

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

Chase Untermeyer, Chair
Hugh C. Akin
Jim Clancy
Chad M. Craycraft

Wilhelmina Delco
Mary K. "Katie" Kennedy
Tom Ramsay
Steve Wolens

AGENDA

Date and Time: 8:30 a.m., Thursday, October 13, 2016
Location: Room E1.014, Capitol Extension, Austin, Texas

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 158th District Court of Denton County, Texas; and related cases, Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-09170, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*; in the 345th 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 53rd Judicial District Court of Travis County, Texas; and related case, Cause

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

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

D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345th Judicial District Court of Travis 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

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

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AGENDA

Date and Time: 1:00 p.m., Thursday, October 13, 2016
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Contested Case Proceeding: Sworn Complaint No. SC-3120485 and Sworn Complaint No. SC-3120486, In the Matter of Empower Texans d.b.a. Texans for Fiscal Responsibility, Respondent. Prehearing conference.
3. 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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AGENDA

Date and Time:	8:30 a.m., Friday, October 14, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

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 158th District Court of Denton County, Texas; and related cases, Cause No. 02-15-00103-CV, *Texas Ethics Commission v. Michael Quinn Sullivan*, in the Second Court of Appeals, Fort Worth, Texas; and Cause No. 15-09170, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - B. Cause No. D-1-GN-14-002665; *Michael Quinn Sullivan v. Jim Clancy, Paul W. Hobby, Hugh C. Akin, Wilhelmina Delco, Tom Harrison, Bob Long, Tom Ramsay, and Chase Untermeyer, in their official capacities as Commissioners of the Texas Ethics Commission, and the Texas Ethics Commission, by and through its Executive Director, Natalia Luna Ashley, in her official capacity*; in the 345th 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

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the 53rd Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00019-CV; *Empower Texans, Inc. and Michael Quinn Sullivan v. The State of Texas Ethics Commission, Natalia Luna Ashley, in her capacity as Executive Director of the Texas Ethics Commission, Tom Ramsay, individually and in his capacity as Commissioner, Paul Hobby, individually and in his capacity as Commissioner, Hugh C. Akin, individually and in his capacity as Commissioner, James T. Clancy, individually and in his capacity as Commissioner, Wilhelmina R. Delco, individually and in her capacity as Commissioner, Warren T. Harrison, individually and in his capacity as Commissioner, Robert K. Long, individually and in his capacity as Commissioner, and Charles G. Untermeyer, individually and in his capacity as Commissioner*, in the Third Court of Appeals, Austin, Texas.

- D. Cause No. D-1-GN-15-004455; *Texas Ethics Commission v. Empower Texans and Michael Quinn Sullivan*; in the 345th 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 261st Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00139-CV, *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
- G. Civil Action No. 1:13-cv-00916; *Mike Barnes v. Texas Ethics Commission*; in the United States District Court for the Western District of Texas, Austin Division; and related case, Cause No. D-1-GN-15-003454; *Mike Barnes v. Texas Ethics Commission*, in the 201st Judicial District Court of Travis County, Texas.
- H. Cause No. 2016-27417; *Briscoe Cain v. Charles G. Untermeyer, in his Official Capacity as Chairman and Commissioner of the Texas Ethics Commission and Natalia Luna Ashley, in her Official Capacity as Executive Director of the Texas Ethics Commission*; in the 270th Judicial District Court of Harris County, Texas.

3. Reconvene in open session.

4. Adjourn.

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

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AGENDA

Date and Time: 9:30 a.m., Friday, October 14, 2016
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Comments by the Executive Director.
3. Comments by the Commissioners.
4. Approve minutes for the following meetings:
 - o Executive Session (discussion of pending litigation) – August 15, 2016; and
 - o Public Meeting – August 15, 2016.

RULEMAKING

5. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Texas Ethics Commission Rules § 50.1 (Legislative Per Diem) relating to the legislative per diem required to be set under Article III, Section 24a, of the Texas Constitution.
6. Public discussion and possible action on the proposal and publication in the Texas Register of a rule to address when a change to a contract is subject to the disclosure requirements of Government Code § 2252.908, which was added by House Bill 1295, 84th Legislative Session.
7. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.50, regarding the requirement that a campaign finance report include the total amount of political contributions maintained at the end of the reporting period.
8. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 34.43(Compensation and Reimbursement Threshold), regarding the lobby registration requirement for

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compensation if no more than 5% of a person's compensated time during a calendar quarter is spent engaging in lobby activity.

9. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 26.1 (Disclosure Statement), to clarify how a political advertising disclosure statement must be included in political advertising in audio form, including broadcasts by radio.
10. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of a new Ethics Commission Rules § 20.60 (Reporting Political Expenditures for Processing Fees), regarding the disclosure of multiple payments in a reporting period to a single person for fees to process political contributions.
11. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of a new Ethics Commission Rules § 20.56 (Expenditures Involving Consultants) and an amendment to Ethics Commission Rules § 20.61 (Purpose of Expenditure), regarding the disclosure of political expenditures made to consultants.

ADVISORY OPINION

12. Discussion of Advisory Opinion Request No. 614: Whether a communication relating to a measure election complies with section 255.003 of the Election Code.

This opinion request construes section 255.003 of the Election Code.

