

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

Chase Untermeyer, Chair
Steven D. Wolens, Vice Chair
Hugh C. Akin
Jim Clancy

Chad M. Craycraft
Wilhelmina Delco
Mary K. "Katie" Kennedy
Tom Ramsay

AGENDA

Date and Time: 1:30 p.m., Wednesday, December 7, 2016
Location: Room El.018, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.074, Government Code, Personnel Matters; Closed Meeting.** Discussion of personnel matters, specifically applicants for the position of executive director.
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.

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

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AGENDA

Date and Time:	8:00 a.m., Thursday, December 8, 2016
Location:	Room El.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.074, Government Code, Personnel Matters; Closed Meeting.** Discussion of personnel matters, specifically applicants for the position of executive director.
3. Reconvene in open session.
4. Adjourn.

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AGENDA

Date and Time: 8:30 a.m., Thursday, December 8, 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. 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, Inc. 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.
 - 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.

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:	9:30 a.m., Thursday, December 8, 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:
 - Executive Session (discussion of pending litigation) – October 13, 2016;
 - Pre-Hearing Conference – October 13, 2016;
 - Executive Session (discussion of pending litigation) – October 14, 2016;
 - Public Meeting – October 14, 2016; and
 - Pre-Hearing Conference – October 14, 2016.
5. Presentation of Outstanding Performance of Duty Certificates to Paul Hobby, Tom Harrison, and Natalia Luna Ashley.
6. Discussion about the Commission Presentation at the House General Investigating and Ethics Committee Hearing.

RULEMAKING

7. Discussion about the Commission's responsibilities under Article III, Section 24a of the Texas Constitution, including possible action on the adoption or 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 by the Commission.

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

8. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules § 46.4, 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.
9. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 20.50 (Total Political Contributions Maintained), regarding the requirement that a campaign finance report include the total amount of political contributions maintained at the end of the reporting period.
10. 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.
11. Public discussion and possible action on the adoption or 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 compensation if no more than 5% of a person's compensated time during a calendar quarter is spent engaging in lobby activity.

ADVISORY OPINIONS

These opinion requests construe section 255.003 of the Election Code.

12. Discussion of Advisory Opinion Request No. 616: Whether certain newsletters published by a city officer or employee would constitute political advertising for purposes of section 255.003 of the Election Code.
13. Discussion of Advisory Opinion Request No. 617: Whether a television program produced with city resources, broadcast on a city-owned cable channel, and hosted by a city council member constitutes political advertising.
14. Discussion of Advisory Opinion Request No. 618: Application of section 255.003 of the Election Code to the use of political subdivision facilities for a debate forum and for distributing campaign materials.

OTHER POLICY MATTERS

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 individuals and political committees:

Julie Countiss (00080055)
Jaime Esparza (00021145)
Raymond G. 'Ray' Wheless (00023298)
John N. Raney (00067602)
Cecilia Wallace, Treasurer, 'TDA-PAC' Texas Deer Association PAC (00059760)
David L. Watts, Jr. (00069332)
John H. Best (00080132)
Joshua A. Estes (00080407)
Susan R. Davis, Treasurer, West Pearland Republican Women (00066458)
Richard A. 'Rick' Green, Jr. (00036491)
D. Wayne Garrett, Treasurer, 'CINC' Citizens to Improve Navarro County (00068205)
Kenneth L. 'Ken' Vaughn, Treasurer, 'MCTP PAC' Montgomery County Tea Party PAC (00080611)
Carol Miller, Treasurer, 'LCARW PAC' Lake Conroe Area Republican Women (00033911)
Mary Colchin Johndroe (00080500)
Byron E. Miller (00038405)
Snapper Carr, Treasurer, 'FA PAC' Focused Advocacy Political Action Committee (PAC) (00066520)
Ana R. Boisselier, Treasurer, El Paso Electric Company Employee PAC (00016999)
Charles R. Kimbrough (00080396)
Christopher S. 'Chris' Shields, Treasurer, Ag Air PAC (00016365)
Sandra Blankenship (00080129)
Hugh D. Shine (00026513)
David Schenck (00062484)
Erin Hill, Treasurer, ActBlue Texas (00059791)
Laura Reyes, Treasurer, AFSCME Texas Correctional Officers PAC (00080729)
Citizen Super PAC, Entity Filing Direct Campaign Expenditure (DCE) Reports (00080702)
Jasmine L. Jenkins (00080559)
Elizabeth A. Gray, Treasurer, 'LAD' Liberal Austin Democrats (00070062)
Mary E. Tucker, Treasurer, Kirby Corporation Political Action Committee (00016899)

- Mary K. Ruyle, Treasurer, Texas Thoroughbred Breeders' Association PAC (00016500)
Marilyn J. Schultz, Treasurer, Grimes County Republican Party (CEC) (00053163)
Tom Spilman, Treasurer, 'STATE PAC' The Texas State University System PAC (00080359)
Terence J. 'Terry' Breen (00080450)
Angie L. Highland, Treasurer, NCHA's Texas Events PAC (00064041)
D. Wayne Klotz, Treasurer, Klotz Associates Inc. PAC (00070834)
16. Discussion and possible action on the approval of a format for electronic filing of campaign finance reports, as proposed by Dallas County.
 17. Discussion and possible action regarding recommendations for statutory changes to the 85th Legislature, as required by section 571.073 of the Government Code.
 18. Report by Nominating Committee of Commissioners regarding the positions of Chair and Vice Chair of the Texas Ethics Commission.
 19. Discussion on the 2017 Texas Ethics Commission meeting schedule.
 20. Communication to the Commission from the public.
 21. 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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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
Legislative Per Diem Options

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

The amended proposed new language is indicated by text.

§ 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 the biennium ~~[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 subsection (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) there is a change to the disclosure of interested parties; or

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

(3) 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 B

Text of Current Rule and Relevant Statutes

Ethics Commission 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) 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.

(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).

Election Code: § 254.031. General Contents of Reports.

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

...

(8) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

(a-1) A de minimis error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section.

Election Code: § 254.0611. Additional Contents of Reports by Certain Judicial Candidates.

(a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253, must include:

(1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period....

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 does not 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.
The deleted language is indicated by [~~strike through~~] 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 40 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.

ETHICS ADVISORY OPINION NO. ____

December 8, 2016

Whether certain newsletters would constitute political advertising for purposes of section 255.003 of the Election Code. (AOR-616)

The Texas Ethics Commission (commission) has been asked to consider whether certain newsletters would comply with section 255.003 of the Election Code.

The requestor of this opinion, who is a city officer, states that between July 1, 2011, and June 10, 2016, city officers and employees drafted or reviewed hundreds of weekly newsletters and distributed them on the city's Internet website and by e-mail to all individuals who had subscribed to the newsletter's mailing list. The requestor has submitted five selected newsletters as examples of similar newsletters that the requestor wishes to publish in the future. The newsletters are attached to this opinion as an appendix and labeled as Newsletters 1, 2, 3, 4, and 5.

The issue in this opinion is whether the requestor, as an officer or employee of a political subdivision, would violate section 255.003(a) of the Election Code by spending or authorizing the spending of public funds to create, review, or distribute newsletters that are similar to the example newsletters. That section provides, in relevant part, as follows:

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

Elec. Code § 255.003(a).¹ Accordingly, the question is whether the newsletters constitute political advertising, which is defined 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:

¹ Section 255.003 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. *Id.* § 255.003(b). The newsletters at issue do not address a measure, and we therefore do not address this section. A violation of section 255.003(a) is a Class A misdemeanor. *Id.* § 255.003(c).

(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).²

For purposes of section 255.003 of the Election Code, the spending of public funds includes the use of a political subdivision's resources for political advertising. Ethics Advisory Opinion Nos. 532 (2015), 516 (2014), 443 (2002), 45 (1992). According to the requestor's facts, public funds were used for the creation and distribution of the example newsletters, including distribution by e-mail and on the city's Internet website. Therefore, if the requestor distributes or authorizes distribution of newsletters in a similar manner, section 255.003 of the Election Code would prohibit such distribution if the newsletters are political advertising.

