

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

Steven D. Wolens, Chair
Chad M. Craycraft, Vice Chair
Randall H. Erben
Chris Flood

Mary K. "Katie" Kennedy
Patrick W. Mizell
Richard S. Schmidt
Joseph O. Slovacek

EXECUTIVE SESSION AGENDA

Date and Time: 1:00 p.m., Tuesday, June 26, 2018
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, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
3. Discussion of pending litigation to seek legal advice relating to the following:
 - A. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; and Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas.
 - B. 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; et al.*; in the 53rd Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00770-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Tom Ramsay in his individual capacity, et al.*; in the Third Court of Appeals, Austin, Texas.
 - C. 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; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

For more information, contact Seana Willing, Executive Director, at (512) 463-5800.

- D. 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.
- E. Cause No. D-1-GN-16-000149: *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the 261st Judicial District Court of Travis County, Texas; and related case, Cause No. 03-17-00167-CV: *Texas Home School Coalition Association, Inc. v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
4. Discussion of personnel matters related to Executive Director, General Counsel and/or Director of Enforcement.
5. Discussion and seeking legal advice regarding referrals and orders under Subchapter F (Enforcement), Chapter 571, Texas Government Code.
6. **Reconvene in open session.**
7. Discussion on the proposed Legislative Appropriation Request to the 86th Legislature for the FY 2020-2021 Biennium.
8. 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: Seana Willing, 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.

Goal/ Objective/ Strategy	Exp 2017	Est 2018	Bud 2019
GAA Appropriated Budget	\$3,034,675.00	\$2,935,748.00	\$2,975,750.00
Appropriated Receipts	\$8,190.00	\$8,190.00	\$8,190.00
Trns In Art IX, Sec 18.02, Salary Increase	\$28,844.00	\$0.00	\$0.00
UB Forward from FY 2016 unexpended Capital			
Rider funds - Video Training software	\$224,132.00	\$0.00	\$0.00
Beginning Budget	\$3,295,841.00	\$2,943,938.00	\$2,983,940.00
1 Administer Public Disclosure / Ethics Laws			
1 Access Required Reports; Respond to Advisory Reqs and Sworn Complaints			
1 DISCLOSURE FILING	\$307,227.00	\$366,708.00	\$381,709.00
Appropriated Receipts - Excess Collected	\$8,209.00	\$2,075.82	\$0.00
2 LEGAL GUIDANCE AND OPINIONS	\$409,313.00	\$388,958.00	\$388,966.00
3 ENFORCEMENT	\$823,421.00	\$871,984.00	\$879,983.00
EXPENDED TOTAL, GOAL 1	\$1,548,170.00	\$1,629,725.82	\$1,650,658.00
2 Indirect Administration			
1 Indirect Administration			
1 CENTRAL ADMINISTRATION	\$357,047.00	\$347,826.00	\$355,827.00
CAPPS Rider- 1FTE	\$0.00	\$0.00	\$40,000.00
2 INFORMATION RESOURCES	\$524,834.00	\$579,566.00	\$589,565.00
2.1 CAPITAL BUDGET RIDERS	\$292,840.00	\$347,890.00	\$347,890.00
EXPENDED TOTAL, GOAL 2	\$1,174,721.00	\$1,275,282.00	\$1,333,282.00
Grand Total Expended	\$2,722,891.00	\$2,905,007.82	\$2,983,940.00
Lapsed	\$572,950.00	\$38,930.18	\$0.00
FTE Appropriated Total	33.4	32.4	33.4
Actual FTE's	28.6	27.8	28.8

EXHIBIT B

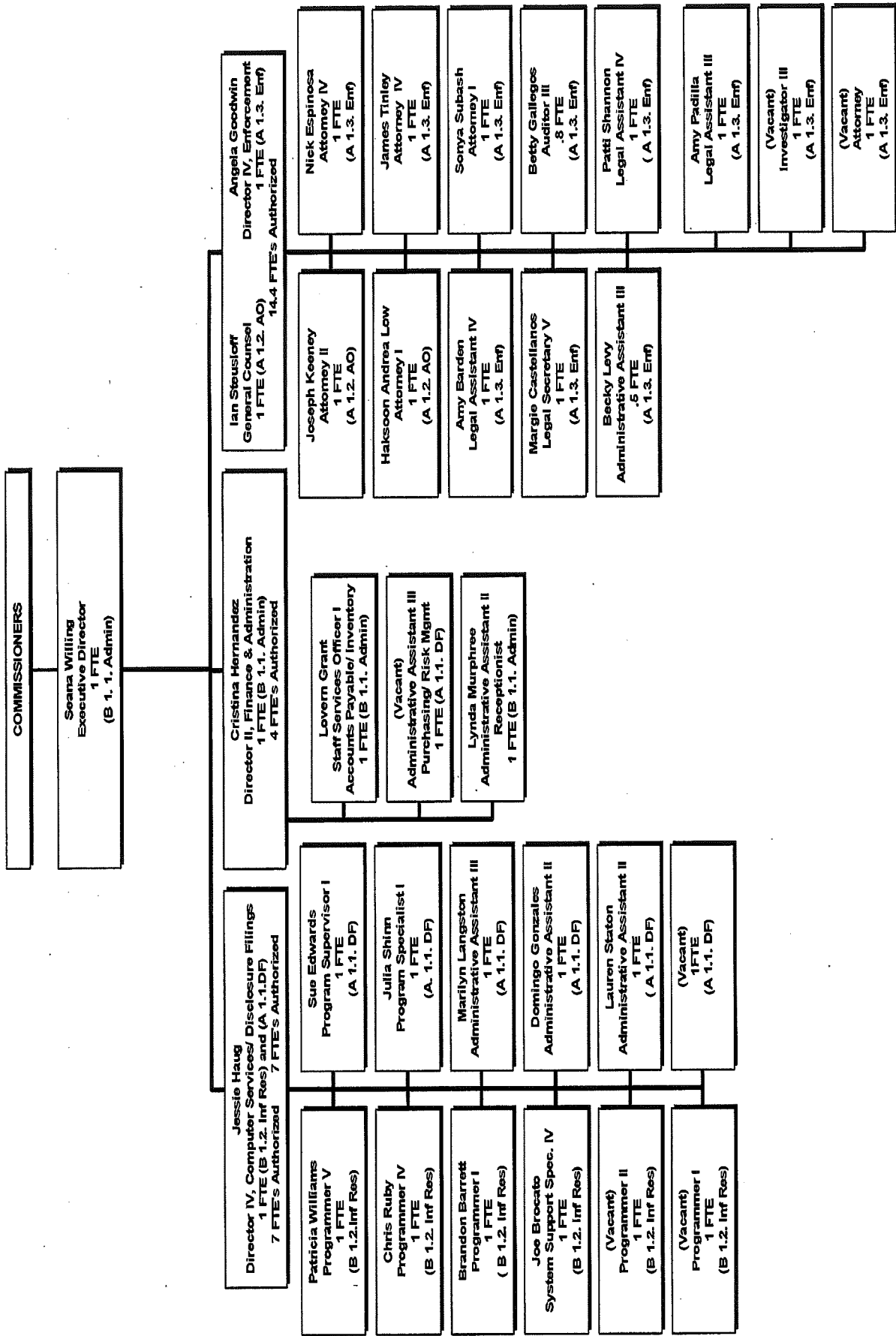


EXHIBIT C

TEXAS ETHICS COMMISSION

	For the Years Ending	
	August 31, 2018	August 31, 2019
Method of Financing:		
General Revenue Fund	\$ 2,935,748	\$ 2,975,750
Appropriated Receipts	<u>8,190</u>	<u>8,190</u>
Total, Method of Financing	<u>\$ 2,943,938</u>	<u>\$ 2,983,940</u>
This bill pattern represents an estimated 100% of this agency's estimated total available funds for the biennium.		
Number of Full-Time-Equivalents (FTE):	32.4	33.4
Schedule of Exempt Positions:		
Executive Director, Group 4	\$133,463	\$133,463
General Counsel	118,388	118,388
Items of Appropriation:		
A. Goal: ADMINISTER ETHICS LAWS		
Administer Public Disclosure/Ethics Laws.		
A.1.1. Strategy: DISCLOSURE FILING	\$ 381,708	\$ 381,709
Serve as the Repository for Statutorily Required Information.		
A.1.2. Strategy: LEGAL GUIDANCE AND OPINIONS	\$ 388,964	\$ 388,966
Respond to Requests for Guidance/Advisory Opinions.		
A.1.3. Strategy: ENFORCEMENT	\$ 879,984	\$ 879,983
Respond to Complaints and Enforce Applicable Statutes.		
Total, Goal A: ADMINISTER ETHICS LAWS	<u>\$ 1,650,656</u>	<u>\$ 1,650,658</u>
B. Goal: INDIRECT ADMINISTRATION		
B.1.1. Strategy: CENTRAL ADMINISTRATION	\$ 355,826	\$ 395,827
B.1.2. Strategy: INFORMATION RESOURCES	<u>\$ 937,456</u>	<u>\$ 937,455</u>
Total, Goal B: INDIRECT ADMINISTRATION	<u>\$ 1,293,282</u>	<u>\$ 1,333,282</u>
Grand Total, TEXAS ETHICS COMMISSION	<u>\$ 2,943,938</u>	<u>\$ 2,983,940</u>
Object-of-Expense Informational Listing:		
Salaries and Wages	\$ 1,882,808	\$ 1,922,809
Other Personnel Costs	118,188	118,188
Professional Fees and Services	321,068	321,067
Consumable Supplies	11,854	11,854
Utilities	1,840	1,840
Travel	20,363	20,364
Rent - Building	5,679	5,680
Rent - Machine and Other	13,649	13,649
Other Operating Expense	237,599	206,291
Capital Expenditures	<u>330,890</u>	<u>362,198</u>
Total, Object-of-Expense informational Listing	<u>\$ 2,943,938</u>	<u>\$ 2,983,940</u>
Estimated Allocations for Employee Benefits and Debt Service Appropriations Made Elsewhere in this Act:		
<u>Employee Benefits</u>		
Retirement	\$ 163,256	\$ 163,256
Group Insurance	330,382	338,930
Social Security	138,289	138,289
Benefits Replacement	<u>6,200</u>	<u>5,332</u>
Subtotal, Employee Benefits	<u>\$ 638,127</u>	<u>\$ 645,807</u>

TEXAS ETHICS COMMISSION
(Continued)

<u>Debt Service</u>		
Lease Payments	\$ 42,646	\$ 0
Total, Estimated Allocations for Employee Benefits and Debt Service Appropriations Made Elsewhere in this Act	\$ 680,773	\$ 645,807

1. **Performance Measure Targets.** The following is a listing of the key performance target levels for the Texas Ethics Commission. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Texas Ethics Commission. In order to achieve the objectives and service standards established by this Act, the Texas Ethics Commission shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.

	<u>2018</u>	<u>2019</u>
A. Goal: ADMINISTER ETHICS LAWS		
Outcome (Results/Impact):		
Percent of Advisory Opinion Requests Answered by Commission within 60 Working Days of Receipt		
	90%	90%
A.1.1. Strategy: DISCLOSURE FILING		
Output (Volume):		
Number of Reports Logged within Two Working Days of Receipt		
	90,000	125,000
A.1.2. Strategy: LEGAL GUIDANCE AND OPINIONS		
Efficiencies:		
Average Time (Working Days) to Answer Advisory Opinion Requests		
	60	60
A.1.3. Strategy: ENFORCEMENT		
Output (Volume):		
Number of Sworn Complaints Processed		
	311	311
Efficiencies:		
Average Time (Working Days) to Respond to Sworn Complaints		
	4.06	4.06

2. **Capital Budget.** None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below shall be expended only for the purposes shown and are not available for expenditure for other purposes.

	<u>2018</u>	<u>2019</u>
a. Acquisition of Information Resource Technologies		
(1) Vendor Support for Electronic Filing & Disclosure Database Systems	\$ 347,890	\$ 347,890
b. Centralized Accounting and Payroll/Personnel System (CAPPS)		
(1) CAPPS Implementation	0	40,000
Total, Capital Budget	\$ 347,890	\$ 387,890
Method of Financing (Capital Budget):		
General Revenue Fund	\$ 347,890	\$ 387,890
Total, Method of Financing	\$ 347,890	\$ 387,890

3. **Judgments and Settlements.** Notwithstanding Article IX, Section 16.04, Judgments and Settlements, of this Act, payment of judgments or settlements, including attorney's fees, resulting from actions brought under Title 42 United States Code §1983 that arise from claims challenging the validity or constitutionality of a state law and prosecuted or defended by the Office of the Attorney General that are obtained against the Texas Ethics Commission, or any individual(s) acting in their official capacity on behalf of the Texas Ethics Commission, shall be paid out by the Comptroller and not from funds appropriated herein to the Texas Ethics Commission.