OTHER POLICY MATTERS

13. Briefing, discussion, and possible action to waive or reduce certain penalties assessed for campaign finance reports and personal financial statements filed late due to issues with the new electronic filing application for the following individuals:

Campaign Finance Reports

Juan Magallanes (00022775)

Personal Financial Statements

Daniel S. 'Shawn' Council (00080436)
Connor P. Flanagan (00080358)
Martha H. Jamison (00027107)
Thomas F. Lee (00020138)
Clyde Frederick 'Fred' Shannon, Jr. (00043506)
Russel D. 'Rusty' Boles (00080310)
Claude Siems (00070901)
Susan Simpson Hull (00070225)
Kenneth Ross (00063549)
Mark Skurka (00042116)
Rabeea Sultan Collier (00080198)
James D. Morrison (00080120)
Erika Beltran (00069788)
Brian J. Haley (00069018)
Brandon H. Bouma (00067746)
Guy Brady (00068940)
Andy M. Chatham (00058203)
Sarah D. Monty-Arnoni (00069203)
Yahara L. Gutierrez (00061785)
Sara Kate Billingsley (00070991)
Dibrell W. 'Dib' Waldrip (00036505)
Irene Armendariz (00062293)
Richard H. 'Rick' Magnis (00057941)
Harold Ashley Ledger, DPM (00065969)
Gwyn C. Shea (00020997)
Nizam Peerwani, M.D. (00066181)
Richard R. 'Dick' Scott (00065382)

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

Jacqueline R. Verastigui (00080618)
Paul Greco (00080579)
Fredericka M. Phillips (00066411)
James R. Dickey, Sr. (00069834)

15. Briefing, discussion, and possible action to waive or reduce the late-filing penalty in connection with a corrected report or to determine whether the corrected report

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

Frank J. Castro (00080420)

Tiffany B. Latta, Treasurer, 'LTP' Llano Tea Party (00067217)

William J. 'Bill' O'Sullivan, Jr., Treasurer, 'TTPP' Texas Patriots State PAC (00066799)

16. Report by subcommittee of Commissioners regarding recommendations for statutory changes to the 85th Legislature as required by section 571.073 of the Government Code and discussion about other recommendations Commissioners may want to consider.
17. Report on the Texas Ethics Commission Legislative Appropriation Request for Fiscal Years 2018 and 2019.
18. Election of Vice Chair of the Texas Ethics Commission.
19. Appointment of a Nominating Committee of Commissioners for the positions of Chair and Vice Chair of the Texas Ethics Commission.
20. Communication to the Commission from the public.
21. Adjourn.

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The draft meeting minutes will be available on our website the day before the meeting, at <https://www.ethics.state.tx.us/DraftMinutes>.

If you would like a copy of the draft minutes, please provide your email address below, and return this sheet to Ethics Commission staff at the meeting.

Email address:

EXHIBIT A

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

The proposed new language is indicated by underlined text.

Chapter 50. LEGISLATIVE SALARIES AND PER DIEM

§ 50.1. Legislative Per Diem

(a) The legislative per diem is \$190. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$190 per diem for 2017 ~~[2015]~~.

EXHIBIT B

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

The proposed new language is indicated by underlined text.

Chapter 50. LEGISLATIVE SALARIES AND PER DIEM

§ 50.1. Legislative Per Diem

(a) The legislative per diem is \$217 [~~\$190~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

(b) If necessary, this rule shall be applied retroactively to ensure payment of the \$217 [~~\$190~~] per diem for 2017 [~~2015~~].

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

Chapter 46. DISCLOSURE OF INTERESTED PARTIES

§46.4. Changes to Contracts.

(a) Section 2252.908 of the Government Code does not apply to a change made to an existing contract, including an amendment, change order, or extension of a contract, except as provided by subsections (b) or (c) of this section.

(b) Section 2252.908 of the Government Code applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if a disclosure of interested parties form was not filed for the existing contract; and either:

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

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

(c) Section 2252.908 of the Government Code applies to a change made to an existing contract, including an amendment, change order, or extension of a contract, if the business entity submitted a disclosure of interested parties form to the governmental entity or state agency that is a party to the existing contract; and either:

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

(2) the value of the changed contract is at least \$1 million greater than the value of the existing contract.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

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

Subchapter B. GENERAL REPORTING RULES

§ 20.50. Total Political Contributions Maintained.

(a) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

(1) The balance [~~Balance~~] on deposit in banks, savings and loan institutions, and other depository institutions; [~~and~~]

(2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc; and

(3) The balance of political contributions accepted and held in any online fundraising account over which the filer can exercise control by making a withdrawal, expenditure, or transfer.

(b) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained includes personal funds that the filer intends to use for political expenditures only if the funds have been deposited in an account in which political contributions are held as permitted by Election Code §253.0351(c).

(c) For purposes of Election Code §254.031(a-1), the difference between the total amount of political contributions maintained that is disclosed in a report and the correct amount is a de minimis error if the difference does not exceed:

(1) \$250; or

(2) the lesser of 10% of the amount disclosed or \$2,500.

EXHIBIT A

Text of Proposed Rule

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

Chapter 34. REGULATION OF LOBBYISTS

Subchapter B. REGISTRATION REQUIRED

§ 34.43. Compensation and Reimbursement Threshold

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than \$1000 in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 26 hours for which the person is compensated or reimbursed [~~no more than 5.0% of the person's compensated time~~] during a calendar quarter [~~is time spent~~] engaging in lobby activity, including preparatory activity as described by § 34.3 of this title.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

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

Chapter 26. POLITICAL AND LEGISLATIVE ADVERTISING

§ 26.1. Disclosure Statement.