The critical issue in determining whether any of the example newsletters is political advertising is whether a newsletter supports or opposes a candidate, political party, public officer, or measure. *See* Ethics Advisory Opinion No. 476 (2007). None of the newsletters at issue address a political party or measure, and we therefore consider whether the newsletters support or oppose a candidate or public officer. Whether a communication supports or opposes a candidate or public officer is a fact question and depends upon the specific content of the communication. In determining whether a communication supports or opposes a public officer, a factor is whether the communication provides information and discussion of official activities without promotion of the public officer. *Id.*

Additionally, we have adopted a rule regarding a public officer's newsletter as political advertising, which states:

For purposes of section 255.003 of the Election Code, a newsletter of a public officer of a political subdivision is not political advertising if:

(1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;

(2) It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 ½" x 11" or larger,

² "Political advertising" does not include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. Ethics Commission Rules § 20.1(13)(B). We assume the newsletters that were distributed by e-mail involved such an expenditure of funds.

with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 ½" x 11"; and

(3) When viewed as a whole and in the proper context:

(A) is informational rather than self-promotional;

(B) does not advocate passage or defeat of a measure; and

(C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

Ethics Commission Rules § 26.2.

Example Newsletters

The example newsletters indicate that they are statements made by the elected mayor of the city that discuss various city events, focusing on city council meetings and interaction between the mayor, city council members, and others within the community. Some of the newsletters also discuss city council elections and candidates in the elections. The newsletters include photographs of various individuals, including the mayor, city council members, and others within the community.

In applying rule 26.2 to the newsletters at issue, we note that the rule provides a safe harbor for newsletters that meet all of its standards. The newsletters marked as Newsletters 1 and 5 meet the rule's standard for photographs,³ and all of the newsletters except for Newsletter 3 meet the rule's standard for personally phrased references.⁴ However, each newsletter must also meet the rule's remaining standard: when viewed as a whole and in the proper context, the newsletter must be informational rather than self-promotional; it cannot advocate passage or defeat of a measure; and it cannot support or oppose a candidate, political party, or public officer.

Newsletter 1: In addition to other city council matters, Newsletter 1 identifies the names of candidates on the ballot in a city council election on the bottom of page 1, and continuing onto the next page. Half of the first paragraph on page three contains

³ Page 6 of Newsletter 2; pages 10, 11, and 14 of Newsletter 3; and pages 9 and 12 of Newsletter 4 include photographs of the public officer that exceed 20 percent of the page on which each photograph appears.

⁴ Page 8 of Newsletter 3 contains more than eight personally phrased references to the public officer from whom the newsletter states it was issued.

favorable statements regarding a city council member who was earlier identified in the newsletter as a candidate for re-election.⁵

Newsletter 3: In addition to other city council matters, Newsletter 3 discusses a redevelopment project that was on the city council agenda in a public meeting. Page seven includes lengthy statements regarding the city council's decision on the project, including statements in support of the project and in support of the officeholders who voted to support the project.

In our opinion, Newsletters 1 and 3, when viewed as a whole and in the proper context, support a public officer and are therefore political advertising. Accordingly, a city officer or employee may not spend public funds or authorize the spending of public funds for the newsletters or for a newsletter that similarly supports a public officer. The remaining newsletters do not support or oppose a candidate, political party, public officer, or measure and therefore are not political advertising.⁶

SUMMARY

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. For purposes of section 255.003 of the Election Code, certain newsletters at issue in this opinion are identified as political advertising supporting a public officer and, therefore, an officer or employee of a political subdivision may not spend or authorize the spending of public funds for the newsletters or for a newsletter that similarly supports a public officer. The remaining newsletters at issue in this opinion are not political advertising.

⁵ The remaining half of the paragraph includes favorable statements regarding two other members of the community, each of whom is accorded a relatively small portion of the paragraph.

⁶ With respect to any future newsletters that the requestor of this opinion may wish to distribute, we cannot determine whether such newsletters would constitute political advertising unless such newsletters are before us.

ETHICS ADVISORY OPINION NO. ____

December 8, 2016

Whether a television show hosted by a city council member is political advertising for purposes of section 255.003 of the Election Code and other related questions. (AOR-617)

The Texas Ethics Commission (commission) has been asked whether a television show hosted by a city council member is political advertising for purposes of section 255.003 of the Election Code and other related questions.

Background

The requestor of this opinion is a city council member who states that the prospective television show would be developed and produced by the member along with city staff. The member would host the show and interview guest speakers on a variety of topics, such as the city's budget process, information about upcoming events in the member's district, thanking those who have volunteered or donated goods or services to the city for city events, thanking those who have volunteered or donated goods or services to the member for events in the member's district, and other issues of interest to city residents or the member's constituents. The member would introduce himself or herself by name and district, and the member's name and district would appear as a caption when the member is on-screen. Guests on the show would include city staff, other council members, and city residents or business owners. The television show would be broadcast on the city's public access cable channels and would be made available on the city's Internet website. The cable channels are provided to the city by the cable operator in exchange for being allowed to install and maintain cable in city right-of-ways.

Relevant Law

Section 255.003 of the Election Code provides, in relevant part, as follows:

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

...

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

Elec. Code § 255.003. The “spending of public funds” includes any use of the city’s resources for political advertising. Ethics Advisory Opinion Nos. 532 (2015) (use of city staff, resources, and letterhead containing city logo), 456 (2004) (use of city resources to broadcast city council meetings over a public access television channel), 443 (2002) (use of facilities maintained by a political subdivision), 45 (1992) (use of school district employees’ work time and equipment).

The initial question in determining compliance with section 255.003(a) of the Election Code is whether the television show described by the requestor is political advertising. Political advertising is defined by section 251.001(16) of the Election Code as:

[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.

Elec. Code § 251.001(16).

The television show would be broadcast for consideration and would appear on the city’s Internet website. Thus, the show would constitute political advertising if it supports or opposes a candidate, public officer, political party, or measure. If the television show is political advertising, section 255.003(a) would prohibit the city council member or staff from using city resources, including staff work time, to develop, produce, or broadcast the show.¹ *Id.* § 255.003(a); Ethics Advisory Opinion Nos. 532 (2015), 443 (2002).

Television Show

The television show would feature, in part, one or more city council members, who are public officers. The show may also feature a candidate, depending on whether a featured city council member is also a candidate or another candidate appears on the show. Thus,

¹ Other state laws and policies adopted by the city may impose additional restrictions on the use of city resources. We cannot issue an advisory opinion interpreting other laws outside the commission’s jurisdiction.

we must consider whether the show, based on the proposed facts, would support or oppose a candidate, public officer, political party, or measure.²

In Ethics Advisory Opinion No. 144, we considered whether a weekly, thirty-minute television program featuring a state representative would be political advertising. Ethics Advisory Opinion No. 144 (1993). As an example of the content of the show, the requestor of that opinion stated that the program would explain the representative's votes on certain bills and explain why the representative filed certain bills. We noted that, although a script had not been provided, such a program would usually be political advertising.

Whether the television show described by the requestor is political advertising is a fact question that depends on the specific content of the show when viewed as a whole and in its proper context. Ethics Advisory Opinion Nos. 506 (2012), 476 (2007). However, a show that is developed, produced, and hosted by a city council member is susceptible to self-promotion of the member by virtue of the member's regular presence on the show and control over the information and presentation of the show's content. In our opinion, however, we do not think that the proposed show would necessarily constitute political advertising in every case.

We have recognized in prior opinions that a communication, such as a newsletter or brochure, that provides information and discussion of official activities without promotion of the officer would not constitute political advertising. *See, e.g.*, Ethics Advisory Opinion Nos. 476 (2007) (a city council member's newsletter providing information and discussion of official activities without promoting the officer, such as with excessive use of pictures of the officer, is not political advertising), 211 (1994) (a brochure merely describing the duties of a justice of the peace and listing the officer's duties and official contact information, without displaying the officer's name in an unduly conspicuous way or otherwise supporting the officer, was not political advertising).³ *See also* Ethics Advisory Opinion No. 506 (2012) (a city council member's refrigerator magnet listing the member's name, contact information, and city Internet website address with further information about the member was self-promotional political advertising because the member's photograph and name appeared in an unduly conspicuous way and the text of the magnet promoted the member's priorities). Consistent with our prior opinions, a television show hosted by a city council member would not be political advertising provided that its content does not promote the member or other public officer or support or oppose a candidate, political party, or measure.

² The requestor's facts do not indicate that the show would include any discussion of a political party or measure, and we assume that it would not support or oppose a political party or measure.

