

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

Mary K. “Katie” Kennedy, Chair
Randall H. Erben, Vice Chair
Chad M. Craycraft
Chris Flood

Patrick W. Mizell
Richard S. Schmidt
Joseph O. Slovacek
Steven D. Wolens

MEETING AGENDA

Date and Time: 3:00 p.m., Wednesday, February 15, 2023
Location: Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2022

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.**
 - A. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; Cause No. 03-21-00033, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - ii. 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.
 - iii. Cause No. D-1-GN-21-003269, *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court in Travis County, Texas; and related case, Cause No. 03-22-00133-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

- iv. Cause No. 1:22-cv-1371, *Orlando Salinas v. J.R. Johnson, et al.*, in the U.S District Court for the Western District of Texas, Austin Division.
- v. Cause No. 22-CV-1130, *Matt Wiggins v. Texas Ethics Commission*, in the 122nd Judicial District of Galveston County, Texas.
- vi. Cause No. 1:22-cv-1166, *Robert Bruce, Bryan Slaton and Grayson County Conservatives PAC v. J.R. Johnson, et al.*, in the U.S District Court for the Western District of Texas, Austin Division.

- B. Discussion to receive legal advice regarding lawsuits filed against Commissioners in their official capacity.
- C. Discussion of contemplated litigation and to seek legal advice regarding the collection of imposed penalties.
- D. Discussion of contemplated litigation and to seek legal advice regarding the enforcement of Section 253.007 of the Election Code.
- E. Discussion of personnel matters.
- F. Reconvene in open session.

3. Adjourn.

CERTIFICATION: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Certifying Official & Agency Liaison: J.R. Johnson, Executive Director.

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

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MEETING AGENDA

Date and Time:	9:00 a.m., Thursday, February 16, 2023
Location:	Room E1.014, Capitol Extension, Austin, Texas

**INFORMATION ON HOW TO VIEW AND/OR PARTICIPATE IN THE ONLINE
BROADCAST OF THIS MEETING WILL BE POSTED ON OUR WEBSITE ON THE
DAY OF THE MEETING HERE:**

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2022

1. Call to order; roll call.
2. Discussion of, and possible action on, any unfinished business from the Executive Session or Public Meeting held on February 15, 2023.
3. Discussion regarding dates for next quarterly Commission meeting.
4. Approve minutes for the following meetings:
 - Executive Session – December 13, 2022; and
 - Public Meeting – December 14, 2022.

RULEMAKING

Rule Adoption

5. Discussion and possible action on the adoption or proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 22.37, regarding virtual currency contributions.

Rule Publication

6. Discussion and possible action on the proposal and publication in the Texas Register of the repeal and amendments to 1 Tex. Admin. Code §§ 18.21, 18.23, 18.24, 18.25 and 18.26, regarding the administrative waiver or reduction of civil penalties for late filing.

For more information, contact J.R. Johnson, Executive Director, at (512) 463-5800.

7. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 18.13, regarding a fine for a late report.
8. Discussion and possible action on the proposed and publication in the Texas Register of the repeal of 1 Tex. Admin. Code § 28.3, regarding the termination of a speaker candidate's candidacy.
9. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 40.3 regarding the definition of "home address" as it relates to personal financial disclosures.

ADVISORY OPINIONS

10. Draft Advisory Opinion No. AOR-674: Whether Section 253.007 of the Election Code prohibits a former member of the Legislature from engaging in activity that would require registration under Chapter 305 if the former member contributed money from his political funds to a general-purpose political committee more than two years before being required to register.

Whether certain political contributions of expenditures made under Section 253.006(3) of the Election Code constitute a violation of Section 253.004 of the Election Code. (AOR 674.)

This opinion construes Sections 253.004, 253.006, and 253.007 of the Election Code.

11. Draft Advisory Opinion No. AOR-678: Whether the revolving door law prohibition in Section 572.069 of the Government Code would prohibit a former employee of a state agency from accepting certain employment. (AOR 678.)

This opinion construes Section 572.069 of the Government Code

12. Draft Advisory Opinion No. AOR 679-CI: A former member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contributions; and (3) registers to lobby. May the former legislator lobby members of the Legislature during the two-year period after making the political contribution?

May the former legislator cure a violation of Section 253.007 or reduce the two-year waiting period imposed by Section 253.007 by reimbursing his or her campaign with personal funds in an amount that equals the political contributions made?

Pursuant to Section 571.173, Government Code, the commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law

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administered and enforced by the commission. What does “the amount at issue” mean for purposes of imposing a penalty for a violation of Section 253.007, Election Code? Does it mean: (1) the amount of political contributions at issue, (2) the maximum amount of income indicated on the person's lobby registration statement, or (3) something else?

This opinion construes Sections 253.006 and 253.007 of the Election Code and Section 571.173 of the Government Code.

ADMINISTRATIVE WAIVER OF FINES

13. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.11, 18.25 and 18.26 relating to administrative waiver or reduction of a fine.

OTHER MATTERS

14. Briefing and discussion of legislation in the 2023 legislative session, including status of Ethics Commission legislative recommendations and discussion and possible action regarding improvements to the Commission’s electronic filing software.
15. Discussion and possible appointment of a Nominating Committee of Commissioners for the positions of Chair and Vice Chair of the Texas Ethics Commission.
16. 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: J.R. Johnson, Executive Director.

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

The draft meeting minutes 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:

1 **§22.37. Virtual Currency Contributions.**
2 **Text of Proposed New Rule**

3 The proposed new language is indicated by underlined text.

4 **Chapter 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES**

5 **§22.37. Virtual Currency Contributions**

6 (a) Virtual currency contributions are considered “in-kind” contributions.

7 (b) A candidate, officeholder, or political committee must report a gain from the sale of virtual
8 currency contributions on the appropriate schedule if the gain exceeds the reporting threshold set
9 by Section 254.031(9) of the Election Code and amended by section 18.31 of this title (relating
10 to Adjustments to Reporting Thresholds).