(a) A [~~The~~] disclosure statement that is required by Section 255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must:

(1) appear on one line of text or on successive lines of text on the face of the political advertising; or

(2) be clearly spoken in the political advertising if the political advertising cannot include written text.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

EXHIBIT A

Text of Proposed Rule

The proposed new language is indicated by underlined text.

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

Subchapter B. GENERAL REPORTING RULES

§ 20.60. Reporting Political Expenditures for Processing Fees.

(a) Multiple political expenditures made to a single payee during a reporting period for fees to process political contributions may be itemized as a single expenditure, in an amount equal to the combined total amount of the expenditures, if all the expenditures are made to a single payee for the same purpose.

(b) The purpose of an expenditure reported under subsection (a) of this section must include the dates of the first and last of the multiple expenditures made to a single payee during the reporting period.

(c) For reporting purposes, the date of an expenditure reported under subsection (a) of this section is the date of the first expenditure made to the payee during the reporting period, as provided by §20.57 (Time of Making Expenditure) of this title.

EXHIBIT A

Text of Proposed Rules

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

Substantive changes are **highlighted in yellow**.

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

Subchapter B. GENERAL REPORTING RULES

§20.56. Expenditures Involving Consultants.

(a) Beginning on January 1, 2017, an expenditure made by a consultant on behalf of a candidate, officeholder, political committee, or other filer which falls within the categories required by Texas Election Code §254.031 must be reported as if the filer made the expenditure.

(b) The payee of an expenditure to which subsection (a) of this section applies is the particular person who receives payment from the consultant. The expenditure must be disclosed as if the filer made the expenditure directly to the particular person.

(c) The payee of an expenditure for consulting services made by a filer to a consultant is the consultant if:

(1) the expenditure is compensation for consulting services; or

(2) the expenditure is a payment to the consultant as a retainer, advance, or reimbursement for one or more expenditures made or to be made by the consultant on behalf of, but not at the direction of, the filer.

(d) "Consultant" means a person who performs consulting services in a professional capacity. "Consulting services" means services provided outside the traditional relationship of employer and employee to assist in a campaign for elective office or on a measure or to assist in performing a duty or engaging in an activity in connection with an elective office, including fundraising activities, voter outreach, creation and distribution of political advertising, and providing advice and strategy in conducting a campaign, but not including legal services.

§20.61. Purpose of Expenditure.

(a) For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means:

(1) A description of the category of goods, services, or other thing of value for which an expenditure is made. Examples of acceptable categories include:

(A) advertising expense;

(B) accounting/banking;

(C) consulting services compensation (as provided by subsection (e) of this section) [expense];

(D) consulting services – no expenditure directed (as provided by subsection (e) of this section);

(E) [(D)] contributions/donations made by candidate/officeholder/political committee;

(F) [(E)] event expense;

(G) [(F)] fees;

(H) [(G)] food/beverage expense;

(I) [(H)] gifts/awards/memorials expense;

(J) [(I)] legal services;

(K) [(J)] loan repayment/reimbursement;

(L) [(K)] office overhead/rental expense;

(M) [(L)] polling expense;

(N) [(M)] printing expense;

(O) [(N)] salaries/wages/contract labor;

(P) [(O)] solicitation/fundraising expense;

(Q) [(P)] transportation equipment and related expense;

(R) [~~(Q)~~] travel in district;

(S) [~~(R)~~] travel out of district;

(T) [~~(S)~~] other political expenditures; and

(2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure.

(b) The description of a political expenditure for travel outside of the state of Texas must provide the following:

- (1) The name of the person or persons traveling on whose behalf the expenditure was made;
- (2) The means of transportation;
- (3) The name of the departure city or the name of each departure location;
- (4) The name of the destination city or the name of each destination location;
- (5) The dates on which the travel occurred; and
- (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

(c) Except as provided by subsections [subsection] (d) and (e) of this section, this rule applies to expenditures made on or after July 1, 2010.

(d) The requirement to include an additional indication if an expenditure is an officeholder expenditure for living in Austin, Texas, applies to an expenditure made on or after July 1, 2014.

(e) Any expenditure made to a consultant under §20.56(c) on or after January 1, 2017, must be disclosed, as applicable:

(1) with the category “consulting services compensation” and a description of “campaign consulting services,” or other appropriate description, if the expenditure is made solely as compensation for consulting services; or

(2) with the category “consulting services – no expenditure directed” and a more specific description, if the expenditure is made for any other purpose.

(f) [(e)] Comments:

The purpose of an expenditure must include both a description of the category of goods or services received in exchange for the expenditure and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. A description of an expenditure that merely states the item or service purchased is not adequate because doing so does not allow a person reading the report to know the allowable activity for which an expenditure was made.

The following is a list of examples that describe how the purpose of an expenditure may be reported under section 20.61. This list is for illustrative purposes only. It is intended to provide helpful information and to assist filers in reporting the purpose of an expenditure under this rule. However, it is not, and is not intended to be, an exhaustive or an exclusive list of how a filer may permissibly report the purpose of an expenditure under this rule. The rule does not require the candidate or officeholder to identify by name or affiliation an individual or group with whom the candidate or officeholder meets.