³ Commission rule 26.2 also provides guidelines for determining when such a newsletter would be political advertising, including criteria based on the number and relative size of pictures of the public officer that appear in the newsletter as well as the number of personally phrased references, in addition to the content of the newsletter as a whole and in proper context. Ethics Commission Rules § 26.2.

Regarding the show contemplated by the requestor of this opinion, we have not been provided with a specific script, but the requestor has provided a list of potential topics to be discussed. Generally, discussing the city's budget process, providing information about upcoming city or district events, or thanking volunteers or donors of goods and services to the city would not constitute political advertising as long as the content of the show is informational and not promotional. An additional suggested topic of the show is thanking volunteers or donors of goods and services to the member or for the member's district events. Generally, volunteers for or donors to a public officer for a campaign or officeholder purpose would be political contributors to that officeholder, and thanking the member's political contributors may constitute political advertising.⁴ See Ethics Advisory Opinion No. 102 (1992) (advertisement congratulating a youth sports team and identifying a candidate or public officer as such would almost always constitute political advertising). Likewise, if the show includes discussion of a political campaign, a solicitation of political contributions, or a reference to a campaign Internet website or other campaign communication, it would be political advertising. Additionally, if the member uses the show as an opportunity to explain and justify the member's votes on city council matters, the show would generally be political advertising. See Ethics Advisory Opinion No. 144 (1993). Furthermore, if the show features a candidate for public office who appears as a candidate to discuss political platforms, policies, and goals, it would almost always be political advertising.⁵

In sum, a television show hosted by a city council member would not constitute political advertising as long as its content provides information and discussion of official activities without supporting or opposing a candidate, public officer, political party, or measure. Additionally, the content of the show should meet certain guidelines in order to avoid becoming political advertising, including: (1) it should not solicit political contributions; (2) it should not include any references to a campaign Internet website or other campaign communications; (3) it should not acknowledge or thank political contributors; (4) it should not include excessive congratulatory or self-promotional statements regarding any candidate or public officer; and (5) it should not contain references to any candidate or election, except to provide merely factual information regarding voter registration, election dates, times, and locations, or to describe the purpose of a measure without promoting its outcome.⁶

⁴ A "political contribution" means a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). A "campaign contribution" includes a contribution given to a candidate that is offered or given with the intent that it be used in connection with a campaign for an elective office. *Id.* § 251.001(3). An "officeholder contribution" includes a contribution given to an officeholder that is offered or given with the intent that it be used to defray expenses that: (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money. *Id.* § 251.001(4).

⁵ However, we note that a candidate forum in which all candidates in an election are provided the same opportunity to appear and speak is not a forum in support or opposition to any individual candidate and, thus, would not be political advertising. Ethics Advisory Opinion No. 343 (1996).

⁶ The requestor has asked for guidelines or guidance to help determine what content of the show is appropriate. The preceding criteria are provided to assist the requestor in ensuring that any show remains informational rather than promotional.

The requestor also asks whether our analysis would change if the title of the show included the member's name or district number. In our opinion, including the member's name or district number in the title of the show would not, by itself, cause the show to become political advertising. However, we caution that the member's name or district number should not be used in a self-promotional or an unduly conspicuous fashion. Ethics Advisory Opinion Nos. 506 (2012), 211 (1994).

The requestor also asks whether it makes a difference if the show is aired within a certain proximity to a city election. Political advertising is defined by the content of the communication, not its timing in relation to an election. However, to the extent that the proximity of an election influences the content of the show, the member should screen the content carefully to ensure it does not support or oppose any candidate, public officer, political party, or measure.

The requestor also asks whether making the show available on the member's campaign website would make a difference in our analysis. In our opinion, merely including a link to the show on the member's campaign website would not render the show political advertising. However, we caution that city resources may not be misused for campaign purposes. Penal Code § 39.02; *see also* Ethics Advisory Opinion No. 431 (2000).⁷

Finally, the requestor asks whether the city manager or staff who participate in the show's development, production, or broadcast would be subject to civil or criminal penalties under section 255.003 of the Election Code. The commission may impose a civil penalty against an officer or employee of a political subdivision for knowingly spending or authorizing the spending of public funds for political advertising. Gov't Code § 571.173. Additionally, an offense for violating section 255.003(a) of the Election Code is a Class A misdemeanor.⁸ Elec. Code § 255.003(c).

SUMMARY

A television show described in this opinion would not constitute political advertising for purposes of section 255.003(a) of the Election Code as long as its content provides information and discussion of official activities, without supporting or opposing a candidate, public officer, political party, or measure.

⁷ Whether any particular use of city resources is a "misuse" under section 39.02 of the Penal Code depends on the specific facts. *See* Penal Code § 39.01(2) (defining a "misuse" for purposes of that section).

⁸ The commission does not have jurisdiction to enforce the Penal Code.

ETHICS ADVISORY OPINION NO. ____

December 8, 2016

Application of section 255.003 of the Election Code to the use of political subdivision facilities for a debate forum and for distributing campaign materials. (AOR-618)

The Texas Ethics Commission (“commission”) has been asked several general questions by the board members of a special purpose district regarding the application of section 255.003 of the Election Code.

Applicable Law

Section 255.003 of the Election Code provides, in relevant part, as follows:

(a) An officer or employee of a political subdivision¹ 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 measure² 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

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

¹ The requestors of this opinion state that the district is a political subdivision. Additionally, the law governing the district defines the district as a political subdivision; defines its boundaries; and provides for self-governance and numerous powers to further various public purposes, including the assessment and collection of taxes. Thus, we agree with the requestors that the district is a political subdivision for purposes of this section. *See* Elec. Code § 1.005(13) (defining “political subdivision” to include a governmental entity that embraces a geographical area with a defined boundary, exists for the purpose of discharging functions of government, and possesses authority for subordinate self-government through officers selected by it).

² A “measure” is a question or proposal submitted in an election for an expression of the voters’ will. *Id.* § 251.001(19).

(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.

For purposes of section 255.003(a), a political subdivision's public funds would be "spent" for political advertising if its resources, including employees' work time, equipment, or facilities, are used to disseminate political advertising. Ethics Advisory Opinion Nos. 532 (2015) (use of city staff and equipment to create and distribute political advertising on city letterhead), 443 (2002) ("EAO 443") (use of school district facilities to post political advertising in a restricted area of a school on work time), 45 (1992) (use of school district employees' work time and internal mail system equipment to distribute political advertising). Section 255.003(a) also applies broadly to any use of a political subdivision's resources for political advertising, regardless of whether the political subdivision shows a preference for political advertising from a particular source. EAO 443. Thus, a district officer or employee could not use or authorize the use of the district's resources, including staff, equipment, or facilities, for political advertising.

Also relevant to section 255.003(a) is the definition of "political advertising," which is 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.

Elec. Code § 251.001(16). Whether a particular communication supports or opposes a candidate, political party, public officer, or measure depends upon its specific content. *See* Ethics Advisory Opinion No. 476 (2007).

Debate Forum

The district's board members are interested in allowing a third party, in exchange for paying a fee, to use a room owned by the district to hold a political debate forum for candidates for public office or for individuals with varying viewpoints regarding a ballot

measure. The requestors ask whether section 255.003(a) of the Election Code would prohibit a district officer from authorizing the third party to use the room for such purposes in the event that the third party does not invite to a debate forum all candidates or all viewpoints on a measure, as applicable.

The statutory definition of political advertising does not include a purely verbal communication unless it is broadcast for consideration by radio or television or appears on an Internet website. The requestors' facts do not indicate whether any debate would be broadcast or appear on an Internet website. If a debate forum is not broadcast for consideration and does not appear on an Internet website, then it would not constitute political advertising and section 255.003(a) would not apply. However, if the debate forum would be broadcast for consideration by radio or television, or appear on an Internet website, the following analysis applies.³

Single-Party Political Debate Forum

The first general question is whether a "single-party political debate" would be considered political advertising if only candidates seeking a nomination of one political party are invited to the debate. We have previously considered whether section 255.003(a) would prohibit a city from holding a forum for candidates for city office, for which candidates do not seek the nomination of a political party. Ethics Advisory Opinion No. 343 (1996). The forum considered in that opinion would be broadcast for consideration on the city's public access cable television channel. We held that a forum at which all candidates in an election are provided the same opportunity to appear and speak is not a forum in support or opposition to any individual candidate and thus would not be political advertising. However, we also stated:

Excluding candidates from such a forum ... makes the forum itself a communication in support of those included because the exclusion of certain candidates lends the sponsor's tacit support to those included as the candidates worthy of consideration by the audience.