EXHIBIT D

Proposed Exceptional Items for TEC's

FY 2020-2021 Legislative Appropriation Request (LAR)

I – Computer Services Division/Technology

- \$100,00/ year: Add to the existing \$347,890 in Cap Rider to cover FAM/1295 maintenance shortage
- \$55,000: One time cost to replace 7 network switches that have reached end of life including time cost for technical support from Insight vendor
- \$62,500/ year: Purchase 500 enhancement hours at \$125/hour (\$62,500) from vendor for 1295 and FAM improvements each year
- \$40,000/year: 10% salary increase to retain current IT staff (Avg salary in Texas is 12.31% higher than current TEC staff)
- \$130,000/ year: Fund 2 vacant programmer vacancies each at \$65,000/year

II – Legal

- \$40,000: Case Management Software (\$40,000 = \$30,000 one-time cost plus \$10,000 annual maintenance)
- \$10,000/year: Annual maintenance cost for Case Management Software
- \$106,054.25/year: 25% increase in salaries to retain lawyers (TEC salary for Attorney I is \$50,000; average salary for Attorney I in Texas is \$72,000. Combined Avg Attorney Texas salary is 25.51% higher than current TEC Staff)
- \$25,185/year: 10% increase in Executive Director and General Counsel Salaries (consistent with state average- 5.38%)
- \$28,895 /year: 10% increase in salaries for legal support staff (Avg salary in Texas is 10.24% higher than current TEC staff)
- \$65,000/year: Fund vacant attorney position at \$65,000 annual salary
- \$25,000/ year: Maintain legal services costs at \$300,000/year and include additional \$25,000/year for possible cost of a formal hearing before SOAH
- \$15,000/year: Increase travel budget for training and TEC meetings

III – Administration

- \$50,000: Fund position for CAPPS Payroll Personnel transition (FY 2020 one time)
- \$ 50,000: Replace cypher locks with badge readers on 4 doors (including server room)- one time charge
- \$16,310/ year: 10% increase in salaries to retain staff (Avg salary in Texas is 14.16% higher than current TEC staff)
- \$80,000/year: Lump Sum payments for retiring/terminating employees
- UB authority for all unexpended funds between each year of biennium
- Remove restrictions on budget structure to allow transfer of funds from other divisions into indirect administration (Information Resources/CSD and Admin)

- Remove restrictions on transfer of FTEs from other divisions into indirect administration

IV – Disclosure Filing Services

- \$19,738/ Year: 10% increase in salaries to retain staff (Avg salary in Texas is 3.39% higher than current TEC staff)
- Remove contingency rider for appropriated receipts and add \$8,190 to baseline

Summary Exceptional items request:	<u>FY 2020</u>	<u>FY 2021</u>	<u>Biennium</u>
I – Computer Services Division/Technology:	\$387,500	\$332,500	\$720,000
II – Legal	\$305,135	\$275,134	\$580,269
III – Administration	\$196,310	\$96,310	\$292,620
IV – Disclosure Filing Services	\$19,738	\$19,738	\$39,476
	\$908,683	\$723,682	\$1,632,365

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PUBLIC MEETING AGENDA

Date and Time: 9:00 a.m., Wednesday, June 27, 2018
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. Comments by Commissioners.
3. Presentation from Nominating Committee regarding recommendations for the positions of Chair and Vice Chair of the Texas Ethics Commission. Election of Chair and Vice Chair of the Texas Ethics Commission.
4. Approve minutes for the following meetings:
 - o Executive Session – March 27, 2018; and
 - o Public Meeting – March 28, 2018.
5. Discussion regarding the next Texas Ethics Commission meetings.
6. Discussion regarding adding Commissioner photographs and short biographies to Texas Ethics Commission website.

ADMINISTRATIVE WAIVERS, REDUCTIONS, APPEALS OF FINES

7. Briefing, discussion, and possible action on appeal of fines increased by the Commission, and on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following individuals and legislative caucus:
 1. Laura Thompson (00080388)
 2. Aerospace Caucus, Legislative Caucus (00070741)
 3. Richard L. "Rick" Range (00082135)

For more information, contact Seana Willing, Executive Director, at (512) 463-5800.

8. 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:
 1. Michael Gipson, Treasurer, Democrats Choice For The People’s Voice (00070005)
 2. Nathan M. Johnson (00081605)
 3. Angela Paxton(00081932)
 4. Ramona L. Thompson (00082095)
 5. Clint Hackney, Treasurer, Texas Crane Owners Political Action Committee (00064304)
 6. Matthew Angle, Treasurer, Lone Star Project Nonfederal (00068390)
 7. Melody G. Chappell (00081890)
 8. Stephanie C. Schnaible, Treasurer, ‘PCC’ Parker County Conservatives (00070872)
 9. Latosha Lewis Payne (00069496)
 10. Michael Curran (00082458)
 11. Ritu Talwar, Treasurer, ‘Enbridge-DCP PAC’ Enbridge (U.S.) Inc. Political Action Committee (00063939)
 12. Aiesha Redmond (00082213)

ADVISORY OPINIONS

9. Discussion of Advisory Opinion Request No. SP-14: Whether a judge or a candidate for judicial office may use public resources for campaign purposes, and whether an associate judge may wear judicial robes and use the title “associate judge” in political advertising.

This opinion request construes sections 255.003 and 255.006 of the Election Code and section 39.02 of the Penal Code.

10. Discussion of Advisory Opinion Request No. AOR-627: Whether a candidate may use political contributions to pay for childcare expenses incurred during a campaign.

This opinion request construes section 253.035 of the Election Code.

11. Discussion of Advisory Opinion Request No. AOR-628: Whether section 572.069 of the Government Code would prohibit a former employee of a state agency from

accepting employment from a person to which the state agency had awarded a contract.

This opinion request construes section 572.069 of the Government Code.

RULEMAKING

RULES FOR ADOPTION

12. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of amendments to Ethics Commission Rules §§ 12.53 and 12.83, regarding communications between commission staff and members.
13. 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, regarding political advertising on the Internet.
14. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 12.13, regarding non-resident attorneys appearing before the commission.
15. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules in Chapter 12, regarding new procedural rules for the formal hearing process.
16. Public discussion and possible action on the adoption or proposal and publication in the Texas Register of new Ethics Commission Rules §§ 12.31 and 12.33, regarding decorum and sanctions in sworn complaint proceedings.

PROPOSED RULES FOR PUBLICATION

17. Public discussion and possible action on the proposal and publication in the Texas Register of an amendment to Ethics Commission Rules § 18.7, regarding the late filing of a report when the Commission's office is closed.
18. Public discussion and possible action on the proposal and publication in the Texas Register of new Ethics Commission Rules Chapter 16 (Facial Compliance Review & Full Audits), including §§ 16.1 – 16.11, regarding procedures for facial compliance reviews and audits.

OTHER POLICY MATTERS

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

Individuals

1. Paul K. Stafford (00069699)
2. Elizabeth R. Tarrant (00080357)
3. LaTronda T. Darnell (00080505)
4. Andy M. Chatham (00058203)
5. David M. Medina (00033991)
6. Angus Kelly McGinty (00051528)

Political Committees

7. Selena Xie, Treasurer, CAAAD Asian American Progress PAC (00062603)
 8. Skylor R. Williams, Treasurer, Conventional Wisdom, Inc. PAC (00065533)
 9. Eric Garza, Treasurer, Texas Leadership Council (00070202)
 10. Houston Ray McClenny, Treasurer, Inclusive Austin (00070479)
 11. Antoine Noun, Treasurer, United Republicans of Texas (00080370)
20. Report more than 30 days late: Discussion and possible action regarding the imposition of an additional fine on the following filers:

Candidates/Officeholders

1. Nicole D. Collier (00067957)
2. Nicole Elizalde Henning (00067765)
3. Lawrence Wade Johnson (00082419)
4. Jeffrey Rank (00081926)
5. Janis M. Richards (00082393)
6. Larry S. Smith (00080158)

Personal Financial Statements

7. Matthew S. Beebe (00067964)
8. Matthew S. Green (00082255)
9. Stephen A. West (00082342)

Lobbyists

10. Nathanael Ferguson (00069152)
11. Connie Heyer (00053927)
21. Discussion of possible recommendations for statutory changes to the 86th Legislature as required by § 571.073 of the Government Code.
22. Public discussion and possible action on a petition for rulemaking concerning the designation of a corporation's political contributions made to a general-purpose committee for administrative expenses under § 253.100(a) of the Election Code.
23. Public discussion and possible action on the proposal and publication in the Texas Register of new and amended Ethics Commission rules regarding corporations and labor organizations making political expenditures to finance the establishment and administration of, and solicitation of political contributions to, a general-purpose committee and making political contributions to a political committee for supporting or opposing measures exclusively under §§ 253.096 and 253.100 of the Election Code.
24. Adjourn.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: Seana Willing, 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:

2018 CALENDAR

JANUARY						
S	M	T	W	Th	F	S
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

01 New Year's Day
 06 Epiphany
 10 Lobby Annual Activity Report Due
 15 M.L. King Day
 15 Jan. Semiannual Report Due

JULY						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

04 Independence Day
 16 July Semiannual Report Due

FEBRUARY						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

13 Shrove Tuesday (Mardi Gras)
 14 Valentine's Day/Ash Wednesday
 19 Presidents Day

AUGUST						
S	M	T	W	Th	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

MARCH						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

2. Texas Independence Day
 30 Good Friday
 31 Passover

SEPTEMBER						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

03 Labor Day
 10 Rosh Hashana
 19 Yom Kippur

APRIL						
S	M	T	W	Th	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

1 Easter

OCTOBER						
S	M	T	W	Th	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

08 Columbus Day
 31 Halloween

MAY						
S	M	T	W	Th	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

13 Mother's Day
 16 Ramadan starts
 28 Memorial Day

NOVEMBER						
S	M	T	W	Th	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

6 Election Day
 12 Veterans Day (observed)
 22 Thanksgiving Day

JUNE						
S	M	T	W	Th	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

17 Father's Day

DECEMBER						
S	M	T	W	Th	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

3 Hanukkah (first day)
 25 Christmas Day
 26 Kwanzaa begins

DRAFT

 ETHICS ADVISORY OPINION NO. ____

June 27, 2018

Whether a judge or a candidate for judicial office may use public resources for campaign purposes, and whether an associate judge may wear judicial robes and use the title “associate judge” in political advertising. (SP-14)

SUMMARY

Section 39.02(a)(2) of the Penal Code and section 255.003(a) of the Election Code prohibit a judge from using the courtroom in which the judge presides to create a photograph for political advertising. These statutes do not prohibit a judge from using the public steps of a courthouse to create a photograph for political advertising. Section 39.02(a)(1) of the Penal Code may, depending on all applicable laws, prohibit a judge from using the public steps of a courthouse to create a photograph for political advertising. These statutes do not apply to a person who is a candidate for judicial office and is not otherwise a public servant.

Section 255.006 of the Election Code does not prohibit an associate judge from wearing judicial robes or referring to the judge in political advertising as “Associate Judge, 1000th District Court, Texas County.”

ANALYSIS

The Texas Ethics Commission (“Commission”), on its own initiative, issues this advisory opinion to address whether a judge may use the courtroom in which the judge presides, including the bench located in the courtroom, or the public steps of a courthouse to create a photograph for political advertising. To resolve this question, we must address sections 39.02(a)(2) and 39.02(a)(1) of the Penal Code and section 255.003(a) of the Election Code, which restrict the use of public resources for political advertising. We also address whether an associate judge may wear judicial robes or use the title “associate judge” in political advertising under section 255.006 of the Election Code.

*Use of Public Resources for Political Advertising**Section 39.02(a)(2), Penal Code*

Section 39.02(a)(2) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly “misuse[] government property, services, personnel, or any other thing of value belonging to the government that has come into

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the public servant's custody or possession by virtue of the public servant's office or employment."¹ Penal Code § 39.02(a)(2). A public servant includes an officer, employee, or agent of government or a candidate for nomination or election to public office.² A "misuse" means:

[T]o deal with government property contrary to:

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

Id. § 39.01(2).

