

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

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

Wilhelmina Delco  
Tom Harrison  
Bob Long  
Tom Ramsay

## AGENDA

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Date and Time: 8:30 a.m., Monday, February 1, 2016  
Location: Room E1.014, Capitol Extension, Austin, Texas

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

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

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
- E. Civil Action No. 5:14-cv-00133-C; *Texas Home School Coalition Association, Inc. v. Matthew D. Powell, in his official capacity as District Attorney of Lubbock County, et al.*; in the United States District Court for the Northern District of Texas, Lubbock Division.
- F. Cause No. D-1-GN-16-000149, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*; in the 261<sup>st</sup> Judicial District Court of Travis County, Texas.
- G. Civil Action No. 4:14-00125; *Joint Heirs Fellowship Church, et al. v. Natalia Ashley, In Her Official Capacity as Executive Director of the Texas Ethics Commission, et al.*; in the United States District Court for the Southern District of Texas, Houston Division; and related case, Cause No. 14-20630, *Joint Heirs Fellowship Church, et al. v. David Reisman, et al.*, in the United States Court of Appeals, Fifth Circuit.
- H. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201<sup>st</sup> Judicial District Court of Travis County, Texas.
- I. Civil Case No. 1:14-cv-00994-LY; *Lake Travis Citizens Council v. Natalia Ashley, in her official capacity as Executive Director of the Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division.
- J. Cause No. DC-15-14322, *Monty Bennett v. Nicholas Espinosa*, in the 44<sup>th</sup> Judicial District Court of Dallas County, Texas.

3. **Reconvene in open session.**

4. Adjourn.

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

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

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

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

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

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## AGENDA

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Date and Time:	9:30 a.m., Monday, February 1, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

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1. Call to order; roll call.
2. Comments by the Commissioners.
3. Approve minutes for the following meetings:
  - o Executive Session (discussion of pending litigation) – November 30, 2015; and
  - o AM Public Meeting – November 30, 2015.
4. Briefing and discussion on the new Electronic Filing Application for the implementation of House Bill 1295.

## RULEMAKING

5. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 46.3 (Definitions), defining interested party for purposes of the House Bill 1295 to clarify that an interested party is a person with a controlling interest or a person who is an intermediary.
6. Public discussion and possible action on the proposal and publication in the Texas Register of the rules defining the meaning of “fact finding trip” for purposes of the lobby law.
7. Public discussion and possible action on the adoption and publication in the Texas Register of amendments to the following Ethics Commission Rules impacted by House Bill 1114, 84nd Legislative Session, Regular Session: Ethics Commission Rules §§ 20.3 (Reports File with the Commission), 20.7 (Reports Filed with other Local Filing Authorities), and 20.315 (Termination of Campaign Treasurer Appointment).

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

8. Public discussion and possible action on the adoption and publication in the Texas Register of amendments to the following Ethics Commission Rules impacted by House Bill 3517, 84th Legislative Session, Regular Session: Ethics Commission Rules §§ 34.1(5) (Definition of Independent Contractor): 34.46 (Registration under Section 305.0041 of the Government Code) and 34.73 (Reporting by Independent Contractor).

### ADVISORY OPINIONS

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

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

These opinion requests construe Chapter 305 of the Government Code.

10. Discussion of Advisory Opinion Request No. AOR-605: Regarding whether a public servant may accept a benefit from a potential donor in certain circumstances.

This opinion request construes Chapter 36 of the Penal Code.

11. Discussion of Advisory Opinion Request No. AOR – 606: Regarding whether an employee of a state agency may accept from persons regulated by the agency subscription fees for operating a website that complies publicly available information.

This opinion request construes Chapter 36 of the Penal Code and Section 572.051 of the Government Code.

12. Discussion of Advisory Opinion Request No. AOR – 607: Regarding whether a former officeholder who is provided housing by the state as a benefit of holding that office may use political contributions to pay the expenses for moving personal household items out of the housing and into storage and to the former officeholder's new personal residence.

This opinion request construes Section 253.035 of the Election Code.

**OTHER POLICY MATTERS**

13. Discussion and possible action on the Commission's authority to conduct random facial compliance reviews and full audits.
14. Discussion and the Commission's authority to initiate complaints and discussion and possible action on an amendment to Ethics Commission Rules § 12.53 (Commission Initiated Complaint) to clarify that process.
15. Discussion and possible action on the use of new resources to analyze filings data to ensure that the statutes enforced by the Commission are being complied with by those who are required to submit the filings.
16. Discussion and possible action on the level of disclosure of political expenditures made to political consultants.
17. Briefing, discussion, and possible action to waive or reduce certain penalties assessed for campaign finance reports, lobby reports and personal financial statements filed late due to issues with the new electronic filing application for the following individuals and political committees:  
  
Casias, Robert A. (00068091)  
Holzheuser, Steve G. (00020370)  
Landwehr, Martha K. (00069447)  
Lujan, III, John (00058435)  
McPeters, Pamela (00070863)  
Rodriguez, Jose Roberto (00066091)  
Romanov, John Halloran, Treasurer, 'TAS-PAC', Texas Association of Staffing PAC (00016232)  
Rozzell, David, Treasurer, Conservative Republicans of Katy PAC (00069528)  
Rozzell, David, Treasurer, Katy Area Republican PAC (00069531)  
Uresti, Tomas (00080143)
18. Briefing, discussion, and possible action on appeals to determinations made under Texas Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following individuals:  
  
Franks, Michael A. (00037080)  
Reyes, Paul (00067908)
19. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report

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

as originally filed substantially complied with the applicable law for the following individual:

Fourrier, Deneile L., Treasurer, Back the Bulldog Bond PAC (00080235)

20. Discussion and possible action regarding the termination of a campaign treasurer appointment of the following inactive political committees:

Central Texas Republican Women (00054439)

Coalition for Financial Freedom (00068754)

Moving Texas Forward (00066546)

RAB Law PAC (00065791)

Southeast Texas Stonewall Democrats (00069423)

Texans for Truth PAC (00070009)

21. Discussion and possible action regarding a form letter for political subdivisions with which campaign finance reports are filed to distribute to their filers.
22. Comments by the Executive Director.
23. Communication to the Commission from the public.
24. Adjourn.

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

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

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

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

**Email address:**

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**EXHIBIT A**

**Text of Proposed Rule**

The proposed new language is indicated by underlined text.  
The deleted language is indicated by ~~strikethrough~~ text.

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.3. Definitions**

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

**EXHIBIT B**

**Text of Current Chapter 46, Texas Ethics Commission Rules**

**Chapter 46. DISCLOSURE OF INTERESTED PARTIES**

**§ 46.1. Application**

(a) This chapter applies to §2252.908 of the Government Code.

(b) Section 2252.908 of the Government Code applies only to a contract of a governmental entity or state agency entered into after December 31, 2015, that meets either of the following conditions:

(1) The contract requires an action or vote by the governing body of the entity or agency; or

(2) The value of the contract is at least \$1 million.

(c) A contract does not require an action or vote by the governing body of a governmental entity or state agency if:

(1) The governing body has legal authority to delegate to its staff the authority to execute the contract;

(2) The governing body has delegated to its staff the authority to execute the contract; and

(3) The governing body does not participate in the selection of the business entity with which the contract is entered into.

**§ 46.3. Definitions**

(a) "Contract" includes an amended, extended, or renewed contract.

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

(c) "Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10

members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

(d) "Interested party" means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser, or attorney for the business entity.

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

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

#### **§ 46.5. Disclosure of Interested Parties Form**

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

- (1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;
- (2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;
- (3) The name of each interested party and the city, state, and country of the place of business of each interested party;
- (4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the goods or services used by the governmental entity or state agency provided under the contract; and

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

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

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

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

**CERTIFICATE OF INTERESTED PARTIES**

**FORM 1295**

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

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

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

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

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

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

AFFIX NOTARY STAMP / SEAL ABOVE

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

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

**ADD ADDITIONAL PAGES AS NECESSARY**

**EXHIBIT A**

**Text of Proposed Rules**

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

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

**Subchapter A. GENERAL RULES**

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

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

(1) a candidate for one of the following offices:

(A) a statewide office;

(B) a district office filled by voters in more than one county;

(C) a seat in the state legislature;

(D) a seat on the State Board of Education;

(E) an office of a political subdivision other than a county, if the governing body of the political subdivision has not been formed and if the political subdivision includes territory in more than one county; or

(F) a judicial district office filled by voters of only one county, subject to § 20.5(b);

(2) a person holding an office listed in paragraph (1) of this section;

(3) the secretary of state;

(4) a specific-purpose committee supporting or opposing a candidate or officeholder required to file with the commission; or

(5) a specific-purpose committee supporting or opposing:

(A) a measure to be submitted to the voters of the entire state; or

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

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

(7) a general-purpose committee.

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

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

- (1) a candidate for an office of a political subdivision other than a county;
- (2) a person holding an office of a political subdivision other than a county; or
- (3) a specific-purpose committee supporting or opposing a measure to be submitted at an election ordered by the authority of a political subdivision other than a county.

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

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

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

- (1) notifying the filing authority in writing of the termination;
- (2) filing a campaign treasurer appointment for a successor campaign treasurer; or
- (3) filing a dissolution report.

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

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

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

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

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

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

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



**EXHIBIT A**

**Text of Proposed Rules**

The deleted language is indicated by [strikethrough] text.

**Chapter 34. REGULATION OF LOBBYISTS**

**Subchapter A. GENERAL PROVISIONS**

**§ 34.1. Definitions**

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

- (1) Communicates directly with, or any variation of that phrase--In Government Code, Chapter 305, and in this chapter includes communication by facsimile transmission.
- (2) Expenditure--In Government Code, Chapter 305, and in this chapter does not include a payment of less than \$200 that is fully reimbursed by the member of the legislative or executive branch who benefits from the expenditure if the member of the legislative or executive branch fully reimburses the person making the payment before the date the person would otherwise be required to report the payment.
- (3) Lobby activity--Direct communication with and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action.
- (4) Registrant--In Government Code, Chapter 305, and in this chapter means a person who is required to register as well as a person who has registered regardless of whether that person's registration was required.
- ~~[(5) Independent contractor--In Section 305.022 of the Government Code and this chapter, means a person, including a consultant, who communicates with a member of the executive branch concerning state agency purchasing decisions involving a product, service, or service provider or negotiations regarding such decisions. The term does not include an employee, as defined by Section 305.022(e) of the Government Code, of a vendor.]~~

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

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

- ~~(1) the person is an independent contractor;~~
- ~~(2) the person's only direct communication as a registrant is with a member of the executive branch to influence administrative action as an independent contractor;~~
- ~~(3) the compensation for the communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions and the amount of the purchasing decision does not exceed \$10 million; and~~
- ~~(4) the person is also required to register under the compensation or reimbursement threshold in Section 305.003(a)(2) of the Government Code but does not exceed the expenditure threshold set by Section 305.003(a)(1) of the Government Code.~~

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

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

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

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

~~(a) In addition to the contents required by Section 305.005 of the Government Code and this chapter, a registration filed by an independent contractor whose compensation for the~~

communication is totally or partially contingent on the outcome of a purchasing decision or negotiations regarding such decisions must:

- ~~(1) disclose the vendor as a client;~~
- ~~(2) indicate that the client is a vendor of a product or service on whose behalf the independent contractor communicates concerning state agency purchasing decisions or negotiations regarding such decisions;~~
- ~~(3) disclose the amount of the sales commission or such fee;~~
- ~~(4) disclose the amount of the purchasing decision;~~
- ~~(5) if the amount of the sales commission or such fee is based on a percentage of the sale, disclose the amount of the percentage; and~~
- ~~(6) describe the product or service that is the subject of the communication.~~

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

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

DRAFT

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

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*February 1, 2016*

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

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

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

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

## DRAFT

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

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

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

The lobby law and commission rules exempt certain activities from the requirement to register. *See* Gov't Code §§ 305.003, .004, .0041; 1 Tex. Admin. Code §§ 34.5, .43. One such activity is receiving compensation or reimbursement for "providing to a member of the legislative or executive branch information consisting of facts or data that the member requested in writing regarding legislation or administrative action, when the request was not solicited by or on behalf of the person providing the information." 1 Tex. Admin. Code § 34.5(a)(5).<sup>3</sup> The question is whether, in either scenario, the attorney would be providing facts or data to a member in response to the member's written request that the attorney did not solicit.<sup>4</sup>

### Scenario 1

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

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

<sup>3</sup> There are no facts indicating that any other exception to the registration requirements applies.

