n Advisory Opinion 2010-11 (July 22, 2010).

² *See* 1 Tex. Admin. Code § 20.13(c)(2).

³Section 254.1581 of the Texas Election Code requires an out-of-state political committee that accepts political contributions and makes political expenditures to file with the Commission a copy of reports filed with the FEC or other filing authority, as applicable. Tex. Elec. Code § 254.1581. Section 20.13 of the Ethics Commission Rules states that an out-of-state political committee that files electronically in another jurisdiction may comply with

certain federal political committees, informally known as Super PACs, which are required to file reports with the FEC and are functionally identical to direct campaign expenditure-only committees under Title 15 of the Texas Election Code.⁴ The committee states that it does not know with certainty whether or how much of its contributions to a Super PAC will be spent on elections voted on in Texas. The recipient Super PACs may support or oppose candidates in only one election or in multiple elections and states. The recipient Super PACs may focus on Presidential candidates in elections that will be voted on in all 50 states or on United States House and Senate candidates in elections that will be voted on in any state.

The committee states that it has no control over a Super PAC's use of any contribution from the committee and receives no binding assurance on how or where a Super PAC will spend the contributions. The committee acknowledges that it may have an expectation as to what a Super PAC is likely to do based on past actions or public statements, but states that those expectations are neither enforceable nor certain to be fulfilled. The committee asserts that its contributions to Super PACs should not be considered political expenditures made in connection with elections voted on in Texas for purposes of calculating whether the committee is an out-of-state political committee.

ANALYSIS

The question addressed by this advisory opinion is whether a contribution from a federal political committee to a federal Super PAC—which could ultimately make political expenditures to support or oppose Texas candidates or measures—is considered a political expenditure made “in connection with elections ... voted on in Texas.”⁵ This question concerns the definition of “out-of-state political committee” and how a contribution made by the committee to a Super PAC affects the committee's status as an out-of-state political committee.⁶ A political committee's status as an out-of-state political committee determines whether the committee may accept political contributions or make political expenditures in connection with a state or local election

Section 254.1581 of the Texas Election Code by sending a letter to the Commission specifying where its electronic reports may be found on the other filing authority's website. 1 Tex. Admin. Code § 20.13(a).

⁴ A direct campaign expenditure-only committee is a political committee authorized to accept political contributions from corporations and labor organizations under Section 253.105(a) of the Texas Election Code if the committee: (1) is not established or controlled by a candidate or officeholder; (2) makes or intends to make direct campaign expenditures; (3) does not make political contributions to a candidate, an officeholder, a specific-purpose committee established or controlled by a candidate or officeholder, or a political committee that makes or intends to make political contributions to a candidate, an officeholder, or a specific-purpose committee established or controlled by a candidate or an officeholder; and (4) has filed an affidavit with the commission stating the committee's intention to operate as described by Subdivisions (2) and (3). *See* Tex. Elec. Code § 253.105(a).

⁵ *See* 1 Tex. Admin. Code § 20.13(c).

⁶ In order to maintain out-of-state status, a political committee must make 80% or more of its total political expenditures “in connection with elections not voted on in Texas.” 1 TEX. ADMIN. CODE § 20.13(c).

in Texas without appointing a campaign treasurer who is required to file campaign finance reports under Title 15 of the Texas Election Code.

Requirements for Out-of-state Political Committees

Generally, a political committee must file a campaign treasurer appointment before accepting more than \$870 in political contributions, or making or authorizing more than \$870 in political expenditures, in connection with a state or local elective office or a measure in Texas.⁷ Once a political committee files a campaign treasurer appointment, the person appointed as campaign treasurer must subsequently file campaign finance reports to disclose the political committee's political contributions and political expenditures.⁸

However, an out-of-state political committee is not required to file a campaign treasurer appointment under Title 15 of the Texas Election Code.⁹ Section 251.001(15) of the Texas Election Code defines an “out-of-state political committee” as:

[A] political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

Tex. Elec. Code § 251.001(15).

Section 20.13(c) of the Ethics Commission Rules paraphrases the Texas Election Code using similar language, stating that a political committee is an out-of-state political committee only if

⁷ Tex. Elec. Code § 253.031(b); 1 Tex. Admin. Code §§ 18.31(a), 20.301(a), 20.401(a) (before January 1, 2020, the threshold requiring a campaign treasurer appointment was \$500). *See also* Tex. Ethics Comm'n Op. No. 513 (2013) (Title 15 of the Texas Election Code regulates political contributions and political expenditures made in connection with a state or local office or a measure in Texas) (citing additional opinions).