(1) Example: Candidate X is seeking the office of State Representative, District 2000. She purchases an airline ticket from ABC Airlines to attend a campaign rally within District 2000. The acceptable category for this expenditure is “travel in district.” The candidate activity that is accomplished by making the expenditure is to attend a campaign rally. An acceptable brief statement is “airline ticket to attend campaign event.”

(2) Example: Candidate X purchases an airline ticket to attend a campaign event outside of District 2000 but within Texas, the acceptable category is “travel out of district.” The candidate activity that is accomplished by making the expenditure is to attend a campaign event. An acceptable brief statement is “airline ticket to attend campaign or officeholder event.”

(3) Example: Candidate X purchases an airline ticket to attend an officeholder related seminar outside of Texas. The acceptable method for the purpose of this expenditure is by selecting the “travel out of district” category and completing the “Schedule T” (used to report travel outside of Texas).

(4) Example: Candidate X contracts with an individual to do various campaign related tasks such as work on a campaign phone bank, sign distribution, and staffing the office. The acceptable category is “salaries/wages/contract labor.” The candidate activity that is accomplished by making the expenditure is to compensate an individual working on the campaign. An acceptable brief statement is “contract labor for campaign services.”

(5) Example: Officeholder X is seeking re-election and makes an expenditure to purchase a vehicle to use for campaign purposes and permissible officeholder purposes. The acceptable

category is “transportation equipment and related expenses” and an acceptable brief description is “purchase of campaign/officeholder vehicle.”

(6) Example: Candidate X makes an expenditure to repair a flat tire on a campaign vehicle purchased with political funds. The acceptable category is “transportation equipment and related expenses” and an acceptable brief description is “campaign vehicle repairs.”

(7) Example: Officeholder X purchases flowers for a constituent. The acceptable category is “gifts/awards/memorials expense” and an acceptable brief description is “flowers for constituent.”

(8) Example: Political Committee XYZ makes a political contribution to Candidate X. The acceptable category is “contributions/donations made by candidate/officeholder/political committee” and an acceptable brief description is “campaign contribution.”

(9) Example: Candidate X makes an expenditure for a filing fee to get his name on the ballot. The acceptable category is “fees” and an acceptable brief description is “candidate filing fee.”

(10) Example: Officeholder X makes an expenditure to attend a seminar related to performing a duty or engaging in an activity in connection with the office. The acceptable category is “fees” and an acceptable brief description is “attend officeholder seminar.”

(11) Example: Candidate X makes an expenditure for political advertising to be broadcast by radio. The acceptable category is “advertising expense” and an acceptable brief description is “political advertising.” Similarly, Candidate X makes an expenditure for political advertising to appear in a newspaper. The acceptable category is “advertising expense” and an acceptable brief description is “political advertising.”

(12) Example: Officeholder X makes expenditures for printing and postage to mail a letter to all of her constituents, thanking them for their participation during the legislative session. Acceptable categories are “advertising expense” OR “printing expense” and an acceptable brief description is “letter to constituents.”

(13) Example: Officeholder X makes an expenditure to pay the campaign office electric bill. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office electric bill.”

(14) Example: Officeholder X makes an expenditure to purchase paper, postage, and other supplies for the campaign office. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office supplies.”

(15) Example: Officeholder X makes an expenditure to pay the campaign office monthly rent. The acceptable category is “office overhead/rental expense” and an acceptable brief description is “campaign office rent.”

(16) Example: Candidate X hires a consultant for campaign consulting [fundraising] services, such as advice on matters of campaign strategy. The acceptable category is “consulting services compensation” [~~“expense”~~] and an acceptable brief description is “campaign strategy services.”

(17) Example: Candidate X hires an independent consultant to provide consulting services by helping to produce and purchase political advertising to be broadcast on television. The candidate gives the consultant \$100,000.

(A) Of that amount, the candidate pays \$5,000 as compensation for consulting services to produce the advertising. The candidate must disclose a \$5,000 expenditure to the consultant as the payee, the acceptable category is “consulting services compensation,” and an acceptable brief description is “political advertising.”

(B) The remaining \$95,000 is used to purchase broadcast airtime on the three major broadcasting stations. The acceptable category of each expenditure is “advertising expenses” and an acceptable brief description is “political advertising.”

(18) [(17)] Example: Candidate/Officeholder X pays his attorney for legal fees related to either campaign matters or officeholder matters. The acceptable category is “legal services” and an acceptable brief description is “legal fees for campaign” or “for officeholder matters.”

(19) [(18)] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting with her constituents. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting with constituents.”

(20) [(19)] Example: Candidate X makes food and beverage expenditures for a meeting to discuss candidate issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss campaign issues.”

(21) [(20)] Example: Officeholder X makes food and beverage expenditures for a meeting to discuss officeholder issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss officeholder issues.”

(22) [(21)] Example: Candidate/Officeholder X makes food and beverage expenditures for a meeting to discuss campaign and officeholder issues. The acceptable category is “food/beverage expense” and an acceptable brief statement is “meeting to discuss campaign/officeholder issues.”