<sup>4</sup> Neither requestor provided any facts indicating that the invitations at issue were solicited by him or on his behalf. Whether any particular request for information is solicited by or on behalf of the person providing the information is a question of fact.

## **DRAFT**

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

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

### **Scenario 2**

In the second scenario, an attorney testified at a legislative committee hearing on behalf of clients in opposition to four specific bills pending before the committee. After the hearing, the attorney received a written invitation from a member of the committee inviting the attorney to the member's office to discuss the same four bills. The letter is addressed to the attorney and states, in part, that it was a "personal, formal invitation to gather your advice on these bills."

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

## **DRAFT**

### **SUMMARY**

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

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

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*February 1, 2016*

*Whether a public servant working for the Office of the Attorney General  
may accept a benefit from a potential donor in certain circumstances.  
(AOR-605)*

The Texas Ethics Commission (“commission”) has been asked whether an individual working for the Office of the Attorney General (“OAG”) may accept a benefit from potential donors in four sets of circumstances.

The requestor of this opinion (“the requestor”) states that none of the potential donors are lobbyists and asks us to assume that none of the prospective benefits to the public servant are regulated by the lobby law or the campaign finance law. Accordingly, we do not address any specific provisions in the lobby law or campaign finance law.<sup>1</sup>

**PENAL CODE RESTRICTIONS**

Chapter 36 of the Penal Code restricts benefits to public servants. A benefit is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” Penal Code § 36.01(3). A public servant includes a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government. *Id.* § 1.07(41)(a). An individual working for the OAG, either as the attorney general or as another officer or employee, is clearly a public servant under the law. Whether any particular benefit is prohibited depends upon the specific facts.<sup>2</sup> This opinion considers only the specific facts presented by the requestor as applied to a public servant working within the OAG (“the public servant”), and we provide no assurance that any person may reasonably rely on this opinion as a defense to prosecution in any other circumstances.

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<sup>1</sup> We note that chapter 305 of the Government Code prohibits an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch or of the legislature or of a legislative committee from accepting certain benefits from a registered lobbyist or from a person on a registrant’s behalf and with the registrant’s consent or ratification. *See generally*, Gov’t Code §§ 305.002(4), (7); 305.024. Additionally, title 15 of the Election Code imposes certain restrictions on political contributions to candidates and officeholders. *See generally*, ch. 253, Election Code. Whether such a benefit would be prohibited depends upon the specific facts.

<sup>2</sup> The restrictions include the honoraria prohibition under section 36.07 of the Penal Code. The requestor asks us to assume that that prohibition would not be violated by the activity at issue. Thus, solely for the purposes of this opinion, we do not consider that law.



## EXHIBIT A – SUBCOMMITTEE DRAFT

### Bribery

In relevant part, section 36.02 of the Penal Code prohibits a person from intentionally or knowingly soliciting, accepting, or agreeing to accept from another:

- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
- (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
- (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
- (4) or any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.

*Id.* § 36.02(a).<sup>3</sup> An offense of bribery is a felony of the second degree. *Id.* § 36.02(e). A punishment for a felony of the second degree shall be imprisonment between two and 20 years and may include a fine not to exceed \$10,000. *Id.* § 12.33.

In this instance, the requestor of this opinion asks us to assume that the bribery prohibition does not apply to the situation at hand and the requestor does not present facts indicating that any benefit from a potential donor is solicited, accepted, offered, or conferred as consideration for any act by the public servant. However, we caution that whether a bribe occurs in any circumstances depends on the specific facts and the plain statutory language in the bribery law does not limit its reach to only persons who are subject to the jurisdiction of the OAG. Accordingly, we adopt this opinion under the assumption that no bribery would possibly occur.

### Restrictions on Gifts by Persons Subject to Jurisdiction of Public Servant

Section 36.08 of the Penal Code prohibits a public servant from accepting a benefit from a person who is subject to the public servant's jurisdiction. That section includes seven separate prohibitions, each applying to a different group of public servants. In general

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<sup>3</sup> Section 36.02 similarly prohibits a person from intentionally or knowingly offering, conferring, or agreeing to confer such benefits on another. *Id.*

## EXHIBIT A – SUBCOMMITTEE DRAFT

terms, the prohibitions are intended to prohibit a public servant from accepting a benefit from a person who would be affected by the decisions of the public servant or the public servant's agency.<sup>4</sup> The prohibitions apply even if the person providing the benefit is not seeking anything in return. Ethics Advisory Opinion No. 130 (1993). In determining which of those prohibitions apply to a particular public servant, it is necessary to consider the duties and functions of the public servant and the public servant's agency.

The requestor states that the OAG has numerous duties, including, but not limited to, the investigation and prosecution of certain offenses, the collection of delinquent debts, and conducting criminal investigations.<sup>5</sup> Section 36.08(a), which is one of the provisions most likely to apply to the public servant, states:

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<sup>4</sup> The attorney general issued an opinion in 1975 that considered a prior version of section 36.08(f), which prohibited a legislator from accepting a benefit from a person the legislator "knows is interested in any matter pending before or contemplated by the legislature or an agency of the legislature," and stated:

Although a gift to a public servant who may make an official decision affecting the donor may be innocent, it casts grave doubts on the integrity of the governmental process. It may even be a bribe in which an agreement simply cannot be proven. This section, therefore, prohibits such gifts to ensure governmental integrity and to penalize the unprovable bribe. ... The offense applies only if the public servant knows that the donor is or may become interested in his or his agency's official action. Gifts from disinterested citizens are not covered.

Attorney General Opinion H-551 (1975) (citing practice commentary based on comments made by the State Bar Committee on Revision of the Penal Code). The current version of section 36.08(f) prohibits a member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature from soliciting, accepting, or agreeing to accept any benefit from any person. Penal Code § 36.08(f). *See also* Attorney General Opinion H-614 (1975) (stating that an offense under a previous version of section 36.08(f) could be established only if the person providing the benefit was interested in a matter pending or contemplated by the legislature and the legislator "knew that fact").

<sup>5</sup> The full list of duties identified by the requestor are as follows:

- Represent the state (including state agencies) in court, either when the OAG or the State of Texas is a named party or on referral from a state agency
- Investigate and prosecute civil Medicaid fraud and violations of state consumer protection laws, including the Deceptive Trade Practices Act, antitrust laws, and statutes governing charitable organizations
- Pursue delinquent debts through legal means, including unpaid taxes, fees, and fines
- Officers may conduct criminal investigations with statewide authority
- Prosecute criminal offenses on request of the local prosecutors or on order of the court
- Represent the state when prison inmates challenge their convictions or sentences in federal court
- Review and approve bonds issued by or for governmental bodies
- Administer child support collections in the state
- Administer the Crime Victims Compensation Fund
- Issue advisory opinions on legal questions
- Issue public information act opinions.

The requestor also states that the OAG has investigative authority over the following areas:

- Civil Medicaid fraud

## EXHIBIT A – SUBCOMMITTEE DRAFT

A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant *knows* to be subject to regulation, inspection, or investigation by the public servant or his agency.

Penal Code § 36.08(a) (emphasis added).

Additionally, the OAG represents the state, state agencies, and other agencies, officers, and employees of government in litigation and other legal matters. *See, e.g.*, Gov't Code § 402.021 (providing that the attorney general shall prosecute and defend all actions in which the state is interested before the supreme court and courts of appeals). Section 36.08(c) of the Penal Code states:

A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant *knows* litigation is pending or contemplated by the public servant or his agency.

Penal Code § 36.08(c) (emphasis added). In this opinion, we assume that the only prohibitions in section 36.08 that apply to the public servant are sections (a) and (c).<sup>6</sup> There are a number of exceptions to these prohibitions under section 36.10 of the Penal Code, none of which apply based on the requestor's facts.

### Potential Donors

The requestor asks whether the public servant may accept a benefit from a potential donor in four scenarios. In the first three, the potential donor is an individual who does not reside in Texas. The facts are presented as follows:

1. The first donor is an individual who does not have an ownership interest in any businesses that operate in Texas and does not serve on a board or otherwise control any entities that operate in Texas.

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- State consumer protection laws, including the Deceptive Trade Practices Act, antitrust laws, and statutes governing charitable organizations
  - Criminal matters in the state (through law enforcement officers).

<sup>6</sup> For purposes of brevity, the statement that a potential donor is "subject to the jurisdiction" of a public servant or the public servant's agency under section 36.08(a) means that the potential donor is subject to the regulation, inspection, or investigation by the public servant or the agency. Similarly, the statement that a potential donor is "subject to the jurisdiction" of a public servant or the public servant's agency under section 36.08(c) means that litigation is pending or contemplated by the public servant or the agency against the potential donor.

## EXHIBIT A – SUBCOMMITTEE DRAFT

2. The second donor is an individual who owns stock in a publicly traded company that operates in Texas. The individual does not serve on a board or otherwise control any entity that operates in Texas.
3. The third donor is an individual who has a limited liability ownership in one or more entities that operate in Texas (for example, a publicly or privately held corporation, or a limited partnership interest in a limited partnership). The individual does not serve on a board or otherwise control any entity that operates in Texas.

The fourth scenario concerns a benefit from an entity named “Company A,” which the requestor describes as follows:

Company A does not operate in Texas, but has a board member who also serves on Company B’s board of directors. Company B operates in Texas.

For purposes of section 36.08(a), the initial question is whether any of the potential donors are subject to regulation, inspection, or investigation by the public servant or the OAG. The legislature has not defined the phrase “subject to,” but in other statutes has used the phrase “subject to investigation” broadly to indicate a legal authority to investigate.<sup>7</sup> The word “subject,” as an adjective, is defined as “[e]xposed, liable, or prone” and “[d]ependent on or exposed to (some contingency); esp., being under discretionary authority.” Black’s Law Dictionary 1651 (10th ed. 2014). Additionally, in a 1975 opinion, the OAG considered a prior version of section 36.08(a)<sup>8</sup> and stated:

Whether this provision will apply in a specific instance will depend on the duties of the public servant and on the identity of the person who is [providing the benefit]. Since the prohibition in subsection (a) applies only if the public servant *has regulatory or investigatory authority over the individual*, a person might be able to offer [a benefit] to one public servant but not to another, depending on the regulatory powers and duties of the public servant.