⁸ *See generally* Tex. Elec. Code Ch. 254.

⁹ Tex. Elec. Code §§ 251.005(a), 253.031(e). If an out-of-state political committee decides to file a campaign treasurer appointment, the out-of-state political committee becomes subject to the requirements of Title 15 to the same extent as a political committee that is not an out-of-state political committee. *Id.* § 251.005(b). If an out-of-state political committee performs an activity that removes the committee from out-of-state status, the committee must file a campaign treasurer appointment before exceeding \$870 in political contributions or political expenditures in connection with a state or local election in Texas. *See id.* §§ 251.005(c), 253.031(b).

80% or more of its total political expenditures during the past 12 months were made in connection with elections not voted on in Texas.¹⁰

Contributions to Super PACs

The committee states that it has been acting as an out-of-state political committee that makes contributions to candidates in Texas and other states. Except for its contributions to Super PACs, we assume that the committee would otherwise qualify as an out-of-state political committee. The question here is whether the committee's contributions to Super PACs, which may ultimately use the contributions to make expenditures in connection with elections voted on in Texas, are political expenditures made in connection with elections voted on in Texas for purposes of determining whether the committee is an out-of-state political committee.

Neither Title 15 of the Texas Election Code nor the Ethics Commission Rules clarifies when a political expenditure is "inside this state," as provided by Section 251.001(15) of the Texas Election Code, or "in connection with elections ... voted on in Texas," as provided by Section 20.13(c) of the Ethics Commission Rules. The Commission has not addressed this question before.

In our opinion, whether the committee's political contribution to a Super PAC is a political expenditure in connection with elections voted on in Texas depends not on how the recipient Super PAC ultimately uses the contribution, but rather on the committee's intent in making the contribution.

The laws of other jurisdictions have recognized that contributions to political committees may be "earmarked" for a particular use.¹¹ In our opinion, a political committee would intend that a contribution to a Super PAC be used in connection with elections voted on in Texas if the committee were to earmark or otherwise designate the contribution to be used in connection with an election voted on in Texas.

¹⁰ Section 20.13(c) of the Ethics Commission Rules uses the phrase "political expenditures . . . in connection with elections not voted on in Texas" to interpret Section 251.001(15) of the Texas Election Code, which uses the phrase "political expenditures in any combination of elections outside this state and federal offices not voted on in this state." See 1 Tex. Admin. Code § 20.13(c); Tex. Elec. Code § 251.001(15). For purposes of this opinion, we use the phrase provided in the rule.

¹¹ Under federal law, "earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1). Similarly, under Montana law, an "earmarked contribution" is "a contribution made with the express, implied, oral, written, direct, or indirect designation or instruction, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue committee, political party committee, independent committee or petition for nomination. An earmarked contribution is the same as a designated contribution." Mont. Admin. R. 44.11.404(1). For additional definitions of "earmark," see Cal. Gov't Code § 85704(b); Colo. Rev. Stat. § 1-45-103(7.5); Wash. Rev. Code § 42.17A.460.

Examples of such an earmarking or designation include: (1) the committee contributes to a Super PAC in response to a solicitation from the Super PAC for a contribution to be used to support or oppose a candidate or measure in an election voted on in Texas; or (2) the committee contributes to a Super PAC subject to a condition or agreement between the committee and the Super PAC, or subsequently agrees with the Super PAC after the contribution is made, that all or a portion of the contribution would be used to support or oppose a candidate or measure in an election voted on in Texas.

Conversely, a contribution not earmarked or designated to be used by the Super PAC to support or oppose a candidate or measure in an election voted on in Texas, such as a contribution to a Super PAC for a general or unspecified purpose, is not a political expenditure made in connection with an election voted on in Texas.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 555

June 19, 2020

ISSUE

Whether a judge may use political contributions to pay for equipment and services in connection with producing an educational podcast for practicing lawyers. (AOR-633)

SUMMARY

A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with producing an educational podcast for practicing lawyers.

FACTS

The requestor is a judicial officer who wants to produce a podcast. The requestor asks us to assume that the podcast would be “an educational podcast, geared towards helping lawyers who regularly practice in courts, and informing them of recent developments in the courts.”

To create the podcast, the requestor states that he would need to pay for certain equipment and services, including audio equipment for recording the podcast and a service for hosting the podcast on the Internet. In his request, the requestor identifies specific equipment, including brand and model information, and states that he has “thoroughly reviewed the subject, consulted with several podcasters and found” that equipment would be appropriate for starting “a small scale podcast.” The requestor asks whether he may use campaign funds to pay for that equipment and those services.