DRAFT

ETHICS ADVISORY OPINION NO. ____

October 14, 2016

Whether a communication relating to a measure election complies with section 255.003 of the Election Code. (AOR-614)

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

The requestor of this opinion states a city has created a temporary crime control and prevention district board (“the board”), which subsequently approved a funding plan and ordered an election to establish the crime control and prevention district and to adopt a sales and use tax to support the funding plan pursuant to chapter 363 of the Local Government Code. The city would like to release a document to provide information regarding the measure election. The requestor states the document would be posted on the city’s website, included in the city’s monthly community newsletter, provided to local media, and made available to residents requesting information about the measure. A copy of the document is attached to this opinion.

The measure on the ballot would read as follows:

The creation of the Sunset Valley Crime Control and Prevention District dedicated to crime reduction programs and the adoption of a proposed local sales and use tax at a rate of one-eighth of one percent.

The issue is whether distribution of the document by city officers or employees would be permissible under section 255.003 of the Election Code, which provides, in relevant part:

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

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

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

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

DRAFT

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

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

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

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

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

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

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication;
or

(ii) on an Internet website.

Id. § 251.001(16).

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

The document at issue includes the measure as it would appear on the ballot, the date of the election, and the dates of early voting. The document includes facts about the district and the proposed tax, such as the purpose of the district, the city’s current sales tax rate, sales tax rates in other areas, the uses of the city’s current sales tax, the estimated sales tax revenue if the measure passes, and the cost of the proposed sales tax for taxable purchases. The document also contains information regarding sales and use taxes generally, including a discussion of the relevant law.

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

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

SUMMARY

For purposes of section 255.003 of the Election Code, the attached document is not political advertising and, therefore, that law would not prohibit the spending of public funds to distribute the document unless an officer or employee of the city authorizing such use of public funds knows that the document contains false information.



Sunset Valley Proposition 1—November 8, 2016

Creation of a Crime Control and Prevention District

Why is this issue on the election ballot this fall?

The City Council has created a temporary Crime Control and Prevention District Board as allowed by state law. The temporary Board consists of the Mayor and members of the City Council and two additional residents. This temporary Board subsequently approved a funding plan and called for an election to formally create the Sunset Valley Crime Control and Prevention District and to establish a new Sales Tax to support the funding plan. A public vote is required to implement this tax.

The ballot for Proposition 1 will read:

The creation of the Sunset Valley Crime Control and Prevention District dedicated to crime reduction programs and the adoption of a proposed local sales and use tax at a rate of one-eighth of one percent.

What is the main purpose and goal for the Crime Control and Prevention District?

The new sales tax would be used to finance a new Police Department Facility. Similar to the Street Tax and Green Tax, the Crime Control Sales Tax is a restricted tax with specific statutory uses, including construction of new police facilities. If approved the Crime Control Tax would automatically expire in 5 years unless renewed by a subsequent vote.

What is sales and use tax?

State legislation allows municipalities to collect sales and use tax imposed on all retail sales, leases and rentals of most goods, as well as taxable services. There is both a state and local portion to the sales tax rate in Texas. The State of Texas rate is 6.25% and local governments may collect up to an additional 2% for a maximum total sales tax rate of 8.25%.

Most cities in the state have adopted the 1% local option sales tax. Sunset Valley adopted this tax in 1975. This 1% local option rate can be used for any general government purpose (similar to property taxes) and is the primary source of funding for Sunset Valley city government. In metro areas of the state (including Austin), the other 1% is typically used by a metro transportation authority (like Capital Metro). Since Sunset Valley is not in Capital Metro, the additional 1% in sales tax is available for other uses. Sunset Valley currently has three additional Sales Tax components:

- .5% for Property Tax Relief (approved in 1995)
- .25% for Street repair and maintenance (approved in 2001)
- .125% for the Green Tax (Edwards Aquifer Watershed Protection Venue – approved in 2007)

What is the sales tax rate for the City?

The current total sales tax rate in Sunset Valley is 8.125%. If the new tax is approved, the new rate in Sunset Valley would be 8.25%. The total Sales Tax rate in Austin and most metro areas of the state is 8.25%.

How much revenue does Sunset Valley expect to collect from this sales and use tax?

The City estimates collecting \$400,000 annually from this sales and use tax, which will be dedicated to construction of new Police facilities.

How much will it cost me?

For every dollar spent in taxable purchases in Sunset Valley, 1/8th of one penny will go to the Crime Control and Prevention District. This equates to 12.5 cents for every \$100 spent. This is a sales tax only and will not change any property or other tax payments.

Election Information

Early Voting - October 24-November 4th:

Early voting locations and hours vary. You may vote at any Vote Center in Travis County where you see a "Vote Here" sign. The closest early voting locations to Sunset Valley are planned for:

Randalls South Mopac and William Cannon at
6600 South Mopac

Randalls Brodie and Slaughter at 9911 Brodie Lane

Election Day—November 8, 2016

On Election Day, eligible Travis County VOTERS MAY VOTE AT ANY of the Vote Centers in Travis County. Voters are NOT limited to only voting in the precinct where they are registered to vote.

On Election Day, you may vote at Sunset Valley City Hall at 3205 Jones Road

Voting locations on election day are open 7 AM – 7 PM

Early voting and Election Day voting locations can be found online: www.traviscountyclerk.org

This fact sheet is provided for informational purposes for the voters only, and by law, the City of Sunset Valley cannot and does not take a position either in favor of or against this Special Election issue.