11 (c) The value of a virtual currency contribution shall be reported as the fair market value of the
12 virtual currency upon receipt.

1 **Text of Proposed Rule Repeal and Amendments**

2 The proposed new language is indicated by underlined text.

3 The deleted language is indicated by [~~strikethrough~~] text.

4 **CHAPTER 18. GENERAL RULES CONCERNING REPORTS**

5
6 **§ 18.21. Submitting a Request to Waive or Reduce a Late Filing Penalty**

7
8 (a) A filer may ask the commission to waive or reduce a civil penalty determined by §§
9 305.033(b) or 572.033(b) of the Government Code, or §254.042(b) of the Election Code
10 by submitting a written request to the Commission.

11
12 (b) The commission will not consider a request under subsection (a) unless the filer, not later
13 than 60 days after the report or statement was due:

- 14
15 1) submits the request in the manner prescribed by subsection (a);
16 2) files all reports owed to the commission; and
17 3) pays all outstanding civil penalties owed to the commission that are not subject to
18 a pending request for waiver or appeal.

19
20 (c) Upon a showing of good cause, the executive director may extend the deadline in
21 subsection (b).

22
23
24 **§ 18.23 [repeal]**

25
26 **§ 18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory**
27 **Civil Penalties**

28 (a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil
29 penalty under §§18.25 or 18.26 of this title, a “prior late offense” is any report for which a civil
30 penalty for late filing was assessed, regardless of whether the civil penalty was waived or
31 reduced. The term does not include:

32 (1) reports for which no late notices were sent and the filer did not file a request that the
33 civil penalty be waived or reduced for the prior late report; and

34 (2) reports determined by the executive director to be not required.

35 (b) A civil penalty that is reduced under §§18.25 or 18.26 of this title will revert to the full
36 amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar
37 days from the date of the letter informing the filer of the reduction.

38 (c) A filer may appeal a determination made under §§18.25 or 18.26 of this title by submitting a
39 request for appeal in writing to the commission.

1 (1) The request for appeal should state the filer's reasons for requesting an appeal,
2 provide any additional information needed to support the request, and state whether the filer
3 would like the opportunity to appear before the commission and offer testimony regarding the
4 appeal.

5 (2) The Executive Director may review the appeal and reconsider the determination
6 made under §§18.25 or 18.26 of this title or set the appeal for a hearing before the commission.

7 (3) After hearing a request for appeal, the commission may affirm the determination
8 made under §§18.25 or 18.26 of this title or make a new determination based on facts presented
9 in the appeal.

10 **§18.25. Administrative Waiver or Reduction of Statutory Civil Penalties not More than**
11 **\$500**

12 (a) The executive director shall apply this section to a late report subject to a statutory civil
13 penalty of not more than \$500.

14
15 (b) The executive director shall use the following chart to determine the level of waiver or
16 reduction of a civil penalty under this section:

# OF PRIOR LATE OFFENSES IN PAST 5 YEARS	ADJUSTED FINE
0	Waiver
1	\$100
2	\$250
3 or more	No reduction or waiver

17
18 **§18.26. Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of \$500**

19 (a) The executive director shall apply this section to a late report subject to a statutory civil
20 penalty in excess of \$500.
21

1
2 (b) The executive director shall use the following chart to determine the level of waiver or
3 reduction of a civil penalty under this section:

Prior Late Offenses	Total Political Expenditures or Contributions in Reporting Period									
	<\$5k	<\$10k	<\$20k	<\$30k	<\$40k	<\$50k	<\$60k	<\$70k	<\$80k	<\$90k
0	\$0	90%	80%	70%	60%	50%	40%	30%	20%	10%
1	\$100	70%	60%	50%	40%	30%	20%	10%	0%	0%
2	\$250	50%	40%	30%	20%	10%	0%	0%	0%	0%

4
5 (c) For purposes of using the chart in subsection (b):

6
7 (1) where the chart identifies a dollar amount, that is the amount of the reduced or waived
8 penalty;

9
10 (2) where the chart identifies a percentage, that is the percentage by which the penalty is
11 reduced.

(1) a late report required to be filed with the commission under Election Code chapter 254 or 257, Government Code chapter 302, Government Code chapter 305, or Government Code chapter 572; or

(2) a late report filed with the commission under Local Government Code chapter 159, subchapter C.

(b) The fine for a report due eight days before an election is \$500 for the first day the report is late and \$100 for each day thereafter that the report is late, up to a maximum fine of \$10,000.

(c) The fine for the first semiannual report under Section 254.063, 254.123, or 254.153, Election Code, that is required to be filed by a candidate or political committee following the primary or general election is \$500 for the first day the report is late and \$100 for each day thereafter that the report is late, up to a maximum fine of \$10,000.

(d) A fine assessed under this chapter is in addition to any other sanction assessed under other law.

§18.15. Additional Fine.

In addition to any other fine assessed under this chapter, the commission may vote to impose a fine of \$2,500 against a filer whose report is more than 30 days late and who has not paid the penalty related to that report within 10 days after receiving the commission notice of lateness.

§18.17. Report Must be Filed.

(a) The payment of a civil or criminal fine for failure to file a report, or for filing a report late, does not satisfy a filer's obligation to file the report. Late fines continue to accrue until the report is filed.

(b) A filer, other than the treasurer of a political committee, who dies or becomes incapacitated is considered to have filed the report on the date of the filer's death or the date the filer is determined to be incapacitated, as applicable, for purposes of this chapter. In this subsection, "incapacitated" means determined by a judgment of a court exercising probate jurisdiction to be either partially mentally incapacitated without the right to vote or totally mentally incapacitated.

§18.19. Affidavit of Timely Filing.