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<sup>7</sup> See, e.g., Health & Safety Code § 181.202 (a violation by a licensed entity is “subject to investigation and disciplinary proceedings” by the licensing agency); Act of May 31, 2005, 79th Leg., R.S., ch. 268, § 1.82, 2005 Tex. Sess. Law. Serv. 621, 663 (codified at Hum. Res. Code § 40.031(e)) (repealed by Act of May 31, 2015, 84th Leg., R.S., ch. 944, § 86, 2015 Tex. Sess. Law. Serv. 3268, 3303) (reports of alleged child abuse or neglect investigated under certain laws “are not subject to investigation by the investigations division” of the Health and Human Services Commission); Ins. Code § 602.104(a) (a covered entity that violates that chapter is “subject to investigation” or other action). Alternatively, the legislature has used the phrase “subject to investigation” to refer to a person who is currently being investigated. See, e.g., Code Crim. Proc. art. 49.09(a) (if a body or body part “subject to investigation” under specified law is interred in certain circumstances, a justice of the peace may direct certain actions); Gov’t Code § 411.125(3) (a regulatory agency is entitled to obtain certain records maintained by an agency that relate to a person “who ... is subject to investigation by the board in connection with a complaint for formal charge against the person).

<sup>8</sup> Current law does not significantly differ from the version of law in effect at that time.

## EXHIBIT A – SUBCOMMITTEE DRAFT

Attorney General Opinion MW-90, at 2 (1979) (emphasis added). Thus, the issue is whether the public servant or the OAG has investigatory authority over any of the potential donors.

In this opinion, we cannot define the full jurisdiction and investigatory authority of the OAG, and we assume that the powers and duties described by the requestor are the extent of that authority. As described, the scope of the OAG authority is varied, statewide,<sup>9</sup> and includes both civil and criminal investigatory and prosecutory powers.<sup>10</sup> Additionally, a person's location does not, by itself, exempt a person from that authority.<sup>11</sup> We note, however, that the legislature has clearly prohibited legislators, the governor, the lieutenant governor, and certain state employees from accepting a benefit from any person. *See* Penal Code § 36.08(f). The legislature did not include public servants working for the OAG, including the attorney general, in that prohibition. Thus, we do not think the legislature intended to prohibit every officer or employee in a law enforcement agency, including the OAG, from accepting any gift from any person on the basis that the agency could conceivably investigate any person.

In a previous opinion, we addressed whether two city police officers may accept from an out-of-state foundation a cash award in recognition of their contributions for improvements in the justice system and certain expenses to attend an award banquet. Ethics Advisory Opinion No. 226 (1994). We recognized that the class of persons subject to investigation by a law enforcement agency is “large” and “certainly includes any individual even suspected of committing a crime within the law enforcement agency’s jurisdiction.” *Id.* We concluded that “the class of persons subject to a local Texas law enforcement agency’s jurisdiction does not include an out-of-state foundation whose only connection with the law enforcement agency’s jurisdiction is the award of a prize to a police officer employed by the agency.” *Id.*

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<sup>9</sup> *See Gidvani v. Aldrich*, 99 S.W.3d 760 (Tex. App.—Houston [1st Dist.] 2003), *no pet.* (district attorney has jurisdiction to investigate and prosecute any crime if at least one element of that crime takes place in his jurisdiction); Penal Code § 1.04 (state has jurisdiction over an offense if either the conduct or a result that is an element of the offense occurs inside this state).

<sup>10</sup> We note that some authority of the OAG requires a request or the consent of another agency or governmental body. *See* Penal Code § 1.09 (attorney general has concurrent jurisdiction with a consenting local county or district attorney to prosecute Penal Code offenses involving state property); Gov’t Code § 402.028 (permitting the OAG to provide assistance in the prosecution of criminal cases to prosecuting attorneys). Other powers can be exercised independently of other agencies. *See* Penal Code § 39.04(d) (attorney general has concurrent jurisdiction with law enforcement agencies to investigate certain violations of civil rights of a person in custody); ch. 17, Bus. & Comm. Code (authorizing division of OAG to investigate, pursue, and resolve charges of false, misleading, or deceptive acts or practices).

<sup>11</sup> *See* Penal Code § 1.04(a)(2), (3) (state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if the conduct outside this state constitutes an attempt to commit an offense inside this state or a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state). *See also, e.g.*, Civ. Prac. & Rem. Code § 17.042 (providing when a nonresident does business in this state for purposes of civil actions); Bus. & Com. Code § 17.61 (providing for service on persons outside this state of investigative demands under the Deceptive Trade Practices-Consumer Protection Act).

## EXHIBIT A – SUBCOMMITTEE DRAFT

In regard to the specific questions presented by the requestor, we conclude that a public servant working for the OAG would not be prohibited by section 36.08(a) from accepting a benefit from an individual who does not reside in Texas or from an entity that does not operate in Texas if the donor's only connection with the jurisdiction of the public servant and the OAG is the act of giving the benefit to the public servant. Whether any person has connections with the jurisdiction of the OAG depends on the specific facts. Considering the broad powers of the OAG, the public servant is in the best position to determine whether there is authority to regulate, inspect, or investigate any potential donor. If the laws applicable to the OAG do not authorize the public servant or the OAG from regulating, inspecting, or investigating a potential donor,<sup>12</sup> or if the public servant does not know that the public servant or the OAG has authority to regulate, inspect, or investigate the donor, then the public servant would not be prohibited by section 36.08(a) from accepting a benefit from the donor at that time. For purposes of section 36.08(c), if there is no litigation pending or contemplated by the public servant or the OAG against a potential donor, or if the public servant does not know that such litigation is pending or contemplated against a potential donor, then that section would not prohibit the public servant from accepting a benefit from the donor at that time.

However, we do not think that a person who is subject to the jurisdiction of a public servant or a law enforcement agency can evade the restrictions under section 36.08 by using another person as a conduit for making a gift to the public servant (e.g., by giving a benefit to another with the instructions that the benefit then be passed to the public servant). Similarly, the public servant would be prohibited from accepting a benefit if the public servant knows that the true source of the benefit is a person who is subject to the jurisdiction of the public servant.

### **Culpable Mental State**

The requestor also raises the possibility of receiving information from a potential donor indicating that the donor is not subject to the jurisdiction of the public servant or the OAG and asks whether a violation would occur if the public servant accepts a benefit from the donor and the information turns out to be incorrect. The law prohibits the public servant from accepting a benefit from a person if the public servant "knows," at that time, that the donor is subject to the jurisdiction of the public servant or the OAG. However, the legislature has not specified how a public servant would "know" that a person is subject to the jurisdiction of the public servant or the public servant's agency.

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<sup>12</sup> For example, we can conceive of circumstances in which an agency only has authority to investigate a person if certain jurisdictional conditions are satisfied, such as the filing of a complaint with the agency. Similarly, if under the applicable law, the public servant and the OAG would not be authorized to investigate a particular donor in particular circumstances, then we do not think the donor would be subject to investigation by the public servant or the OAG for purposes of section 36.08(a).

## EXHIBIT A – SUBCOMMITTEE DRAFT

There is a general presumption that a person must have a culpable mental state to violate a penal statute. *Aguirre v. State*, 22 S.W.3d 463, 472 (Tex. Crim. App. 1999).<sup>13</sup> Section 6.02 of the Penal Code states that a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires. Penal Code § 6.02(a). If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required, then intent, knowledge, or recklessness suffices to establish criminal responsibility. *Id.* § 6.02(c).<sup>14</sup>

The distinction between “knowingly” and “recklessly” is significant. According to the Penal Code, a person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct, when he is aware of the nature of his conduct or that the circumstances exist.<sup>15</sup> *Id.* § 6.03(b). In contrast, a person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. *Id.* § 6.03(c). The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint. *Id.*

We are aware of no legal authority that specifically addresses the culpable mental state required for a person to violate sections 36.08(a) or (c), or what a public servant must “know” in order to commit a violation.<sup>16</sup> However, in *Hubbard v. Texas*,<sup>17</sup> a state appellate court considered the culpable mental state required for section 36.09(a) of the Penal Code, which states:

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<sup>13</sup> If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Penal Code § 6.02(b).

<sup>14</sup> Culpable mental states are classified according to relative degrees, from highest to lowest, as follows: (1) intentional; (2) knowing; (3) reckless; (4) criminal negligence. *Id.* § 6.02(d). Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged. *Id.* § 6.02(e). Thus, if it is proved that a person acted intentionally or with intent, then it is also proved that the person acted knowingly or with knowledge.

<sup>15</sup> A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result. *Id.* § 6.03(b).

<sup>16</sup> Section 36.08 includes seven subsections that create an offense for a public servant soliciting, accepting, or agreeing to accept a benefit from a person subject to the public servant’s jurisdiction. Of those subsections, six create an offense if the public servant “knows” that the person is subject to his or her jurisdiction. The remaining subsection, subsection (f), creates an offense for certain statewide officials, legislators, and their employees without a knowledge requirement, which was deleted from the statute in 1975. Acts 1975, 64th Leg., p. 915, ch. 342, § 11 (eff. Sept 1, 1975).

<sup>17</sup> *Hubbard v. Texas*, 668 S.W.2d 419 (Tex. App.—Dallas 1984), *remanded on other grounds*, 739 S.W.2d 341 (Tex. Crim. App. 1987).

## EXHIBIT A – SUBCOMMITTEE DRAFT

A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he *knows* the public servant is prohibited by law from accepting.

Penal Code § 36.09(a) (emphasis added).<sup>18</sup> In that opinion, the court compared section 36.09(a) with the bribery prohibition in section 36.02(a) and noted that each statute has a different culpable mental state.<sup>19</sup> The court stated:

The bribery statute creates an offense if a person “intentionally or knowingly does the proscribed act.” The offering of a gift to a public servant statute does not prescribe a culpable mental state, therefore, the mental state must be discerned from [section 6.02 of the Penal Code]. Subsections (b) and (c) of section 6.02 provide that this mental state is intent, knowledge, or recklessness. Because recklessness is a lesser culpable mental state than intent or knowledge, a different range of conduct is prohibited by that statute than by the bribery statute.

*Id.*

Based on that opinion, the similarities in the language in sections 36.08(a) and (c) compared to section 36.09(a), and each statute’s use of the word “knows” with respect to the circumstances surrounding the acceptance or giving of a benefit, we cannot conclude that the culpable mental state for sections 36.08(a) or (c) is “knowingly” or possessing “actual knowledge”<sup>20</sup> rather than recklessness.<sup>21</sup> If the culpable mental state is recklessness, then a public servant in an agency performing regulatory functions or conducting inspections or investigations would violate section 36.08(a) by accepting a benefit from a person who is, at that time, subject to regulation, inspection, or investigation by the public servant or the agency *and* the public servant is aware of, but consciously disregards, a substantial and unjustifiable risk that the person is subject to regulation, inspection, or investigation by the public servant or the agency. A public servant in an agency carrying on civil or criminal litigation on behalf of government would similarly violate section 36.08(c) by accepting a benefit from a person against whom, at the time of acceptance, litigation is pending or contemplated by the public servant or the agency *and* the public servant is aware of, but consciously disregards, a

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<sup>18</sup> Section 36.09(a) remains unchanged since *Hubbard*. See Acts 1973, 63rd Leg., R.S., ch. 399, § 1.

<sup>19</sup> *Hubbard*, 668 S.W.2d at 421.