**TEXAS ETHICS COMMISSION
MEMORANDUM**

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: October 6, 2016
SUBJECT: Waiver Requests related to Transition to the New Electronic Filing System
Meeting Date: October 14, 2016

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 new filing application. In each case:

- It was the filer's first time to file a report using the new electronic filing application;
- The report was filed promptly after the filer learned the report was late;
- The filer worked with Commission technical support staff to resolve any issues; and
- Staff has implemented changes to try to help filers avoid these issues in the future.

Staff Recommendation – Waiver (Item 1): This filer mistakenly thought the report had been timely filed but actually left the report "in-progress" and did not complete all the filing steps due to unfamiliarity with the new application.

1. Juan A. Magallanes (22775)
District Judge

- a) Report: semiannual report due July 15, 2015
 File date: January 18, 2016
 Activity: contributions = \$2,500.00; expenditures = \$2,400.41;
 contributions maintained = \$650.48
 Penalty: \$500
- b) Report: semiannual report due January 15, 2016
 File date: January 18, 2016
 Activity: contributions = -0-; expenditures = \$688.01;
 contributions maintained = -0-
 Penalty: \$500

PERSONAL FINANCIAL STATEMENTS

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

- It was the filer's first time to file a PFS electronically using the new filing application;
- The PFS was filed promptly after the filer learned the PFS was late;
- The filer worked with Commission technical support staff to resolve any issues; and
- Staff has implemented changes to try to help filers avoid these issues in the future.

Staff Recommendation – Waiver (Items 2-10): The filers in items 2-10 mistakenly thought the report had been timely filed but actually left the report "in-progress" and did not complete all the filing steps due to unfamiliarity with the new application.

**2. Daniel S. 'Shawn' Council (80436)
Candidate, District Judge**

Report: personal financial statement due February 12, 2016
File date: February 13, 2016
Penalty: \$500

**3. Connor P. Flanagan (80358)
Candidate, State Representative**

Report: personal financial statement due February 12, 2016
File date: June 14, 2016
Penalty: \$500

**4. Martha H. Jamison (27107)
Court of Appeals Justice**

Report: personal financial statement due May 2, 2016
File date: May 4, 2016
Penalty: \$500

**5. Thomas F. Lee (20138)
Senior Judge**

Report: personal financial statement due May 2, 2016
File date: May 20, 2016
Penalty: \$500

**6. Clyde Frederick 'Fred' Shannon, Jr. (43506)
Senior Judge**

Report: personal financial statement due May 2, 2016
File date: May 20, 2016
Penalty: \$500

7. Russel D. 'Rusty' Boles (80310)
Member, Brazos River Authority

Report: personal financial statement due May 2, 2016
File date: May 23, 2016
Penalty: \$500

8. Claude Siems (70901)
Member, Texas Private Security Board

Report: personal financial statement due May 2, 2016
File date: May 23, 2016
Penalty: \$500

9. Susan Simpson Hull (70225)
Member, Texas Private Security Board

Report: personal financial statement due May 2, 2016
File date: May 23, 2016
Penalty: \$500

10. Kenneth Ross (63549)
Member, Automobile Burglary and Theft Prevention Authority

Report: personal financial statement due May 2, 2016
File date: May 25, 2016
Penalty: \$500

Staff Recommendation – Waiver (Items 11-19): The filers in items 11-19 did not realize they needed to submit a security form to set up a PFS password in order to file the PFS electronically. They all promptly contacted the Commission's technical support staff and received assistance setting their PFS passwords and filing their reports.

11. Mark Skurka (42116)
Candidate, District Attorney

Report: personal financial statement due February 12, 2016
File date: February 16, 2016
Penalty: \$500

12. Rabeea Sultan Collier (80198)
Candidate, District Judge

Report: personal financial statement due February 12, 2016
File date: February 16, 2016
Penalty: \$500

13. James D. Morrison (80120)
Candidate, State Representative

Report: personal financial statement due February 12, 2016
File date: February 16, 2016
Penalty: \$500

14. Erika Beltran (69788)
Member, State Board of Education

Report: personal financial statement due May 2, 2016
File date: May 5, 2016
Penalty: \$500

15. Brian J. Haley (69018)
Member, Prepaid Higher Education Tuition Board

Report: personal financial statement due May 2, 2016
File date: May 6, 2016
Penalty: \$500

16. Brandon H. Bouma (67746)
Member, Texas Animal Health Commission

Report: personal financial statement due May 2, 2016
File date: May 9, 2016
Penalty: \$500

17. Guy Brady (68940)
Member, Texas Grain Producer Indemnity Board

Report: personal financial statement due May 2, 2016
File date: May 10, 2016
Penalty: \$500

18. Andy M. Chatham (58203)
Senior Judge

Report: personal financial statement due May 2, 2016
File date: May 13, 2016
Penalty: \$500

19. Sarah D. Monty-Arnoni (69203)
Member, Texas Southern University Board of Regents

Report: personal financial statement due May 2, 2016
File date: June 9, 2016
Penalty: \$500

Staff Recommendation – Waiver (Items 20-28): The filers in items 20-28 submitted the PFS in paper format by mail (the PFS is required to be filed electronically). They all promptly contacted the Commission's technical support staff as soon as they realized their error and received assistance setting their PFS passwords and filing their reports.