A filer who has been notified by the commission that a report is late but who filed the report on or before the deadline may submit an affidavit to the executive director swearing that the report was timely filed.

§18.21. Jurisdiction to Consider Waiver Request.

(a) A filer must file a complete report before the executive director or commission will consider a request to waive or reduce a fine assessed for failure to file a timely report.

(b) A request to waive or reduce a fine assessed for failure to file a timely report or for filing a correction to a report will not be considered after an action to collect the fine is filed in court.

§18.23. Administrative Waiver of Statutory Civil Penalties.

(a) A filer may request the executive director to waive a civil penalty determined by §§305.033(b) or 572.033(b) of the Government Code or §254.042(b) of the Election Code by submitting an affidavit to the executive director.

(b) If, in the executive director's discretion, the affidavit establishes any of the following grounds for a waiver, the executive director shall waive the civil penalty, and the penalty waived is not a prior offense for purposes of §18.25 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties) or §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500):

(1) the report was filed late because of an unforeseen serious medical emergency or condition or a death that involved the filer, a family member or relative of the filer, a member of the filer's household, or a person whose usual job duties include preparation of the report;

(2) the report was filed late as a result of verifiable severe weather at the filer's location that prevented the filer from filing the report by the applicable deadline and the report was filed within a reasonable time after the deadline;

(3) the report was filed late because the filer was a first responder, as defined in §6.1 of this title (relating to Definitions), deployed to an emergency situation at the time of the filing deadline or a member of the military deployed on active duty at the time of the filing deadline and the report was filed within a reasonable time after the deadline;

(4) the filer filed a timely report but accidentally selected the incorrect filing year or filing period in the agency's electronic filing system, and:

(A) the filer filed a corrected report amending the filing year or filing period no later than 30 days after the individual was notified that the report appeared to be late; and

(B) the corrected report is substantively identical to the originally-filed report;

(5) the filer reasonably relied on incorrect information given to the filer by the agency; or

(6) the report was filed late because of other administrative error by the agency.

(c) If, in the executive director's discretion, the affidavit establishes any of the following grounds for a waiver, the executive director shall waive the civil penalty, but the penalty waived is a prior offense for purposes of §18.25 or §18.26:

(1) the filer of the personal financial disclosure report is not an elected official, a candidate for election, or a salaried public servant, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed no later than 30 days after the individual was notified that the report appeared to be late;

(2) the filer of the personal financial disclosure report was an unopposed candidate in a primary election, and the late report:

(A) was the first personal financial disclosure report filed late by the filer under Government Code chapter 572; and

(B) was filed before the primary election.

(3) the filer of the campaign finance report:

(A) had filed all previous reports by the applicable deadline;

(B) had no new contributions, expenditures, or loans to report during the filing period; and

(C) filed the report no later than 30 days after the filer first learned that the report was late;

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties.

(a) A filer who does not qualify for a waiver under §18.23 of this title (relating to Administrative Waiver of Statutory Civil Penalties) may request the executive director to waive a civil penalty determined by §§305.033(b) and 572.033(b) of the Government Code or §254.042(b) of the Election Code by submitting an affidavit to the executive director. The executive director may waive or reduce a civil penalty if the filer meets the criteria and the late report meets the qualifications set out in §18.25 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties) and §18.26 of this title (relating to Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500).

(b) For purposes of determining a waiver or reduction of a civil penalty under §18.25 and §18.26 of this title, a filer requesting a waiver or reduction will be categorized as follows:

(1) Category A includes candidates for and officeholders of the following offices and specific-purpose committees supporting candidates for and officeholders of the following offices:

(A) statewide office;

(B) legislative office;

(C) district judge;

(D) state appellate court justice;

(E) State Board of Education member; and

(F) Secretary of State.

(2) Category B includes all filers not categorized in Category A, as defined by paragraph (1) of this subsection, or Category C, as defined by paragraph(3) of this subsection.

Examples of Category B filers include the following filer types:

(A) lobbyists;

(B) salaried non-elected officials;

(C) candidates for and officeholders of district attorney;

(D) candidates for and officeholders of political party chair;

(E) political committees with \$3,000 or more in annual activity in the calendar year in which the late report was due; and

(F) a legislative caucus.

(3) Category C includes:

(A) unsalaried appointed board members and officials; and

(B) political committees with less than \$3,000 in annual activity in the calendar year in which the late report was due.

(c) For purposes of a reduction of a civil penalty under §18.25 and §18.26 of this title, good cause includes, but is not limited to, the following:

(1) The report was filed no later than three days after the date it was due.

(2) The filer filed the report within five days after first learning the report was late from a late notice sent by the commission.

(3) The report was not a critical report and was prepared and placed in the mail on time but not postmarked by the deadline.

(4) The filer had technical difficulties after regular business hours, but the report was filed no later than the next business day after the commission's technical support staff fixed the technical difficulty.

(5) There are no funds in the filer's campaign or officeholder account and the filer is unemployed.

(6) A first-time filer that is required to file campaign finance reports with a county filing authority and personal financial statements with the commission, who mistakenly files the personal financial statement with the county on the filing deadline and then correctly files with the commission within seven days of realizing the mistake.

(d) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil penalty under §18.25 or §18.26 of this title, a prior offense is any prior late report in which a civil penalty was assessed except:

- (1) the civil penalty for that prior late report was waived under Sections 18.23(b) of this title; or
- (2) no late notices were sent for that prior late report and the filer did not file a request that the civil penalty be waived or reduced for the prior late report.

(e) A civil penalty that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(f) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) The Executive Director may review the appeal and reconsider the determination made under §18.25 or § 18.26 of this title or set the appeal for a hearing before the commission.

(3) After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties

(a) The executive director shall apply this section to:

- (1) a late report subject to a statutory civil penalty of not more than \$500; or
- (2) a late report that:
 - (A) is subject to a statutory civil penalty in excess of \$500; and
 - (B) discloses less than \$3,000 in total political contributions and less than \$3,000 in total political expenditures for the reporting period.