The use of government resources for campaign purposes is a misuse contrary to the state constitutional requirements that public money be used for a public purpose. Tex. Const. art. III, §§ 51, 52(a).³ Section 39.02(a)(2) of the Penal Code applies only to a misuse of government resources that have "come into the public servant's custody or possession by virtue of the public servant's office or employment." Whether a particular government resource is in a public servant's custody or possession by virtue of the public servant's office or employment depends upon the specific facts. In our opinion, a judge would have custody or possession⁴ of the

¹ We assume for purposes of this opinion that the judge acts with intent to obtain a benefit or to harm or defraud another. "Benefit" is defined, in pertinent part, as "anything reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code. § 1.07(a)(7).

² *Id.* § 1.07(41)(A), (E).

³ Tex. Const. art. III, §§ 51 (legislature may not authorize grant of public money to any individual, association, municipal or other corporation), 52(a) (legislature may not authorize any county, city, town or other political corporation or subdivision of the state to grant public money or thing of value in aid of or to any individual, association, or corporation). *See also* Ethics Advisory Opinion Nos. 386 (1997) (use of state equipment or state employees to handle campaign contributions or prepare campaign finance reports for officeholders is a misuse of government resources), 172 (1993) (state employees' work time may not be used to handle campaign contributions or expenditures); Gov't Code § 556.004 (prohibiting use of legislatively appropriated money and other resources for campaign purposes); Attorney General Opinions DM-431 (1997), JM-685 (1993) (both holding that governmental entity may not pay costs in connection with election contest involving government officeholder), MW-36 (1979) (public body has no authority to contribute public funds to or on behalf of an individual or organization).

⁴ "Custody" is defined as "[t]he care and control of a thing or person for inspection, preservation, or security." Black's Law Dictionary 467 (10th ed. 2014). "Possession" is defined as "[t]he fact of having or holding property in one's power; the exercise of dominion over property," and "[t]he right under which one may exercise control over something to the exclusion of all others." *Id.* at 1351.

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courtroom in which the judge presides by virtue of being a judge, and therefore section 39.02(a)(2) of the Penal Code would prohibit a judge from using the courtroom in which the judge presides, including the bench located in the courtroom, to create a photograph for political advertising. With respect to the use of the public steps of a courthouse to create a photograph for political advertising, in our opinion, such an area would not be in the “custody or possession” of a judge. Therefore, section 39.02(a)(2) of the Penal Code would not prohibit a judge from using the public steps of a courthouse to create a photograph for political advertising. We do not address in this opinion the use of a government facility that is a public forum.⁵

With respect to whether a candidate for judicial office may use a courtroom or the public steps of a courthouse for political advertising, we do not think section 39.02(a)(2) of the Penal Code would apply to a person whose only status as a public servant is as a candidate for judicial office because a candidate does not have an “office or employment” as a candidate.

Section 39.02(a)(1), Penal Code

Section 39.02(a)(1) of the Penal Code states that a public servant may not, with intent to obtain a benefit or harm or defraud another, intentionally or knowingly “violate[] a law relating to the public servant’s office or employment.” Penal Code § 39.02(a)(1).⁶ Section 39.02(a)(2) of the Penal Code and the constitutional requirement to use public money for a public purpose are laws relating to the judge’s office or employment. Therefore, in our opinion, a judge would violate section 39.02(a)(1) of the Penal Code by using the courtroom in which the judge presides, including the bench located in the courtroom, to create a photograph for political advertising. We also do not think section 39.02(a)(1) of the Penal Code applies to a person who is a public servant only by virtue of being a candidate for judicial office or to the use of the steps of a courthouse that are operating as a public forum.

However, we caution that additional legal restrictions may apply to the use of any public resources, including other state or local laws or policies, and such restrictions may constitute law relating to a public servant’s office or employment under section 39.02(a)(1) of the Penal Code. This prohibition has a wide application and “allows for a vast array of potential means of

⁵ Whether a governmental body has the legal authority to designate any facility as a public forum should be directed to the respective governmental body or to the Office of the Attorney General. *See, e.g.*, Attorney General Opinion No. DM-64 (1991) (addressing whether state appropriations act prohibits police department from designating its property as a public forum for distributing literature and soliciting funds). Whether any restriction on the use of a public forum for speech or political expression is enforceable must be considered in light of the First Amendment. *See United States v. Grace*, 461 U.S. 171, 177 (1983) (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983)) (a governmental body may enforce “reasonable time, place, and manner regulations in a public forum as long as the restrictions are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication”).

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

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committing the offense.” *State v. Martinez*, 2018 Tex. App. LEXIS 2590, 16 (Tex. App. 13th—Corpus Christi – Edinburg) (Apr. 12, 2018) (indictment alleging an offense under this provision must specify which law or laws relating to the public servant’s office or employment were allegedly violated). Accordingly, we cannot provide assurance that section 39.02(a)(1) of the Penal Code, depending upon all applicable laws, would not prohibit a judge from using other government resources, including the public steps of a courthouse, to create a photograph for political advertising.⁷

Section 255.003(a), Election Code

Section 255.003(a) of the Election Code states that 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).⁸ The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities.⁹ “Political advertising” is defined, in pertinent part, as a communication supporting or opposing a candidate for nomination or election to a public office or a public officer that is published or broadcast in return for consideration or appears in various forms of writing or on an Internet website. *Id.* § 251.001(16).

In our opinion, this statute would prohibit a judge from using the courtroom in which the judge presides, including the bench located inside the courtroom, to create a photograph for political advertising.¹⁰ However, this statute only applies to an officer or employee of a political subdivision and therefore does not apply to a person who is a candidate for judicial office and is not also an officer or employee of a political subdivision. Additionally, we do not think a judge’s use of the public steps of a courthouse to create a photograph for political advertising would constitute spending, or the authorization to spend, public funds for political advertising, and therefore would not violate section 255.003(a) of the Election Code.

Use of “Associate Judge” in Political Advertising

⁷ We cannot opine on laws outside our jurisdiction. Gov’t Code §571.091 (specifying the laws subject to an advisory opinion by the Commission).

⁸ This law would apply to a judge who is an officer or employee of a political subdivision, whereas section 39.02 of the Penal Code applies to any public servant, including a state judge. *See* Penal Code § 1.07(41) (defining “public servant” to include an officer, employee, or agent of government).

⁹ *See, e.g.*, Ethics Advisory Opinion Nos. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds), 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time is prohibited); Attorney General Opinion No. KP-177 (2018) (this statute prohibits the use of school district staff, facilities, or other resources to advertise for or against a candidate or measure).

¹⁰ As noted above in this opinion, we do not address the use of a government facility that is a public forum.

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We also address in this opinion whether an associate judge, who is also a candidate for state district judge, may wear judicial robes or refer to himself in political advertising in the following manner: “John Smith, Associate Judge, 1000th District Court, Texas County.”

Section 255.006 of the Election Code states:

(a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he does not hold at the time the agreement is made.

(b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office he does not hold at the time the representation is made.

That law generally does not prohibit a judge from using the title “judge” in political advertising or campaign communications for another judicial office as long as the communications do not suggest that the judge holds a public office the person does not hold. *See, e.g.*, Ethics Advisory Opinion No. 171 (1993) (a part-time municipal judge seeking the office of district or county court-at-law judge may use the title “judge” in political advertising); *see also* Elec. Code §§ 251.001(16), (17) (defining “political advertising” and “campaign communication”).

For purposes of this opinion, the issue is whether wearing judicial robes or the use of the title “associate judge” would represent that the judge holds a public office, not whether the judge is actually a judge. In this instance, wearing judicial robes or using a reference to the associate judge as “Associate Judge, 1000th District Court, Texas County” does not, by itself, represent that the judge holds an office the judge does not hold, and therefore would not violate section 255.006 of the Election Code.

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ETHICS ADVISORY OPINION NO. ____

June 27, 2018

Whether a candidate may use political contributions to pay childcare expenses incurred during a campaign. (AOR-627)

SUMMARY

Under the facts presented, a candidate may use political contributions to pay childcare expenses to facilitate the candidate's participation in campaign activities.

FACTS

The requestor of this opinion is a candidate for public office who states that, since becoming a candidate for public office, she has had to pay for childcare services (daycare and babysitting) for her two young children while she attends campaign events and meetings. She describes the campaign activities, in part, as commissioners court meetings; public office hours to meet with voters; meetings with campaign volunteers; and attendance at other campaign events and blockwalking. She states that she cannot be an effective and successful candidate without the childcare services for several reasons, including that she is facilitating the meetings, she is required to be "hands-on" at the meetings, that children would be a disturbance during the meetings, that the events occur past the children's bedtime, or that outdoor temperatures are too high for the children to attend. She states that before she was a candidate, she was "a stay-at-home mom" and never incurred costs for childcare other than an occasional babysitter for personal reasons. She states that she desires to use political contributions to pay for the childcare and that a supporter intends to contribute to the candidate's campaign specifically to help defray the costs of childcare.

ANALYSIS

A person who accepts a political contribution¹ as a candidate may not convert the contribution to personal use. Elec. Code § 253.035(a). "Personal use" is a use that primarily furthers individual

¹ "Political contribution" means a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).

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or family purposes not connected with the performance of duties or activities as a candidate. *Id.* § 253.035(d).

The candidate's payments for childcare services further some individual or family purposes. However, we have previously recognized that "by specifying that the use must not *primarily* serve individual or family purposes, the legislature has indicated that a use is not a prohibited personal use merely because it may have some incidental benefits to the individual candidate." Ethics Advisory Opinion No. 149 (1993) (emphasis in original). According to the facts presented, the candidate began paying for childcare services only after becoming a candidate, and the candidate's stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign activities. Thus, in our opinion, the payments would not primarily further individual or family purposes not connected with the performance of duties or activities as a candidate and therefore would not constitute personal use.²

² By comparison, the use of political contributions for leadership training, seminars, or courses of study may be connected with the activities of a candidate because they facilitate activities as a candidate. *See* Ethics Advisory Opinion Nos. 546 (2018), 423 (1999), 267 (1995), 247 (1995), and 157 (1993).

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ETHICS ADVISORY OPINION NO. ____

June 27, 2018

Whether section 572.069 of the Government Code would prohibit a former employee of a state agency from accepting employment from a person to which the state agency had awarded a contract. (AOR-628)

SUMMARY

Section 572.069 of the Government Code prohibits a former employee of a state agency from accepting employment from a person, before the second anniversary of the date on which the former employee's employment with the agency ended, because the former employee assisted in revising the scope of a contract that was awarded by the agency to that person.

FACTS

The Texas Ethics Commission has been asked whether the "revolving door" law in section 572.069 of the Government Code would prohibit the requestor of this opinion ("the requestor") from accepting employment from the person ("the person") to which the state agency¹ ("the agency") had awarded a contract.

The requestor states that the agency awarded the contract through a competitive procurement. The requestor did not negotiate the contract, score contract proposals, or review or manage scoring decisions by agency staff. The requestor edited and updated the scope of work for the contract that was awarded to the person by adding supplemental programs to the scope of work for an expired contract. The requestor also identified and managed staff who worked on the procurement and assisted agency executives to locate and execute the contract after the agency awarded the contract to the person. The requestor states that the agency executed the contract on May 1, 2017. The requestor retired from the agency shortly thereafter.

ANALYSIS

At the time the agency executed the contract, section 572.069 of the Government Code stated:

¹ The agency is the Texas Health and Human Services Commission, which is a state agency. Gov't Code § 572.002(10)(A) (defining "state agency" in part as a commission in the state executive branch with statewide authority and created by the Texas Constitution or state statute).

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A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date of the officer's or employee's service or employment with the state agency ceased.

Gov't Code § 572.069 (effective through August 31, 2017).²

The question is whether the requestor participated on behalf of the agency in a procurement or contract negotiation involving the person. Section 572.069 does not define the term "participated;" however, it is defined in section 572.054 of the Government Code, a companion revolving door law, as "to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." *Id.* § 572.054(h)(1). Additionally, for purposes of that law, a former officer or employee is deemed to have "participated" when acting "either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility," including being "in a position of authority over those who have personal involvement in the matter." Ethics Advisory Opinion No. 285 (1995). It is reasonable to rely on the meaning of "participated" in section 572.054 when construing section 572.069, and we therefore apply that meaning here. *See* Gov't Code § 311.011(b) (words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly).