**20. Yahara L. Gutierrez (61785)
District Judge**

Report: personal financial statement due February 12, 2016
File date: February 22, 2016
Penalty: \$500

**21. Sara Kate Billingsley (70991)
District Judge**

Report: personal financial statement due February 12, 2016
File date: April 28, 2016
Penalty: \$500

**22. Dibrell W. 'Dib' Waldrip (36505)
District Judge**

Report: personal financial statement due February 12, 2016
File date: May 6, 2016
Penalty: \$500

**23. Irene Armendariz (62293)
Member, Texas Commission on Jail Standards**

Report: personal financial statement due May 2, 2016
File date: May 10, 2016
Penalty: \$500

**24. Richard H. 'Rick' Magnis (57941)
District Judge**

Report: personal financial statement due May 2, 2016
File date: May 24, 2016
Penalty: \$500

**25. Harold Ashley Ledger, DPM (65969)
Member, Texas State Board of Podiatric Medical Examiners**

Report: personal financial statement due May 2, 2016
File date: May 24, 2016
Penalty: \$500

**26. Gwyn C. Shea (20997)
Member, University of North Texas System Board of Regents**

Report: personal financial statement due May 2, 2016
File date: May 26, 2016
Penalty: \$500

27. Nizam Peerwani, M.D. (66181)
Member, Texas Forensic Science Commission

Report: personal financial statement due May 2, 2016
File date: June 2, 2016
Penalty: \$500

28. Richard R. 'Dick' Scott (65382)
Member, Texas Parks and Wildlife Department

Report: personal financial statement due May 2, 2016
File date: June 17, 2016
Penalty: \$500

**TEXAS ETHICS COMMISSION
MEMORANDUM**

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: October 6, 2016
SUBJECT: Late Reports Memo – Appeals under Ethics Commission Rule 18.24(g)
Meeting Date: October 14, 2016

The following filers 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 appeal, unless specifically noted in **bold** under the penalty.

REPORT TYPE I: NON-CRITICAL REPORTS

TEC Rules Determination: Sec. I-A – Levels Chart - Level 1.5 – Reduction to \$150 (Item 1):

1. Jacqueline R. Verastigui (80618)
Candidate, State Representative

Report: personal financial statement due February 12, 2016
File date: March 9, 2016 (26 days late)
Prior offenses: As C/OH – January 2016 semiannual report (\$500 fine waived because no prior offenses and no activity to report)
Penalty: \$500 – reduction to \$150

Basis: Not a critical report (filer not an opposed candidate in the primary election); Category A filer; one prior late-filing offense in the last five years; good cause shown.

On July 26, 2016, the Commission sent a determination letter to Ms. Verastigui informing her that she is eligible for a reduction of the late-filing penalty to \$150 under the Ethics Commission Rules. The letter requested that Ms. Verastigui remit the payment by August 25, 2016, or submit a request for appeal.

Request for Appeal: On August 22, 2016, the Commission received the appeal. In her appeal, Ms. Verastigui stated that she has been unemployed since March 2016 while supporting a dependent. She further stated:

At this time, I do not have the sufficient funds to pay the fee. I am unsure if there will be any immediate changes in my employment status, and as such, I am requesting a dismissal of the fees.

I apologize for the additional paperwork my late-filing has caused. I thank the Texas Ethics Commission's continued assistance in addressing the matter.

REPORT TYPE II: CRITICAL REPORTS

TEC Rules Determination: Sec. II-A – Levels Chart - Level 2.5 – Reduction to \$400 (Item 2):

2. **Paul Greco (80579)**
Candidate, State Representative

Report: 8-day pre-election report due February 22, 2016
File date: February 23, 2016 (1 day late)
Activity: contributions = \$50.00; expenditures = -0-; contributions maintained = \$50.00
Prior offenses: January 2016 semiannual report (\$500 fine waived because no prior offenses and no activity to report)
Penalty: \$500 – reduction to \$400
– waiver (based on additional information)

Basis: Critical report; Category A filer; one prior late-filing offense in the last five years; good cause shown.

On August 11, 2016, the Commission sent a determination letter to Mr. Greco informing him that he is eligible for a reduction of the late-filing penalty to \$400 under the Ethics Commission Rules. The letter requested that Mr. Greco remit the payment by September 12, 2016, or submit a request for appeal.

Request for Appeal: On August 18, 2016, the Commission received the appeal. In his appeal, Mr. Greco stated that he had serious medical conditions that contributed to the late filing. Based on this new information, staff recommends waiver.

TEC Rules Determination: II-A – Formulas Chart – Reduction to \$400 (Item 3):

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

Report: 30-day pre-election report due February 1, 2016
File date: February 2, 2016 (1 day late)
Activity: contributions = \$4,291.00; expenditures = \$1,511.20;
contributions maintained = \$3,912.83
Prior offenses: July 2013 semiannual report (\$500 fine waived because no prior offenses and no activity to report)
Penalty: \$500 – reduction to \$400

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

Formula: The fine is calculated at \$400 (good cause, 1 prior, 1 day late) = \$400.

On August 2, 2016, the Commission sent a determination letter to Ms. Phillips informing her that she is eligible for a reduction of the late-filing penalty to \$400 under the Ethics Commission

Rules. The letter informed Ms. Phillips that the reduced fine would revert to the original amount assessed if she did not remit the payment by September 1, 2016, or submit a request for appeal.