(b) In order to qualify for a waiver or reduction of a civil penalty under this section, a filer must meet all of the following criteria:

- (1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;
- (2) The filer filed the report within thirty (30) days of learning the report was late;

(3) The civil penalty for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(4) The filer does not have an outstanding civil penalty for a prior late report.

(c) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

LEVEL	# OF PRIORS IN LAST 5 YEARS	CATEGORY A	CATEGORY B	CATEGORY C	EXPLANATORY NOTE
1	0	Waiver	Waiver	Waiver	
1.5	1	\$150	\$100	\$50	Level 2 violation with good cause shown*
2	1	\$300	\$200	\$100	
2.5	2	\$400	\$300	\$150	Level 3 violation with good cause shown*
3	2	\$500	\$500	\$250	

*The categorization shifts one-half level (from Level 2 to 1.5; from Level 3 to 2.5) if the filer's explanation qualifies as good cause under section 18.24(c) of this title.

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500.

(a) The executive director shall apply this section to a late report that discloses more than \$3,000 in total political contributions or more than \$3,000 in total political expenditures during the reporting period and that is subject to a civil penalty in excess of \$500.

(b) In order to qualify for a waiver or reduction of a civil penalty under this section, a filer must meet all of the following criteria:

(1) The filer has no more than two prior late offenses in the five (5) years preceding the filing deadline of the late report at issue;

(2) The civil penalty for the report at issue has not been increased by the commission at a public meeting pursuant to §254.042(b), Election Code, or §305.033(c) or §572.033(b), Government Code; and

(3) The filer does not have an outstanding civil penalty for a prior late report.

(c) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Category A

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$500	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 for every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Penalty = \$150 (0 priors); or Starting Penalty = \$400 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$1,000	2nd – 11th days late
+ \$500 every full 30 days thereafter, up to \$10,000	12th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Category B

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Penalty = \$100 (0 priors); or Starting Penalty = \$300 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

Category C

NO GOOD CAUSE	EXPLANATORY NOTES
Starting Penalty = \$500	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment
GOOD CAUSE SHOWN	EXPLANATORY NOTES
Starting Penalty = \$50 (0 priors); or Starting Penalty = \$150 (1 or 2 priors)	1st day late
+ \$100 a day, up to \$500	2nd – 6th days late
+ \$250 every full 30 days thereafter, up to \$5,000	7th day late – Filed Date: Take # of days divided by 30; drop remainder days that do not make a full 30-day segment

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
253.031(b)	PAC: Amount of contributions or expenditures permitted before TA is required	\$500	\$920
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	\$25,000	\$34,220
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	\$500	\$940
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	\$100	\$190
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	\$500	\$940

1 **18.13. Fine for a Late Report**
2 **Text of Proposed Amendment**

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

4 **CHAPTER 18. GENERAL RULES CONCERNING REPORTS**

5 **§18.13. Fine for a Late Report.**

6 (a) Except as provided by subsection (b) or (c) of this section, the fine is \$500 for:

7 (1) a late report required to be filed with the commission under Election Code chapter
8 254 or 257, ~~Government Code chapter 302,~~ Government Code chapter 305, or
9 Government Code chapter 572; or

10 (2) a late report filed with the commission under Local Government Code chapter 159,
11 subchapter C.

12 (b) The fine for a report due eight days before an election is \$500 for the first day the report is
13 late and \$100 for each day thereafter that the report is late, up to a maximum fine of \$10,000.

14 (c) The fine for the first semiannual report under Section 254.063, 254.123, or 254.153, Election
15 Code, that is required to be filed by a candidate or political committee following the primary or
16 general election is \$500 for the first day the report is late and \$100 for each day thereafter that
17 the report is late, up to a maximum fine of \$10,000.

18 (d) A fine assessed under this chapter is in addition to any other sanction assessed under other
19 law.

1 **28.3. Termination of Candidacy**
2 **Text of Proposed Repeal**

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

4 **CHAPTER 28. REPORTS BY A CANDIDATE FOR SPEAKER OF THE HOUSE OF**
5 **REPRESENTATIVES**

6 ~~**§28.3. Termination of Candidacy.**~~

7 ~~For purposes of the Government Code, §302.013 (concerning Filing of Statement of~~
8 ~~Contributions, Loans, and Expenditures), a speaker candidate is considered to have terminated~~
9 ~~the candidacy when the candidate is no longer seeking the office or is ineligible to seek the~~
10 ~~office.~~

Sec. 302.0121. DECLARATION OF SPEAKER CANDIDACY. (a) Each speaker candidate shall file a declaration of candidacy with the Texas Ethics Commission as provided by this section.

(b) A declaration of speaker candidacy must:

(1) be in writing;

(2) identify the legislative session as to which the candidacy relates; and

(3) include:

(A) the speaker candidate's name;

(B) the speaker candidate's residence or business street address; and

(C) the speaker candidate's telephone number.

(c) Except as provided by Subsection (e), a speaker candidate may not knowingly accept a contribution, loan, or promise of a contribution or loan in connection with the speaker candidacy or make or authorize a campaign expenditure at a time when a declaration of candidacy for the candidate is not in effect.

(d) A declaration of speaker candidacy terminates on the earlier of:

(1) the date the speaker candidate files a written statement with the Texas Ethics Commission stating that the candidate has terminated the candidacy; or

(2) the date a speaker is elected for the legislative session as to which the speaker candidate filed the statement.

(e) A former speaker candidate whose declaration of speaker candidacy is terminated under Subsection (d) may make a campaign expenditure in connection with a debt incurred during the period the former speaker candidate's declaration of candidacy was in effect.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 3.01, eff. Sept. 1, 2003.