<sup>20</sup> In at least one case, a Texas court has held that a statute creating an offense for performing a particular act while that person “knows” certain circumstances requires “knowing” as the culpable mental state. See *Broyles v. Texas*, 552 S.W.2d 144, 147 (Tex. Crim. App. 1977) (statute prohibiting a person from selling any sound recording “that he knows” has been reproduced without proper consent prescribes “knowingly” as the culpable mental state).

<sup>21</sup> If section 36.08 instead requires a public servant to have “actual knowledge” that a person is subject to the public servant’s jurisdiction, we think that is a more appropriate determination for a court with proper jurisdiction.



## EXHIBIT A – SUBCOMMITTEE DRAFT

substantial and unjustifiable risk that the litigation is pending or contemplated against that person by the public servant or the agency.

### **Diligent Inquiry**

The “recklessness” standard would not require a public servant to know *with certainty* whether a potential donor is subject to his or her jurisdiction before accepting any benefit. Rather, the public servant must perform a diligent inquiry into a donor’s circumstances before accepting a benefit if the public servant is aware of a substantial and unjustifiable risk that the donor is subject to the public servant’s jurisdiction. Such an inquiry must be sufficient so that the risk is given its due consideration and is not disregarded in a manner that grossly deviates from the standard of care that an ordinary person would exercise under all the circumstances. Thus, the extent of any necessary inquiry will depend upon what the public servant knows or suspects about the potential donor. However, considering the broad scope of the OAG’s authority, we believe there is a substantial and unjustifiable risk that any person offering a benefit to a public servant working within the OAG may be subject to the jurisdiction of the public servant or the OAG. Given that risk, in our opinion, the public servant must perform a diligent inquiry into a donor’s circumstances before accepting a benefit from any prospective donor.

Regarding the requestor’s particular circumstances, the requestor asks whether the public servant may accept a benefit from any of the potential donors if the public servant yields no results after performing a diligent search within the OAG to determine whether the potential donor is currently part of an investigation and a search of public registries of individuals and entities registered to do business in Texas. Because such a search would reveal persons who are likely subject to the jurisdiction of the public servant or the OAG, then performing that search would be effective and appropriate. However, such a search would not be exhaustive. In our opinion, any diligent inquiry must include a request for information from the potential donor regarding the donor’s identity and circumstances to help determine the extent to which the public servant or the OAG has jurisdiction over the donor. A request for information must also confirm that the benefit provided by the potential donor is from the donor’s own property and would not be offered or given on behalf or at the request of a person who is subject to the jurisdiction of the public servant or the OAG (i.e. that the potential donor is not operating as a conduit for a prohibited benefit provided by another). If the public servant requests and receives information from one of the potential donors described in this opinion that indicates that the donor is not subject to the jurisdiction of the public servant or the OAG, performs a diligent search within the OAG and public registries of persons registered to do business in Texas, and subsequently does not know and is unaware of any substantial risk that the donor is subject to the jurisdiction of the public servant or the OAG, then sections 36.08(a) and (c) would not prohibit acceptance of a benefit from the donor.

## EXHIBIT A – SUBCOMMITTEE DRAFT

### Disclosure

Chapter 572 of the Government Code requires certain state officers, candidates, and others to file a personal financial statement (“PFS”) that includes an account of their financial activity for the preceding calendar year. Subch. B, ch. 572, Gov’t Code. The account of financial activity includes the identification of a person or other organization from which the individual or the individual’s spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift. For a gift of cash or a cash equivalent such as a negotiable instrument or gift certificate, the PFS shall include in the description of the gift a statement of the value of the gift. *Id.* § 572.022(d). This requirement does not apply to gifts from certain relatives, political contributions reported as required by chapter 254 of the Election Code, or lobby expenditures required to be reported by a registrant under chapter 305 of the Government Code.<sup>22</sup> Thus, a public servant who is required to file a PFS would be required to disclose the receipt of a gift of value in excess of \$250 if it is received during the calendar year covered by the statement.<sup>23</sup>

### Best Practices

Because the receipt of a gift is not required to be disclosed in a PFS until the statement is due the following year<sup>24</sup> (and in some cases, the due date could be more than a year after the gift is received), the following Best Practices are highly recommended to avoid the appearance of corruption.

1. If a public servant working in the office of the OAG accepts a gift from a potential donor in the circumstances presented by the requestor, we recommend that the public servant publicly disclose the receipt of the gift, including the source, value, and description of the gift, in addition to the identity of any individuals facilitating the gift, within thirty days of receipt.<sup>25</sup>
2. In addition, it is our opinion that the public servant should also maintain detailed and discoverable records of the public servant’s inquiry into the donor’s identity and circumstances to verify that the potential donor is not subject to the jurisdiction of the public servant or the OAG. We also believe that, in such a case,

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<sup>22</sup> *Id.* § 572.023(b)(7).

<sup>23</sup> A gift may also trigger for a potential donor certain disclosure requirements or other effects with respect to gift and estate taxes under the federal Internal Revenue Code. *See generally*, 26 U.S.C. §§ 2001-2801.

<sup>24</sup> A personal financial statement required by a state officer is due on April 30 of each year. *Id.* § 572.026(a). Candidates for certain offices and other individuals may be required to file on other deadlines, as applicable. *Id.* § 572.026.

<sup>25</sup> If the public servant is required to file a personal financial statement with the commission, the commission is the appropriate filing authority for the disclosure.

## EXHIBIT A – SUBCOMMITTEE DRAFT

the public servant should be willing to waive any attorney-client privilege regarding the records if the public servant's legal counsel assembles or maintains records of that inquiry.

3. Lastly, we recommend that the solicitation of personal gifts to the public servant not be performed by other employees within the agency<sup>26</sup> or, to the extent that the public servant is a holder of or candidate for public office, the public servant's campaign treasurer or other campaign staff.<sup>27</sup>

### STANDARDS OF CONDUCT

Section 572.051 of the Government Code sets out standards of conduct for state officers and employees. Gov't Code § 572.051. Those standards provide, in part, that a state officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct. *Id.* § 572.051(a)(1). Those standards also provide that a state officer or employee should not accept other employment or compensation that might induce the officer or employee to disclose confidential information or that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of official duties. *Id.* § 572.051(a)(2), (3).

Section 572.051 also requires each state agency to adopt and distribute a written ethics policy for the agency's employees consistent with the standards of conduct and other provisions of subchapter C, chapter 572, of the Government Code. *Id.* § 572.051(c). A state employee who violates the standards of conduct or the adopted ethics policy is subject to termination of the employee's state employment or another employment-related sanction. *Id.* § 572.051(b). A state officer or employee who violates the standards of conduct is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule. *Id.*<sup>28</sup>

We caution that any public servant working for a law enforcement agency should be aware of the laws and policies governing their conduct and that restrict the acceptance of benefits, including any law or policy that would require the public servant to refrain from participating in any matter involving a donor from whom the public servant accepted a benefit.

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<sup>26</sup> We also note that public funds and other state resources must be used for public purposes. Tex. Const. art. III, §§ 50, 51; art. VIII, § 3. *See also* Ethics Advisory Opinion No. 522 (2014).

<sup>27</sup> We note that section 253.035 of the Election Code prohibits a person who accepts a political contribution as a candidate or officeholder from converting the contribution to personal use. Elec. Code § 253.035(a).

<sup>28</sup> The commission does not have jurisdiction to enforce the standards of conduct. *Id.* § 572.051(e).

## EXHIBIT A – SUBCOMMITTEE DRAFT

### SUMMARY

A public servant working for the Office of the Attorney General (“OAG”) would not violate sections 36.08(a) or (c) of the Penal Code by accepting a benefit from a potential donor described in this opinion if the donor’s only connection with the jurisdiction of the public servant and the OAG is the act of giving the benefit to the public servant. If the laws applicable to the public servant and the OAG do not authorize the public servant or the OAG from regulating, inspecting, or investigating a potential donor, or if the public servant does not know that a potential donor is subject to the jurisdiction of the public servant or the OAG, then section 36.08(a) or (c) of the Penal Code would not prohibit the public servant from accepting a benefit from the donor. Because of the substantial and unjustifiable risk that a potential donor is subject to the jurisdiction of the public servant or the OAG, the public servant must perform a diligent inquiry into the donor’s identity and circumstances to determine that the donor is not subject to the jurisdiction of the public servant or the OAG before accepting a benefit from the donor.<sup>29</sup>

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<sup>29</sup> If a public servant working for the OAG accepts a benefit from a donor in the circumstances described in this opinion, we recommend that the public servant follow the best practices as outlined herein.

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

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*February 1, 2016*

*Whether an employee of a state agency may accept from persons regulated by the agency subscription fees for operating a website that compiles publicly available information. (AOR-606)*

The Texas Ethics Commission (“commission”) has been asked whether an employee (“the employee”) of a state regulatory agency may accept from persons regulated by the agency subscription fees for operating a website that compiles publicly available information.

The requestor of this opinion (“the requestor”) states that the agency sets the minimum standards for the conduct and training of certain law enforcement officers. The agency’s duties include training and law enforcement functions. As part of its regulatory scope, the agency authorizes training providers to provide law enforcement training under non-monetary training contracts. The entities that provide the training are subject to the agency’s training regulations and standards. The training contracts are issued, reviewed, and renewed according to the agency’s standards. To ensure compliance, agency personnel regularly perform audits or initiate investigations based on complaints. Oversight of all training performed under the training contracts is legally delegated to training coordinators, who are subject to action following noncompliance with the agency’s regulations, such as reprimand, suspension, or revocation.

The requestor states that the employee works daily with contract training providers and training coordinators. The employee is required to maintain close liaison with training coordinators and entities in relation to prospective and existing training provider contracts, including processing applications for the contracts. The employee is responsible for the initial issue and renewal process of all contract training providers, but agency executive staff formally approves new and renewal contracts. Agency field agents also audit and inspect training providers and coordinators.

Current and Proposed Websites

Since 2008, the employee has acted as a moderator for an electronic mailing list located on a third-party Internet website. The mailing list is an online forum for the moderator and mailing list members to share information regarding law enforcement training opportunities, scholarships, law enforcement association resources, law enforcement grant resources, and job vacancies. The members of the mailing list include training

## DRAFT

coordinators and agency licensees. The requestor states that the information posted to the website is publicly available on other freely accessible websites on the Internet. The employee has moderated the mailing list during working hours and with the consent of the agency, but has, since requesting this opinion, continued to moderate the mailing list in the employee's private capacity only. The requestor states that the current website is not an asset of the agency.

The employee wishes to create and operate an entirely new website that would be used to similarly aggregate and share publicly available information on law enforcement training opportunities in Texas. The requestor states that no state resources, including agency time or equipment, would be used for the proposed website and that the employee would not disclose any protected or restricted information that the employee acquired by reason of the employee's position at the agency. The requestor proposes operating the website and charging subscriptions to allow access only to paying members.

### PENAL CODE RESTRICTIONS

The first question is whether the employee may operate the website and receive subscription fees from entities and persons regulated by the agency. The laws under the commission's authority include chapter 36 of the Penal Code, which restricts an employee of a state regulatory agency from accepting a "benefit." Penal Code § 36.08(a). A "benefit" is anything reasonably regarded as pecuniary gain or pecuniary advantage. *Id.* § 36.01(3). A benefit would include a payment of money as a subscription fee to access the website.