ANALYSIS

Title 15 of the Texas Election Code prohibits candidates and officeholders from converting political contributions to personal use. Tex. Elec. Code § 253.035(a). “Personal use” is defined as “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.” *Id.* § 253.035(d). “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).

In a previous opinion, we stated that it would not be a personal use for a judicial officeholder to use political contributions to pay ordinary and necessary travel expenses to teach at a legal conference. Tex. Ethics Comm’n Op. No. 536 (2016). That opinion rested on the particular facts presented to us, including that the conference was intended to assist and educate attorneys on issues concerning the law. *Id.* Given those facts, we stated that a judge’s attendance to teach at such a conference would be connected to the judge’s performance of official duties or activities, and thus a judge may use political contributions to “defray ordinary and necessary expenses incurred” in connection with that attendance. *Id.* (citing Tex. Elec. Code § 253.035(d)(1)).

More broadly, several of our prior opinions discuss judges using political contributions to *receive* education. Most recently, we opined that a judge may use political contributions to pay for membership in an organization that provides leadership training if the primary purpose in paying the costs is to facilitate the duties or activities of the judicial office. Tex. Ethics Comm’n Op. No. 546 (2018); *see also* Tex. Ethics Comm’n Op. Nos. 291 (1995) (a former judge sitting by assignment may use political contributions for continuing legal education courses), 279 (1995) (a senior judge may use political contributions for continuing legal education courses); 267 (1995) (a judge may use political contributions to attend a legal seminar); 247 (1995) (a judge may use political contributions to pay a person to assist the judge in preparation of a thesis required for a Masters of Law in the Judicial Process).¹

In each of these cases, the judge received an incidental personal benefit from the expenditure. But the Commission has recognized that “by specifying that the use must not *primarily* serve individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefits to the individual candidate.” Tex. Ethics Comm’n Op. No. 547 (2018) (quoting Tex. Ethics Comm’n Op. No. 149 (1993)) (emphasis in original). An expenditure is not an impermissible personal use unless it “*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.” Tex. Elec. Code § 253.035(d) (emphasis added).

¹ These opinions are distinguishable from Texas Ethics Commission Opinion Number 432 (2001), which states that a mayor may not use political contributions to pay professional license dues unless the license is *required* for the office held or sought. *Id.*; *cf.* Tex. Ethics Comm’n Op. No. 245 (1995) (a judge can use political contributions to pay state bar dues because a license to practice law is a requirement for that office). In that opinion, we recognized that expenditures for licensing raised different issues than expenditures for education. *Id.* (“It is the knowledge, however, not a professional license, that is useful [to a mayor’s official duties]. The license itself allows the actual practice of engineering, which would be of value primarily for the mayor’s *personal* purposes.”) (emphasis added). Unlike professional licenses, we stated that a candidate or officeholder may not use political contributions to pay for general education or prepare for a private career, but may use political contributions to pay for education “if the education primarily furthers activities as a candidate or officeholder.” *Id.* at fn. 1.

In our opinion, creating an educational podcast for practicing lawyers would be connected to the judge's performance of official duties and activities, and therefore, paying for ordinary and necessary expenses related to creating such a podcast is a permissible use of political contributions. *See* Tex. Elec. Code § 253.035(d)(1). Not only does our precedent support this opinion, so too does the Texas Code of Judicial Conduct, which defines certain "extra-judicial activities" of judges, including to "speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code." Tex. Code Jud. Conduct, Canon 4(B)(1), *reprinted* in Tex. Gov't Code Ann. tit. 2, subtit. G., app. B (West 2013).

However, we decline to opine on whether the specific equipment and services identified by the requestor are ordinary or necessary. Instead, and only for the purposes of this opinion, we rely on the requestor's statement that the equipment and services were identified after thorough research on what is ordinary and necessary for a "small scale podcast." Assuming that is true, then the expenditures are permissible under Section 253.035(d)(1) of the Election Code.

Importantly, even though a judge may use political contributions to pay for podcasting equipment, he may not then convert that equipment to personal use. *See* Tex. Ethics Comm'n Op. No. 25 (1992) (judges may use political contributions to purchase electronic equipment for use in the judge's courtroom, but may not convert the assets to personal use). Instead, the equipment would be subject to various provisions of Title 15 of the Election Code applicable to assets purchased with political contributions. *Id.*; *see also* Tex. Ethics Comm'n Op. No. 296 (1995) ("Items purchased with political contributions may not be converted to personal use at the end of an officeholder's tenure in office and would need to be disposed of in a manner consistent with Section 254.204 of the Election Code.")