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EXHIBIT A
Text of Proposed Rule Amendment

The proposed new language is indicated by underlined text.

CHAPTER 40. FINANCIAL DISCLOSURE FOR PUBLIC OFFICERS

§40.3. Redaction of Home Addresses.

(a) In order for the commission to redact a home addresses under §572.032(a-1), Government Code, a filer must indicate whether an address disclosed on the personal financial statement is the filer’s home address by checking the appropriate box on the personal financial statement form or filing application.

(b) A filer may have more than one home address.

(c) For the purposes of this section and §572.032(a-1) “home address” means a filer’s primary and usual residence and includes a fixed place of habitation where a person routinely lives, whether permanently or temporarily, including a residence in Travis County maintained by a member of the legislature, or statewide officeholder, who does not ordinarily reside in Travis County.

(d) For the purposes of this section and §572.032(a-1) “home address” does not include:

- (1) Unimproved land;
- (2) Commercial property that the filer owns, but does not routinely reside in;
- (3) A rental property that the filer owns, but does not routinely reside in; and
- (4) A hotel room, hospital room, or equivalent temporary lodgings.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether Section 253.007 of the Election Code prohibits a former member of the Legislature from engaging in activity that would require registration under Chapter 305 if the former member contributed money from his political funds to a general-purpose political committee more than two years before being required to register.

Whether certain political contributions or expenditures made under Section 253.006(3) of the Election Code constitute a violation of Section 253.004 of the Election Code. (AOR 674.)

SUMMARY

The requestor may make political contributions and direct campaign expenditures from a general-purpose committee he controls without violating Sections 253.004, 253.006 and 253.007, provided he waits two-years from the last contribution accepted by the political committee accepted from his candidate or officeholder account.

FACTS

The requestor is a former legislator who asks how Sections 253.006 and 253.007 of the Election Code apply to him after transferring political contributions he accepted as a candidate and officeholder from his candidate/officeholder (C/OH) account to a general-purpose committee (the GPAC). The requestor does not explicitly state he will control the GPAC. However, such control is implied by his statement that once registered as a lobbyist he “intends to *authorize* political contributions and expenditures from the GPAC.”

ANALYSIS

In 2019, the 86th Legislature passed H.B. 2677 seeking to “clarify that a registered lobbyist may not use political contributions to advance his or her lobby efforts.”¹ H.B. 2677 included Sections 253.006 and 253.007 of the Election Code which limit a former candidate or officeholder’s ability to use their own political contributions to facilitate their lobbying career.²

¹ *Author’s/Sponsors Statement of Intent*, H.B. 2677, available at <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/HB02677E.pdf#navpanes=0>

² Because the statutes are codified in Chapter 253 of the Election Code, it is also a violation of Section 253.004 for a person to knowingly violate Section 253.006 or 253.007. Tex. Elec. Code § 253.004(a) (“A person may not knowingly make or authorize a political expenditure in violation of [Chapter 253].”)

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Section 253.007 imposes a two-year waiting period before a former candidate or officeholder may engage in activity requiring registration as a lobbyist under Chapter 305 of the Government Code from the last time the former candidate or officeholder made a political contribution or direct campaign expenditure from a political contribution the former candidate or officeholder “accepted . . . as a candidate of officeholder.”³

In Ethics Advisory Opinion No. 575, we addressed whether a former candidate or officeholder could transfer their contributions to a political committee they controlled to avoid triggering the Section 253.007 restrictions on the lobbying activity. Tex. Ethics Comm’n. Op. No. 575 (2022). We held that “candidates and officeholders cannot avoid the restrictions of section 253.007 by transferring the political contributions they accepted as a candidate or officeholder to political committees they control.” *Id.* This is because “even after being transferred to a committee” those funds were still “accepted by the person as a candidate or officeholder” due to the transferor’s continued control over the funds. *Id.* (citing Tex. Elec. Code § 253.007).

A “transfer” or a “contribution” from a former officeholder to a political committee controlled by the former officeholder candidate is a legal fiction akin to person moving money from their right pants pocket to left. To effect the transfer, a former candidate or officeholder needs to do little more than file a GPAC registration form and report the “transfer” as an expenditure on the Candidate/Officeholder campaign finance report and a contributions on their political committee campaign finance report. There are almost no organizational requirements for a political committee. The lack of statutory controls on the internal governance of a political committee allows a former candidate or officeholder to continue to exercise complete control over their previous candidate/officeholder funds they re-label as political committee funds. We opined that sanctioning such easy circumvention “would strip section 253.007 of any meaning” and that

³ The law reads in full:

Sec. 253.007. PROHIBITION ON LOBBYING BY PERSON MAKING OR AUTHORIZING CERTAIN POLITICAL CONTRIBUTIONS AND DIRECT CAMPAIGN EXPENDITURES.

(a) In this section, "administrative action," "communicates directly with," "legislation," "member of the executive branch," and "member of the legislative branch" have the meanings assigned by Section 305.002, Government Code.

(b) Notwithstanding any other provision of law and except as provided by Subsection (c), a person who knowingly makes or authorizes a political contribution or political expenditure that is a political contribution to another candidate, officeholder, or political committee, or direct campaign expenditure, from political contributions accepted by the person as a candidate or officeholder may not engage in any activities that require the person to register under Chapter 305, Government Code, during the two-year period after the date the person makes or authorizes the political contribution or direct campaign expenditure.

(c) Subsection (b) does not apply to a person who:

(1) communicates directly with a member of the legislative or executive branch only to influence legislation or administrative action on behalf of:

(A) a nonprofit organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code;

(B) a group of low-income individuals; or

(C) a group of individuals with disabilities; and

(2) does not receive compensation other than reimbursement for actual expenses for engaging in communication described by Subdivision (1).

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“state law demands that we presume the Legislature intended to enact an effective statute.” Tex. Ethics Adv. Op. No. 575 (2022) (citing Tex. Gov’t Code § 311.021(2)).