Request for Appeal: On August 25, 2016, the Commission received the appeal. In the appeal, Ms. Phillips expressed her thanks for the reduction to \$400 and requested a waiver or greater reduction. She stated:

My report was only seconds late—less than a minute past midnight of the filing deadline. It would have been timely if my computer had not stalled when I attempted to submit the report before midnight. It's obvious given the time stamp that I was attempting to file my report on time. As such, I do not think it's fair to assess a fine almost equal to what the fine would be for a file that did not file their report at all. Although I'm not entirely clear on the levels listed in the fine reduction rules, I think I qualify for a reduction to \$150 on the fine.

TEC Rules Determination: II-B – Formulas Chart – Reduction to \$300 (Item 4):

**4. James R. Dickey, Sr. (69834)
Candidate, County Party Chair**

Report:	8-day pre-election report due February 22, 2016
File date:	February 23, 2016 (1 day late)
Activity:	contributions = \$5,580.00; expenditures = \$182.57; contributions maintained = \$5,287.00
Prior offenses:	January 2016 semiannual report (\$500 fine waived because no prior offenses and no activity to report)
Penalty:	\$500 – reduction to \$300

Basis: Critical report; Category B filer; total contributions are over \$3,000 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, 1 day late) = \$300.

On August 11, 2016, the Commission sent a determination letter to Mr. Dickey informing him that he is eligible for a reduction of the late-filing penalty to \$300 under the Ethics Commission Rules. The letter informed Mr. Dickey that the reduced fine would revert to the original amount assessed if he did not remit the payment by September 12, 2016, or submit a request for appeal.

Request for Appeal: On September 20, 2016, the Commission received the appeal. In the appeal letter, Mr. Dickey stated, "Even though I faced technical issues with the web site that delayed the filing, it was completed and submitted literally 2 minutes after midnight, and my opponent raised and spent no funds, so there was no possible competitive disadvantage in the delay meriting a penalty."

Mr. Dickey requested an opportunity to appear before the Commission and offer testimony.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: October 6, 2016
SUBJECT: Corrected Reports Memo
Meeting Date: October 14, 2016

Substantial Compliance (Items 1-2)

1. Frank J. Castro (80420)
Candidate, District Judge

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016
Activity report #1: contributions = -0-; expenditures = \$1,556.29;
contributions maintained = -0-
Activity report #2: contributions = -0-; expenditures = \$1,689.51;
contributions maintained = -0-
Prior corrections: none
Penalty: \$500

Mr. Castro corrected the original report to add a \$133.22 political expenditure from personal funds. Mr. Castro stated that the omission was inadvertent. The amount of the unreported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

2. Tiffany B. Latta (67217)
Treasurer, 'LTP' Llano Tea Party

Report: 8-day pre-election report due February 22, 2016
Correction date: May 16, 2016
Activity report #1: contributions = \$4,013.41; expenditures = \$6,303.74;
contributions maintained = \$7,422.85
Activity report #2: contributions = \$4,013.41; expenditures = \$6,303.74;
contributions maintained = \$7,442.85
Prior corrections: none
Penalty: \$8,800

Mrs. Latta corrected the original report to increase the amount of total contributions maintained by \$20. The amount of the change in the total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Substantial Compliance and Waiver (Item 3)

**3. William J. 'Bill' O'Sullivan, Jr. (66799)
Treasurer, 'TTPP' Texas Patriots State PAC**

(Mr. O'Sullivan filed three corrections to the report at issue.)

Report: 8-day pre-election report due October 26, 2015
Correction date: January 6, 2016; January 14, 2016; and February 22, 2016
Activity reports #1-3: contributions = \$4,795.67; expenditures = \$3,564.26;
contributions maintained = \$1,120.84; outstanding loans = \$6,000.00
Activity report #4: contributions = \$4,795.67; expenditures = \$3,564.26;
contributions maintained = \$1,120.84; outstanding loans = -0-
Prior corrections: 8-day pre-election report due February 24, 2014, and 8-day pre-election report due
May 1, 2015 (fines waived by the Commission)
Penalty: \$10,000

On January 6, 2016, Mr. O'Sullivan corrected the reporting period end date on the original report. There was no change in the activity disclosed in the report. On January 14, 2016, he corrected the report to add address and employer/occupation information for two unitemized contributions stored in the committee's contribution database in the filing application. Since both contributions at issue were below the itemization threshold and the committee chose to disclose them as a lump sum total, there was no change in the activity disclosed in the report. Both of these corrections were minor, in context. **Recommendation Based on Commission Guidelines: substantial compliance.**

On February 22, 2016, Mr. O'Sullivan corrected the report to decrease the total principal amount of outstanding loans from \$6,000 to zero. He stated that he had incorrectly entered a loan in the totals that was actually taken by the organization's federal PAC. He filed the correctly within 14 business days of learning of the error. **Recommendation Based on Commission Guidelines: waiver.**

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

Chase Untermeyer, Chair
Hugh C. Akin
Jim Clancy
Chad M. Craycraft

Wilhelmina Delco
Mary K. "Katie" Kennedy
Tom Ramsay
Steve Wolens

AGENDA

Date and Time:	3:00 p.m., Friday, October 14, 2016
Location:	Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Contested Case Proceeding: Sworn Complaint No. SC-31407143, In the Matter of Todd M. Smith, Campaign Treasurer, Texas Conservative Tea Party Coalition, Respondent. Prehearing conference.
3. 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.

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