Id.

In the question before us, only candidates in a primary election who seek the nomination of a single political party would be invited, and thus other candidates in a primary election who seek the nomination of another political party would be excluded. In our opinion, if all candidates who are seeking the nomination of a single political party in a primary election are provided the same opportunity to appear and speak at the debate forum, then the forum would not support or oppose a candidate, political party, public officer, or measure and therefore would not be political advertising. Thus, in those circumstances, an officer or employee of a political subdivision would not violate section

³ Although not under the commission's jurisdiction, Federal Communication Commission regulations may also apply to such a broadcast.

255.003(a) of the Election Code by spending or authorizing the spending of public funds for such a debate forum.

Knowingly Spending Public Funds

Regarding the requestors' second general question, the requestors propose that a prospective third party that wishes to hold a non-partisan debate forum would provide to the district a written assurance that all candidates or viewpoints regarding a measure, as applicable, would be given an opportunity to speak at the forum, and that the third party would be informed that the distribution of political advertising is prohibited. The requestors state that, in such circumstances, district officers and employees would be unlikely to have actual knowledge of whether the third party's invitations to the debate forum included all candidates or viewpoints. The requestors ask whether a violation would occur if the third party fails to equally invite and allow all candidates or viewpoints to appear and speak. A related question is whether a violation would occur when an officer or employee has "actual knowledge" or merely "should have known" that public funds would be spent or authorized to be spent for political advertising.

At the outset, we do not think that section 255.003(a) applies only to circumstances in which an officer or employee spends or authorizes the spending of public funds for what the person *knows* to meet the legal definition of political advertising.⁴ However, in 2009, the legislature amended the statute by adding the term "knowingly" to state that an officer or employee of a political subdivision may not "knowingly spend or authorize the spending of public funds for political advertising."⁵ The issue is what an officer or employee must "know" in order to commit a violation.

Legislative history surrounding the 2009 statutory amendment does not clearly resolve this issue.⁶ However, the legislature has previously adopted laws under Title 15 of the Election Code that specifically require a person to know that their conduct is illegal in order to commit a violation.⁷ In a related provision, the legislature has prohibited an

⁴ In our opinion, such a narrow interpretation would decrease the incentive for political subdivisions to carefully prepare the information they provide to the public regarding candidates, officeholders, and ballot measures and would be contrary to the purposes of other statutory provisions that allow an officer or employee of a political subdivision to request an advisory opinion regarding whether a communication is political advertising. *See id.* § 255.003(d), (e). *See also infra*, n.7.

⁵ Two bills adopted during the regular session of the 81st Legislature contained identical amendments to subsection 255.003(a). Act of May 31, 2009, 81st Leg., R.S., ch. 843, § 1, eff. Sept. 1, 2009; Act of June 3, 2009, 81st Leg., R.S., ch. 644, § 1, eff. Sept 1, 2009.

⁶ The analysis for the introduced version of one bill stated "the bill provides protection for officers or employees of a political subdivision who rely on a third party whose actions are found to have violated the statute, if the officer/employee had no prior knowledge of the intent to violate the statute." Sen. Comm. on State Affairs, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (Apr. 29, 2009). Subsequent legislative analysis did not directly address the issue. *See* Sen. Comm. on State Affairs, Bill Analysis, Tex. C.S.S.B. 2085, 81st Leg., R.S. (May 5, 2009); House Comm. on Elections, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (unamended); Sen. Comm. on State Affairs, Bill Analysis, Tex. S.B. 2085, 81st Leg., R.S. (Aug. 4, 2009).

⁷ *See, e.g.*, section 253.003(b) (a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code); 253.005(a) (a person may not knowingly make or

officer or employee of a political subdivision from spending or authorizing the spending of public funds for a communication describing a measure if the communication contains information that the officer or employee “knows is false” and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. Elec. Code § 255.003(b-1).

The Election Code does not define the term “knowingly.” However, the Penal Code definitions of culpable mental states generally apply to offenses set out in civil statutes.⁸ Moreover, Penal Code definitions are generally applicable to the civil enforcement of statutes that also contain a criminal sanction.⁹

The Penal Code defines “knowingly” as follows:

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*. 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.

Penal Code § 6.03(b) (emphasis added).

In the case of spending public funds or authorizing the spending of public funds for political advertising, it is the circumstances surrounding the act (i.e., spending or authorizing the spending of public funds for political advertising) that make the conduct illegal. Thus, section 255.003(a) is best classified as a “circumstances offense.”¹⁰ Therefore, in our opinion, an officer or employee of a political subdivision must be aware of the circumstances surrounding the communication at issue to violate section 255.003(a).

authorize a political expenditure wholly or partly from a political contribution the person knows to have been made in violation of chapter 253 of the Election Code). *See also, Osterberg v. Peca*, 12 S.W.3d 31, 39 (Tex. 2000) (holding that a statute prohibiting a person from “knowingly” making or accepting a campaign contribution or making a campaign expenditure in violation of chapter 253 of the Election Code applies only to whether a person is making a campaign contribution or campaign expenditure).

⁸ *See Goss v. State*, 582 S.W.2d 782, 784 (Tex. Crim. App. 1979).

⁹ *See Texas Alcoholic Beverage Comm'n v. J. Square Enterprises*, 650 S.W.2d 531, 532 (Tex. App.—Dallas 1983, no writ) (applying Penal Code definition of “knowingly” to the civil enforcement of a statute making it an offense to “knowingly permit” a minor to consume alcohol on the premises).

¹⁰ *Cf. McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989) (“where otherwise innocent behavior becomes criminal because of the circumstances under which it is done, a culpable mental state is required as to those surrounding circumstances”). This principle was applied in the civil enforcement of a “circumstances offense” in the *J. Square* case. *See supra*, n.9. In *J. Square*, the Texas Alcoholic Beverage Commission (“TABC”) brought administrative proceedings against J. Square Enterprises for violating section 106.13 of the Alcoholic Beverage Code, which made it an offense to knowingly sell an alcoholic beverage to a minor or to knowingly permit a minor to consume alcohol on the premises. *Id.* at 531. The Fifth Court of Appeals affirmed the district court’s order dismissing the administrative sanction because TABC only proved that the defendant *should have known* that the person to whom he sold alcohol was underage, but did not *actually know* that he was underage. *Id.* at 532. In other words, TABC did not prove that J. Square *actually knew* the circumstances that made serving alcohol illegal.

Regarding the requestors' particular scenario, if a district officer or employee knows only that a third party has affirmed by written agreement that all candidates or viewpoints regarding a measure, as applicable, would be provided the same opportunity to appear and speak at the debate forum, and that the third party has been informed that political advertising may not be distributed at the debate forum, then the officer or employee would not violate section 255.003(a) of the Election Code. However, if the officer or employee has knowledge of circumstances indicating that the debate forum would be used for political advertising, then section 255.003(a) would prohibit the officer or employee from spending or authorizing the spending of public funds for that debate forum.¹¹

Distribution of Campaign Materials

The requestors' third general question concerns the application of section 255.003(a) of the Election Code, as interpreted by EAO 443, to the distribution of campaign materials in the district's facilities or adjacent premises during business hours, including facilities that are designated as a public forum.

In EAO 443, we considered how that section applied to a school district allowing district employees, during work time, to distribute a candidate's campaign flyers in a teachers' lounge that is not accessible to the public. EAO 443. We noted that, in those circumstances, the use of school district resources would be a prohibited use of public funds "for" political advertising. The school district had argued that the restriction should not apply when any candidate has the same opportunity to make use of school district resources for the dissemination of political advertising. However, based on the broad statutory language that prohibits the spending of public funds "for political advertising," we concluded that the prohibition applies to any use of a political subdivision's resources for political advertising, regardless of whether the school district showed a preference for political advertising from a particular source.¹² We further noted that the opinion was not intended to address the use of facilities that function as a public forum.