A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency. *Id.*<sup>1</sup> Thus, any payment made to the employee by a person who the employee knows is regulated by the agency would be a prohibited benefit. However, section 36.08 does not prohibit a payment to a public servant to which the public servant is lawfully entitled or for which the public servant gives legitimate consideration in a capacity other than as a public servant. *Id.* § 36.10(a)(1). A public servant gives "legitimate consideration" if the public servant provides services to another in exchange for a payment that is commensurate with the actual value of those services. Ethics Advisory Opinion No. 533 (2015). The requirement that a public servant act "in a capacity other than as a public servant" means that it must be the services rendered, and not the status of the public servant rendering the services, that is of value to the person for whom the services are performed. *Id.*

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<sup>1</sup> Additionally, a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion. *Id.* § 36.08(d). The facts presented by the requestor do not clearly indicate whether the employee exercises such discretion. For purposes of this opinion, we assume that the employee is not subject to any of the additional benefit restrictions under section 36.08.

## DRAFT

If the subscription fees paid by persons regulated by the agency to the employee reflect the actual value of the services that the employee provides in a capacity other than as a public servant, and the fees are not given in consideration for services that the employee was requested to provide because of his or her official position or duties, then the fees from persons regulated by the agency would not be prohibited by section 36.08 of the Penal Code.

The laws under the commission's authority also include section 36.07 of the Penal Code, which prohibits a public servant from accepting an honorarium<sup>2</sup> in consideration for services that the public servant would not have been requested to provide but for his or her official position or duties. Penal Code § 36.07(a). An honorarium is permissible as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform the services at issue.<sup>3</sup> In this case, based on the working relationship between the employee and the training providers and coordinators, and the employee's role in processing their applications, there is a considerable possibility that a training provider or training coordinator would subscribe to the new website, in part, because of the employee's official position with the agency. However, whether any payment is made for that reason depends upon the specific facts. If the employee's official position is not a reason why the subscription fee is paid, then the honorarium provision would not prohibit the public servant from accepting the fee.<sup>4</sup>

The second question is whether the employee may operate the website for entities and persons who are not regulated by the agency. If a fee is not a prohibited honorarium and is not from a person who is subject to the jurisdiction of the employee or the agency, then sections 36.07 and 36.08 of the Penal Code would not prohibit the employee from accepting the fee.

The third question is whether the employee may donate a portion of the subscription fees to dependents of law enforcement officers for scholarships or to a memorial for Texas peace officers. Assuming that the subscription fees are not a prohibited benefit or honorarium, the laws under the commission's jurisdiction would not prohibit the employee from donating a portion of the fees.

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<sup>2</sup> In our opinion, a payment to the public servant to maintain and provide access to information on the website would be an honorarium in consideration for services.

<sup>3</sup> We have previously stated that the permissibility of an honorarium depends on the motivation of the person seeking the services of a public servant. Although it may be impossible to know the various motivations of a person seeking the services of a public servant, a useful way for a public servant to analyze whether acceptance of an honorarium is permissible is to ask: "Would my services be as useful or desirable if I did not hold a position with the government?" Ethics Advisory Opinion No. 305 (1996).

<sup>4</sup> We cannot address any restrictions that are imposed on the employee by other laws or policies outside the commission's jurisdiction, including laws and policies that are specific to the agency.

## DRAFT

The fourth question is whether the employee may operate the website as a non-profit enterprise or without charging for access. The relevant restrictions in chapter 36 of the Penal Code prohibit public servants from accepting certain benefits. If the employee operates the website without accepting a benefit, then the benefit restrictions under chapter 36 of the Penal Code would not prohibit that activity.<sup>5</sup>

### STANDARDS OF CONDUCT

The laws under the commission's jurisdiction also include section 572.051 of the Government Code, which sets out standards of conduct for state officers and employees. Gov't Code § 572.051. Those standards provide, in part, that a state officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct. *Id.* § 572.051(a)(1). Those standards also provide that a state officer or employee should not accept other employment or compensation that might induce the officer or employee to disclose confidential information or that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of official duties. *Id.* § 572.051(a)(2), (3).

In the present case, the employee processes applications from current and prospective training providers and training coordinators who seek the agency's authorization to provide certain training services to law enforcement officers and, in providing those services, are regulated by the employee and the agency. It also appears that the information that would be maintained on the new website would be directly related to the training services offered by training providers, which is dependent on the agency's authorization. Given that the employee moderated the electronic mailing list in her official capacity using agency resources, there may be confusion or an expectation among regulated persons that the new website would be related to the employee's performance of official duties. Therefore, in our opinion, any payments made to the employee by persons regulated by the agency to obtain such information might reasonably tend to influence the employee in the discharge of official duties. Additionally, the payments might reasonably be offered with the intent to influence, and could reasonably be expected to interfere with the employee's judgment in processing applications or contracts from the same persons who pay the employee for access to the website. Therefore, the employee should not receive subscription fees for operating the website from any person who is regulated by the agency in the manner described in this opinion.<sup>6</sup> However, fees paid by persons who are completely outside the jurisdiction of the agency do not raise similar concerns.

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<sup>5</sup> Chapter 36 of the Penal Code includes additional restrictions on certain actions by public servants. *See generally*, ch. 36, Penal Code. We assume that none of those other restrictions apply to the facts presented.

<sup>6</sup> We do not think the fees paid by regulated persons would be appropriate in any of the circumstances presented by the requestor.



## DRAFT

Section 572.051 of the Government Code also requires each state agency to adopt and distribute a written ethics policy for the agency's employees consistent with the standards of conduct and other provisions of subchapter C, chapter 572, of the Government Code. *Id.* § 572.051(c). A state employee who violates the standards of conduct or the adopted ethics policy is subject to termination of the employee's state employment or another employment-related sanction. *Id.* § 572.051(b). A state officer or employee who violates the standards of conduct is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule. *Id.* The commission does not have authority to enforce these standards of conduct. *Id.* § 572.051(e).<sup>7</sup>

## SUMMARY

An employee of a state regulatory agency should not accept from a person regulated by the agency a payment in the form of a subscription fee to operate a website as described in this opinion.

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<sup>7</sup> We note that section 572.055 of the Government Code provides that an association or organization of employees of a regulatory agency may not solicit, accept, or agree to accept anything of value from a business entity regulated by that agency and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected with that business entity. Gov't Code § 572.055(a). Similarly, a business entity regulated by a regulatory agency and from which the business entity must obtain a permit to operate that business in this state, or an individual directly or indirectly connected with that business entity may not offer, confer, or agree to confer on an association or organization of employees of that agency anything of value. *Id.* § 572.055(b). The facts presented by the requestor do not indicate that the subscription fees to operate the proposed website would be provided to an association or organization of employees of a regulatory agency.

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

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*February 1, 2016*

*Whether a former officeholder, who is provided housing by the state as a benefit of holding that office, may use political contributions to pay the expenses for moving personal household items out of the housing and into storage and to the former officeholder's new personal residence. (AOR-607)*

The Texas Ethics Commission ("commission") has been asked to consider whether a former officeholder, who is provided housing by the state as a benefit of holding the office, may use political contributions to pay certain moving expenses.

In the scenario presented by the requestor, the former officeholder resided outside Austin, Texas, before being elected to the office. As a benefit of holding the office, the state provided housing for the officeholder and the officeholder's family. The state housing was used daily for public functions in connection with the officeholder's duties. After leaving office, the former officeholder incurred expenses to move personal household items out of the state-provided housing to make the housing available for a new resident (officeholder). The requestor states that on the day the term of office was completed, the former officeholder's new personal residence outside Travis County was not ready for the former officeholder to move in, and the former officeholder stayed in a temporary residence. As a result, the household items were moved into temporary storage. Subsequently, the items were moved to the former officeholder's new personal residence. The request states that the state does not reimburse the moving expenses and asks whether political contributions may be used to pay or reimburse the expenses.

A former officeholder may not convert a political contribution to personal use. Elec. Code § 253.035(a). "Personal use" means "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). "Personal use" does not include "payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County." *Id.* § 253.035(d)(1). The issue is whether the former officeholder's moving expenses in the circumstances presented would be for a personal use.

## DRAFT

In Ethics Advisory Opinion No. 133, we determined that a newly elected appellate judge may use political contributions to pay the expenses of moving from his home city to the city where the court sits. Ethics Advisory Opinion No. 133 (1993) (EAO 133). In that opinion, we implicitly recognized that the judge's expenses would be incurred in connection with the performance of duties or activities of a public officeholder and, therefore, using political contributions to pay the expenses would not constitute a personal use.<sup>1</sup>

In the question before us, an officeholder resided in state-provided housing and used the housing to perform duties or activities as an officeholder. Under those circumstances, once the officeholder is required to vacate the housing when the term of office ends, then any ordinary and necessary expenses incurred to move personal household items from the housing to the former officeholder's personal residence would be connected to the former officeholder's duties or activities as an officeholder and would not primarily further individual or family purposes. Accordingly, using political funds for those expenses would not constitute a personal use.<sup>2</sup>

Whether any moving expenses are "ordinary and necessary" depends upon the specific facts.<sup>3</sup> Under these circumstances, we think that "ordinary and necessary" expenses would include the expenses necessary to move the personal household items by conventional means and by the shortest and most direct route available between the state-provided housing and the new personal residence.<sup>4</sup> However, such expenses would be ordinary and necessary only up to an amount equal to what it would cost the former officeholder to move the items from the state-provided housing to the residence that the former officeholder held in Texas immediately prior to assuming the office.<sup>5</sup>

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<sup>1</sup> In concluding that a judge may use political contributions to pay the expenses of moving from his home city to the city where the court sits, we cited a prior opinion by the Texas Secretary of State that held, in part, that in order for a legislator to attend a legislative session and to perform his or her official duties, the legislator must be present in Travis County, and that the legislator's expenses of moving into Travis County would be directly connected to and necessary for the performance of a legislator's duties. *Id.* (citing Election Law Opinion MAM-3 (1985)).

<sup>2</sup> We have held that the exception for "reasonable housing or household expenses incurred in maintaining a residence in Travis County" in section 253.035(d)(1) is expressly limited to members of the legislature who do not ordinarily reside in Travis County. EAO 133. The requestor of this opinion has not indicated that the expenses would be incurred by a member of the legislature who does not ordinarily reside in Travis County, and we therefore do not address that exception.

<sup>3</sup> See also Ethics Advisory Opinion No. 293 (1995) (stating "[t]he nature and duties of a particular office will always be relevant to questions about what type of expenditures may be made in connection with that office").

<sup>4</sup> The route can include any diversion necessary to place the items into temporary storage, if the storage is otherwise ordinary and necessary for the relocation.

<sup>5</sup> Under the circumstances presented, allowing a former officeholder to use political contributions to pay for moving personal items from an official residence provided by the state to a new personal residence located farther away from the location of his previous place of residence would result in an impermissible personal benefit to the former officeholder.

## DRAFT

As to the storage of personal items, we determined in EAO 133 that the judge may use political contributions to pay “temporary living expenses to the extent that they are deductible moving expenses for federal income tax purposes.” EAO 133. In our opinion, a period of 30 consecutive days after moving out of the state-provided housing is an appropriate limitation on using political contributions to pay for the storage.<sup>6</sup> Provided that the storage is ordinary and necessary for the former officeholder’s relocation to the personal residence, then political contributions may be used to pay the expenses for storage up to 30 consecutive days.