The requestor asks the Commission to reconsider Ethics Advisory Opinion No. 575. He points to section 253.006, the plain language of which indicates that the Legislature did intend to allow a former candidate or officeholder to engage in lobby activity and continue to make a political contributions and direct campaign expenditures from a political committee the former candidate or officeholder controlled. In the requestor’s view, the former candidate or officeholder would simply need to wait two years after making the transfer of his campaign funds to a GPAC before engaging in lobby activity. After the two year wait, the former candidate or officeholder would be free to make political contributions from the political committee account and continue to engage in lobby activity.

Section 253.006 states:

Notwithstanding any other provision of law, a person required to register under Chapter 305, Government Code, may not knowingly make or authorize a political contribution or political expenditure that is a political contribution to another candidate, officeholder, or political committee, or direct campaign expenditure, from political contributions accepted by:

- (1) the person as a candidate or officeholder;
- (2) a specific-purpose committee for the purpose of supporting the person as a candidate or assisting the person as an officeholder; or
- (3) a political committee that accepted a political contribution from a source described by Subdivision (1) or (2) during the two-year period immediately before the date the political contribution or expenditure was made.

Subdivision (3) appears to authorize a former candidate or officeholder to be a registered lobbyist and make political contributions from a political committee he controls two years after transferring his candidate/officeholder political contributions to the committee. Tex. Gov’t Code § 253.006(3). Subdivision (3) must contemplate that the former candidate or officeholder controls the political committee because the law only applies to expenditures knowingly made or authorized by the former candidate or officeholder. *Id.* The former candidate or officeholder necessarily controls the committee to “make or authorize” an expenditure for the committee. Subdivision (3) then authorizes the former candidate or officeholder to make contributions and direct campaign expenditures from such a political committee two years after the political committee accepted contributions from the former candidate of officeholder’s own political contributions or political contributions from the registrant’s specific-purpose committee. *Id.*

The requestor argues a contrary interpretation would nullify subdivision (3) and “create a conflict between two contemporaneously adopted statutory provisions: permissible activity under § 253.006 triggers a violation of § 253.007.”

The argument follows that under a plain and ordinary reading of HB 2677, a person can leave office and contribute money to a GPAC, do nothing with the GPAC for two years, make no political contributions or lobby expenditures during the same time period, and then register as a

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lobbyist. At which time, political expenditures from COH and SPAC accounts would still be prohibited, but the making of the same from GPAC accounts would be permissible under Section 253.006(3) of the Election Code and Section 305.029(b) of the Government Code, which effectively restates Section 253.006 in the Government Code.

When construing a statute, the Texas Supreme Court counsels that “we begin with its language, drawing the Legislature's intent from the words chosen when possible.” *Phillips v. Bramlett*, 288 S.W.3d 876, 880 (Tex. 2009) (citing *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006)). Legislative intent is determined “from the entire act and not just its isolated portions.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). One must “try to give effect to all the words of a statute, treating none of its language as surplusage when reasonably possible.” *Id.* (quoting *Sultan v. Mathew*, 178 S.W.3d 747, 751 (Tex. 2005)).

Considering Section 253.007 in light of 253.006 compels the conclusion that the Legislature intended to permit a former candidate or officeholder to transfer their political contributions to a political committee, wait two years, register as a lobbyist and use the new political committee to make political contributions and direct campaign expenditures.

Both Section 253.007 and 253.006 tie a restriction to the use of political contributions “accepted by the person as a candidate or officeholder.” Compare Tex. Elec. Code § 253.006(1) with *id.* § 253.007(b). However, Section 253.006 treats a political contribution transferred to a political committee by a former candidate or officeholder in subdivision (3) differently than a contribution “accepted by the person as a candidate or officeholder” in subdivision (1). Section 253.006(3) clearly contemplates a former candidate or officeholder transferring his own contributions to a political committee he controls and then being able to use those contributions to make political contributions regardless of whether he is lobbyist (provided he waits two years). It impossible to give effect to that provision and hold that a similar contribution would from a candidate-controlled political committee would violate Section 253.006(1) and trigger the 253.007 waiting period.

Therefore, the requestor may make political contributions and direct campaign expenditures from a general-purpose committee he controls without violating Sections 253.004, 253.006 and 253.007, provided he waits two-years from the last contribution the political committee accepts from his C/OH account.

Our job is to give effect to the Legislature’s intent drawing from the words it chose. *Bramlett*, 288 S.W.3d at 880. In this case, it is now clear the Legislature chose to allow an easy route for a former candidate or officeholder to convert a lifetime prohibition on using their political contributions to make political contributions as a lobbyist to a two-year wait. All an officeholder-turned lobbyist needs to do is transfer their candidate officeholder contributions to a general-purpose committee they control.

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUE

Whether the revolving door law prohibition in section 572.069 of the Government Code would prohibit a former employee of a state agency from accepting certain employment. (AOR 678.)

SUMMARY

A former state employee participates on behalf of a state agency in a procurement or contract negotiation by drafting contract terms and having direct communications with a company regarding a potential contract.

A former state employee participates on behalf of a state agency in a procurement or contract negotiation with a subcontractor if the subcontractor is identified as providing work in the contract.

FACTS

The requestor is a former employee of the Texas Department of Transportation (“TxDOT” or the “department”). He asks whether he may accept employment at two different companies (“Firm 1” and “Firm 2”).

During the requestor’s employment with TxDOT, he was a “Team Lead” in charge of four TxDOT project managers. The requestor also served as a project manager on his own projects. The requestor states that all of his work for TxDOT was presented to another layer of TxDOT management for acceptance or rejection.

Some of the project managers he led managed outside consultants who performed project work. As Team Lead and project manager, the requestor was involved in some aspects of the contracting with Firm 1 and Firm 2.

