



TEXAS ETHICS COMMISSION MEETING MINUTES

Public Meeting Minutes

May 12, 2022, 9:02 a.m.

Capitol Extension, Room E1.014

Austin, Texas 78701



COMMISSIONERS PRESENT: Mary K. “Katie” Kennedy, Chair; Randall H. Erben, Vice Chair; Chad M. Craycraft, Chris Flood, Patrick W. Mizell, Richard S. Schmidt, Joseph O. Slovacek, and Steven D. Wolens

COMMISSIONERS NOT PRESENT: All Present

STAFF PRESENT: Joe Brocato, Margie Castellanos, Carmen Dalpaiz, Nick Espinosa, Betty Gallegos, Jessie Haug, Cristina Hernández, Jordan Hunn, J.R. Johnson, Natalie McDermon, Amy Padilla, Anne Temple Peters, Lindsay Powers, Patti Shannon, Bill Wilson and Jim Tinley.

MINUTES

These minutes are a summary record of the Commission’s actions at the meeting. For a detailed record of discussions and statements made by persons speaking at the meeting, please consult the audio recordings on file at the Commission’s office.

Agenda Item 1: Call to Order/Roll Call.

The meeting was called to order by Chair Kennedy. Anne Temple Peters, Executive Director, called the roll. All Commissioners were present except Commissioner Mizell, who joined the meeting shortly after the Executive Session began.

Agenda Item 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; 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.
 - iv. Cause No. 21-00140: *Texas Ethics Commission v. Robert L. "Bob" Hall, III*, in the 294th Judicial District Court in Van Zandt County, Texas.
- B. Discussion of pending and contemplated litigation regarding the collection of imposed penalties.
 - C. Discussion of personnel matters.
 - D. Reconvene in open session, at 9:58 a.m. No action was taken.

Agenda Item 3: Discussion regarding dates for next quarterly Commission meeting.

Chair Kennedy briefed the Commission on this agenda item. Chair Kennedy, Commissioners Craycraft, Mizell and Wolens, and Anne Temple Peters, Executive Director, responded with questions and comments. Tentative dates for the next commission meetings, subject to change, are September 28, 2022 and September 29, 2022.

Agenda Item 4: Approve minutes for the following meetings:

- **Formal Hearings on February 24, 2022**
- **Public Meeting on February 25, 2021.**

Chair Kennedy briefed the Commission on this agenda item. Motion by Vice Chair Erben to approve the minutes in Agenda Item 4; second by Commissioner Flood. **Motion passed unanimously.**

Agenda Item 5: 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, for the following filer: Ben Bhatti (00084839).

Natalie McDermon, Assistant General Counsel, briefed the Commission on this agenda item. Mr. Bhatti appeared remotely, was sworn in, and testified. Chair Kennedy and Commissioner Mizell responded with questions and comments. Motion by Commissioner Flood to waive the fine

on Agenda Item 5; second by Commissioner Schmidt. **Motion passed unanimously.**

Agenda Item 6: **Draft Advisory Opinion No. AOR-659: Whether a corporation may coordinate with candidates or political committees on the content, timing, and distribution of advertisements that criticize or praise candidates—including those with whom the corporation coordinates and their opponents—for opposing or supporting certain legislative policies.**

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. Jonathan Berkon addressed the Commission. Chair Kennedy, Commissioner Wolens and Mr. Johnson responded with questions and comments. Motion by Vice Chair Erben to adopt Agenda Item 6; second by Commissioner Flood. **Motion passed unanimously.**

Agenda Item 7: **Draft Advisory Opinion No. AOR-660: Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission.**

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. David Keating and Don Daugherty addressed the Commission. Chair Kennedy, Commissioners Mizell and Wolens, and Mr. Johnson responded with questions and comments. No action was taken.

Commissioner Schmidt left the meeting during this agenda item.

Agenda Item 8: **Draft Advisory Opinion No. AOR-662: Whether a specific-purpose committee’s contributions and expenditures trigger section 253.007’s restrictions on the lobbying activity of candidates and officeholders.**

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. Chair Kennedy, Commissioner Wolens and Mr. Johnson responded with questions and comments. Motion by Vice Chair Erben to adopt Agenda Item 8 with footnote; second by Chair Kennedy. **Motion passed by a vote of seven ayes.** Chair Kennedy express her appreciation of staff’s hard work.

