

TEC Overview

Texas Ethics Commission – February 2024

Creation of Texas Ethics Commission

- **Constitutional state regulatory agency created in 1991**
 - Texas Constitution: Art. III, Sec. 24a
 - Ballot proposition passed Nov. 5, 1991
 - Offices in Austin
 - 28.4 FTEs (currently budgeted)

- **TEC staff is divided into four main divisions:**
 - Legal Department, which is further divided into:
 - Office of General Counsel (rules, advisory opinions and Legal Helpline)
 - Enforcement (complaints and facial compliance)
 - Disclosure Filings
 - Computer Services, which includes Technical Support
 - Administration

General Duties of Texas Ethics Commission

- TEC has the powers and duties provided by law
 - Determined by Texas Legislature
- TEC sets legislators' per diem
- TEC may recommend legislators' salary
 - If recommendation made, voters must still approve

Commissioners

- 8 appointed members
 - Lists of prospective members are provided by Texas House and Senate members of each major political party
 - 4 by Governor, two from each party
 - 2 by Speaker of the House, one from each party
 - 2 by Lt. Governor, one from each party
 - Statewide appointments
- 4 year terms
- Can serve for 1 term and a partial 2nd term; after that, they are ineligible for reappointment
- Must meet at least quarterly

Tex. Gov't Code Ch. 571; 1 T.A.C. ch. 6

Commissioners

Bi-partisan design: 6 votes needed

- ⦿ Adopt rules
- ⦿ Decide complaints (except dismissal after a formal hearing)
- ⦿ Initiate review (complaint)
- ⦿ Issue subpoenas
- ⦿ Audit a report
- ⦿ Initiate civil enforcement
- ⦿ Refer to prosecutor

Commissioners

Bi-partisan design: 5 votes needed for other actions

- ⦿ Publish rules for public comment
- ⦿ Dismiss complaint after formal hearing
- ⦿ Issue advisory opinions (EAOs)
- ⦿ Waive, reduce, increase civil penalty (late reports)
- ⦿ Terminate treasurer appointment

Texas Ethics Commission

Purpose of Enabling Legislation:

“To protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also protecting the constitutional right of the governed to apply to their government for the redress of grievances.”

Tex. Gov't Code § 571.001

Texas Ethics Commission

TEC's enabling legislation shall be construed to:

- ⦿ Control and reduce cost of elections;
- ⦿ Eliminate opportunities for undue influence;
- ⦿ Disclose fully information regarding campaign spending and lobbying;
- ⦿ Enhance potential for individual participation in electoral and governmental processes; and
- ⦿ Ensure the public's confidence and trust in its government.

Tex. Gov't Code § 571.001

Four Main Groups of Ethics Laws

- ◎ Title 15, Election Code (Chapters 251 – 259)
 - Campaign Finance and Political Advertising
- ◎ Chapters 36 and 39, Penal Code
 - Bribery, Prohibited Gifts and Honoraria
 - Misuse of Government Property
- ◎ Chapter 305, Gov't Code
 - Lobby laws
- ◎ Chapter 572, Gov't Code
 - Personal Financial Disclosure, commonly called the PFS
 - Revolving Door

Tex. Gov't Code ch. 571; 1 T.A.C. ch. 6

What TEC Doesn't Do

What we DON'T do:

- ⦿ Anything to do with federal elections
- ⦿ Disciplinary actions concerning the ethics or morals of public officeholders
- ⦿ Disciplinary actions concerning the ethics or morals of lawyers or judges
- ⦿ Determining whether an individual is eligible to run for a public office
- ⦿ Timing and placement of campaign signs

How Ethics Laws Work

Governmental ethics laws exist to promote confidence in our system of government and a sense of fair play

- ⦿ Limit outside influence
- ⦿ Require public disclosure of financial activity
- ⦿ Ensure public resources are used for public purposes only

How Ethics Laws Work

Limit outside influence:

- No personal use of contributions
- No corporation or labor organization contributions to a candidate or officeholder
- Legislative moratorium
 - No contributions during regular session
- Judicial candidates
 - Fundraising window: 210 days before ballot application – 120 days after election
 - Contribution limits
- Lobbyist gift restrictions

How Ethics Laws Work

Require public disclosure, via Campaign Finance, Lobby, Personal Financial Disclosure

- Campaign finance disclosure deters actual corruption and avoids appearance of corruption (*Buckley v. Valeo*, 424 U.S. 1 (1976))
 - “Sunlight is said to be the best of disinfectants” – Justice Louis D. Brandeis
- 2013 Sunset Advisory Commission report
 - Given the few limits state law places on campaign contributions and expenditures, Texas’ approach to ethics relies on disclosure to shine a light on political financial activity for the public to see and judge

How Ethics Laws Work

- Disclosure aids detection of violations:
 - Contributions accepted and spent
 - Recordkeeping requirements
- Personal Financial Statements (PFSs)
- Lobby Registration and Activity Reports

Personal Financial Statements

- Filed by state officers and candidates for state office, many state agency board members and executive directors, state party chairs, etc.
- Also filed by some city and county officials, depending on population. These are filed locally and are not in TEC's jurisdiction; they are governed by Tex. Local Gov't Code Chapters 145 and 159
- Must disclose a lot of information, including sources of occupation, stocks, bonds, mutual funds, gifts, business ownership, personal notes, real property interests, conflicts between official duties and personal activities, etc.
- Not available on TEC website, but subject to Public Information Act requests
- Typical due dates:
 - April 30th for officeholders; TEC filers can ask for 60 day extension
 - February 12th for candidates; no extension
 - New appointees to major state agencies – due 30 days after appointment; no extension
 - New executive head of a state agency – due 45 days after assuming duties; no extension

Lobbyists

- Communicates directly with member of legislature or executive branch to influence legislation or administrative action
- Three thresholds to watch:
 - Compensation and reimbursement: more than \$1,870 per calendar quarter---
 - Time: more than 40 hours per calendar quarter (someone who crosses the compensation threshold but doesn't spend that much time on it does not have to register); or
 - Expenditures: more than \$940 per calendar quarter
- File monthly, unless your total expenditures are \$2,150 or less – then file annually
- Register every year; registration automatically expires at the end of each year
- \$750 to register unless your only client(s) are nonprofits, then it is \$150

Tex. Gov't Code Chap. 305; 1 Tex. Admin. Code Chap. 34

How Ethics Laws Work

Ensure public resources are used for public purposes:
Restrictions on improper use of government property

- Tex. Elec. Code § 255.003 and Penal Code § 39.02
- No campaign use (EAO 386, 431, 550)
- No personal use of campaign contributions
 - Tex. Elec. Code § 253.035
 - EAO 522

How Ethics Laws Work

Reports filed locally or with the TEC serve an important function:

- ⦿ Must be accurate (sworn to), because inaccuracies can be enforced
- ⦿ Filers must be aware of their activities
 - Must consider disclosure before accepting contributions
 - Same with personal activities (investments, debts)
- ⦿ Public can question inappropriate activity
 - Who supports the candidate?
 - How does a candidate spend their campaign money?
 - Political advertising disclosure statement
- ⦿ Press can report about it
- ⦿ Discrepancies can lead to complaints

Penalties

- Most ethics laws carry criminal and/or civil penalties for violations
- Violations may result in:
 - Monetary penalties
 - Criminal penalties (including jail time)
 - Other action

TEC Duties

- Filing authority for public reports
- Assist public servants, candidates, PACs, general public regarding ethics laws
- Civil enforcement
 - Fines for late reports
 - Complaints
- Rulemaking
- Advisory Opinions

TEC: Filing Authority

- Filing authority for the following reports:
 - Campaign finance
 - Lobby
 - Personal Financial Statements
 - Disclosure of Interested Parties (1295)
 - Representation Before State Agency
- Public information
- Most filed (or retained) electronically

Campaign Finance Filers

Two main types of campaign finance filers:

- ⦿ Candidates and officeholders
- ⦿ Political Action Committees (PACs)
 - Two types:
 - GPAC (general-purpose political action committee)
 - SPAC (specific-purpose political action committee)
 - Can take corporation/labor organization contributions

TEC: Filing Authority

- Most campaign finance and lobby reports are available online
- Campaign finance:
 - Searchable on website
 - Downloadable database
 - Lists of candidates, PACs, caucuses
- Lobby:
 - Searchable reports
 - Lobby Activity report database
 - Other lists (since 1999)

Where to Find Reports on TEC Website (www.ethics.state.tx.us)



Texas Ethics Commission

Promoting Public Confidence in Government

ENHANCED BY Google



Resources ▾

Opinions/Statutes/Rules ▾

Filing Reports ▾

Training ▾

Forms/Instructions ▾

Search ▾

Home

- Campaign Finance Reports
- Lobby Registrations/Activity Reports
- TEC Opinions
- 1295 Acknowledged Certificates
- Sworn Complaints
- Delinquent Filers

Next Commission Mtg: Mar 11-12, 2021

▶ Play

⏸ Pause

Home

Administrative Penalties

- Automatic statutory fines for late reports filed with TEC
 - \$500 – most reports
 - Can be increased to \$10,000 if more than 30 days late and penalty remains unpaid
 - \$500 + \$100 for each additional day up to \$10,000
 - 8-day pre-election and first semiannual due after election
- Can file Statement of Defense to request waiver or reduction
 - 1 Tex. Admin. Code §§18.19 – 18.26
- Delinquent filers on TEC website and Texas Register

Civil Enforcement

- Audits – Facial Compliance
- Sworn Complaints
 - Any Texas resident can file complaint
 - TEC can initiate
 - Statute of Limitations of 2 years for most allegations
 - Almost entirely confidential
 - Open orders posted to website
 - Formal hearings are public
 - Fines up to \$5,000 or triple amount at issue for most violations
 - SC Numbers: 2021: 244
2022: 457
2023: 345

Office of General Counsel

Main functions:

- Rules: proposing and adopting;
- Ethics Advisory Opinions;
- Open Records Requests;
- Administrative Waiver and Appeal; and
- Legal helpline

Office of General Counsel: Rulemaking

- TEC authorized to adopt rules to:
 - Administer Chapter 571, Gov't Code
 - Administer and clarify any other law administered and/or enforced by TEC
- Rules in Title 1, Texas Admin. Code: Chapters 6 - 50
- Administrative Procedures Act applies
- Public comments welcome on proposed rules

Office of General Counsel: Ethics Advisory Opinions (“EAOs”)

- TEC can issue opinions on laws under our jurisdiction
 - Requires 5 votes by Commissioners to pass
- 600 opinions issued to date; can be searched on our website
- Can be defense to prosecution
 - Must be reasonable reliance
- Can be initiated by TEC or requested by certain individuals

EAOs, continued

Not all opinions can be issued

- ⦿ TEC cannot answer (insufficient facts, no jurisdiction)
- ⦿ Can be answered by statute or rule
- ⦿ Already answered by TEC
- ⦿ Insufficient votes to adopt
- ⦿ Concerns subject matter of pending litigation

EAOs, continued

- Request for opinion must:
 - Be in writing
 - Ask about application of law to requestor
 - Real or hypothetical fact situation
 - Provide sufficient detail and be clearly stated
 - Include name of requestor or person for whom requested
- Name of requestor confidential
 - Can be waived
- opinions@ethics.state.tx.us

Tex. Gov't Code § 571.093; 1 Tex. Admin. Code §§ 8.5, 8.7, 8.19

EAOs, continued

- Things to consider before requesting an EAO:
 - TEC can only address law as applied to requestor
 - Call TEC first:
 - Might already be answered
 - Opinions take longer than phone call (often must be voted on at a Commission meeting)

Office of General Counsel: Administrative Waivers and Appeals

- ⦿ If a TEC filer files a report late, they can file a Statement of Defense to ask the Commissioners to reduce/waive the automatic penalty
- ⦿ Process and form are detailed under the “Administrative Fines” section on our website:
<https://www.ethics.state.tx.us/enforcement/>
- ⦿ TEC cannot consider the Statement of Defense until after the missing report is filed

Tex. Gov’t Code § 571.0771; 1 Tex. Admin. Code Chap. 18.