The requestor, personally and as an official responsibility, edited and updated the scope of work of an expired contract to prepare the new contract that the agency awarded to the person. By doing so, the requestor participated in a procurement on behalf of the agency. Accordingly, section 572.069 of the Government Code would prohibit the requestor from accepting employment from the person for two years after the date the requestor's service or employment with the agency ceased.³

² The statute was amended, effective September 1, 2017, to prevent a former employee of a state agency from accepting employment before the second anniversary of the date the "*contract is signed or the procurement is terminated or withdrawn*" (emphasis added). Acts 2017, 85th Leg., R.S., ch. 556, §1 (effective September 1, 2017). Although the previous law applies to this requestor's inquiry, the facts in this particular situation would not lead to a different result under the new law.

³ The requestor also assisted agency executives to locate and execute the contract that was awarded to the person. In our opinion, the legislature did not intend "participated" under section 572.069 of the Government Code to include an employee's purely ministerial acts that do not involve the exercise of official discretion by that employee. As we note above, the companion revolving door law in section 572.054(b) prohibits a former state officer or employee of a regulatory agency from representing any person or receiving compensation for services rendered on behalf of any person regarding a "particular matter" in which the former officer or employee participated during the period of state service or employment. A "particular matter" involves the exercise of discretion by the state agency. Ethics Advisory Opinion No. 285 (1995). The definition of "participated" similarly includes such actions as a decision, approval, disapproval, recommendation, giving advice, or an investigation. Gov't Code § 572.054(h)(1).

AGENDA ITEM 12, EXHIBIT A

EXHIBIT A (Staff Option 1 – For Publication)

- 1. Executive Director Resolves All Complaints in Preliminary Review
- 2. Expressly Permitting Ex Parte Communications Regarding Initiation

Text of Proposed Rule Amendments

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

Chapter 6. ORGANIZATION AND ADMINISTRATION

Subchapter A. GENERAL RULES

§ 6.7. Actions That Require Six Votes.

(a) The following actions require the affirmative vote of no less than six members of the commission:

(1) to adopt a rule to administer any law administered and enforced by the commission;

(2) to render any decision on a complaint or a report of a violation ~~[as provided by the Government Code, Chapter 571 (concerning Texas Ethics Commission),]~~ other than:

(A) a final decision after a formal hearing that a violation has not occurred, which requires only five votes, or

(B) a decision to resolve a complaint during a preliminary review, which is made by the executive director;

(3) to prohibit participation by a member of the commission in commission proceedings relating to the investigation, complaint, or motion;

(4) without a sworn complaint, to initiate a preliminary review of an alleged violation of a law administered or enforced by the commission;

(5) to subpoena and examine witnesses and documents that directly relate to a sworn complaint and issue a written request to a peace officer to serve a subpoena of the commission in the manner prescribed for service of a district court subpoena;

(6) to order and perform a complete audit at an informal or formal hearing of a sworn complaint or commission-initiated complaint; and

1 (7) to initiate civil enforcement actions and refer matters to the appropriate
2 prosecuting attorney for criminal prosecution.

3 (b) Any action not listed in subsection (a) of this section that requires a vote of the commission
4 requires the affirmative vote of no less than five members of the commission.

5 **Chapter 12. SWORN COMPLAINTS**

6 **Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT**

7 **§ 12.53. Commission Initiated Complaint.**

8
9 (a) Commission staff may gather or present documents or evidence, make recommendations, and
10 otherwise communicate outside the presence of the respondent with commissioners in
11 contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners
12 may request documents, evidence, or recommendations, and otherwise communicate with
13 commission staff outside the presence of the respondent, in contemplation of, or in preparation for,
14 a commission initiated preliminary review.

15
16 (b) [(a)] A preliminary review initiated by the commission under section 571.124(b) of the
17 Government Code is deemed to be a complaint for purposes of all further proceedings under
18 chapter 571 of the Government Code and of this chapter.

19
20 (c) [(b)] Documents or evidence gathered by the commission and commission staff in
21 contemplation of, or in preparation for, a commission initiated preliminary review are related to
22 the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140
23 of the Government Code.

24 (d) [(e)] Discussions between the commission and commission staff regarding gathering
25 documents or evidence in contemplation of, or in preparation for, a commission initiated
26 preliminary review are related to the processing of a preliminary review or motion for the purposes
27 of sections 571.139 and 571.140 of the Government Code.

28 **Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW**

29 **§ 12.81. Technical, Clerical, or De Minimis Violations.**

30 (a) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government
31 Code may include a first-time allegation against a respondent for:

32
33 (1) Typographical or incomplete information on a campaign finance report that is
34 not misleading and does not substantially affect disclosure;

35
36 (2) Failure to include a disclosure statement on political advertising;

37

1 (3) Failure of a non-incumbent to use the word "for" in a campaign communication
2 that is not otherwise misleading;

3
4 (4) Failure to include the highway right-of-way notice on political advertising;

5
6 (5) Using a representation of the state seal by a person who is not an officeholder
7 in political advertising that is not otherwise misleading;

8
9 (6) Filing a late campaign finance report that is not a report due 30 or 8 days before
10 an election or a special pre-election report, and the alleged violations do not
11 substantially affect disclosure;

12
13 (7) Filing an incomplete or corrected campaign finance report that is not a report
14 due 30 or 8 days before an election or a special pre-election report if:

15
16 (A) the total amount of incomplete or incorrectly reported political
17 contributions does not exceed the lesser of 10% of the total amount of
18 political contributions on the corrected report, or \$5,000;

19
20 (B) the total amount of incomplete or incorrectly reported political
21 expenditures does not exceed the lesser of 10% of the total amount of
22 political expenditures on the corrected report, or \$5,000; or

23
24 (C) the total amount of incomplete or incorrectly reported political
25 contributions or political expenditures does not exceed the amount of the
26 filing fee for a place on the ballot for the office sought or held by the
27 respondent during the period covered by the report at issue, or, if there is
28 not a set filing fee, \$500;

29
30 (8) Filing an incomplete or corrected campaign finance report if the incomplete or
31 corrected information is not misleading and does not substantially affect disclosure,
32 including:

33
34 (A) the filer's full name, address, office sought, or office held;

35
36 (B) the identity and date of the election for which the report is filed;

37
38 (C) the campaign treasurer's full name, address, or telephone number;

39
40 (D) the full name of each identified candidate or measure or classification
41 by party of candidates supported or opposed by a political committee;

42
43 (E) the full name of each identified officeholder or classification by party
44 of officeholders assisted by a political committee;

1 (F) the amount of total political contributions maintained as of the last day
2 of the reporting period, if the error is a de minimis error as defined by §20.50
3 of this title;

4
5 (G) the purpose of a political expenditure; or

6
7 (H) the period covered by the report;

8
9 (9) Failure to timely file a campaign treasurer appointment if, before filing the
10 campaign treasurer appointment, the total amount of political contributions
11 accepted does not exceed \$2,500 and the total amount of political expenditures
12 made or authorized does not exceed \$2,500;

13
14 (10) Failure to disclose information related to an out-of-state political committee
15 required by §20.29 or §22.7 of this title if the total amount of political contributions
16 accepted from the committee does not exceed \$10,000 and the contributions are
17 otherwise properly disclosed;

18
19 (11) Failure to disclose the principal occupation, job title, or employer of a
20 contributor if the total amount of political contributions accepted from the
21 contributor does not exceed \$15,000 and the contributions are otherwise properly
22 disclosed;

23
24 (12) As a general-purpose committee, making a political contribution to another
25 general-purpose committee without including in its campaign treasurer
26 appointment the name of the recipient committee before making the contribution,
27 if the contributing committee properly disclosed the contribution;

28
29 (13) Failure to file a termination report required by §20.317 or §20.417 of this title
30 if the period covered by the termination report is included in a subsequently filed
31 report;

32
33 (14) Filing a campaign finance report without using the form prescribed by the
34 commission if the report:

35
36 (A) discloses all the information required by chapter 254 of the Election
37 Code and this title;

38
39 (B) is substantially similar in size and format to the form prescribed by the
40 commission; and

41
42 (C) is not misleading and does not substantially affect disclosure;

43
44 (15) Making a political contribution prohibited by §253.1611, Election Code, if the
45 contribution does not exceed the limits by more than \$1,000 and the amount in
46 excess is returned to the contributor; or

1
2 (16) Failure to timely respond to a sworn complaint if the response is no more than
3 30 days late and the respondent shows good cause for the late response.

4
5 (b) A technical, clerical, or de minimis violation for purposes of §571.0631 of the Government
6 Code may include allegations against a respondent for:

7
8 (1) Typographical or incomplete information on a campaign finance report that is
9 not misleading or does not substantially affect disclosure;

10
11 (2) Filing an incomplete or corrected campaign finance report if:

12
13 (A) the total amount of incomplete or incorrectly reported political
14 contributions does not exceed the lesser of 5% of the total amount
15 of political contributions on the corrected report, or \$2,500; or

16
17 (B) the total amount of incomplete or incorrectly reported political
18 expenditures does not exceed the lesser of 5% of the total amount of
19 political expenditures on the corrected report, or \$2,500; or

20
21 (3) Filing an incomplete or inaccurate campaign finance report by a general-
22 purpose committee if, during the period covered by the report and during each of
23 the two reporting periods preceding the period covered by the report, the committee
24 did not:

25
26 (A) accept political contributions totaling \$3,000 or more;

27
28 (B) accept political contributions from a single person totaling
29 \$1,000 or more; or

30
31 (C) make political expenditures totaling \$3,000 or more.

32 ~~[(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government~~
33 ~~Code, if the executive director determines that all the alleged violations are technical, clerical, or~~
34 ~~de minimis under subsection (a) of this section, the executive director may enter into an assurance~~
35 ~~of voluntary compliance with the respondent. Before entering into an assurance of voluntary~~
~~compliance, the executive director may require a respondent to correct the violations.]~~

36 ~~[(d) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government~~
37 ~~Code, if the executive director determines that all the alleged violations are technical, clerical, or~~
38 ~~de minimis under subsection (b) of this section, the executive director may enter into an agreed~~
39 ~~resolution with the respondent. Before entering into an agreed resolution, the executive director~~
40 ~~may require a respondent to correct the violations.]~~

41 ~~[(e) An assurance of voluntary compliance or an agreed resolution entered into under this section~~
42 ~~is confidential under section 571.140 of the Government Code.]~~

1 ~~[(f) An assurance of voluntary compliance or an agreed resolution entered into under this section~~
2 ~~may include a penalty not to exceed \$500.]~~

3 **§ 12.82. Resolution During Preliminary Review.**

4 (a) During a preliminary review, the executive director may resolve a sworn complaint by entering
5 into an assurance of voluntary compliance, agreed resolution, or other agreed order with a
6 respondent and may require a respondent to correct any violations or noncompliance that is the
7 subject of the complaint. The executive director may require a respondent to pay a civil penalty in
8 an amount not to exceed the maximum amount allowable under §571.173, Government Code, or
9 other applicable law.

10 (b) An assurance of voluntary compliance entered into under this section is confidential under
11 §571.140 of the Government Code.

12 (c) During a preliminary review, the executive director may dismiss a complaint after determining
13 that there is credible evidence of no violation of any law administered and enforced by the
14 commission.

15 (d) Except as provided by subsection (e) of this section, if during a preliminary review the
16 executive director receives a written request for a preliminary review hearing from a respondent,
17 the executive director shall set the complaint for a preliminary review hearing.

18 (e) If the executive director determines that good cause exists to postpone a preliminary review
19 hearing, the executive director may postpone such hearing until the following commission
20 meeting. The executive director may postpone such hearing not more than twice.

21 **§ 12.83 Preliminary Review.**

22 (a) A respondent must respond to written questions submitted to the respondent pursuant to section
23 571.1243 of the Government Code not later than 15 business days after the respondent receives
24 the written questions. The executive director may grant an extension of the time period for good
25 cause shown.

26 (b) If the commission staff submits written questions to a respondent pursuant to section 571.1243
27 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government
28 Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number
29 of business days during the period beginning on the date the commission sends the written
30 questions and ending on the date the commission receives the respondent's written response.