Courts have recognized three types of fora, the first of which is the traditional public forum that is defined by certain objective characteristics of the property, such as whether "by long tradition or by government fiat," the property has been 'devoted to assembly

¹¹ We note that public funds must be used for public purposes and whether any particular use of public funds furthers a public purpose depends upon the specific facts. Ethics Advisory Opinion No. 522 (2014). State law also prohibits certain misuses of government property by public servants. Penal Code § 39.02(a) (prohibiting a public servant from, with the intent to obtain a benefit or harm or defraud another, intentionally or knowingly misusing government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment).

¹² As noted in the opinion, the distribution of campaign flyers is clearly different from a broadcast candidate forum. In each case, the issue is whether the communication, as a whole, supports or opposes a candidate, officeholder, political party, or measure. *See id.* at n.1. In the case of the flyers, the prohibition applied because there was no question that the flyers were political advertising. However, in the case of a candidate forum, if all candidates are provided the same opportunity to appear and speak at the forum, then the forum itself does not support or oppose a candidate.

and debate.”¹³ A state can exclude a speaker from such a forum “only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.”¹⁴ However, the government may impose “[r]easonable time, place, and manner regulations..., and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest.”¹⁵

The second forum is the designated public forum, created by purposeful governmental action by “intentionally opening a nontraditional public forum for public discourse.”¹⁶ “If the government excludes a speaker who falls within the class to which a designated public forum is made generally available, its action is subject to strict scrutiny.”¹⁷ Additionally, the government may create a designated forum that is “limited to use by certain groups or dedicated solely to the discussion of certain subjects.”¹⁸ In a limited forum, the government “may impose restrictions on speech that are reasonable and viewpoint-neutral.”¹⁹

The third forum is a nonpublic forum, to which the government can restrict access “as long as the restrictions are reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”²⁰

EAO 443 did not specifically address a public officer or employee allowing a member of the public to distribute campaign flyers in a public forum because the facility at issue was a teachers’ lounge that was not open to the public and thus was clearly not a public forum. However, as that opinion also implied, section 255.003(a) can not prohibit the distribution of political advertising in a public forum if such a prohibition would be an unconstitutional restriction on speech, and there is no basis to distinguish from a

¹³ *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 677 (1998) (quoting *Perry Ed. Assn v. Perry Local Educators’ Assn*, 460 U.S. 37, 45 (1983)).

¹⁴ *Forbes*, 523 U.S. at 677 (quoting *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)).

¹⁵ *Perry*, 460 U.S. at 46.

¹⁶ *Forbes*, 523 U.S. at 677 (quoting *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992). Courts look to the “policy and practice of the government” to determine whether a place is designated as a public forum. *Forbes*, 523 U.S. at 677 (quoting *Cornelius*, 473 U.S. at 802).

¹⁷ *Id.* As long as a state retains the open character of a designated forum, “it is bound by the same standards as apply in a traditional public forum.” *Perry*, 460 U.S. at 46.

¹⁸ *Pleasant Grove City v. Summum*, 555 U.S. 460, 470 (2009) (citing *Perry*, 460 U.S. at 46, n.7).

¹⁹ *Summum*, 555 U.S. at 470 (2009).

²⁰ *Forbes*, 523 U.S. at 677-78 (quoting *Cornelius*, 473 U.S. at 800). In public property that is not a forum for public communication, a state may reserve the forum for its intended purposes “as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Perry*, 460 U.S. at 46.

traditional or designated public forum in this regard.²¹ Thus, if the facility is a traditional or designated public forum, then section 255.003(a) of the Election Code would not prohibit the use of public funds for political advertising if, under the particular circumstances, the prohibition would unconstitutionally restrict speech.²² An additional question is whether section 255.003(a) applies only to a designated public forum consisting of an exterior or interior space. In determining whether a particular area is designated as a public forum, we are aware of no bright-line distinction between exterior or interior spaces.²³

The requestors ask whether a district policy requiring a third party to pay for the use of its facilities, presumably for the distribution of campaign flyers, would violate section 255.003(a). In our opinion, based upon the broad statutory language that we recognized in EAO 443, the prohibition would apply to an officer or employee who authorizes the spending of public funds for the distribution of political advertising in district facilities that are not a public forum, including in circumstances in which a person pays the district for the use of the facilities.

SUMMARY

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. If all candidates who are seeking the nomination of a single political party in a primary election are provided the same opportunity to appear and speak at the debate forum described in this opinion, then the forum would not support or oppose a candidate, political party, public officer, or measure and therefore would not be political advertising. In order to violate section 255.003(a) of the Election Code, an officer or employee of a political subdivision must be aware of the circumstances surrounding the communication at issue. Regarding the use of a facility that is a traditional or designated public forum, section 255.003(a) of the Election Code would not prohibit the use of public funds for political advertising if, under the particular circumstances, the prohibition would unconstitutionally restrict speech.

²¹ Gov't Code § 311.021(1) (in enacting a statute, it is presumed that compliance with the constitutions of this state and the United States is intended).

²² Whether section 255.003(a) is an unconstitutional restriction in any particular case depends on the specific facts, including the nature of the restriction, its justification, and other circumstances. Such broad questions are beyond the scope of this opinion and are for the judiciary to resolve. However, we note that the United States Supreme Court has considered circumstances in which a candidate may be excluded from a debate forum. *See, e.g., Forbes*, 523 U.S. at 682-83 (1998) (where a congressional candidate debate was a nonpublic forum broadcast by state-owned public television, the state could permissibly exclude a candidate based on “a reasonable, viewpoint-neutral exercise of journalistic discretion”).

²³ The United States Supreme Court has stated that in order to create a designated public forum, the government “must intend to make the property ‘generally available’ to a class of speakers.” *Forbes*, 523 U.S. at 679. Courts may also consider “the nature of the property and its compatibility with expressive activity to discern the government’s intent.” *Cornelius*, 473 U.S. at 802-03.

TEXAS ETHICS COMMISSION
MEMORANDUM

TO: Commissioners, Texas Ethics Commission
FROM: Amy S. Barden, Senior Legal Assistant
DATE: December 1, 2016
SUBJECT: Corrected Reports Memo
Meeting Date: December 8, 2016

Substantial Compliance (Items 1-24)

1. Julie Countiss (80055)
Candidate, District Judge

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016
Activity report #1: contributions = \$14,341.19; expenditures = \$62,704.52;
contributions maintained = \$25,454.97
Activity report #2: contributions = \$14,341.19; expenditures = \$63,225.94;
contributions maintained = \$25,454.97
Prior corrections: none
Penalty: \$500

Ms. Countiss corrected the original report to add a \$521.42 expenditure. The amount of the unreported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

2. Jaime Esparza (21145)
District Attorney

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016
Activity report #1: contributions = \$26,388.36; expenditures = \$65,033.72;
contributions maintained = \$6,651.40
Activity report #2: contributions = \$26,851.28; expenditures = \$65,033.72;
contributions maintained = \$6,651.40
Prior corrections: none
Penalty: \$500

Mr. Esparza corrected the original report to add a \$462.92 in-kind contribution. The amount of the unreported contribution does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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3. **Raymond G. 'Ray' Wheless (23298)** **District Judge**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016
Activity: contributions = \$28,100.00; expenditures = \$30,002.60;
contributions maintained = \$33,018.06 (on both reports)
Prior corrections: none
Penalty: \$500

Judge Wheless corrected the original report to add two PACs under "Notices from Political Committees" on the cover sheet, stating that the notices were received after the original report was filed. (*Note:* The law requires the candidate/officeholder (COH) to report the receipt of such a notice on the report covering the period in which the COH receives the notice.) **Recommendation Based on Commission Guidelines: substantial compliance.**

4. **John N. Raney (67602)** **State Representative**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 24, 2016
Activity report #1: contributions = \$173,103.07; expenditures = \$204,529.35;
contributions maintained = \$122,924.94
Activity report #2: contributions = \$177,145.53; expenditures = \$204,529.35;
contributions maintained = \$122,924.94
Prior corrections: none
Penalty: \$600

Representative Raney corrected the original report to add two in-kind contributions totaling \$4,042.46. He also added four PACs under "Notices from Political Committees" on the cover sheet, stating that the notices were received after the original report was filed. (*Note:* The law requires the candidate/officeholder (COH) to report the receipt of such a notice on the report covering the period in which the COH receives the notice.) The amount of the unreported contributions does not exceed 10% of the total contributions or \$10,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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**5. Cecilia Wallace (59760)
Treasurer, 'TDA-PAC' Texas Deer Association Political Action Committee**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 24, 2016
Activity report #1: contributions = \$6,421.66; expenditures = \$79,500.00;
contributions maintained = \$547,987.89
Activity report #2: contributions = \$6,421.66; expenditures = \$83,500.00;
contributions maintained = \$547,987.89
Prior corrections: none
Penalty: \$600