Regarding whether the former officeholder may use political contributions to reimburse the moving expenses described in this opinion, we note that the former officeholder may use political contributions to reimburse himself for a political expenditure made from personal funds only if the expenditure from personal funds is fully reported as a political expenditure made from personal funds with the appropriate designation that the expenditure is subject to reimbursement. Elec. Code § 253.035(h).

## SUMMARY

A former officeholder may use political contributions to pay ordinary and necessary expenses to move his personal household items from state-provided housing to his new personal residence only up to an amount equal to what it would cost the former officeholder to move the items from the state-provided housing to the residence that the former officeholder held in Texas immediately prior to assuming the office. Expenses for temporarily storing the personal household items for a period up to 30 consecutive days after moving out of the state-providing housing may be paid with political contributions if the expenses are ordinary and necessary for the former officeholder’s relocation to the personal residence.

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<sup>6</sup> See 26 U.S.C. § 217; 26 C.F.R. 1.217-2(b)(3) (deductible moving expenses includes the cost of storing household goods and personal items for any period of 30 consecutive days after moving out of a former residence).

## Exhibit A

### Section 571.069 of the Government Code. Review of Statements and Reports; Audits

(a) The commission shall review for facial compliance randomly selected statements and reports filed with the commission and may review any available documents. The commission shall return for resubmission with corrections or additional documentation a statement or report that does not, in the opinion of the commission, comply with the law requiring the statement or report. A statement or report returned for resubmission is considered to have been filed on the date the statement or report was originally filed if:

(1) the statement or report is resubmitted to the commission not later than the seventh business day after the date the person filing the statement or report receives the returned statement or report; and

(2) the resubmitted statement or report complies with law.

(b) The commission may by a vote of at least six commission members initiate a preliminary review as provided by Section 571.124 or perform a complete audit of a statement or report:

(1) if, before the 31st day after the date the statement or report was originally due, the executive director does not obtain from the person information that permits the executive director to determine that the statement or report complies with law;

(2) if a statement or report returned for resubmission is not resubmitted within the time prescribed by Subsection (a); or

(3) on an affirmative vote of at least six commission members that a statement or report resubmitted under Subsection (a), together with any corrections or additional documentation, does not, in the opinion of the commission, comply with the law requiring the statement or report.

(c) Any audited statement, report, document, or other material is confidential and may not be disclosed unless the statement, report, document, or other material:

(1) was previously public information; or

(2) is entered into the record of a formal hearing or a judicial proceeding.

(d) The party who is the subject of the audit may waive confidentiality by sending written notice to the commission.

(e) The commission may not audit a statement or report filed before January 1, 1992, under a law administered and enforced before that date by the secretary of state.

(f) This section may not be construed as limiting or affecting the commission's authority to, on the filing of a motion or receipt of a sworn complaint, review or investigate the sufficiency of a statement or report.

## **Exhibit A**

### **Proposed Amendment to Texas Ethics Commission Rules**

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

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

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

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

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

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** January 22, 2016  
**SUBJECT:** Waiver Requests related to Transition to the New Electronic Filing System  
**Meeting Date:** February 1, 2016

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**CAMPAIGN FINANCE REPORTS**

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

**Staff Recommendation – Waiver (Items 1-4):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues. In each case, the July 2015 semiannual report was the filer's first time to file a report using the new filing application.

**1. Jose Roberto Rodriguez (00066091)**  
**State Senator**

Report: semiannual report due July 15, 2015  
 File date: July 16, 2015  
 Activity: contributions = \$26,616.96; expenditures = \$76,201.48;  
 contributions maintained = \$169,357.15  
 Previous violations: none  
 Penalty: \$500

Senator Rodriguez stated that his report was one day late due to difficulty importing data from the old software into the new filing application. He stated that his campaign staff tried to follow the instruction in the TEC import guide and spent a considerable amount of time with the Commission's technical support staff right up until the TEC offices closed on the deadline. He stated that they finally succeeded in importing the data and filed the report the next morning.

**2. John Halloran Romanow (00016232)**  
**Treasurer, 'TAS-PAC' Texas Assn. of Staffing PAC**

Report: semiannual report due July 15, 2015  
File date: December 7, 2015  
Activity: contributions = \$2,410.00; expenditures = \$3,937.66;  
contributions maintained = \$10,822.78  
Previous violations: January 2014 semiannual report (fine waived under Sec. I-B, Lev. 1)  
Penalty: \$500

Mr. Romanow stated that he completed the report prior to the due date but apparently neglected to complete the submission process and the report was left pending. He stated that he made every attempt to submit the report on time but his inexperience with the new system caused him to make this error. Mr. Romanow filed the report as soon as he realized the error. The Commission's technical support staff identified the issue with filers failing to advance through all the steps to complete a filing and implemented improvements in the filing application to further clarify the process.

**3. David Rozzell (00069528)**  
**Treasurer, Conservative Republicans of Katy PAC**

Report: semiannual report due July 15, 2015  
File date: October 16, 2015  
Activity: none  
Previous violations: none  
Penalty: \$500

Mr. Rozzell stated that he was unaware that the old software system was not working, so he thought his report was done properly. He stated that after speaking with the Commission's technical support staff he learned the report did not process and filed the report using the new filing application.

**4. David Rozzell (00069531)**  
**Treasurer, Katy Area Republican PAC**

Report: semiannual report due July 15, 2015  
File date: October 16, 2015  
Activity: none  
Previous violations: none  
Penalty: \$500

Mr. Rozzell stated that he was unaware that the old software system was not working, so he thought his report was done properly. He stated that after speaking with the Commission's technical support staff he learned the report did not process and filed the report using the new filing application.



## PERSONAL FINANCIAL STATEMENTS

As you are aware, state officers began using the new electronic filing application to file personal financial statements on September 14, 2015. The following personal financial statements were filed late due to issues related to the transition to the new filing application.

**Staff Recommendation – Waiver (Items 5-7):** Staff recommends waiver based on the fact that the personal financial statements were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues.

**5. Tomas Uresti (00080143)  
Candidate, State Representative**

Report: personal financial statement due October 29, 2015  
File date: October 30, 2015  
Previous violations: none  
Penalty: \$500

Mr. Uresti stated that on October 29th he made many attempts to log in to the filing application but kept getting an error message and was eventually locked out of the system. He promptly contacted the Commission's technical support staff the next day and received assistance with resetting his password and filing the report.

**6. John Lujan, III (00058435)  
Candidate, State Representative**

Report: personal financial statement due October 29, 2015  
File date: October 30, 2015  
Activity: none  
Previous violations: none  
Penalty: \$500

Mr. Lujan stated that on October 29th he began working on his personal financial statement and contacted the Commission staff with questions. He stated that later that evening he made many attempts to log in to the filing application but had trouble with his password. He promptly contacted the Commission's technical support staff the next day and received assistance with resetting his password and filing the report.

**7. Robert A. Casias (00068091)  
Candidate, State Representative**

Report: personal financial statement due October 29, 2015  
File date: October 30, 2015  
Previous violations: none  
Penalty: \$500

Mr. Casias stated that on October 29th he made many attempts to log in to the filing application but had trouble with his password. He promptly contacted the Commission's technical support staff the next day and received assistance with resetting his password and filing the report.

## LOBBY REPORTS

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

**Staff Recommendation – Waiver (Items 8-10):** Staff recommends waiver based on the fact that the reports were filed as soon after the filing deadline as possible and the filers worked with Commission technical support staff to resolve the issues.

**8. Steve G. Holzheuser (00020370)  
Lobbyist**

Report: monthly lobby activities report due October 13, 2015  
File date: November 10, 2015  
Activity: lobby expenditures = \$51.48  
Previous violations: none  
Penalty: \$500

Mr. Holzheuser stated that when using the new online filing application for the first time he believed he had filed the October monthly report but did not complete the task due to technical issues. The Commission's technical support staff identified the issue with filers failing to advance through all the steps to complete a filing and implemented improvements in the filing application to further clarify the process.

**9. Martha K. Landwehr (00069447)  
Lobbyist**

Report: monthly lobby activities report due October 13, 2015  
File date: October 14, 2015  
Activity: none  
Previous violations: lobby activities report due October 10, 2014 (fine paid)  
Penalty: \$500

Ms. Landwehr stated that on the due date she attempted to submit her report via the old software, but it was rejected since the old software is no longer supported. She stated that she was able to submit the report disclosing zero activity using the new filing application within a few minutes past the deadline.

**10. Pamela McPeters (00070863)**  
**Lobbyist**

Report: monthly lobby activities report due November 10, 2015  
File date: December 2, 2015  
Activity: lobby expenditures = \$34.59  
Previous violations: none  
Penalty: \$500

Ms. McPeters stated that when using the new online filing application for the first time she mistakenly designated the October monthly report as a final report. She stated that she was unaware of the error until he received a notice from the Commission dated November 20, 2015. She promptly contacted the Commission for assistance in correcting the error and filing her report. The Commission's technical support staff identified an issue with filers incorrectly marking the final report box and implemented improvements in the filing application to further clarify the process.

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

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** January 22, 2016  
**SUBJECT:** Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)  
**Meeting Date:** February 1, 2016

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The following filers have submitted requests to the Commission for an appeal regarding a determination previously made under section 18.25 or 18.26 of the Ethics Commission Rules (relating to Administrative Waiver or Reduction of Fine). The Commission may vote to affirm the determinations made under the Ethics Commission Rules or make a new determination based on facts presented in an appeal. *Note:* Staff makes no recommendation regarding the appeals, unless specifically noted in **bold** under the penalty.

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

**Report Type I – Did Not Meet Criteria for Waiver or Reduction**

**TEC Determination: No Waiver (Item 1):**

**1. Michael A. Franks (00037080)**  
**Candidate, State Representative**

Report: semiannual report due July 15, 2015  
File date: October 15, 2015 (93 days late)  
Activity: none  
Prior offenses: July 2010, January 2011, and July 2013 semiannual reports (three \$500 fines not paid) and 30-day pre-election report due February 3, 2014 (\$500 fine not paid); as treasurer of a PAC – January 2011, July 2013, and July 2015 semiannual reports (\$500 fines waived under HB 89)  
Penalty: \$500 – no waiver

**Basis:** Not a critical report; did not meet the criteria for a waiver or reduction under the Ethics Commission Rules because the filer has three outstanding late fines and has had seven prior late-filing offenses in the last five years.

On October 30, 2015, the Commission sent a determination letter to Mr. Franks informing him that he is not eligible for a waiver of the \$500 late-filing penalty under the Ethics Commission Rules. The letter requested that Mr. Franks remit the payment by November 30, 2015, or submit a request for appeal.

**Request for Appeal:** On December 1, 2015, the Commission received the appeal. In his appeal, Mr. Franks stated:

I want to appeal the late penalty for this report and have it reduced to \$0. This was a software issue of being under the impression the report went through [using the old software]. When we found out later it did not and we had to use the new system, we sent it in through the new system.

## REPORT TYPE II: CRITICAL REPORTS

### Report Type II – Category B

#### TEC Rules Determination: II-B – Formulas Chart (Item 2):

2. **Paul Reyes (00067908)**  
**Treasurer, 'Associa PAC' Associations, Inc. PAC**

Report: 8-day pre-election report due May 1, 2015  
File date: July 15, 2015 (75 days late)  
Activity: contributions = \$7,759.84; expenditures = \$2,005.00;  
contributions maintained = \$16,065.59  
Prior offenses: as treasurer of a different PAC – January 2011 semiannual report (\$500 fine reduced to \$250; paid)  
Penalty: \$7,900 – reduction to \$1,300

Basis: Critical report; Category B filer; total contributions are \$3,000 or more for the reporting period; one prior late-filing offense in the last five years; good cause shown.