31 (c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to
32 section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2)
33 of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is
34 increased by the number of business days during the period beginning on the date the staff applies
35 to the commission for the subpoena and ending on either:

- 1 (1) the date the commission rejects the staff's application for a subpoena;
- 2 (2) the date the person to whom the subpoena is directed complies with the subpoena; or
- 3 (3) the date the commission reports to a district court pursuant to section 571.137(c) of the
4 Government Code.
- 5 (d) Commission staff may not communicate with a commissioner outside the presence of the
6 respondent for the purpose of influencing a decision on a pending sworn complaint. [~~The executive~~
7 ~~director may report to the commission any findings and conclusions from a preliminary review of~~
8 ~~a complaint.~~]

AGENDA ITEM 12, EXHIBIT B

EXHIBIT B (Staff Option 2 – For Publication)

- 1
- 2
- 3 1. Requiring Prior Agreement on Non-Technical/De Minimis Complaints
- 4 2. Expressly Permitting Ex Parte Communications Regarding Initiation
- 5

6 Text of Proposed Rule Amendments

7
8 The proposed new language is indicated by underlined text.
9 The deleted language is indicated by [~~strike through~~] text.

10 Chapter 12. SWORN COMPLAINTS

11 Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

12 § 12.53. Commission Initiated Complaint.

13
14 (a) Commission staff may gather or present documents or evidence, make recommendations, and
15 otherwise communicate outside the presence of the respondent with commissioners in
16 contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners
17 may request documents, evidence, or recommendations, and otherwise communicate with
18 commission staff outside the presence of the respondent, in contemplation of, or in preparation for,
19 a commission initiated preliminary review.

20
21 (b) [(a)] A preliminary review initiated by the commission under section 571.124(b) of the
22 Government Code is deemed to be a complaint for purposes of all further proceedings under
23 chapter 571 of the Government Code and of this chapter.

24
25 (c) [(b)] Documents or evidence gathered by the commission and commission staff in
26 contemplation of, or in preparation for, a commission initiated preliminary review are related to
27 the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140
28 of the Government Code.

29 (d) [(e)] Discussions between the commission and commission staff regarding gathering
30 documents or evidence in contemplation of, or in preparation for, a commission initiated
31 preliminary review are related to the processing of a preliminary review or motion for the purposes
32 of sections 571.139 and 571.140 of the Government Code.

33 Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW

34 § 12.83. Preliminary Review.

35 (a) A respondent must respond to written questions submitted to the respondent pursuant to section
36 571.1243 of the Government Code not later than 15 business days after the respondent receives
37 the written questions. The executive director may grant an extension of the time period for good
38 cause shown.

1 (b) If the commission staff submits written questions to a respondent pursuant to section 571.1243
2 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government
3 Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number
4 of business days during the period beginning on the date the commission sends the written
5 questions and ending on the date the commission receives the respondent's written response.

6 (c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to
7 section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2)
8 of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is
9 increased by the number of business days during the period beginning on the date the staff applies
10 to the commission for the subpoena and ending on either:

11 (1) the date the commission rejects the staff's application for a subpoena;

12 (2) the date the person to whom the subpoena is directed complies with the
13 subpoena; or

14 (3) the date the commission reports to a district court pursuant to section 571.137(c)
15 of the Government Code.

16 (d) During a preliminary review, commission staff shall determine whether there is credible
17 evidence of a violation of law within the jurisdiction of the commission. If staff determines there
18 is credible evidence of a violation, staff shall attempt to reach an agreement with the respondent
19 to resolve and settle the complaint, including the payment of any civil penalty. If staff determines
20 there is no credible evidence of a violation, staff shall recommend to the commissioners that the
21 complaint be dismissed. If staff determines there is insufficient evidence of a violation, staff shall
22 recommend to the commissioners that the complaint be dismissed or request a preliminary review
23 hearing.

24 [~~(d) The executive director may report to the commission any findings and conclusions from a~~
25 ~~preliminary review of a complaint.]~~

26 (e) Staff shall present any agreement or recommendation under subsection (d) of this section to
27 the commissioners. If there are insufficient votes by the commissioners to accept the agreement or
28 recommendation, the commissioners may direct staff to propose an agreement to the respondent.
29 If no agreement between the commissioners and the respondent can be reached, or if the executive
30 director receives a written request for a preliminary review hearing from a respondent, the
31 executive director shall set the complaint for a preliminary review hearing.

32 (f) Commission staff may not communicate with a commissioner outside the presence of the
33 respondent for the purpose of influencing a decision on a pending sworn complaint.

34 (g) If the executive director determines that good cause exists to postpone a preliminary review
35 hearing, the executive director may postpone such hearing until the following commission
36 meeting. The executive director may postpone such hearing not more than twice.

EXHIBIT C (Staff Option 3 – For Adoption or Publication)

1. Expressly Permitting Ex Parte Communications Regarding Initiation
2. Expressly Permitting Ex Parte Communications Regarding Preliminary Review

Text of Proposed Rule Amendments

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

Chapter 12. SWORN COMPLAINTS

Subchapter B. FILING AND INITIAL PROCESSING OF A COMPLAINT

§ 12.53. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate outside the presence of the respondent with commissioners in contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners may request documents, evidence, or recommendations, and otherwise communicate with commission staff outside the presence of the respondent, in contemplation of, or in preparation for, a commission initiated preliminary review.

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

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

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

Subchapter C. INVESTIGATION AND PRELIMINARY REVIEW

§ 12.83. Preliminary Review.

(a) A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives

1 the written questions. The executive director may grant an extension of the time period for good
2 cause shown.

3 (b) If the commission staff submits written questions to a respondent pursuant to section 571.1243
4 of the Government Code, the time period set forth in section 571.1242(a)(2) of the Government
5 Code or section 571.1242(b)(2) of the Government Code, as applicable, is increased by the number
6 of business days during the period beginning on the date the commission sends the written
7 questions and ending on the date the commission receives the respondent's written response.

8 (c) If the commission staff applies to the commission for the issuance of a subpoena pursuant to
9 section 571.137(a-1) of the Government Code, the time period set forth in section 571.1242(a)(2)
10 of the Government Code or section 571.1242(b)(2) of the Government Code as applicable, is
11 increased by the number of business days during the period beginning on the date the staff applies
12 to the commission for the subpoena and ending on either:

13 (1) the date the commission rejects the staff's application for a subpoena;

14 (2) the date the person to whom the subpoena is directed complies with the
15 subpoena; or

16 (3) the date the commission reports to a district court pursuant to section 571.137(c)
17 of the Government Code.

18 (d) During a preliminary review, commission staff may present documents or evidence, make
19 recommendations, or otherwise communicate with commissioners outside the presence of the
20 respondent for the purpose of investigating and resolving a sworn complaint. [~~The executive~~
21 ~~director may report to the commission any findings and conclusions from a preliminary review of~~
22 ~~a complaint.~~]

23 (e) Commission staff may not communicate with a commissioner outside the presence of the
24 respondent for the purpose of influencing a decision on a pending sworn complaint after the
25 complaint has been scheduled for a preliminary review hearing and notice of the hearing has been
26 sent to the respondent.

27

EXHIBIT A

Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

1 **CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING**

2 **§ 26.1. Disclosure Statement.**

3 (a) A disclosure statement that is required by §255.001, Election Code, must contain the
4 words "political advertising" or any recognizable abbreviation, and must:

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

7 (2) be clearly spoken in the political advertising if the political advertising does not
8 include written text.

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

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

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

13 (3) the candidate authorizing the political advertising.

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

16 (d) A disclosure statement is not required on political advertising appearing on an Internet
17 website if:

18 (1) no payment was made to create, publish, or broadcast the political advertising,
19 and

20 (2) the political advertising was not authorized by a candidate or political
21 committee.

22 (d-1) For purposes of subsection (d) of this section, "payment" does not include the use of
23 goods or equipment acquired for purposes other than political advertising or the
24 consumption of electricity.

AGENDA ITEM 13, EXHIBIT B

Patti Shannon - Comments on online advertising proposal

From: Gardner Pate
To: Ian Steusloff <ian.steusloff@ethics.state.tx.us>
Date: 6/11/2018 1:39 PM
Subject: Comments on online advertising proposal
CC: Margo Cardwell
Attachments: Online Advertising Rule Comments.pdf; Online Advertising Rule Proposal.pdf

Ian,

Please accept the attached as joint comments from myself and Margo Cardwell (copied here) to the Ethics Commission's proposed amendments to Rule 26.1. We are happy to discuss if you or the commissioners have any questions, and will plan to speak at the Commission's June meeting.

Thank you.

GP

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Government Affairs and Legal Consulting

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June 11, 2018

Seana Willing
Executive Director
Texas Ethics Commission
PO Box 12070
Austin, Texas 78711-2070

Re: Comments on Proposed Amendment to Rule 26.1

Dear Ms. Willing:

Please accept these as joint comments from myself and Margo Cardwell on the Texas Ethics Commission's proposed amendments to Rule 26.1.

Ms. Cardwell and I have over fifteen years combined experience representing officeholders, candidates, political committees, and other interested parties in complying with Texas campaign laws and regulations. Our clients range from statewide political campaigns to first time candidates for local office, and from political committees that spend millions of dollars each election cycle to those who spend less than twenty thousand dollars per cycle. We regularly counsel our clients on when and how to include the political advertising disclaimers.

We strongly support the Commission's proposed amendments to Rule 26.1. As currently drafted, the changes help account for the new way individuals communicate with one another via social media. While we support Rule 26.1, we request the Commission take a slightly different approach by helping to modernize and clarify the law for campaigns and political committees, in addition to other individuals.

Legal Background

As defined, political advertising is a communication that supports or opposes a candidate and/or measure. In order for a communication to be considered "political advertising", it must be broadcast by radio or television in exchange for consideration; be published in a newspaper, magazine, or other periodical in exchange for consideration; or it must appear on an Internet website or other medium, regardless of any consideration being provided.

The law then requires some, but not all, political advertising to contain a disclaimer. Disclaimers note that the communication is political advertising, and state the name of the person who paid for otherwise authorized the advertising. For political advertising to require a disclaimer, it must contain express advocacy (the law deems any political advertising authorized by a candidate, a candidate's agent, or a political committee to contain express advocacy) and it must not otherwise be exempt from the disclaimer requirement.

Recognizing that, in certain circumstances, these disclaimers are unnecessary or impractical, the legislature and the Commission have excluded certain types of political advertising from disclaimer requirement. For example, the legislature exempted from the disclaimer requirements tickets or invitations to political fundraising events, campaign buttons, pins, hats, or similar campaign materials (so-called novelty items), and circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. Similarly, the Commission, by rule, has exempted any object whose size makes printing the disclosure impractical, as well as certain letterhead stationery. Finally, the Commission, in various advisory opinions, has exempted candy wrappers;¹ balloons;² wooden nickels;³ lapel stickers, pens, magnets, and emery boards;⁴ shirts;⁵ envelopes carrying political advertising where the information in the envelope contains the disclaimer;⁶ or holiday greeting cards.⁷ For the purposes of the current proposal, there is no exemption for political advertising appearing on an Internet website.

Campaigns and political committees have changed how they communicate with voters

Over the past several years, online advertising in political campaigns has increased substantially. While it is hard to believe now, the idea of having a dynamic campaign website with regular updates on candidate positions, news, and upcoming events was once considered a luxury; many candidates simply ignored the Internet. The rise in social media as a means to reach voters and influence public opinion has dramatically changed the way political campaigns are conducted.

Over the same time period, however, the laws requiring disclaimers have remained relatively static, with only two substantive changes. In 2013, the Commission broadened its definition of political advertising to include mass email communications involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth. Prior to this change, no email communication—whether one individual contacting another or a campaign sending thousands of emails to supporters or voters—was considered political advertising. In 2010, the Commission adopted an advisory opinion for paid political advertising by a political committee appearing on a social media website. The opinion allowed the communication to appear without a full disclaimer, provided the advertising contained the words “political advertising” (or an abbreviation) and had a direct link to another Internet page displaying the full disclaimer.⁸

The current system does not match current practices

¹ Op. Tex. Ethics Comm’n No. 424 (1999).

² *Id.* No. 390 (1998).

³ *Id.* No. 387 (1997).

⁴ *Id.* No. 184 (1994).

⁵ *Id.* No. 457 (2004).

⁶ *Id.* No. 380 (1997).

⁷ *Id.* No. 289 (1995).

⁸ *Id.* No. 491 (2010).

Under the law as it currently stands, *any* communication, from *any* person, that appears on *any* Internet website must contain the disclaimer, provided the communication contains express advocacy supporting or opposing a candidate or measure. There is no requirement that the person making the communication be a candidate or political committee. There is no requirement that the person making the communication pay for the advertising.