Agenda Item 9: **Discussion and possible action on the adoption or proposal and publication in the Texas Register of new 1 Tex. Admin. Code § 22.37, regarding virtual currency contributions.**

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. Chair Kennedy, Commissioners Craycraft and Wolens, and Mr. Johnson responded with questions and comments. Motion by Commissioner Craycraft to adopt Agenda Item 9; second by Vice Chair Erben. Roll call was called; motion initially passed by a vote of six ayes, with Commissioner Wolens voting no. Commissioner Slovacek sought clarity on the vote, then changed his vote to no. **Motion failed**

by a vote of 5 ayes to 2 nays; Commissioner Schmidt was absent and Commissioners Slovacek and Wolens voted no. Chair Kennedy stated that Agenda Item 9 will be placed on the September 29, 2022, meeting's agenda, if time permits.

Agenda Item 10: Discussion and possible action on the proposal and publication in the Texas Register of amended 1 Tex. Admin. Code § 8.11, regarding withdrawals of advisory opinion requests.

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. Chair Kennedy and Mr. Johnson responded with questions and comments. Motion by Vice Chair Erben to publish Agenda Item 10 for public comment; second by Commissioner Craycraft. **Motion passed by a vote of seven ayes.**

Agenda Item 11: Discussion and possible action on the proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 18.31, regarding the adjustments of reporting thresholds, and Ethics Commission Rules that are affected by the adoption of an amendment to 1 Tex. Admin. Code § 18.31, including §§ 20.62, 20.65, 20.217, 20.219, 20.220, 20.221, 20.275, 20.279, 20.301, 20.303, 20.313, 20.329, 20.331, 20.333, 20.401, 20.405, 20.431, 20.433, 20.434, 20.435, 20.553, 20.555, 22.1, 22.6, 22.7, 34.41, and 34.43.

J.R. Johnson, General Counsel, briefed the Commission on this agenda item. Motion by Vice Chair Erben to publish Agenda Item 11 for public comment; second by Commissioner Flood. **Motion passed by a vote of seven ayes.**

Agenda Item 12: Discussion and possible approval of Final Orders in the following Formal Hearings:

- 1. In the Matter of Matthew Wiggins, Respondent. Sworn Complaint Nos. SC-32009187, SC-32010205 and SC-32011255. This sworn complaint contains allegations under section 255.003 of the Election Code.**
- 2. In the Matter of Phillip Bryant, Respondent, Sworn Complaint No. SC-31912187. This sworn complaint contains allegations under sections 252.001, 253.031, 254.031, 255.001 and 255.004 of the Election Code.**
- 3. In the Matter of Eric Dick, Sworn Complaint No. SC-31912186. This sworn complaint contains allegations under sections 252.001, 253.031, 254.031, 255.001 and 255.004 of the Election Code.**

J.R. Johnson, General Counsel, briefed the Commission on Agenda Item 12, number 1. Motion by Vice Chair Erben to adopt the Final Order on Agenda Item 12, number 1; second by Commissioner Flood. **Motion passed by a vote of seven ayes.** Chair Kennedy recused herself from consideration of Agenda Item 12, numbers 2 and 3. J.R. Johnson, General Counsel, briefed the Commission on

Agenda Item 12, number 2. Motion by Commissioner Flood to adopt the Final Order on Agenda Item 12, number 2; second by Commissioner Craycraft. **Motion passed by a vote of six ayes.** J.R. Johnson, General Counsel, briefed the Commission on Agenda Item 12, number 3. Motion by Commissioner Flood to adopt the Final Order on Agenda Item 12, number 3; second by Commissioner Mizell. **Motion passed by a vote of six ayes.** Questions and comments by Vice Chair Erben, Commissioner Wolens and Anne Temple Peters, Executive Director.

Agenda Item 13: Adjourn.

Commission meeting adjourned by unanimous consent.

Meeting adjourned at 11:27 am.