Formula: The fine is calculated at \$300 (good cause, 1 prior, 1st day late) + \$500 (next 5 days late @ \$100 per day) + \$500 (two 30-day segments @ \$250 per segment) + \$0 (remaining 9 days late do not add up to a full 30-day segment) = \$1,300.

On December 15, 2015, the Commission sent a determination letter to Mr. Reyes informing him that he is eligible for a reduction of the late-filing penalty to \$1,300 under the Ethics Commission Rules. The letter requested that Mr. Reyes remit the reduced payment by January 14, 2016, or submit a request for appeal.

Request for Appeal: On January 5, 2016, the Commission received the appeal. In the appeal, Mr. Andrew Fortin, the new treasurer effective January 5, 2016, expressed his appreciation for the reduction but asked for additional consideration. Mr. Fortin swore that the committee promptly filed the report as soon as they received notice that it was missing. Mr. Fortin further swore:

For this reason and our ongoing, prompt and transparent response combined with our excellent compliance record we would request that the Ethics Commission take into account these factors and provide further consideration waiving or reducing the penalty assessed. Such consideration would be appreciated.

(As background, the committee filed the 30-day pre-election report due April 9, 2015, which automatically triggered the requirement to file the 8-day pre-election report due May 1, 2015. Although the 8-day period was covered by the July 2015 semiannual report and the 8-day report considered filed as of July 15, 2015, the committee filed a separate 8-day report on December 3, 2015, to specifically cover the 8-day period after receiving the Commission's notice regarding the late-filing penalty. The committee swore that there is no variance between the activity disclosed in the July report for the 8-day period and the activity later disclosed in the separate 8-day report.)

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

**TO:** Commissioners, Texas Ethics Commission  
**FROM:** Amy S. Barden, Senior Legal Assistant  
**DATE:** January 22, 2016  
**SUBJECT:** Corrected Reports Memo  
Meeting Date: February 1, 2016

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**Substantial Compliance (Item 1)**

**1. Deneile L. Fourrier (00080235)**  
**Treasurer, Back the Bulldog Bond PAC**

Report: 8-day pre-election report due October 26, 2015  
Correction date: December 8, 2015  
Activity: contributions = \$3,600.00; expenditures = \$3,909.24;  
contributions maintained = \$5,290.77 (on both reports)  
Prior corrections: none  
Penalty: \$4,700

Both the original and the corrected reports were filed in paper format. The original report was timely filed via fax machine on October 22, 2015, however, the two pages of Schedule A1 itemizing five political contributions totaling \$3,600 printed out too light to clearly read. On November 2, 2015, Mrs. Fourrier filed via U.S. Mail legible copies of the Schedule A1 pages. After being notified by Commission staff, Mrs. Fourrier filed the corrected report via U.S. Mail on December 8, 2015, to include the entire report with the two pages of Schedule A1. The corrected report was an exact legible copy of the original and there were no other changes to the report totals or activity. **Recommendation Based on Commission Guidelines: substantial compliance.**

***Texas Ethics Commission***  
**MEMORANDUM**

**TO:** Chair Paul Hobby and Members of the Texas Ethics Commission

**FROM:** Natalia Luna Ashley, Executive Director

**DATE:** January 22, 2016

**SUBJECT:** Termination of Campaign Treasurer Appointments

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**POLITICAL COMMITTEES**

**1. Central Texas Republican Women (00054439)**  
**Larry C. Howell, Treasurer**

Last report filed: October 27, 2014  
Treasurer appointment filed: January 6, 2014

**2. RAB Law - PAC (00065791)**  
**Ricardo A. Baca, Treasurer**

Last report filed: July 30, 2014  
Treasurer appointment filed: June 15, 2009

**3. Moving Texas Forward (00066546)**  
**LaShonda M. Johnson, Treasurer**

Last report filed: October 27, 2014  
Treasurer appointment filed: June 28, 2013

**4. Coalition for Financial Freedom (00068754)**  
**Mike Bush, Treasurer**

Last report filed: Has never filed a report  
Treasurer appointment filed: October 3, 2014

**5. Southeast Texas Stonewall Democrats (00069423)**  
**Lawrence D. Gilstrap, Treasurer**

Last report filed: August 4, 2014  
Treasurer appointment filed: July 30, 2013

**6. Texans For Truth PAC (00070009)  
Anthony A. Holm, Treasurer**

Last report filed:	Has never filed a report
Treasurer appointment filed:	February 10, 2014



**DRAFT**

AGENDA ITEM 21, EXHIBIT A

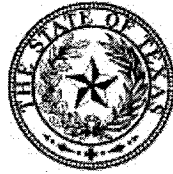
# TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070

Paul W. Hobby  
Chair

Chase Untermeyer  
Vice Chair

Natalia Luna Ashley  
Executive Director



Commissioners

Hugh C. Akin  
Jim Clancy  
Wilhelmina Delco  
Tom Harrison  
Bob Long  
Tom Ramsay

February 1, 2016

Dear School Administrator,

The Texas Ethics Commission (TEC) appreciates your service to the State of Texas and your diligence in fulfilling your duties under the Texas campaign finance law. The TEC is responsible for administering and enforcing this law, which requires candidates, officeholders, and political committees to file campaign finance reports. Some of the reports are required to be filed with your school district. The TEC recently conducted a survey to study compliance of the campaign finance law requirements at the local level. Survey results show that too many candidates start off on the wrong track by failing to file the campaign treasurer appointment (CTA), which is the first form required to be filed, and that these candidates are less likely to file other required forms. Survey results also show that candidates who start off on the right track by filing the CTA are more likely to comply with other reporting requirements. Failure to comply with the campaign finance law can result in civil or criminal complaints.

The TEC is always looking for educational opportunities to improve compliance. With that in mind, we are asking that you help us notify candidates about the first steps in running for office by providing each candidate with the enclosed "First Steps for Candidates Running for School Board Trustee." Additionally, on our website we have a notice explaining other ways that you can help candidates start off their campaign on the right track: [https://www.ethics.state.tx.us/NTF/2016\\_Local\\_Filing\\_Authorities.pdf](https://www.ethics.state.tx.us/NTF/2016_Local_Filing_Authorities.pdf)

Thank you for helping us with our mission of ensuring that information related to political expenditures and political contributions is fully disclosed.

Sincerely,

Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission

Enclosure: First Steps for Candidates Running for School Board Trustee

*Come visit our home page at <http://www.ethics.state.tx.us> on the Internet.*

**(512) 463-5800 • FAX (512) 463-5777 • TDD 1-800-735-2989**

The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

## First Steps for Candidates Running for School Board Trustee

*This quick-start guide for candidates is not intended to provide comprehensive information. For more details, including information on political advertising requirements, fundraising rules, and filing schedules, see the Texas Ethics Commission's (TEC) website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).*

### 1. File a Campaign Treasurer Appointment (Form CTA)

All candidates must file Form CTA even if you do not intend to raise or spend any money. Form CTA is required to be filed before you file an application for a place on the ballot, raise or spend any money for your campaign, or announce your candidacy. File Form CTA with the school board clerk or school board secretary.

### 2. Will you accept or spend more than \$500 for an election?

**YES:** If you do intend to accept or spend more than \$500 in connection with an election, do not complete the *Modified Reporting Declaration* on page two of Form CTA. You are **required** to file 30-day and 8-day pre-election reports if you have an opponent on the ballot.

**NO:** If you do not intend to accept or spend more than \$500 in connection with an election, you can elect to file on the modified reporting schedule by completing the *Modified Reporting Declaration* on page two of Form CTA. Electing to file on the modified reporting schedule means that you do not have to file 30-day and 8-day pre-election reports (Form C/OH). You must report your campaign activity on your next semiannual report or on a final report, which you must file even if you have no activity to report.

If you are an opposed candidate and elect to file on the modified reporting schedule but exceed \$500 in either contributions or expenditures before the 30-day pre-election report is due, you **must** file 30-day and 8-day pre-election reports. If you exceed \$500 in either contributions or expenditures after the 30-day pre-election report is due, you **must** file an "Exceeded \$500" report within 48 hours of exceeding the threshold. If you exceed \$500 in either contributions or expenditures before the 8-day pre-election report is due, you **must** file the 8-day pre-election report.

### 3. File pre-election campaign finance reports (Form C/OH)

If you are an opposed candidate in an election, and you do not elect to file on the modified reporting schedule, you must file campaign finance reports that are due 30-days and 8-days before the election. To be timely, pre-election reports must be received by the filing authority no later than the due date.

### 4. Use the TEC's Filing Application to prepare your campaign finance reports

You can use the TEC's Filing Application at <https://www.ethics.state.tx.us/File/> to prepare a PDF version of your campaign finance reports (Form C/OH). Select "Local Authority" and follow the steps to set up an account and login to the application. The filing application will walk you through each reporting schedule. Once you have completed your report, print out a copy, get it notarized, and file it with your local filing authority by the appropriate deadline.

### 5. Visit Our Website

Often candidates make mistakes because they are unaware of their responsibilities under the campaign finance laws. The TEC has published a campaign finance guide for local candidates and officeholders that you can find at [https://www.ethics.state.tx.us/guides/coh\\_local\\_guide.pdf](https://www.ethics.state.tx.us/guides/coh_local_guide.pdf). Also on our website are forms, instructions, common reporting errors (under "Hot Topics"), political advertising and fundraising guides, filing schedules and other information you may find useful.

# DRAFT

## First Steps for Candidates Running for a City Office

This quick-start guide for candidates seeking a city office is not intended to provide comprehensive information. For more details, including information on political advertising requirements, fundraising rules, and filing schedules, see the Texas Ethics Commission's (TEC) website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

### 1. File a Campaign Treasurer Appointment (Form CTA)

All candidates must file Form CTA even if you do not intend to raise or spend any money. Form CTA is required to be filed before you file an application for a place on the ballot, raise or spend any money for your campaign, or announce your candidacy. File Form CTA with the city clerk or city secretary, as applicable.

### 2. Will you accept or spend more than \$500 for an election?

**YES:** If you do intend to accept or spend more than \$500 in connection with an election, do not complete the *Modified Reporting Declaration* on page two of Form CTA. You are **required** to file 30-day and 8-day pre-election reports if you have an opponent on the ballot.

**NO:** If you do not intend to accept or spend more than \$500 in connection with an election, you can elect to file on the modified reporting schedule by completing the *Modified Reporting Declaration* on page two of Form CTA. Electing to file on the modified reporting schedule means that you do not have to file 30-day and 8-day pre-election reports (Form C/OH). You must report your campaign activity on your next semiannual report or on a final report, which you must file even if you have no activity to report.

If you are an opposed candidate and elect to file on the modified reporting schedule but exceed \$500 in either contributions or expenditures before the 30-day pre-election report is due, you **must** file 30-day and 8-day pre-election reports. If you exceed \$500 in either contributions or expenditures after the 30-day pre-election report is due, you **must** file an "Exceeded \$500" report within 48 hours of exceeding the threshold. If you exceed \$500 in either contributions or expenditures before the 8-day pre-election report is due, you **must** file the 8-day pre-election report.