In practice, the vast majority of those who do fall under this requirement simply do not comply with the law, presumably because they are unaware of its application to their communications. As an example, think of your “crazy in-law” who writes on his or her Facebook page about his support of or opposition to a particular candidate for office. Or think of your “activist sibling” who constantly tweets his or her support of or opposition to particular political parties. These activities appear on an Internet website, and they contain express advocacy. Under the law as it currently stands, the communications need political advertising disclaimers.

The current proposal only fixes part of the problem

The Commission’s proposed amendment would exempt from the disclaimer requirement any communication that appears on an Internet website if both (1) no payment was made to create, publish, or broadcast the political advertising and (2) the political advertising was not authorized by a candidate or political committee. While the proposal does remedy the “crazy in-law” and “activist sibling” problem, it does so only to the extent they are not reposting, sharing, retweeting, or otherwise disseminating messaging from candidates or political committees. If instead those persons push a message from a candidate or political committee, the rule change would not apply, as the communication would have been authorized by a candidate or political committee.

We propose a modification to Rule 26.1 to recognize the increasing use of the Internet for campaigns

We encourage the Commission to take this opportunity to provide a solution to the current disconnect between the law and practice. Specifically, we propose the following modifications to the proposal:

- If the communication is from a candidate, officeholder, or political committee, the communication must contain a hyperlink to a publicly accessible Internet webpage containing the full political advertising disclaimer.
- If the communication is from a person who is not a candidate, officeholder, or political committee, and no expenditure was made for the communication, no disclaimer is required.
- If the communication is from a person who is not a candidate, officeholder, or political committee, but the person makes an expenditure for the communication, the person is treated like a candidate, officeholder, or political committee for purposes of the disclaimer requirement.

In addition, we recommend the Commission make an exception for candidates or officeholders with regard to personal social media accounts. If such an individual has a

social media account, and his or her name is clearly and conspicuously displayed on his or her social media profile page, we propose that no disclaimer be required.

After conversations with multiple campaign professionals, we believe our proposal mirrors current practice. We believe the changes fit neatly with pre-existing exclusions, including the stationery exception and the exception for objects whose size makes printing the political advertising disclaimer impractical. We believe these changes will not adversely impact transparency.

Non-candidates or political committees

As shown on the attached proposal, we encourage the Commission to provide an exemption for persons making communications on the Internet if they are not candidates, officeholders, or political committees, provided the person did not pay for the communication. Specifically, this exception, found in Subsection (c)(2) of our proposal, would have single focus: whether the person made an expenditure of funds for the communication. Regardless of the communication, it would not need a political advertising disclaimer if no expenditure were made for the communication. We believe this tracks the intent of the Commission's original proposal. In practice, this allows any person who is simply posting or tweeting their political viewpoints—even if those viewpoints include messages originally shared by a candidate or political committee—to be relieved from the need to include a political advertising disclaimer.

If, however, the person established a website to disseminate political advertising, the person would need to include the political advertising disclaimer, as they would have made an expenditure of funds (such as registering a domain name or procuring hosting for the website). In addition, if the person communicated via paid advertising on an Internet website, the person would be treated like a candidate or political committee under our proposal.

Candidates, officeholders, and political committees

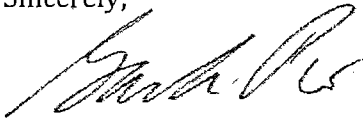
As shown on the attached proposal's Subsection (c)(4), we encourage the Commission to modify the disclaimer requirement for candidates, officeholders, and political committees, as well as for other persons who pay for political advertising on the Internet. While we agree that political advertising by candidates, officeholders, and political committees should contain a disclaimer, it is difficult to include such a disclaimer in certain Internet communications. Instead of requiring the disclaimer on each social media communication, we encourage the Commission to allow a disclaimer be displayed on a separate, publicly accessible webpage, provided the original political advertising links to that webpage. In this manner, the candidate, officeholder, or political committee may engage in social media communications without the need to include a political advertising disclaimer on each communication. Importantly, this would not relieve the candidate or political committee from including a disclaimer statement on websites operated by the candidate or political committee. As drafted, this portion of the rule would also apply to advertising by all persons in the form of banner advertisements and search engine preferred listings; in many of those instances, the person is unable to add the disclaimer because of character and/or space restrictions.

Personal social media pages of candidates and officeholders

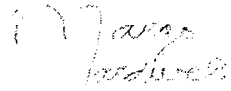
The Commission has previously allowed candidates and officeholders to use stationery letterhead without requiring the political advertising disclaimer, provided the candidate's or officeholder's name is clearly displayed on the stationery. We encourage the Commission extend a similar exception for personal social media accounts of candidates and officeholders. Under our proposal's Subsection (c)(3), if a candidate or officeholder has a social media account for himself or herself, the candidate would not need a political advertising disclaimer on either social media posts *or* the individual's social media profile page, provided his or her name were conspicuously displayed on the social media profile page. This allows those individuals to continue to maintain a personal social media presence while simultaneously engaging in political activity. Importantly, this exception still provides transparency, as the candidate's or officeholder's name must appear on the individual's social media profile page.

Again, we support the Commission's efforts to update these political advertising regulations. We look forward to working with the Commission as it addresses this important topic. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Gardner Pate
For the Firm



Margo Cardwell
Margo Cardwell PLLC

§ 26.1. Disclosure Statement (amendments effective January 1, 2017)

(a) A disclosure statement that is required by §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:

(1) campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical;

(2) political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:

(i) is not an officeholder, candidate, or political committee; and

(ii) did not make any expenditure for the political advertising beyond the basic cost of hardware messaging software and bandwidth;

(3) the Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder; or

(4) political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that:

(i) contains the disclosure statement; or

(ii) is exempt from containing the disclosure statement under

Subsection (c)(3).

(d) For the purposes of Subsection (c), an "Internet social media profile webpage" is an Internet webpage on a website where members of the public may, for no charge, connect electronically with other members of the public and share text, images, videos, and similar forms of communications.

EXHIBIT A

Text of Proposed Rules

The proposed new language is indicated by underlined text.

Chapter 12. SWORN COMPLAINTS

Subchapter A. GENERAL PROVISIONS AND PROCEDURES

§12.31. Conduct and Decorum.

(a) Parties, representatives, and other participants at a hearing shall conduct themselves with dignity, show courtesy and respect for one another and for the commission, and follow any additional guidelines of decorum prescribed by the presiding officer, including adherence to the amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Supreme Court of Texas and the Court of Criminal Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme Court of Texas.

(b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and decorum.

(c) All objections, arguments, and other comments by parties shall be directed to the commission and not to an opposing party.

(d) While a party is addressing the commission or questioning a witness, any other party shall not interrupt for any purpose except to make a valid objection.

(e) Parties shall not approach the dais without leave of the presiding officer and must not lean on the dais.

(f) Parties shall remain seated at the counsel table at all times except:

(1) when addressing the commission; and

(2) whenever it may be proper to handle documents, exhibits, or other evidence.

(g) Parties must question witnesses and deliver arguments to the commission while seated at the counsel table or standing at the lectern. If a party seeks to question or argue from another location, leave of the presiding officer must be requested and granted.

(h) Parties must request leave of the presiding officer to conduct a demonstration.

(i) The presiding officer may take appropriate action to maintain and enforce proper conduct and decorum, including:

- (1) issuing a warning;
- (2) sanctioning a party pursuant to §12.33 of this chapter;
- (3) excluding persons from the proceeding;
- (4) recessing the proceeding; and
- (5) clearing the hearing room of persons causing a disruption.

§12.33. Sanctioning Authority.

(a) The presiding officer has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the presiding officer to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery;

(3) failure to comply with a commission order; or

(4) violating §12.31 of this chapter.

(b) The presiding officer may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:

(1) disallowing or limiting further discovery by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representatives;

(3) deeming designated facts be admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking motions or testimony in whole or in part.

1 EXHIBIT A

2
3 Text of Proposed Rules

4
5 The proposed new language is indicated by underlined text.

6
7 Chapter 18. GENERAL RULES CONCERNING REPORTS

8
9 ...

10 §18.7. Timely Reports and Complete Reports.

11 (a) A report is timely if it is complete and is filed by the applicable deadline using the reporting
12 method required by law.

13 (b) The deadline for any report filed electronically with the commission is midnight Central
14 Time Zone on the last day for filing the report under the law requiring the filing of the report.

15 (c) A report is late if it is:

16 (1) incomplete;

17 (2) not filed by the applicable deadline; or

18 (3) not filed by computer diskette, modem, or other means of electronic transfer and the
19 filer is required by law to file using one of these methods.

20
21 (d) A report filed electronically is not late if:

22 (1) the commission's office is closed on the deadline and the report is filed by midnight,
23 Central Time Zone, on the next regular business day, excluding a legal holiday, when the
24 commission's office is open;

25 (2) the commission cannot accept reports on the deadline and the report is filed by
26 midnight, Central Time Zone, on the next regular business day, excluding a legal holiday,
27 that the commission is able to accept reports; or

28 (3) severe weather or other disaster-related incident as evidenced by school closures in
29 the district where the filer resides, hinders a filer's ability to file on the deadline and the
30 report is filed within 24 hours after the circumstances that prevented the filer from filing
31 have ended.

EXHIBIT B

Text of Proposed Rules

The proposed new language is indicated by underlined text.

Chapter 18. GENERAL RULES CONCERNING REPORTS

...

§18.7. Timely Reports and Complete Reports.

(a) A report is timely if it is complete and is filed by the applicable deadline using the reporting method required by law.

(b) The deadline for any report filed electronically with the commission is midnight Central Time Zone on the last day for filing the report under the law requiring the filing of the report.

(c) A report is late if it is:

(1) incomplete;

(2) not filed by the applicable deadline; or

(3) not filed by computer diskette, modem, or other means of electronic transfer and the filer is required by law to file using one of these methods.

(d) A report filed electronically is not late if:

(1) the commission's office is closed on the deadline and the report is filed by midnight, Central Time Zone, on the next regular business day, excluding a legal holiday, when the commission's office is open;

(2) the commission cannot accept reports for a period of time up to and including midnight on the deadline and the report is filed by midnight, Central Time Zone, on the next regular business day, excluding a legal holiday, that the commission is able to accept reports; or

(3) severe weather or other disaster-related incident as evidenced by school closures in the district where the filer resides, hinders a filer's ability to file on the deadline and the report is filed within 24 hours after the circumstances that prevented the filer from filing have ended.

EXHIBIT A

Text of Proposed Rules

The proposed new language is indicated by underlined text.

Chapter 16. FACIAL COMPLIANCE REVIEWS AND AUDITS

§16.1. Definitions.

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

(1) Deficiency—An error, omission, inaccuracy, or violation of a law or rule administered and enforced by the commission that is apparent on the face of a statement or report filed with the commission.

(2) Compliance review report—A report sent to a filer detailing deficiencies in a report that is the subject of a facial compliance review.

(3) Facial compliance review—A review conducted under section 571.069 of the Government Code of the information disclosed on a report, randomly selected in accordance with §16.15, filed with the commission for facial completeness, accuracy, reliability, and compliance with the law.

(4) Report—A personal financial statement, lobby registration, lobby activities report, or campaign finance report filed with the commission.

§16.15. Random Selection.

The report subject to a facial compliance review must be randomly selected from a list of all reports filed by a particular filer type for a specific filing deadline.

§16.2. Corrected or Amended Report Filed During a Facial Compliance Review; Late Fines.

(a) A correction filed for the report that is subject to the facial compliance review will not be subject to a late fine if:

(1) The correction is filed not later than the 30th day after the date the filer receives the compliance review report;

(2) The corrected information complies with the law; and

(3) The original report was filed in good faith and without an intent to mislead or misrepresent the information contained in the report.

1 (b) A late fine will not be assessed for corrections filed to correct reporting errors made in
2 any report filed prior to the report that is subject to the facial compliance review if:

3
4 (1) The filer learned of the errors through the facial compliance review;

5
6 (2) The correction is filed not later than the 30th day after the date the filer receives
7 the compliance review report;

8
9 (3) The corrections comply with the law; and

10
11 (4) The original report was filed in good faith and without an intent to mislead or
12 misrepresent the information contained in the report.

13
14 (c) A correction filed in accordance with this section will not be considered a prior late
15 offense for purposes of determining the waiver or reduction of a fine under chapter 18 of
16 this title.

17
18 **§16.3. Additional Documents and Information Submitted in Response to a Facial**
19 **Compliance Review; Timeliness.**

20
21 (a) The commission may request from a filer documentation and other information used by
22 the filer to compile a report that is subject to a facial compliance review.