Ms. Wallace corrected the original report to add two expenditures totaling \$4,000. The amount of the unreported expenditures does not exceed 10% of the total expenditures. **Recommendation Based on Commission Guidelines: substantial compliance.**

**6. David L. Watts, Jr. (69332)
Candidate, State Representative**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 24, 2016
Activity report #1: contributions = \$40,204.00; expenditures = \$103,591.48;
contributions maintained = \$19,595.78
Activity report #2: contributions = \$40,204.00; expenditures = \$104,551.48;
contributions maintained = \$19,595.78
Prior corrections: none
Penalty: \$600

Mr. Watts corrected the original report to add a \$960 expenditure. The amount of the unreported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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7. **John H. Best (80132)** **District Attorney**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016; and February 24, 2016 (two corrections)
Activity report #1: contributions = \$4,249.92; expenditures = \$9,469.72;
contributions maintained = \$530.00
Activity reports #2-3: contributions = \$4,249.92; expenditures = \$9,469.72;
contributions maintained = \$667.18
Prior corrections: none
Penalty: \$600

On February 23, 2016, Mr. Best corrected the original report to increase the amount of total contributions maintained by \$137.18. On February 24, 2016, he corrected the report to add a PAC under "Notices from Political Committees" on the cover sheet, stating that the notice was received after the original report was filed. (*Note:* The law requires the candidate/officeholder (COH) to report the receipt of such a notice on the report covering the period in which the COH receives the notice.) The error in the amount of total contributions maintained does not exceed \$2,000 and the second correction. **Recommendation Based on Commission Guidelines: substantial compliance.**

8. **Joshua A. Estes (80407)** **Candidate, District Judge**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 24, 2016; and February 26, 2016 (two corrections)
Activity report #1: contributions = \$4,500.00; expenditures = \$20,868.47;
contributions maintained = \$11,421.46
Activity report #2: contributions = \$4,500.00; expenditures = \$21,019.28;
contributions maintained = \$11,270.65
Activity report #3: contributions = \$4,500.00; expenditures = \$21,353.44;
contributions maintained = \$10,922.27
Prior corrections: none
Penalty: \$800

On February 24, 2016, Mr. Estes corrected the original report to add two political expenditures totaling \$150.81 and decrease the amount of total contributions maintained accordingly. On February 26, 2016, he corrected the report to add two political expenditures totaling \$334.16 and decrease the amount of total contributions maintained accordingly. For each corrected report, the amounts of the unreported expenditures do not exceed \$2,000 and the changes in the total contributions maintained do not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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9. Susan R. Davis (66458)
Treasurer, West Pearland Republican Women

Report: 8-day pre-election report due February 22, 2016
Correction date: February 27, 2016
Activity: contributions = \$30.00; expenditures = \$1,239.22;
contributions maintained = \$25,534.20 (on both reports)
Prior corrections: none
Penalty: \$900

Mrs. Davis corrected the original report to change the payee type indicator from "individual" to "entity" for two unitemized expenditures stored in the committee's expenditure database in the filing application. Since both expenditures 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. The corrections were minor, in context. **Recommendation Based on Commission Guidelines: substantial compliance.**

10. Richard A. 'Rick' Green, Jr. (36491)
Candidate, Supreme Court Justice

Report: 8-day pre-election report due February 22, 2016
Correction date: February 27, 2016
Activity: contributions = \$41,731.25; expenditures = \$68,330.02;
contributions maintained = \$57,422.41 (on both reports)
Prior corrections: none
Penalty: \$900

Mr. Green corrected the original report to add two PACs under "Notices from Political Committees" on the cover sheet, stating that the notices were received after the original report was filed. (Note: The law requires the candidate/officeholder (COH) to report the receipt of such a notice on the report covering the period in which the COH receives the notice.) **Recommendation Based on Commission Guidelines: substantial compliance.**

11. D. Wayne Garrett (68205)
Treasurer, 'CINC' Citizens To Improve Navarro County

Report: 8-day pre-election report due February 22, 2016
Correction date: February 28, 2016
Activity report #1: contributions = -0-; expenditures = \$1,000.00;
contributions maintained = -0-
Activity report #2: contributions = -0-; expenditures = \$2,000.00;
contributions maintained = -0-
Prior corrections: none
Penalty: \$1,000

Mr. Garrett corrected the original report to add a \$1,000 expenditure. The amount of the unreported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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12. Kenneth L. 'Ken' Vaughn (80611)
Treasurer, 'MCTP PAC' Montgomery County Tea Party PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: February 28, 2016
Activity report #1: contributions = \$14,300.00; expenditures = \$23,268.69;
contributions maintained = \$3,706.46
Activity report #2: contributions = \$14,376.00; expenditures = \$23,289.50;
contributions maintained = \$3,706.46
Prior corrections: none
Penalty: \$1,000

Mr. Vaughn corrected the original report to add two contributions totaling \$76 and to add a \$20.81 expenditure. The amount of the unreported contributions does not exceed \$2,000 and the amount of the unreported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

13. Carol Miller (33911)
Treasurer, 'LCARW PAC' Lake Conroe Area Republican Women PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: February 29, 2016
Activity: contributions = \$2,869.00; expenditures = \$1,294.05;
contributions maintained = \$32,366.74 (on both reports)
Prior corrections: none
Penalty: \$1,100

Mrs. Miller corrected the original report to replace a \$518.34 expenditure, which originally listed the payee as an individual, with six expenditures totaling \$518.34, which correctly listed the actual vendors as payees. The amount of the incorrectly reported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

14. Mary Colchin Johndroe (80500)
Candidate, Court of Appeals Justice

Report: 8-day pre-election report due February 22, 2016
Correction date: March 4, 2016
Activity report #1: contributions = \$22,250.00; expenditures = \$2,750.74;
contributions maintained = -0-
Activity report #2: contributions = \$22,375.00; expenditures = \$2,750.74;
contributions maintained = -0-
Prior corrections: none
Penalty: \$1,500

Mrs. Johndroe corrected the original report to add a \$125 contribution. The amount of the unreported contribution does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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15. Byron E. Miller (38405)
Candidate, State Representative

Report: 8-day pre-election report due February 22, 2016
Correction date: March 15, 2016
Activity report #1: contributions = \$5,908.69; expenditures = \$2,940.11;
contributions maintained = \$7,508.69
Activity report #2: contributions = \$4,108.69; expenditures = \$2,940.11;
contributions maintained = \$7,508.69
Prior corrections: none
Penalty: \$2,600

Mr. Miller corrected the original report to decrease the amount of total contributions by \$1,800. Mr. Miller stated that an extra zero was accidentally added on three contributions in the original report. He corrected the original amounts (\$500, \$500, \$1000) to the accurate amounts (\$50, \$50, and \$100). The amount of the incorrectly reported contributions does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

16. Snapper Carr (66520)
Treasurer, 'FA PAC' Focused Advocacy Political Action Committee (PAC)

Report: 8-day pre-election report due February 22, 2016
Correction date: April 5, 2016
Activity report #1: contributions = \$9,000.00; expenditures = \$13,000.00;
contributions maintained = \$2,699.85
Activity report #2: contributions = \$9,000.00; expenditures = \$12,500.00;
contributions maintained = \$3,199.85
Prior corrections: none
Penalty: \$4,700

Mr. Carr corrected the original report to remove a \$500 expenditure to a candidate and remove the name of the candidate under "Committee Activity" on the cover sheet. He also increased the amount of total contributions maintained accordingly. Mr. Carr stated that the check was not delivered and was voided. The amount of the incorrectly reported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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17. Ana R. Boisselier (16999)

Treasurer, El Paso Electric Company Employee PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: April 14, 2016
Activity report #1: contributions = \$8,289.23; expenditures = \$3,551.32;
contributions maintained = \$46,409.09; outstanding loans = \$51,147.00
Activity report #2: contributions = \$8,289.23; expenditures = \$3,551.32;
contributions maintained = \$51,147.00; outstanding loans = -0-
Prior corrections: none
Penalty: \$5,600