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 556

June 19, 2020

ISSUE

Whether a registered lobbyist can be “present”¹ at an event via videoconference technology.
(AOR-635)

SUMMARY

No. To be “present” for purposes of Texas Government Code Sections 305.006(f) or 305.024(a), a registered lobbyist must share a physical location with the recipient of the expenditure.

FACTS

The requestor is a registered lobbyist who seeks clarification from the Commission regarding the meaning of the word “present” as it is used in Chapter 305 of the Texas Government Code. Specifically, Chapter 305 prohibits lobbyists from making certain expenditures to communicate directly with members of the legislative or executive branch, including expenditures on food or beverages, unless the lobbyist is “present at the event.” Tex. Gov’t Code §§ 305.006(f), 305.024(a).

The requestor asks whether a registered lobbyist may be “present” for purposes of Chapter 305 by meeting with legislators remotely via videoconferencing software such as Zoom or Apple FaceTime. The requestor asks us to assume that the lobbyist organizes, pays for, and attends the virtual meeting that includes food and/or beverages.

ANALYSIS

Section 305.006 of the Texas Government Code requires every registered lobbyist to file periodic reports of expenditures made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. Tex. Gov’t Code §§ 305.006(a)-(b). These expenditures must be reported by category, including: “(1)

¹ Tex. Gov’t Code §§ 305.006(f), 305.024(a) (as amended by Chapters 92 (S.B. 1011) and 206 (H.B. 1508), Acts of the 79th Legislature, Regular Session, 2005).

transportation and lodging; (2) food and beverages; (3) entertainment; (4) gifts, other than awards and mementos; (5) awards and mementos; and (6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events.” *Id.* § 305.006(b).

However, expenditures for certain categories—including food and beverage—are generally prohibited “unless the registrant is present at the event.” *Id.* § 305.006(f) (“An expenditure described by Subsection (b)(1), (2), (3), or (6) may not be made or accepted unless the registrant is present at the event.”); *see also Id.* § 305.024(a) (providing that a lobbyist may not offer, confer, or agree to confer to a member of the legislative or executive branch an expenditure described by Sections 305.006(1), (2), (3), or (6) unless present at the event).

All of our prior opinions discussing the presence requirement have assumed the physical presence of the registered lobbyist. *See, e.g.,* Tex. Ethics Comm’n Op. Nos. 113 (1993), 92 (1992), 89 (1992), and 4 (1992). Because we have not yet addressed the question, we look to other jurisdictions for guidance. The significant majority are in agreement; when a statute or rule requires a person to be “present,” it requires a physical presence,² unless there is an express exception that applies.³

For example, the Texas Open Meetings Act expressly allows members of governmental bodies to participate remotely in meetings “by videoconference call,” but only if the presiding officer is “physically present at one location of the meeting that is open to the public during the open portions of the meeting.” Tex. Gov’t Code § 551.127. Conversely, Chapter 305 of the Texas Government Code does not include any such express exceptions to the requirement that a lobbyist be present when making certain expenditures to communicate with members of the legislative and executive branches of government.

We understand the circumstances during this particular time in history are unique. Over the past several months, the Governor has declared a state of disaster due to the COVID-19 pandemic and has issued several emergency proclamations ordering Texas citizens to minimize social gatherings and to avoid restaurants, bars, and stores.

² *See, e.g., United States v. Navarro*, 169 F.3d 228, 236 (5th Cir. 1999), cert. denied 528 U.S. 845 (1999) (construing “present” as used in Federal Rule of Criminal Procedure 43 and holding that “the common-sense understanding of the definition is that a person must be in the same place as others in order to be present.”); *accord United States v. Williams*, 641 F.3d 758, 764-65 (6th Cir. 2011); *United States v. Torres-Palma*, 290 F.3d 1244, 1245-48 (10th Cir. 2002); *United States v. Lawrence*, 248 F.3d 300, 301, 303-04 (4th Cir. 2001); *United States v. Salim*, 690 F.3d 115, 122 (2nd Cir. 2012) (“every federal appellate court to have considered the question has held that a defendant’s right to be present requires physical presence and is not satisfied by participation through videoconference.”).

³ *See, e.g.,* Federal Rule of Civil Procedure 43(a), which expressly allows judges to “permit [presentation of] testimony in open court by contemporaneous transmission from a different location,” but only upon a showing of good cause.

However, in the absence of an express statutory exception to the common-sense meaning of presence, or a lawful executive order suspending the requirement that a lobbyist be present,⁴ it is our opinion that a lobbyist cannot satisfy Chapter 305's presence requirement using videoconference software.