Office of General Counsel: Legal Helpline

Provide legal guidance and assistance:

- Public servants: Elected and non-elected
- Candidates, PACs, others
- Lobbyists
- General public

Legal Helpline, continued

- Available by phone (512-463-5800) or reception@ethics.state.tx.us
- If you need to contact TEC, your first stop should be our website
 - www.ethics.state.tx.us
 - FAQs for new and outgoing filers
 - Filing schedules
 - Forms, Instructions, Guides
 - Judicial Campaign Fairness Act tips
 - Advisory Opinions
 - All TEC statutes and rules

Office of General Counsel

If you still need to contact TEC:

- reception@ethics.state.tx.us
- 512-463-5800
- Don't wait until the last minute; be aware of filing deadlines
- Have your facts ready
- Be patient
- Be friendly

TEC Website: ethics.state.tx.us

The screenshot shows the homepage of the Texas Ethics Commission website. At the top left is the TEC logo with the text "Texas Ethics Commission" and "Promoting Public Confidence in Government". To the right is a search bar labeled "ENHANCED BY Google". Below the header is a navigation menu with items: Resources, Opinions/Statutes/Rules, Filing Reports, Training, Forms/Instructions, Search, and Home. The main banner features a large clock face with the text "Next Commission Mtg: Mar 11-12, 2021" and "Play" and "Pause" buttons. Below the banner is a "Home" section with a "Quick Help" sidebar containing links to "LOGIN to Electronic Filing Application", "Upcoming Deadlines", "Filing Schedules", "Enforcement & Compliance", "Commission Meetings", "Customer Satisfaction Survey", "Job Opportunities", "Calendar", and "87th Legislature Bill Tracking". The main content area has a "COVID-19" section with text about office hours and a link to "reception@ethics.state.tx.us". Below this is a section titled "I want to ..." with three icons: a document with a dollar sign, a scale of justice, and a briefcase with a star.

Texas Ethics Commission

Promoting Public Confidence in Government

ENHANCED BY Google

Resources - Opinions/Statutes/Rules - Filing Reports - Training - Forms/Instructions - Search - Home

Next Commission Mtg: Mar 11-12, 2021

Play Pause

Home

Quick Help

LOGIN to Electronic Filing Application

Upcoming Deadlines

Filing Schedules

Enforcement & Compliance

Commission Meetings

Customer Satisfaction Survey

Job Opportunities

Calendar

87th Legislature Bill Tracking

COVID-19




The Texas Ethics Commission (TEC) is working to serve you during our regular office hours (8am-5pm, Monday through Friday). The TEC office is attending the 512-463-5800 telephone. TEC is also operating over email until further notice. Email your questions to reception@ethics.state.tx.us. TEC will be monitoring this mailbox during our regular office hours. TEC will respond to emails as quickly as possible.

Our office in the Sam Houston Building is closed to the public at this time.

Impact to local filers and local filing authorities:

- Unsworn Declaration that can be used in lieu of a notary on a campaign finance report or personal financial statement (click for form)

I want to ...



Resources

- Commission provides detailed guides for candidates, which can be found online at <https://www.ethics.state.tx.us/resources/cf/>
- FAQs for candidates:
https://www.ethics.state.tx.us/resources/FAQs/FAQ_COH_Legal.php
- Icon: I Want to “Campaign in Texas”:
<https://www.ethics.state.tx.us/resources/cf/StartEndCampaign.php>
- Updated filing schedules for filing campaign finance reports can be found at:
https://www.ethics.state.tx.us/filinginfo/schedules/filing_schedules.php
- If you or your client ever have a question, give the Commission a call at (512) 463-5800 or send an email to reception@ethics.state.tx.us.