Dealings with Firm 1

Firm 1 had an active contract with TxDOT when the requestor joined the department. At the request of a TxDOT supervisor, the requestor was involved in a contract negotiation with Firm 1 for a supplemental agreement to add additional “scope and fee” to the contract. While serving as interim project manager, the requestor coordinated with a TxDOT contracts manager and Firm 1

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to ensure everything the TxDOT supervisor wanted was in the supplemental agreement. The requestor described his work on the contract as follows:

Coordination in this situation consisted of setting up meetings, taking notes on decisions the schematic supervisor made, ensuring those notes were included in the contract, giving information on similarities between this project and others, comparing this contract to other contracts, and giving the contract a first review before passing it along to the schematic supervisor for further review and approval. The position was supposed to act as a go-between between the schematic supervisor and Firm 1, but in this particular case Firm 1 repeatedly communicated directly with the schematic supervisor instead. When it came to discretion and independent decision making, my role was advisory in terms of “I think we should change this” or “I think this is appropriate”, but never the ability to say “this is what we are going to do” or firmly make a decision.

The requestor stated he did not recall negotiating anything related to the fee. The supplemental agreement was then executed.

Dealings with Firm 2

Firm 2 was a sub-consultant for another firm (Firm 3). During the requestor’s employment Firm 3 had active contract with TxDOT, managed by a project manager on the requestor’s team. A TxDOT supervisor requested the project manager add a supplemental agreement to the original contract that included additional “scope and fee.” The requestor provided guidance to the project manager on how to negotiate, gave a rough approximation to the project manager of what the requestor believed the fee should be, attended a scoping meeting with the project manager, Firm 3, and other supervisors. The requestor also provided quality control reviews regarding the scope and fee of the supplemental agreement. The requestor left TxDOT while the supplemental contract was being negotiated and does not know the specific terms of the final agreement. The requestor states Firm 2 was not a signee on the contract or any supplemental agreement. However, Firm 2 was listed as a providing services on the contract and supplemental agreements.

ANALYSIS

Legal Standard:

Section 572.069 of the Government Code states:

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 the contract is signed or the procurement is terminated or withdrawn.

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Tex. Gov't Code § 572.069.

Section 572.069 does not define the word “participated.” However, we have applied the definition found in a companion revolving door law to Section 527.069. Tex. Ethics Comm’n Op. No. 568 (2021). We do so again. *See* Tex. 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.”). “Participated” means “to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” Tex. Gov’t Code § 572.054(h)(1).

The former state employee participated on behalf of a state agency in a procurement or contract negotiation involving Firm 1

We have held that “direct communications with a potential contracting partner over the terms of a prospective deal constitutes participating in a procurement or contract negotiation.” Tex. Ethics Comm’n Op. No. 578 (2022). We have also held that a requestor participated in a procurement on behalf of a state agency by scoring and evaluating bid proposals for a contract to provide information technology services, even though the requestor did not participate any further in the request for proposal or participate in negotiation with vendors or the vendor selection. Tex. Ethics Comm’n Op. No. 545 (2017). However, a former employee does not participate in a procurement when a former state employee’s only involvement is merely being kept informed of the status the procurements. Tex. Ethics Comm’n Op. No. 568 (2021).

A former state employee “participates” in a contract negotiation or procurement by making a “recommendation” or “giving advice.” Tex. Gov’t Code § 572.054(h)(1). Here, the requestor participated in the contract negotiation though his involvement in reviewing the contract, drafting contract terms, and giving advice and recommendations to his supervisor regarding contract terms. The requestor is therefore prohibited from accepting employment from Firm 1 for two years after the date the contract with Firm 1 was executed.

The former state employee participated on behalf of a state agency in a procurement or contract negotiation involving Firm 2, because Firm 2 was identified as providing services in the agreement.

The revolving door prohibition is triggered by participating in a procurement or contract negotiation “involving a person.” Tex. Gov’t Code § 572.069. Here, the requestor participated in the supplement agreement procurement with Firm 3 by providing guidance to the project manager on how to negotiate, giving a cost estimate, and attending a meeting involving the scope of the project with Firm 3 and other TxDOT employees.

The relevant question is whether the procurement involved Firm 2, a sub-contractor working on the contract between TxDOT and Firm 3.

A contract that identifies a subcontractor as performing work “involves” the identified subcontractor for purposes of Section 572.069. Ethics Comm’n Op. No. 545 (2017) (holding a former employee of a state agency would be prohibited from accepting employment from a

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subcontractor identified in a proposed contract which the former employee evaluated and scored).

The requestor states that Firm 2 was identified as providing work under the first agreement and the supplemental agreement with which the requestor was involved. Therefore, consistent with Ethics Advisory Opinion No. 545, the contract negotiation involved Firm 2. Consequently, the requestor is prohibited from accepting employment from Firm 2 for two years after the date supplement agreement was signed or the procurement was withdrawn.

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ETHICS ADVISORY OPINION NO. ____

[DATE]

Having determined that it would be in the public interest, the Texas Ethics Commission issues the following opinion on its own initiative pursuant to Section 571.094, Government Code.

ISSUES

A member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contributions; and (3) registers to lobby. May the former legislator lobby members of the Legislature during the two-year period after making the political contribution?

May the former legislator cure a violation of Section 253.007 or reduce the two-year waiting period imposed by Section 253.007 by reimbursing his or her campaign with personal funds in an amount that equals the political contributions made?

Pursuant to Section 571.173, Government Code, the commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law administered and enforced by the commission. What does “the amount at issue” mean for purposes of imposing a penalty for a violation of Section 253.007, Election Code? Does it mean: (1) the amount of political contributions at issue, (2) the maximum amount of income indicated on the person's lobby registration statement, or (3) something else? (AOR 679-CI)

SUMMARY

Section 253.007, Election Code prohibits a person from engaging in activities that require the person to register under Chapter 305, Government Code during the two-year period after the date the person knowingly makes or authorizes a political contribution to another candidate, officeholder, or political committee from political contributions accepted by the person as a candidate or officeholder.