However, food or beverage with a value of \$90 or less, which is delivered by mail or common contract carrier to a location other than the Capitol Complex, is a gift not subject to the presence requirement. Tex. Gov't Code §§ 305.0061(e-1), 305.006(b)(4); 1 Tex. Admin. Code § 18.31(a) (adjusting threshold from \$50 to \$90). An expenditure for such a gift is subject to the \$500 aggregate calendar year limit, rather than the allowance for an unlimited amount that may be spent on food or beverages that meets the presence requirement. *Id.* § 305.024(a).

⁴ Under Texas Government Code Section 418.016, the Governor has the authority to suspend any regulatory statute prescribing the procedures for conduct of state business if strict compliance would prevent, hinder, or delay necessary action in coping with a disaster. Governor Abbott has exercised that authority to suspend certain provisions of law during the pandemic, but he has not suspended any portion of Sections 305.006(f) or 305.024(a).



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 557

September 15, 2020

ISSUE

Whether an apparel company may contract with candidates, political parties, and political committees to design, manufacture, market, and fulfill sales of campaign merchandise in return for a portion of the sales proceeds, and, if so, whether such a business model involves any reportable campaign contributions. (AOR - 636)

SUMMARY

Because the Commission's rules exclude from the definition of "contribution" any "transfer for consideration of anything of value pursuant to a contract that reflects the usual and normal business practice of the vendor,"¹ an apparel company providing goods and services to candidates, political parties, and political committees before receiving payment from those purchasing the campaign apparel does not make a political contribution if the company offers the same terms "to political and non-political entities alike." *See* Tex. Ethics Comm'n Op. No. 533 (2015); Tex. Ethics Comm'n Op. No. 143 (1993).

However, the apparel company's customers *are* making political contributions when they purchase the campaign merchandise. Accordingly, any participating candidate, party, or committee would need the apparel company to keep a record of all reportable activity necessary for filing the required reports.

FACTS

The requestor seeks to create "an apparel ecommerce company [that] serves as a profit-share marketplace for political candidates, parties, and other entities." The requestor explains that the apparel company would accept payment for merchandise directly from the customer, retain a portion of that money, and send another portion to the candidate, party, or other entity for fundraising.

According to the requestor, the hypothetical apparel company would design, manufacture, advertise, and fulfill the sales of apparel that feature the logos and messages of the candidates, parties, and other entities it contracts with. The apparel company would "not charge for shirt design

¹ 1 Tex. Admin. Code § 20.1(3).

and website setup” or, for that matter, any manufacturing or advertising costs, and those expenditures would be made with the prior authorization of the participating candidates, parties, and committees. Instead, the apparel company would hope to recoup its costs by keeping a portion of the sales price of each item.

As an example, the requestor asks the commission to imagine that the apparel company creates shirts using the logos and designs of a political party, sells each shirt for \$20, of which it keeps \$15. At the end of the month, the apparel company would send \$5 for each shirt sold during the month to the political party. When asked for more information by commission staff, the requestor stated that these were typical of the commercial terms that the apparel company would offer to political and non-political entities alike. The requestor also confirmed that the apparel company would—through its website—notify its customers that profits from the sale of apparel would be transferred to the corresponding participating candidate, party, or committee.

The requestor asks the commission whether such a business model is permitted under the Texas Election Code and, if so, whether reporting would be required.

ANALYSIS

The Election Code defines “contribution” as any “direct or indirect transfer of money, goods, services, or any other thing of value” and expressly includes “an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer.” Tex. Elec. Code § 251.001(2).

Here, there are two separate transactions to consider. First, the apparel company provides services (design, manufacturing, marketing, and fulfillment) and perhaps goods (apparel or material) to a candidate, party, or political committee before any purchase is made. Second, the apparel company transfers money (a portion of the sales proceeds) from its customer to a candidate, party, or political committee after a purchase is made.

Provision of Goods and Services by the Company to Candidates, Parties, or Committees

The requestor’s hypothetical apparel company would provide goods and services to a candidate or political committee before receiving payment from those purchasing the items. This would include materials and time used in creating the designs, manufacturing and marketing the apparel, and fulfilling the sales. As such, the apparel company will be advancing or, in effect, loaning funds to assist the candidates or committees in fundraising. In answering similar requests, the Federal Election Commission (“FEC”) has repeatedly stated that such funds are contributions, and remain contributions to the extent that the apparel company remains unpaid. *See, e.g.*, Fed. Elec. Comm’n Advisory Op. Nos. 1989-21 and 1976-50.