Ms. Boisselier corrected the original report to remove a \$51.32 expenditure from Schedule F1 (used to itemize political expenditures from political contributions) in order to report the expenditure in the lump sum total amount of unitemized political expenditures on the cover sheet. (*Note:* The law allows a committee the option to report political expenditures of \$100 or less to a single payee either as an unitemized lump sum total or as itemized on the appropriate expenditures schedule.) Ms. Boisselier also entered the amount of total contributions maintained incorrectly on the original report. She stated that she originally mistakenly entered the period's beginning balance under "Total Political Contributions Maintained as of the Last Day of the Reporting Period" and the period's ending balance under "Total Principal Amount of All Outstanding Loans as of the Last Day of the Reporting Period." She corrected the report to disclose the accurate totals, resulting in an increase in the total contributions maintained of \$4,737.91. The amount of the incorrectly reported expenditure does not exceed \$2,000 and the error in the amount of total contributions maintained does not exceed 10% of the total. **Recommendation Based on Commission Guidelines: substantial compliance.**

18. Charles R. Kimbrough (80396)

Candidate, District Judge

Report: 8-day pre-election report due February 22, 2016
Correction date: April 24, 2016
Activity report #1: contributions = -0-; expenditures = \$3,799.07;
contributions maintained = \$157.58
Activity report #2: contributions = -0-; expenditures = \$3,799.07;
contributions maintained = \$131.02
Prior corrections: none
Penalty: \$6,600

Mr. Kimbrough corrected the original report to decrease the amount of total contributions maintained by \$26.56. The error in the amount of total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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**19. Christopher S. 'Chris' Shields (16365)
Treasurer, Ag Air PAC**

Report: 8-day pre-election report due February 22, 2016
Correction date: May 11, 2016
Activity report #1: contributions = \$23,740.00; expenditures = \$2,833.55;
contributions maintained = \$43,231.40
Activity report #2: contributions = \$22,940.00; expenditures = \$2,833.55;
contributions maintained = \$42,431.40
Prior corrections: none
Penalty: \$8,300

Mr. Shields corrected the original report to remove a \$800 contribution, which was a duplicate entry and decreased the amount of total contributions maintained accordingly. The amount of the incorrectly reported contribution does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**20. Sandra Blankenship (80129)
Candidate, State Representative**

Report: 8-day pre-election report due February 22, 2016
Correction date: July 11, 2016
Activity report #1: contributions = \$300.00; expenditures = \$210.35;
contributions maintained = \$424.32
Activity report #2: contributions = \$300.00; expenditures = \$302.06;
contributions maintained = \$424.32
Prior corrections: none
Penalty: \$10,000

Mrs. Blankenship corrected the original report to add three expenditures totaling \$91.71. The amount of the unreported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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21. **Hugh D. Shine (26513)** **Candidate, State Representative**

Report: 8-day pre-election report due February 22, 2016
Correction date: July 15, 2016
Activity report #1: contributions = \$54,983.72; expenditures = \$136,172.31;
contributions maintained = \$44,077.44
Activity report #2: contributions = \$56,253.72; expenditures = \$136,172.31;
contributions maintained = \$44,077.44
Prior corrections: none
Penalty: \$10,000

Mr. Shine corrected the original report to add seven monetary contributions totaling \$1,150, which were online donations mistakenly omitted, and to add a \$120 in-kind contribution of food and beverages. The total contributions increased by \$1,270. The amount of the unreported contributions does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

22. **David Schenck (62484)** **Court of Appeals Justice**

Report: 8-day pre-election report due February 22, 2016
Correction date: July 15, 2016
Activity report #1: contributions = \$45,320.64; expenditures = \$51,095.05;
contributions maintained = \$39,962.04
Activity report #2: contributions = \$45,370.64; expenditures = \$51,125.80;
contributions maintained = \$39,962.04
Prior corrections: none
Penalty: \$10,000

Justice Schenck corrected the original report to add a \$50 contribution and to add two expenditures totaling \$30.75. The amount of the unreported contribution does not exceed \$2,000 and the amount of the unreported expenditures does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Corrected Reports Memo

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**23. Erin Hill (59791)
Treasurer, ActBlue Texas**

Report: 8-day pre-election report due April 29, 2016
Correction date: May 10, 2016
Activity report #1: contributions = \$35,903.02; expenditures = \$32,964.60;
contributions maintained = -0-
Activity report #2: contributions = \$35,903.02; expenditures = \$32,897.40;
contributions maintained = -0-
Prior corrections: none
Penalty: \$1,500

Ms. Hill corrected the original report to remove a \$67.20 expenditure, which she stated was an erroneous entry generated by a technological error in the PAC's database. The amount of the incorrectly reported expenditure does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

**24. Laura Reyes (80729)
Treasurer, AFSCME Texas Correctional Officers PAC**

Report: 8-day pre-election report due April 29, 2016
Correction date: May 18, 2016
Activity report #1: contributions = \$3,115.00; expenditures = \$5,000.00;
contributions maintained = -0-
Activity report #2: contributions = \$3,115.00; expenditures = \$5,000.00;
contributions maintained = \$100.00
Prior corrections: none
Penalty: \$2,300

Mrs. Reyes corrected the original report to add the total contributions maintained of \$100. The amount of the unreported total contributions maintained does not exceed \$2,000. **Recommendation Based on Commission Guidelines: substantial compliance.**

Waivers (Items 25-30)

**25. Citizen Super PAC (80702)
Entity Filing Direct Campaign Expenditure (DCE) Reports**

Report: 8-day pre-election report due February 22, 2016
Correction date: February 23, 2016
Activity report #1: expenditures = \$155,894.30 (on both reports)
Prior corrections: none
Penalty: \$500

The original report was corrected to add the names of 36 candidates supported and opposed by the entity under "Filer Activity" on the cover sheet. The original report disclosed these candidates' names under the related expenditures itemized on Schedule F1 (used for political expenditures) but were omitted from the appropriate section on the cover sheet. **Recommendation Based on Previous Commission Decisions: waiver.**

**26. Jasmine L. Jenkins (80559)
Candidate, State Board of Education**

Report: 8-day pre-election report due February 22, 2016 (original filed late; paid \$500 fine)
Correction date: February 26, 2016
Activity report #1: contributions = \$9,837.26; expenditures = \$5,779.53;
contributions maintained = \$4,057.53
Activity report #2: contributions = \$7,200.46; expenditures = \$5,779.53;
contributions maintained = \$4,057.53
Prior corrections: none
Penalty: \$300

Dr. Jenkins corrected the original report to remove a \$2,636.80 in-kind contribution from an organization for telephone calls. Dr. Jenkins stated that her campaign paid for the service and she made an error in reporting it as an in-kind service. The correction was filed no later than four days after the deadline and before the election date. **Recommendation Based on Commission Guidelines: waiver.**

Corrected Reports Memo

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27. Elizabeth A. Gray (70062) Treasurer, 'LAD' Liberal Austin Democrats

Report: 8-day pre-election report due October 26, 2015
Correction date: August 5, 2016
Activity report #1: contributions = \$75.00; expenditures = \$2.06;
contributions maintained = \$3,349.18
Activity report #2: contributions = \$25.00; expenditures = \$223.00;
contributions maintained = \$131.18
Prior corrections: none
Penalty: \$10,000

Ms. Gray was the committee's campaign treasurer when the original report was due. On July 14, 2016, the committee replaced Ms. Gray as the campaign treasurer. On August 5, 2016, David J. Albert, the committee's new treasurer, corrected the original report due to unauthorized withdrawals and other mistakes not properly reported by the former treasurer. (He also filed correction to other reports filed by the former treasurer, all of which were not subject to a late fine under the law. The law exempting those corrected reports from late fines does not apply to 8-day pre-election reports; however, the Commission has authority to waive or reduce fines in connection with corrected 8-day pre-election reports.) Ms. Gray submitted an affidavit stating that she signed a legal restitution agreement on August 5, 2016, providing for repayment and correction of errors on her part and has complied with the agreement.