23
24 (b) Documentation and other information requested by the commission is timely submitted
25 if received by the commission not later than the 30th day after the date the filer receives
26 the request for additional documentation.

27
28 **§16.4. Commission Initiated Preliminary Review or Audit Resulting from a Facial**
29 **Compliance Review.**

30
31 (a) The commission may initiate a preliminary review as authorized by §571.124 of the
32 Government Code or perform a complete audit of a report that is subject to a facial
33 compliance review under §571.069 of the Government Code if:

34
35 (1) a correction is not resubmitted to the commission in accordance with §16.2;

36
37 (2) documentation or other information requested by the commission during a facial
38 compliance review is not submitted to the commission in accordance with §16.3; or

39
40 (3) the commission has determined by a vote of at least six commission members
41 that the correction filed in response to a compliance review report, does not comply
42 with the law.

1 **§16.5. Notice of Audit of Report.**

2
3 The commission shall notify a filer that the commission will perform a complete audit of a
4 report that is the subject of a facial compliance review not later than the seventh day after
5 the date the commission votes to initiate the audit.
6

7 **§16.6. Supporting Documentation in Response to Audit; Timeliness.**

8
9 (a) A filer must submit to the commission, upon request and where applicable, supporting
10 documentation in the possession, custody, or control of the filer or filer's agents that
11 contains information necessary for filing the report that is subject to the audit, such as:
12

13 (1) Bank statements;

14 (2) Cancelled checks;

15 (3) Receipts;

16 (4) Credit card statements;

17 (5) Invoices;

18 (6) Loan documents;

19 (7) Books or ledgers;

20 (8) Employee timesheets and payroll records;

21 (9) Certificates of formation or other business documents; and

22 (10) Real property records.
23
24
25
26
27
28

29 (b) A filer must submit to the commission the supporting documentation in response to an
30 audit not later than the 30th business day from the date the filer receives notice of the audit.
31
32

33 **§16.7. Complete Audit Report.**

34 (a) Commission staff must complete a draft audit report not later than the 30th day after
35 the commission receives from the filer the documentation requested under §16.6.
36

37 (b) The filer must have an opportunity to confer and object in writing to any findings in the
38 draft audit report before it is submitted to the commission for approval.
39
40
41
42
43

1 (c) Commission staff must consider the filer's objections before submitting the draft audit
2 report to the commission for approval.

3
4 (d) Upon approval of an audit, the commission shall send to the filer a final audit report
5 that includes:

6
7 (1) a notification that the commission has determined the report that was subject to
8 the audit complies with the law; or

9
10 (2) required corrective actions that the filer must take to cure any deficiency found
11 in the report that is subject to the audit.

12
13 (e) A filer must correct or amend a report to correct all deficiencies identified in a complete
14 audit report not later than the 30th day from the date the filer receives the complete audit
15 report.

16
17 **§16.8. Representation by Attorney.**

18
19 (a) A filer has the right to be represented by an attorney retained by the filer during a facial
20 compliance review or an audit initiated by the commission as a result of a facial compliance
21 review.

22
23 (b) A letter of representation must be submitted to the commission if the filer is represented
24 by an attorney.

25
26 **§16.10. Extension of Deadlines.**

27
28 The executive director may extend all deadlines related to this chapter except as provided
29 by §571.069(a) of the Government Code (relating to when a corrected or amended report
30 is considered filed as of the date the report was originally filed).

31
32 **§16.11. Waiver of Delivery by Certified Mail.**

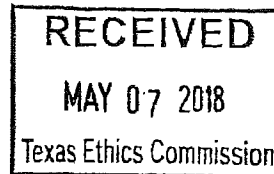
33
34 A filer may waive the right under §571.032 of the Government Code to receive written
35 notices related to a facial compliance review or audit by registered or certified mail,
36 restricted delivery, return receipt requested, and may agree to receive written notices by
37 first class mail, electronic mail, or other means.

AGENDA ITEM 22, EXHIBIT A

MID# 36141
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CC: SW

DOCKET NO. _____

RULEMAKING PETITION OF § BEFORE THE TEXAS ETHICS
ONE REALCO CORPORATION § COMMISSION
§
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ORIGINAL PETITION FOR RULEMAKING

COMES NOW, One Realco Corporation (Petitioner) on its own behalf and files this rulemaking petition with the Texas Ethics Commission (TEC) seeking to add a rule to be designated as 1 TAC §24.18.

1. Petitioner

Petitioner is a Texas corporation that intends to make political expenditures to finance the establishment, administration, maintenance, or operation of a Texas general-purpose committee.

2. Legal Authority

This petition is brought pursuant to Texas Government Code § 571.062(b) and Texas Government Code § 2001.021.

3. Current Rule

There is currently no rule that provides guidance on the manner for designating a corporate contribution to a general-purpose committee to be used for establishing, administering, maintaining, or operating such committee.

4. Proposed Rule

§ 24.18. Designation of Contribution for Administrative Purposes. Any of the following will serve to designate a corporate expenditure as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

- (a) A contemporaneous written instruction that the expenditure is restricted to the administration, maintenance or operation of the committee accepting the expenditure;
- (b) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to “Inc.,” “Incorporated,” “Corp.,” or “Corporation”; or
- (c) The general-purpose committee accepting the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee’s campaign-finance report.

5. Reason for Rule

The Third Court of Appeals has opined that:

There is no such thing as a legal undesignated corporate political contribution. Individuals can legally make undesignated political contribution, but corporations cannot. A corporation must designate the purpose of the political contribution by contributing to a political committee that is exclusively devoted to measures, by making expenditures for the maintenance or operation of a corporate political committee, or by contributing to a political party under certain narrowly defined conditions.

Ex parte Ellis, 309 S.W.3d 71, 88 (Tex.App. – Austin 2010).

Despite this opinion, no state law nor administrative rule provides guidance as to how a corporation is to “designate” that its expenditures and contributions are for the establishment, administration, maintenance, or operation of a general-purpose committee. Arguably, failure of a corporation to properly “designate” that a contribution is for the establishment, administration, maintenance, or operation of a general-purpose committee could subject that corporation to civil and criminal penalties. The proposed rule sets forth the circumstances in which a corporate contribution is deemed properly “designated.”

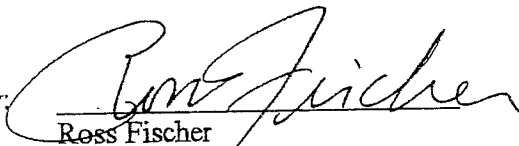
As proposed, the rule would provide three mechanisms for properly designating a contribution as intended for administrative purposes. First, the contribution can be accompanied by a written designation restricting the use of the funds to administration of the receiving general-purpose committee. Second, if the check itself contains language indicating that the contribution is from a corporation, that language will serve as a designation of the contribution for administrative uses (or, at the very least, clear and conspicuous notice to the recipient general-purpose committee). Third, if the recipient general-purpose committee reports the contribution as originating from a corporation, the contribution is deemed to have been properly designated. Any of these three options would provide evidence of the contributing corporation's or labor organization's designation for administrative purposes.

6. Request for Rulemaking. For the reasons stated above, the Petitioner requests the TEC to initiate a rulemaking proceeding and to adopt 1 TAC §24.18 to establish methods for properly designating a corporate contribution to a general-purpose committee.

Signed on this the 4th day of May, 2018.

Respectfully submitted,

By:



Ross Fischer

State Bar No. 24004647

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P.O. Box 341016

Austin, Texas 78734

(512) 354-1786, Fax (877) 437-5755

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Ross Fischer, attorney for the Petitioner, certify that a copy of the foregoing pleading was served on this the 4th day of May, 2018.

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Executive Director
Texas Ethics Commission
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Austin, Texas 78711-2070

CMRRR # 7015 1520 0001 3799 7225 ✓

Ian Steusloff
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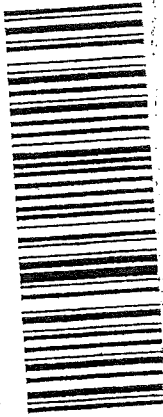
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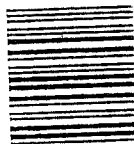
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AGENDA ITEM 23, EXHIBIT A

EXHIBIT A

Text of Proposed New Rules and Amendments

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

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

3 **Subchapter H. RULES APPLICABLE TO A POLITICAL PARTY ACCEPTING**
4 **CONTRIBUTIONS FROM CORPORATIONS OR LABOR ORGANIZATIONS**

5 **§20.521. Restrictions on Use of Contributions from Corporations or Labor**
6 **Organizations.**

7 A political party that accepts a contribution authorized by §253.104 of the Election Code
8 ~~[§24.19 of this title (relating to Contribution to a Political Party)]~~ may use the contribution
9 only for the following purposes:

- 10 (1) to defray normal overhead and administrative or operating costs incurred by the
11 party; or
12 (2) to administer a primary election or convention held by the party.

13

14 **§20.523. Separate Account Required.**

15 (a) Contributions authorized by §253.104 of the Election Code ~~[§24.19 of this title (relating~~
16 ~~to Contribution to a Political Party)]~~ must be maintained in an account separate from other
17 contributions accepted by a political party.

18 (b) Interest and other income earned from contributions authorized by §253.104 of the
19 Election Code ~~[§24.19 of this title (relating to Contribution to a Political Party)]~~ must be
20 maintained in the account required by subsection (a) of this section.

21 (c) Proceeds from the sale or rent of assets purchased either with contributions authorized
22 by §253.104 of the Election Code ~~[§24.19 of this title (relating to Contribution to a Political~~

1 ~~Party~~) or with interest or other income earned from such contributions must be maintained
2 in the account required by subsection (a) of this section.

3

4 **§20.525. Record of Contributions and Expenditures and Contents of Report.**

5 (a) The party chair of a political party is required to maintain a record of all contributions
6 from corporations and labor organizations and all expenditures from such contributions.

7 (b) The party chair of a political party shall preserve the record required by subsection (a)
8 of this section for at least two years after the filing deadline for the report containing the
9 information on the record.

10 (c) The party chair of a political party that accepts contributions authorized by §253.104 of
11 the Election Code [~~§24.19 of this title (relating to Contribution to a Political Party)~~] shall
12 report all contributions and expenditures made to and from the account required by §20.523
13 of this title (relating to Separate Account Required), in accordance with the reporting
14 schedule in §20.529 of this title (relating to Reporting Schedule for Political Party
15 Accepting Corporate or Labor Organization Contributions).

16 ...

17

18 **Subchapter I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY**
19 **EXECUTIVE COMMITTEE**

20 **§20.561. County Executive Committee Accepting Contributions from Corporations**
21 **and/or Labor Organizations.**

22 (a) A county executive committee that accepts contributions from corporations or labor
23 organizations authorized by §253.104 of the Election Code [~~§ 24.19 of this title (relating~~
24 ~~to Contribution to a Political Party)~~] is subject to the provisions set out in Subchapter H of
25 this chapter (relating to Rules Applicable to a Political Party Accepting Contributions from
26 Corporations or Labor Organizations).

1 ...

2

3 **Chapter 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**
4 **APPLICABLE TO CORPORATIONS, ~~AND~~ LABOR ORGANIZATIONS, AND**
5 **CERTAIN POLITICAL COMMITTEES**

6 **§24.19. Establishment and Administration of a General-Purpose Committee.**

7 (a) Section 253.100 of the Election Code authorizes a corporation or labor organization to
8 make political expenditures only to:

9 (1) finance the establishment of a general-purpose committee; and

10 (2) finance the administration, including the maintenance and operation, of a
11 general-purpose committee or the solicitation of political contributions to a general-
12 purpose committee if the corporation or labor organization established the
13 committee.

14 (b) A corporation or labor organization may make a political expenditure authorized by
15 §253.100 of the Election Code to a general-purpose committee by either:

16 (1) making the expenditure directly from its own funds to pay an expense incurred
17 by the committee;

18 (2) making a political contribution of funds to a separate account maintained by the
19 committee and restricted to be used solely for a purpose authorized by §253.100 of
20 the Election Code; or

21 (3) making an in-kind political contribution of its resources to the committee, such
22 as the grant of office space or furniture, and restricted to be used solely for a purpose
23 authorized by §253.100 of the Election Code.