### 3. File pre-election campaign finance reports (Form C/OH)

If you are an opposed candidate in an election, and you do not elect to file on the modified reporting schedule, you must file campaign finance reports that are due 30-days and 8-days before the election. To be timely, pre-election reports must be received by the filing authority no later than the due date.

### 4. Use the TEC's Filing Application to prepare your campaign finance reports

You can use the TEC's Filing Application at <https://www.ethics.state.tx.us/File/> to prepare a PDF version of your campaign finance reports (Form C/OH). Select "Local Authority" and follow the steps to set up an account and login to the application. The filing application will walk you through each reporting schedule. Once you have completed your report, print out a copy, get it notarized, and file it with your local filing authority by the appropriate deadline.

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# DRAFT

## First Steps for Candidates Running for a County, Precinct, or District Office

*This quick-start guide for non-judicial candidates is not intended to provide comprehensive information. Different filing requirements apply to certain judicial offices. For more details, including information for judicial candidates, see the Texas Ethics Commission's (TEC) website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).*

### 1. File a Campaign Treasurer Appointment (Form CTA)

All candidates must file a campaign treasurer appointment (Form CTA) even if you do not intend to raise or spend any money. Form CTA is required to be filed before you file an application for a place on the ballot, raise or spend any money for your campaign, or announce your candidacy. Candidates for a county office (except for multi-county district offices) will file Form CTA with the county clerk, county elections administrator, or tax assessor, as applicable.

### 2. Will you accept or spend more than \$500 for an election?

**YES:** If you do intend to accept or spend more than \$500 in connection with an election, do not complete the *Modified Reporting Declaration* on page two of Form CTA. You are **required** to file 30-day and 8-day pre-election reports if you have an opponent on the ballot.

**NO:** If you do not intend to accept or spend more than \$500 in connection with an election, you can elect to file on the modified reporting schedule by completing the *Modified Reporting Declaration* on page two of Form CTA. Electing to file on the modified reporting schedule means that you do not have to file 30-day and 8-day pre-election reports (Form C/OH). You must report your campaign activity on your next semiannual report or on a final report, which you must file even if you have no activity to report.

If you are an opposed candidate and elect to file on the modified reporting schedule but exceed \$500 in either contributions or expenditures before the 30-day pre-election report is due, you **must** file 30-day and 8-day pre-election reports. If you exceed \$500 in either contributions or expenditures after the 30-day pre-election report is due, you **must** file an "Exceeded \$500" report within 48 hours of exceeding the threshold. If you exceed \$500 in either contributions or expenditures before the 8-day pre-election report is due, you **must** file the 8-day pre-election report.

### 3. File pre-election campaign finance reports (Form C/OH)

If you are an opposed candidate in an election, and you do not elect to file on the modified reporting schedule, you must file campaign finance reports that are due 30-days and 8-days before the election. To be timely, pre-election reports must be received by the filing authority no later than the due date.

### 4. Use the TEC's Filing Application to prepare your campaign finance reports

You can use the TEC's Filing Application at <https://www.ethics.state.tx.us/File/> to prepare a PDF version of your campaign finance reports (Form C/OH). Select "Local Authority" and follow the steps to set up an account and login to the application. The filing application will walk you through each reporting schedule. Once you have completed your report, print out a copy, get it notarized, and file it with your local filing authority by the appropriate deadline.

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# DRAFT

## First Steps for Candidates Running for a County Judicial Office

This quick-start guide for judicial candidates is not intended to provide comprehensive information. The Judicial Campaign Fairness Act (JCFA) imposes filing requirements, restrictions, and limits on contributions and expenditures that are different from other candidates. Consult the *Campaign Finance Guide for Judicial Candidates and Officeholders* for more information, at [https://www.ethics.state.tx.us/guides/jcoh\\_guide.pdf](https://www.ethics.state.tx.us/guides/jcoh_guide.pdf).

### 1. File a Campaign Treasurer Appointment (Form JCTA)

All candidates must file a campaign treasurer appointment (Form JCTA) even if you do not intend to raise or spend any money. Form JCTA is required to be filed before you file an application for a place on the ballot, raise or spend any money for your campaign, or announce your candidacy. Candidates for a statutory county court or statutory probate court will file Form JCTA with the county clerk, county elections administrator, or tax assessor, as applicable. Candidates for a district court, court of appeals, Court of Criminal Appeals, or Supreme Court will file Form JCTA with the TEC.

### 2. Will you accept or spend more than \$500 for an election?

**YES:** If you do intend to accept or spend more than \$500 in connection with an election, do not complete the *Modified Reporting Declaration* on page three of Form JCTA. You are **required** to file 30-day and 8-day pre-election reports if you have an opponent on the ballot.

**NO:** If you do not intend to accept or spend more than \$500 in connection with an election, you can elect to file on the modified reporting schedule by completing the *Modified Reporting Declaration* on page three of Form JCTA. Electing to file on the modified reporting schedule means that you do not have to file 30-day and 8-day pre-election reports (Form JC/OH). You must report your campaign activity on your next semiannual report or on a final report, which you must file even if you have no activity to report.

If you are an opposed candidate and elect to file on the modified reporting schedule but exceed \$500 in either contributions or expenditures before the 30-day pre-election report is due, you **must** file 30-day and 8-day pre-election reports. If you exceed \$500 in either contributions or expenditures after the 30-day pre-election report is due, you **must** file an "Exceeded \$500" report within 48 hours of exceeding the threshold. If you exceed \$500 in either contributions or expenditures before the 8-day pre-election report is due, you **must** file the 8-day pre-election report.

### 3. File pre-election campaign finance reports (Form C/OH)

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**Local Filers and Filing Authorities**

Forms and Instructions

Filing Schedules

Notices

Political Advertising

Publications & Guides

- Local Candidate/Officeholder Campaign Finance Guide
- Judicial Candidate/Officeholder Campaign Finance Guide
  - County Filing Authority Duties
  - Local Filing Authority Duties

Laws & Regulations

- Fair Campaign Practices Act
  - Title 15, Election Code
  - Commission Rules

Local Government Conflict of Interest Forms

Local Filing Authorities

# TEXAS ETHICS COMMISSION

*Mailing Address:*  
P.O. Box 12070, Capitol Station  
Austin, Texas 78711-2070  
512-463-5800



*Street Address:*  
201 E. 14th St., 10th Floor  
Austin, Texas 78701  
[www.ethics.state.tx.us](http://www.ethics.state.tx.us)

## NOTICE TO COUNTY FILING AUTHORITIES

Below is a list of the forms, instructions, filing schedules, and other materials you should have in order to comply with your responsibilities as a filing authority for campaign finance reports under Title 15 of the Texas Election Code. All of these materials are available at [www.ethics.state.tx.us/main/local.htm](http://www.ethics.state.tx.us/main/local.htm) on the Texas Ethics Commission's website.

If you prepare filing packets for candidates and officeholders, we recommend that packet include the items that are marked with an asterisk (\*). To determine if you have the most current items, refer to the forms and instructions page located at [www.ethics.state.tx.us/filinginfo/localcohforms.htm](http://www.ethics.state.tx.us/filinginfo/localcohforms.htm) on our website.

Please do not hesitate to call if you have any difficulty accessing our forms, instructions, filing schedules, or other filing materials, or if you have any questions about the campaign finance laws. We encourage you to refer your campaign finance filers to the applicable guides and instructions or to our office if they have any questions about their filing obligations.

**URGENT REMINDER:** It is imperative that you affix a date stamp on the first page of every campaign finance report/document that is filed with your office. A date affixed by the filer when signing the report or a notary public when witnessing the filer's signature is not considered a date stamp of the filing authority. Also, encourage individuals with reporting questions to review the form instructions guide and appropriate campaign finance guide and to call the Ethics Commission if they still have questions.

### List of Forms, Instructions, and Guides

- Guide to a County Filing Authority's Duties under the Campaign Finance Law
- \* 2016 Filing Schedule for Candidates and Officeholders Filing with the County Clerk or Elections Administrator
- \* Campaign Finance Guide for Candidates and Officeholders Who File With Local Filing Authorities
- Campaign Finance Guide for Judicial Candidates and Officeholders
- Campaign Finance Guide for Political Committees
- \* Political Advertising: What You Need to Know, Brochure
- \* Fair Campaign Practices Act
- \* Form CFCP - Code of Fair Campaign Practices
- \* Form CTA - Appointment of a Campaign Treasurer by a Candidate
- \* Form CTA - Instruction Guide
- Form ACTA - Amended Appointment of a Campaign Treasurer by a Candidate
- Form ACTA - Instruction Guide
- \* Form C/OH - Candidate/Officeholder Campaign Finance Report

- \* Form C/OH – Instruction Guide
  - Form JCTA - Appointment of a Campaign Treasurer by a Judicial Candidate
  - Form JCTA – Instruction Guide
  - Form AJCTA - Amended Appointment of a Campaign Treasurer by a Judicial Candidate
  - Form AJCTA – Instruction Guide
  - Form JC/OH - Judicial Candidate/Officeholder Campaign Finance Report
  - Form JC/OH – Instruction Guide
  - Form STA - Appointment of a Campaign Treasurer by a Specific-Purpose Committee
  - Form STA – Instruction Guide
  - Form ASTA - Amended Appointment of a Campaign Treasurer by a Specific-Purpose Committee
  - Form ASTA – Instruction Guide
  - Form SPAC - Specific-Purpose Committee Campaign Finance Report
  - Form SPAC – Instruction Guide
  - Form JSPAC – Judicial Specific-Purpose Committee Campaign Finance Report
  - Form JSPAC – Instruction Guide
  - Form C/OH-UC - Candidate/Officeholder Report of Unexpended Contributions
  - Form C/OH-UC – Instruction Guide
  - Form COR-C/OH – Correction Affidavit for Candidate/Officeholder
  - Form COR-PAC – Correction Affidavit for Political Committee
- \*\* Form CIS – Local Government Officer Conflicts Disclosure Statement
- \*\* Form CIQ – Conflict of Interest Questionnaire
  - Title 15 of the Election Code
  - Texas Ethics Commission Rules

\*\* As required by the Legislature, the Texas Ethics Commission adopted Forms CIS and CIQ. Please note that the Texas Ethics Commission does NOT have jurisdiction to interpret or enforce Chapter 176 of the Government Code; that responsibility rests with the local filing authority. Also, please note that these forms are filed with the local filing authority and NOT with the Texas Ethics Commission.



# TEXAS ETHICS COMMISSION

*Mailing Address:*

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512-463-5800



*Street Address:*

201 E. 14th St., 10th Floor  
Austin, Texas 78701  
[www.ethics.state.tx.us](http://www.ethics.state.tx.us)

## NOTICE TO LOCAL FILING AUTHORITIES

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### List of Forms, Instructions, and Guides

Guide to a Local Filing Authority's Duties under the Campaign Finance Law

- \* 2016 Schedule for Elections Held on Uniform Election Dates
- \* Campaign Finance Guide for Candidates and Officeholders Who File With Local Filing Authorities
- \* Political Advertising: What You Need to Know, Brochure
- \* Fair Campaign Practices Act
- \* Form CFCP - Code of Fair Campaign Practices
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Form SPAC - Specific-Purpose Committee Campaign Finance Report

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Form COR-C/OH – Correction Affidavit for Candidate/Officeholder

Form COR-PAC – Correction Affidavit for Political Committee

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Title 15 of the Election Code

Texas Ethics Commission Rules

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