However, our rules expressly exclude from the definition of contribution any “transfer for consideration of anything of value pursuant to a contract that reflects the usual and normal business practice of the vendor.” 1 Tex. Admin. Code § 20.1(3). In such a case, the terms of the transaction “must also be typical of the terms the commercial party offers to political and non-political entities alike.” Tex. Ethics Comm’n Op. No. 533 (2015); *see also* Tex. Ethics Comm’n Op. No. 143 (1993). The Federal Election Commission recognizes this same exclusion. 11 C.F.R. § 100.52(d)(1); Fed. Elec. Comm’n Advisory Op. No. 2019-12 (“The sale of goods or services at

a discount does not result in a contribution when the discount is offered in the ordinary course of business and made available on the same terms and conditions as to the vendor’s customers that are not federal candidates or political committees.”).

Here, the request states that the proposed apparel company would serve as “a profit-share marketplace for political candidates, parties, and **other entities**.” (emphasis added). The requestor also confirmed that his apparel company would offer the same commercial terms to political and non-political entities alike. Assuming that is true, the apparel company’s advances of goods and services to candidates, committees, and parties would reflect the “usual and normal business practice of the vendor” and thus would be excluded from our definition of “contribution.” 1 Tex. Admin. Code § 20.1(3); Tex. Ethics Comm’n Op. No. 533 (2015).

Transfer of Sales Proceeds from Company’s Customers to Candidates, Parties, or Committees

Under the requestor’s model, the apparel company collects the entire purchase price when a customer purchases an item and then later transfers a percentage of those proceeds to participating candidates, parties, or committees. Unlike the apparel company, the company’s customers are not “vendors,” and their purchases are therefore not reflective of a “usual and normal business practice.” See 1 Tex. Admin. Code § 20.1(3). Instead, the customers are making “indirect transfer[s] of money”—through the apparel company—to participating candidates, parties, and committees. See Tex. Elec. Code § 251.001(2) (defining “contribution”). Moreover, because the apparel company would notify its customers that profits from the sale of apparel would go to benefit the campaigns of participating candidates, parties, and committees, its customers would have the intent to make reportable political contributions.² See Tex. Elec. Code § 251.001(3)-(5). Consequently, the apparel company must obtain the name and address of each person actually making the contribution and provide that information to the recipient to make the proper disclosure. Tex. Elec. Code § 253.001(a) (“a person may not knowingly make or authorize a political contribution in the name of or on behalf of another unless the person discloses in writing to the recipient the name and address of the person actually making the contribution....”).

Furthermore, to meet their reporting requirements, participating political candidates, parties, and committees would need the apparel company to collect certain information from any contributor whose contribution exceeds the applicable reporting thresholds. Section 254.031(a)(1) of the Election Code requires each campaign finance report to include the amount of political contributions from each person that in the aggregate exceed \$90³ and that are accepted during the reporting period⁴ by the person or committee required to file a report, the full name and address of

² While the requestor here has confirmed that he will provide such notice to his customers, the Commission will presume—even absent express notice—that a purchaser of apparel or other merchandise with the names, campaign slogans, or other identifiable information of a candidate, party, or committee has the intent to make a political contribution to that candidate, party, or committee.

³ Pursuant to Section 571.064 of the Texas Government Code, this threshold is adjusted annually by Commission rule 18.31.

⁴ A political contribution that is received but not accepted must be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. Tex. Elec. Code § 254.034(c). Accordingly, if a participating candidate, party, or committee refuses to accept a contribution from a customer of the apparel company, the contribution must be returned to the apparel company’s customer. This is one more reason why it will be essential for participating candidates, parties, and committees to require the apparel company to collect and provide the name and address of the contributors.

the person making the contributions, and the dates of the contributions, and Section 254.031(a)(1-a) of the Election Code requires the itemization of all political contributions that are made and accepted electronically, regardless of amount. In addition, participating candidates, parties, and committees would need the apparel company to keep a record of the principal occupation, job title, and other employer information for each contributor who makes a contribution that, when aggregated with all other political contributions from that contributor during a reporting period, exceeds the applicable threshold. *See* Tex. Elec. Code §§ 254.0611, 254.0612, 254.1211, 254.1212, 254.151; 1 Tex. Admin. Code § 18.31.