The plain language of Section 253.007 does not permit a person to cure a past violation or reduce the two-year waiting period by reimbursing the person's campaign with personal funds.

Because any amount of lobby compensation or expenditures in excess of the applicable registration threshold is prohibited by Section 253.007, the “amount at issue” for purposes of that section are the total amount of prohibited lobbying activities.

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FACTS

The Commission assumes the following facts for purposes of this opinion. A former member of the Texas Legislature retires at the end of a legislative session. Before the next legislative session, the former legislator: (1) uses title 15 campaign contributions to make a political contribution to legislative candidates; (2) subsequently uses personal funds to reimburse the campaign for the same amount of the contribution; and (3) engaged in activity that required registration under Chapter 305.

ANALYSIS

Section 253.007 prohibits a former member of the Legislature from engaging in activities that require registration as a lobbyist for two years after using title 15 funds to make political contributions to legislative candidates.

The Legislature enacted Section 253.007, Election Code in response to concerns “about the revolving door of candidates and officeholders becoming lobbyists immediately after losing an election or retiring from office.”¹ Among other things, Section 253.007 prohibits a person from engaging in activities that require the person to register under Chapter 305, Government Code during the two-year period after the date the person knowingly makes a political contribution to a candidate, officeholder, or political committee from political contributions accepted by the person as a candidate or officeholder. Tex. Elec. Code § 253.007(b).

Chapter 305 requires a person to register as a lobbyist if he or she receives—or is entitled to receive under an agreement—an amount of compensation that exceeds an annually-adjusted threshold to communicate directly with a member of the legislative or executive branch for the purpose of influencing legislation or administrative action. Beginning on January 1, 2023, that threshold is \$1,760 in a calendar quarter. Tex. Gov’t Code § 305.003(a)(2); 1 Tex. Admin. Code § 18.31; *see also* Tex. Gov’t Code § 305.001(3) (defining compensation as “money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered”).

Section 253.007 thus prohibits a former member of the Legislature from receiving—or being entitled to receive under an agreement—over \$1,760 in a calendar quarter to lobby current members of the Legislature if the former member has used political contributions he or she accepted as a candidate or officeholder to make political contributions to others within the past two years.

Section 253.007 does not permit a person to cure a past violation or reduce the two-year waiting period by reimbursing his or her campaign with personal funds.

Some laws under the Commission’s jurisdiction expressly allow for past violations to be cured or remedied by subsequent action. For example, a statement, registration, or report required to be filed with the Commission is not considered to be late if the person files a corrected report within

¹ <https://capitol.texas.gov/tlodocs/86R/analysis/pdf/HB02677H.pdf#navpanes=0>

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION

14 business days and any error or omission in the report as originally filed was made in good faith. Tex. Gov't Code § 571.0771.

However, many other violations cannot be cured. For example, the return of an illegal corporate contribution after knowing acceptance does not undo the violation. *See, e.g., In re Fernandez*, SC-3120241 (2012) (finding a violation of the corporate contribution prohibition even after the respondent returned the illegal contribution).²

Here, the plain language of Section 253.007 does not permit a reimbursement from personal funds to a campaign to change the source of funds used in the initial contribution. The two-year waiting period is triggered once a former candidate or officeholder “makes or authorizes a political contribution or political expenditure that is a political contribution” from his own political contributions. A “contribution” is a “direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer.” Tex. Elec. Code § 251.001(2). Therefore, the triggering event is complete once the former officeholder effects the transfer of his own political contributions to another candidate, officeholder or political committee.

Notwithstanding the conclusion that a reimbursement does not cure a past violation of Section 253.007, it may be relevant for the Commission’s consideration of the appropriate penalty for the violation. By law, the Commission is required to consider several factors in assessing a penalty, including “actions taken to rectify the consequences of the violation.” Tex. Gov’t Code § 571.177.

The “amount at issue” for purposes of Section 253.007 is the amount of prohibited lobbying activity.

Pursuant to Section 571.173, Government Code, the Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue for a violation of law administered and enforced by the commission. However, that leaves unanswered what “the amount at issue” means for purposes of imposing a penalty for a violation of Section 253.007.

This is a question of first impression for the Commission. Some may argue that the amount at issue is the amount of political contributions made by the former legislator from his or her title 15 funds within two years of engaging in activities that require registration. But Section 253.007 does not prohibit making political contributions. Rather, it prohibits a person who has made certain contributions from engaging “in any activities that require the person to register” for two years. Therefore, the amount at issue may be the total amount of lobby activity prohibited by Section 253.007 (*i.e.*, the amount of lobby compensation and expenditures).

The Commission finds this second alternative more persuasive. Because any amount of lobby compensation or expenditures in excess of the applicable registration threshold is prohibited by Section 253.007, the “amount at issue” for purposes of that section is the total amount of prohibited lobbying activities. And, because Chapter 305 defines lobby compensation to include both payments actually received *and* prospective compensation, the “amount at issue” includes

² Available at https://www.ethics.state.tx.us/data/enforcement/sworn_complaints/2012/3120241.pdf

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION

any compensation the person is entitled to receive under a lobby agreement. *See* Tex. Gov't Code §§ 305.002(3) (defining compensation to include money that “is received or is to be received”), 305.003(a)(2) (compensation threshold triggered by money received or money one is “entitled to receive under an agreement”).

However, the amount a person is entitled to receive under an agreement may not necessarily include the full amount disclosed on the person's lobby registration statement. For example, a registration statement may disclose future anticipated compensation that the registrant is not yet entitled to receive. The answer will ultimately depend on the terms of the agreement between the lobbyist and client as well as other factors.

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