Mr. Albert corrected the report to remove \$50 from the lump sum total unitemized contributions and to decrease the amount of total contributions maintained by \$3,218. He also removed a \$2.06 non-political expenditure and added two non-political expenditures totaling \$223. Mr. Albert swore that the corrected report was filed within 14 business days of his learning of the errors. **Recommendation Based on Previous Commission Decisions: waiver.**

28. Mary E. Tucker (16899) Treasurer, Kirby Corporation Political Action Committee

Report: 8-day pre-election report due February 22, 2016
Correction date: June 17, 2016
Activity report #1: contributions = \$12,171.74; expenditures = \$32,000.00;
contributions maintained = \$72,412.69
Activity report #2: contributions = \$8,779.37; expenditures = \$32,000.00;
contributions maintained = \$72,412.69
Prior corrections: none
Penalty: \$10,000

Ms. Tucker corrected the original report to remove duplicate contributions entries, which decreased the total contributions by \$3,392.37. Ms. Tucker stated that the contributions were received through company employee payroll deductions on January 15, 2016, and had been properly disclosed in the PAC's 30-day pre-election report. She stated that those contributions were mistakenly reported in duplicate in the 8-day pre-election report and she corrected the error as soon as it was discovered on June 17, 2016. All election-related activity was timely disclosed in the original report. **Recommendation Based on Commission Guidelines: waiver.**

Corrected Reports Memo

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29. Mary K. Ruyle (16500)

Treasurer, Texas Thoroughbred Breeders' Association PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: May 11, 2016
Activity report #1: contributions = \$312.33; expenditures = \$6,900.00;
contributions maintained = \$8,808.38
Activity report #2: contributions = \$6,687.34; expenditures = \$6,900.00;
contributions maintained = \$8,808.38
Prior corrections: none
Penalty: \$8,300

Ms. Ruyle corrected the period covered to change the start date from January 22, 2016, to January 1, 2016, which resulted in the addition of four contributions totaling \$6,375.01 that occurred in the previously uncovered time period. Ms. Ruyle stated that on May 11, 2016, while preparing the runoff report due May 16, 2016, she called the Commission office to ask about the uncovered period of time and discovered the error. She immediately filed the correction. Based on the activity disclosed in the reports, all election-related activity was timely disclosed in the original report. **Recommendation Based on Commission Guidelines: waiver.**

Additional explanation: The PAC had no election-related activity during the reporting period for the 30-day pre-election report due February 1, 2016, and therefore was not required to file the 30-day report. During the following 8-day reporting period, the PAC made election-related expenditures and Ms. Ruyle filed the original 8-day report using the regular 8-day report start date of January 22, 2016 (which would have been correct, if a 30-day report had been filed), however the result was a gap of time that was left uncovered. (*Note:* There should never be gaps between reporting periods and, generally, there should not be overlaps.)

30. Marilyn J. Schultz (53163)

Treasurer, Grimes County Republican Party (CEC)

Report: 8-day pre-election report due February 22, 2016
Correction date: July 14, 2016
Activity report #1: contributions = \$4,029.36; expenditures = \$25.00;
contributions maintained = \$12,404.36
Activity report #2: contributions = \$42,640.36; expenditures = \$15,743.51;
contributions maintained = \$145,777.57
Prior corrections: none
Penalty: \$10,000

Ms. Schultz corrected the original report to add 139 contributions totaling \$38,611.00; to add 11 expenditures totaling \$15,718.51; and to increase the amount of total contributions maintained by \$133,373.21. Ms. Schultz stated that while attempting to enter activity for the semiannual report due July 15, 2016, she had problems and contacted the Commission. After speaking with Commission legal staff, she realized that the 8-day pre-election report should have included all the committee's activity for the reporting period, not just the activity related to the primary election. Ms. Schultz immediately filed the corrected report to add the non-election-related activity that occurred during the reporting period. All election-related activity was timely disclosed in the original report. **Recommendation Based on Commission Guidelines: waiver.**

Reductions (Items 31-34)

31. Tom Spilman (80359)

Treasurer, 'STATE PAC' The Texas State University System PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: March 16, 2016 (15 days after election date)
Activity report #1: contributions = \$18,000.00; expenditures = -0-;
contributions maintained = \$78,120.00
Activity report #2: contributions = \$18,000.00; expenditures = -0-;
contributions maintained = \$42,120.00
Prior corrections: none
Penalty: \$2,700

Mr. Spilman corrected the original report to decrease the total contributions maintained by \$36,000. He stated that there was a typographical error when entering the original amount and when the error was discovered the PAC immediately corrected the oversight to maintain transparency. The amount of the change in total contributions maintained is approximately 85% of the total. The correction was filed approximately two weeks after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$500.**

32. Terence J. 'Terry' Breen (80450)

Candidate, District Attorney

Report: 8-day pre-election report due February 22, 2016
Correction date: July 14, 2016; July 15, 2016; and October 14, 2016 (three corrections)
Activity report #1: contributions = \$600.00; expenditures = \$11,559.70;
contributions maintained = \$250.00
Activity report #2: contributions = \$600.00; expenditures = \$13,668.93;
contributions maintained = \$250.00
Activity report #3: contributions = \$600.00; expenditures = \$13,448.25;
contributions maintained = \$250.00
Activity report #4: contributions = \$600.00; expenditures = \$7,073.30;
contributions maintained = \$250.00
Prior corrections: none
Penalty: \$10,000

On July 14, 2016, Mr. Breen corrected the original report to add a \$2,109.23 expenditure that was made to pay a credit card bill. On July 15, 2016, he corrected the report to remove a \$220.68 duplicate expenditure from Schedule G (used for political expenditures from personal funds) that had already been listed in the same report on Schedule F4 (used for expenditures made by credit card). He also attempted to remove other duplicate expenditure entries but experienced technical problems and was unable to delete the other duplicates. On October 14, 2016, Commission staff became aware that Mr. Breen had filed an incomplete correction and helped him successfully correct the report to remove the remaining 11 duplicate expenditures totaling \$6,374.95. Mr. Breen stated that he did not fully understand all the steps required to report credit card expenditures until he called the Commission in July for assistance. The amount of the unreported expenditure is approximately 30% of the total. The correction was filed approximately four months after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$500.**

Corrected Reports Memo

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33. Angie L. Highland (64041) Treasurer, NCHA's Texas Events PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: April 5, 2016 (35 days after election date)
Activity report #1: contributions = \$77,602.00; expenditures = \$27,500.00;
contributions maintained = \$220,958.91
Activity report #2: contributions = \$77,602.00; expenditures = \$32,000.00;
contributions maintained = \$220,958.91
Prior corrections: none
Penalty: \$4,700

Ms. Highland was the committee's campaign treasurer when the original report was due and when the correction was filed. She corrected the original report to increase the amount of total expenditures by \$4,500. Ms. Highland stated that four expenditures, which were donations to four opposed candidates in the primary election, were reported with an incorrect amount due to a clerical error. She corrected the incorrect amounts (\$1000 for each) to the accurate amounts (\$3000, \$1500, \$2500, and \$1500). On October 11, 2016, Ms. Highland was replaced as the campaign treasurer by Deanna M. Hayes. In a supplemental affidavit, Ms. Hayes stated that the original report was timely filed in good faith. She stated that on March 22, 2016, after reconciling the bank statement, the committee discovered the errors and filed the corrected report within 14 business days. (*Note:* Commission records show that the accurate amounts were timely disclosed by the candidates in their pre-election reports.) The amount of the change in total expenditures is approximately 14% of the total. The correction was filed approximately one month after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**

34. D. Wayne Klotz (70834) Treasurer, Klotz Associates Inc. PAC

Report: 8-day pre-election report due February 22, 2016
Correction date: April 6, 2016 (36 days after election date)
Activity report #1: contributions = \$7,375.00; expenditures = \$10,250.00;
contributions maintained = \$13,050.00
Activity report #2: contributions = \$20,625.00; expenditures = \$10,250.00;
contributions maintained = \$13,050.00
Prior corrections: none
Penalty: \$4,800

Mr. Klotz corrected the original report to add four contributions totaling \$13,250. Mr. Klotz stated that on April 6, 2016, while preparing the next report due April 7, 2016, the PAC discovered that four contributions made by company employees to the PAC had inadvertently been omitted and he immediately corrected the report. He also stated that the PAC has since taken procedural and administrative steps to ensure that no similar omission occurs in the future. The amount of the change in total contributions is approximately 64% of the total. The correction was filed approximately one month after the primary election. **Recommendation Based on Commission Guidelines: reduction to \$1,000.**