When keeping those records, the apparel company should understand that the full amount paid by a purchaser—not just the portion that the apparel company forwards to a candidate, party, or committee—would be a contribution by the purchaser subject to the limitations and prohibitions of the Election Code. The Commission has held that a candidate who accepts a political contribution by credit card must report as a political contribution the full amount that a donor intends to contribute, not merely the amount that is ultimately received by the candidate after deducting credit card processing fees. Tex. Ethics Comm’n Op. No. 514 (2013). The same is true of the costs of creating a piece of fundraising merchandise; the full purchase price is a contribution, and the costs of creating that merchandise are reported separately as a political expenditure. *Id.* In this case, the participating candidate, party, or committee would report the portion of the sales proceeds retained by the apparel company as a political expenditure. This conclusion is again consistent with federal authorities. *See* 11 C.F.R. § 100.53; Fed. Elec. Comm’n Advisory Op. No. 2019-09.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 558

December 2, 2020

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.
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. 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.

APPENDIX B
TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES

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

**I. ALLOW THE COMMISSION TO PROVIDE INFORMATION REQUESTED BY
CRIMINAL LAW ENFORCEMENT OFFICIALS**

Section 571.140 of the Government Code prohibits commission staff from disclosing any information regarding a sworn complaint except in certain limited circumstances, including, for example, when disclosure is necessary for the commission to investigate the complaint. Tex. Gov't Code § 571.140(b-1). However, there is currently no express exception for providing information to criminal law enforcement officials in connection with their own investigations.

The commission occasionally receives requests from law enforcement officials for information related to sworn complaints, but it is unclear whether the commission is permitted to comply with those requests, even if they are made in a grand jury subpoena. In its current form, Section 571.140 arguably requires the commission to file a motion to quash a grand jury subpoena, even if such a motion is likely to lose. For these reasons, permitting the commission to comply with requests from law enforcement officials would advance justice and reduce administrative costs.

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

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

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

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

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

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

II. RECONSIDER THE ANNUAL THRESHOLD ADJUSTMENTS

Section 571.064(b) of the Government Code,¹ effective since 1992, requires the commission to use its rulemaking authority to adjust the statutory reporting and registration thresholds on an annual basis pursuant to a statutory formula. Specifically, this section requires the commission to adjust thresholds “upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor.” The commission began adjusting these thresholds in 2019.

The commission’s compliance with Section 571.064(b) has created confusion, uncertainty, and nearly-universal criticism. One problem is that the statutory formula results in unusual, hard-to-remember thresholds that change every year. For example, Section 253.031(b) of the Election Code states that a political committee must appoint a campaign treasurer if it accepts over \$500 in contributions or makes over \$500 in expenditures. However, application of the statutory formula has resulted in changing this threshold to \$870 for calendar year 2020. Other examples include:

- The threshold at which information on the payee of a political expenditure is required to be reported was originally set at \$100, but is now \$180.
- The direct campaign expenditure thresholds triggering a Special Report Near Election by GPACs was set at \$1,000 for a single candidate and \$15,000 for a group of candidates. Those thresholds have been changed to \$1,790 and \$26,780, respectively.
- The threshold of compensation or reimbursement at which a lobbyist registrant must report the exact amount of the compensation or reimbursement was set by statute at \$500,000, but has been amended to \$892,560.

Adding to the confusion of these unusual numbers is that the commission must apply the formula—and calculate entirely new thresholds—*every year*.

Another problem with Section 571.064(b) is the administrative costs associated with the commission’s compliance. Such costs include: (i) calculating each year more than 60 separate thresholds; (ii) amending each year 26 separate commission rules that incorporate the statutory thresholds; and (iii) making changes each year to the agency’s electronic filing system to incorporate the new thresholds.

For these reasons, the commission is requesting that the legislature repeal or amend Section 571.064(b). In addition, the Legislature could consider either ordering the commission to repeal its prior adjustments and return to the original statutory thresholds, or leaving the commission’s existing adjustments in place.

¹ Section 571.064(b) currently reads:

(b) If a law administered and enforced by the commission sets dollar amounts or categories of amounts as reporting thresholds or if the commission sets those amounts, the commission annually shall adjust those thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor.

III. MODERNIZE METHODS OF FILING AND COMMUNICATION

A. Update technical requirements for filing campaign finance reports.

Section 254.036 of the Election Code sets formal requirements for filing reports with the commission. The current statute references technologies that are no longer used by the agency, and it includes formal requirements that serve no legitimate purpose. The proposals would simplify the statute, conserve agency resources, and reduce unnecessary violations.

Specifically, subsection (a) should be amended to remove any reference to filing by “diskette,” allow the use of blue ink in addition to black ink, and simplify the language regarding computer-processing. Subsection (b) should also be revised to remove the reference to filing by “diskette.”