24 (c) For purposes of subsection (b) of this section, a political contribution is restricted to be
25 used solely for an authorized purpose if:

1 (1) the contribution is made by check, money order, or other negotiable instrument
2 or transfer that clearly indicates in writing that the contribution is restricted for use
3 for an authorized purpose; or

4 (2) the contribution is accompanied by a writing, signed by the contributor, that
5 clearly indicates that the contribution is restricted for an authorized purpose.

6 (d) A general-purpose committee may not use a political contribution accepted under
7 section 253.100 of the Election Code from a corporation or labor organization, or interest,
8 income, or proceeds from such contributions, for any purpose other than those authorized
9 by section 253.100 of the Election Code. This subsection does not prohibit a general-
10 purpose committee from using such contributions to make purely nonpolitical
11 expenditures.

12
13 **§24.21. Separate Account Required.**

14 Political contributions accepted by a political committee from a corporation or labor
15 organization authorized by subchapter D, chapter 253, of the Election Code, and interest,
16 income, and proceeds from such contributions, must be maintained in an account separate
17 from other contributions.

18
19 **§24.23. Measure-Only Political Committees.**

20 Section 253.096 of the Election Code permits a political committee that supports or
21 opposes measures exclusively to use political contributions accepted from a corporation or
22 labor organization, or interest, income, or proceeds from such contributions, only to
23 support or oppose measures.

AGENDA ITEM 23, EXHIBIT C

MID# 3614
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CC: SW

DOCKET NO. _____

RULEMAKING PETITION OF § BEFORE THE TEXAS ETHICS
ONE REALCO CORPORATION § COMMISSION
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ORIGINAL PETITION FOR RULEMAKING

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This petition is brought pursuant to Texas Government Code § 571.062(b) and Texas Government Code § 2001.021.

3. Current Rule

There is currently no rule that provides guidance on the manner for designating a corporate contribution to a general-purpose committee to be used for establishing, administering, maintaining, or operating such committee.

4. Proposed Rule

§ 24.18. Designation of Contribution for Administrative Purposes. Any of the following will serve to designate a corporate expenditure as restricted to the establishment, administration, maintenance, or operation of a general-purpose committee:

- (a) A contemporaneous written instruction that the expenditure is restricted to the administration, maintenance or operation of the committee accepting the expenditure;
- (b) The negotiable instrument conveying the contribution contains language indicating that the entity is a corporation, including but not limited to “Inc.”, “Incorporated”, “Corp.”, or “Corporation”; or
- (c) The general-purpose committee accepting the contribution reports the contribution as monetary contribution or monetary support from a corporation or labor organization on the committee’s campaign-finance report.

5. Reason for Rule

The Third Court of Appeals has opined that:

There is no such thing as a legal undesignated corporate political contribution. Individuals can legally make undesignated political contribution, but corporations cannot. A corporation must designate the purpose of the political contribution by contributing to a political committee that is exclusively devoted to measures, by making expenditures for the maintenance or operation of a corporate political committee, or by contributing to a political party under certain narrowly defined conditions.

Ex parte Ellis, 309 S.W.3d 71, 88 (Tex.App. – Austin 2010).


Despite this opinion, no state law nor administrative rule provides guidance as to how a corporation is to “designate” that its expenditures and contributions are for the establishment, administration, maintenance, or operation of a general-purpose committee. Arguably, failure of a corporation to properly “designate” that a contribution is for the establishment, administration, maintenance, or operation of a general-purpose committee could subject that corporation to civil and criminal penalties. The proposed rule sets forth the circumstances in which a corporate contribution is deemed properly “designated.”

As proposed, the rule would provide three mechanisms for properly designating a contribution as intended for administrative purposes. First, the contribution can be accompanied by a written designation restricting the use of the funds to administration of the receiving general-purpose committee. Second, if the check itself contains language indicating that the contribution is from a corporation, that language will serve as a designation of the contribution for administrative uses (or, at the very least, clear and conspicuous notice to the recipient general-purpose committee). Third, if the recipient general-purpose committee reports the contribution as originating from a corporation, the contribution is deemed to have been properly designated. Any of these three options would provide evidence of the contributing corporation's or labor organization's designation for administrative purposes.

6. Request for Rulemaking. For the reasons stated above, the Petitioner requests the TEC to initiate a rulemaking proceeding and to adopt 1 TAC §24.18 to establish methods for properly designating a corporate contribution to a general-purpose committee.

Signed on this the 4th day of May, 2018.

Respectfully submitted,

By: 
Ross Fischer
State Bar No. 24004647
The Gober Group, PLLC
P.O. Box 341016
Austin, Texas 78734
(512) 354-1786, Fax (877) 437-5755

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I, Ross Fischer, attorney for the Petitioner, certify that a copy of the foregoing pleading was served on this the 4th day of May, 2018.

Seana Willing
Executive Director
Texas Ethics Commission
P.O. Box 12070
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CMRRR # 7015 1520 0001 3799 7225 ✓

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CMRRR # 7015 1520 0001 3799 7218


ROSS FISCHER

ETHICS ADVISORY OPINION NO. ____

August 14, 1998

Whether a corporation may make political contributions to defray administrative expenses of a general-purpose political committee that has no other connection to the corporation. (AOR-444)

The Texas Ethics Commission has been asked whether a corporation may make expenditures to defray administrative expenses of a general-purpose political committee that has no other connection to the corporation.

As a general rule, a corporation may not make a political contribution or expenditure. Elec. Code § 253.094.¹ There are, however, exceptions to that general rule. This request has to do with the following exception:

¹The prohibition applies to a corporation covered by Election Code section 253.091 as well as to an association covered by Election Code section 253.093, regardless of whether the association is incorporated.

A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose political committee.

Id. § 253.100(a). The question raised here is whether that provision permits a corporation to make political expenditures to defray administrative expenses of a general-purpose committee even if the corporation did not establish the committee and has no other connection to the committee.

The language of section 253.100(a) is susceptible of the interpretation that any corporation may make political expenditures to finance the administration of any general-purpose political committee. The legislative history of section 253.100(a), however, suggests that the legislative intent underlying that section was that a corporation could make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation had participated in the establishment of the committee.

In 1975, the legislature created several exceptions to the longstanding prohibition on political contributions and expenditures by corporations. Acts 1975, 64th Leg., ch. 711, § 8 at 2257, 2262-63. *See generally* Acts 1951, 52nd Leg., ch. 492, at 1097, 1190-91 (creating Election Code and prohibiting corporate political contributions and expenditures). One of the exceptions provided that, for purposes of the prohibition on political contributions and expenditures, the phrase "contribution

or expenditure” did not include expenditures for “the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization.” Acts 1975, 64th Leg., ch. 711, § 8, at 2257, 2263. The quoted language was a verbatim duplication of Congress’s 1972 amendment to the federal prohibition on corporate campaign contributions and expenditures in connection with federal elections.² Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 205, 86 Stat. 10 (1972). Federal Election Commission rules have interpreted that language to mean that a corporation may provide administrative support only to a separate segregate fund (a PAC) that the corporation itself established.³ 11 C.F.R. §§ 102.14(c) (name of separate segregated fund must contain name of its connected organization), 114.5(b) (corporation may use general treasury funds to establish and administer its separate segregated fund). In our view, that is the most reasonable interpretation of that language. *See Eckerdt v. Frostex Foods, Inc.*, 802 S.W.2d 70, 72 (Tex. App.—Austin 1990, no writ) (in construing state statute, court may consider how similar federal statute has been implemented).

Since 1975, the Texas legislature has on several occasions amended the language of the provision regarding corporation expenditures for the administrative expenses of a general-purpose

²The Texas law carried forward even the failure to include the preposition “of” to connect the words “establishment” and “administration” to the phrase “a separate segregated fund.” The omission has since been corrected in the Texas law, but not in the federal law.

³There have been minor changes to the wording of the federal law since 1972. Pub. L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stats. 490; Pub. L. 96-187, Title I, §§ 105(5), 112(d), Jan. 8, 1980, 93 Stat. 1354, 1366. The provision is now codified at 2 U.S.C. § 441b(b)(2)(C).

political committee. In 1977, the legislature amended the provision to state that, for purposes of the prohibition on political contributions and expenditures by corporations, the phrase "contribution or expenditure" did not include expenditures for "the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations." Acts 1977, 65th Leg., ch. 276, § 6, at 735, 738. By pluralizing the references to corporations and labor organizations, the legislature made clear that corporations could pool their resources in establishing and administering political committees. The changes did not, however, indicate that a corporation that had not been involved in the establishment of a political committee would be permitted to make expenditures to defray the committee's administrative expenses.

In 1987, the legislature adopted the current language of section 253.100(a) as part of an across-the-board revision of the campaign finance law. Acts 1987, 70th Leg., ch. 899, § 1, at 2995, 3010. After the revision the words "establishment" and "administration" were connected by "or" rather than "and" so that the law states:

A corporation, acting alone or with one or more other corporations, may make one or more political expenditures to finance the establishment or administration of a general-purpose political committee.

Id. The use of "or" instead of "and" gives an entirely new cast to the provision and suggests that there need be no connection between a corporation that establishes a general-purpose political committee and a corporation that makes expenditures to defray the committee's administrative expenses. In our view, however, the legislature did not intend the revision to change the scope of the exception set out in section 253.100(a). The recommendation for revision to the Election Code from the Texas Legislative Council to the 69th Legislature indicates that the language in section 253.100(a) was intended as a nonsubstantive change. TEX. LEGIS. COUNCIL, REPORT OF THE ELEC. CODE STUDY COMM. ELEC. CODE VOLUME II, p. 189 (Feb. 1985).⁴ Furthermore, in 1991 the legislature amended the campaign finance law to permit a corporation (or labor organization) to make contributions to the state or county executive committee of a political party to be used to defray administrative expenses. Acts 1991, 72nd Leg., ch. 304, §§ 5.08, 5.19, at 1290, 1327, 1330-31 (codified at Elec. Code §§ 253.104, 257.002 - .005). The addition of that provision would have

⁴Although the recommendations from the Texas Legislative Council were submitted to the 69th Legislature, S.B. 1068 proposed by Senator Edwards which incorporated the suggested revisions did not pass during the 69th Session. The Bill analysis for the House substitute to S.B. 1068, however, also indicates that section 253.100 was derived from the statutory predecessor and not new language. HOUSE COMM. ON ELECTIONS, BILL ANALYSIS, C.S.S.B. 1068, 69th Leg., R.S., at 4 (1985). During the 70th Legislature, H.B. 1818 was amended by a proposal from Senator Edwards. The amendment contained the same language under section 253.100 as the Texas Legislative Council's report and S.B. 1068. SEN. AMEND. NO. 1 to H.B. 1818, 70th Leg., R.S. (filed May 30, 1987).

been unnecessary had Election Code section 253.100(a) already permitted the state or county executive committee of a political party (by definition, a general-purpose political committee) to accept corporate contributions to defray administrative expenses. We conclude, therefore, that a corporation may make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation participated in the establishment of the general-purpose political committee.⁵ See generally Ethics Advisory Opinion No. 163(1993) (Elec. Code § 253.100(b) allows corporation or corporations to solicit only stockholders, employees, or families of stockholders or employees of corporation or corporations assisting committee under Elec. Code § 253.100(a)).

Corporations and general-purpose political committees that rely on section 253.094 should be aware of the type of expenditures that are permissible as expenditures for the "administration" of a general-purpose political committee. Administrative expenses are, in essence, expenses for a committee's infrastructure. Examples of administrative expenses are expenditures for rent and utilities. Ethics Advisory Opinion No. 132, at 4 (1993). In contrast, expenditures for fund raising⁶

⁵In a case in which a nonprofit corporation has corporate members, the corporate members may make expenditures to defray administrative expenses of a general-purpose political committee established by the nonprofit corporation. See generally Ethics Advisory Opinion Nos. 217 (1994), 163 (1993).

⁶A corporation may make political expenditures to finance the solicitation of political contributions to a general-purpose political committee that the corporation assists from the corporation's stockholders, employees, or families of stockholders or employees. Elec. Code § 253.100(b); see Ethics Advisory Opinion No. 163, at 2 n.3 (1993) (corporation may pay costs of soliciting its own stockholders, employees and families of stockholders and employees, not those of any other corporation).

for the committee or for support of candidates are not administrative expenses. *Id.*; see also Ethics Advisory Opinion No. 216 (1994) (payment of fine is administrative expense).

SUMMARY

A corporation may make expenditures to defray administrative expenses of a general-purpose political committee only if the corporation participated in the establishment of the general-purpose political committee.