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

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

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

B. Allow the commission to email notices regarding sworn complaints.

Section 571.032 of the Government Code requires the commission to send certain notices by registered or certified mail, and other notices to be sent by “regular mail.” Amending this statute to permit the commission to send notices via email would not only reduce administrative burdens and costs, but would also result in faster, more reliable notices to the regulated community. Every filer is required to provide the commission a contact email address. The commission should be permitted to use that email address to send the notices required by Chapter 571 of the Government Code.

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

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

(c) Written notice under Section 571.123(c) that a sworn complaint does not comply with the form requirements or that the

commission does not have jurisdiction over the violation alleged in the complaint may be sent by regular mail or electronic delivery.

C. Modernize the transmission of information regarding personal financial statements.

Section 572.030 of the Government Code requires the commission to “mail” a notice to each individual required to file a personal financial statement. The commission has email addresses for the vast majority of filers, and it would save money and result in faster notice if the statute was amended to clarify that the commission was permitted to send the notice via email. It would also save money to remove the requirement that the commission send the forms and instructions by mail. This material is available on the commission’s website.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CLOSE LOOPHOLES

A. Add a “good faith” requirement to Section 571.1223

As currently constructed, the plain language of Section 571.1223 of the Government Code arguably requires the commission to dismiss a complaint *every time* the respondent files a corrected report before the commission accepts jurisdiction over the complaint. This opens the process up for abuse, allowing filers to intentionally file inaccurate or incomplete reports, knowing that they can wait until a complaint is filed to correct those reports and escape any enforcement action. Using Section 571.0771(a) as a model, staff recommends closing this loophole by adding a requirement that the filer submit an affidavit stating that any error or omission in the statement, registration, or report as originally filed was made in good faith.

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

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

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

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

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

B. Add a “reasonableness” requirement to the statutory defense for unanswered advisory opinion requests.

Under Section 571.097(b) of the Government Code, anyone who submits a request for an advisory opinion but does not receive an opinion within the statutory deadline receives a statutory defense, regardless of how reasonable or silly the request was. This stands in contrast to subsection (a), which says that reliance on an advisory opinion is only a defense to prosecution if that reliance is “reasonable.”

Subsection (b) needs to be revised to clarify that the statutory defense only applies if the request presents a question of law that cannot be answered by reference to the plain language of a statute, commission rule, or prior advisory opinion. Otherwise the advisory opinion process is susceptible to abuse.

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

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

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

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

(A) issue the opinion; or

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

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

C. Clarify scope of the political advertising statute.

As currently written, Section 255.001(b) of the Election Code states that advertising authorized “by a candidate, an agent of a candidate, or a political committee filing reports under this title” shall be deemed to contain express advocacy. In other words, *agents of candidates* are expressly included, but *agents of political committees* are not.

This is important because subsection (a) requires political advertising with express advocacy to include a political disclosure statement. Thus, as currently written, someone could argue that a political advertisement authorized by a political committee’s attorney need not include a disclosure statement. Staff’s proposal would fix that issue by expressly including agents of political committees.

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

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

V. RESOLVE CONFLICTS AND OUTDATED CROSS-REFERENCES

A. Resolve conflict regarding lobbyist expenditures.

The 79th legislature passed two slightly different versions of Section 305.024(a) of the Government Code. The statute broadly prohibits lobbyists from making certain expenditures, subject to certain exceptions. However, while the House bill expressly includes the exception permitted under Section 305.0061(e-1) (allowing gifts under \$50 to be sent by mail or common or contract carrier), the Senate bill neglected to include that exception.

B. Resolve conflict regarding sworn-complaint standing.

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

C. Resolve conflict regarding redactions on personal financial statements.

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

D. Remove incorrect and unnecessary cross-reference.

Section 254.0313(a) of the Election Code—regarding the commission’s redaction of judges’ residence information—states, “[i]n this section, ‘federal judge’ and ‘state judge’ have the meanings assigned by Section 13.021.”² However, another bill from the 86th Legislature moved the definitions of “federal judge” and “state judge” to Section 1.005, so the cross-reference is incorrect. Moreover, because Section 1.005 provides code-wide definitions, a cross-reference is no longer necessary.

² The entirety of Section 254.0313 states:

(a) In this section, "federal judge" and "state judge" have the meanings assigned by Section 13.0021.

(b) On receiving notice from the Office of Court Administration of the Texas Judicial System of a judge’s qualification for office or on receipt of a written request from a federal judge, state judge, or spouse of a federal or state judge, the commission shall remove or redact the residence address of a federal judge, a state judge, or the spouse of a federal or state judge from any report filed by the judge in the judge’s capacity or made available on the Internet under this chapter.