

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

Randall H. Erben, Chair
Chris Flood, Vice Chair
Sean Gorman
Patrick W. Mizell

Geanie W. Morrison
Richard S. Schmidt
Joseph O. Slovacek
Mark Strama

MEETING AGENDA

Date and Time: 9:00 a.m., Thursday, June 12, 2025
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_2025-2029.php#2029

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys; Section 551.074, Government Code, Personnel Matters, Section 571.039, Government Code, confidential sworn complaint 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, 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-21-003269: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the 459th Judicial District Court, 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.
- iii. Case No. 4:23-cv-00808-P, *Institute for Free Speech, a nonprofit corporation and public interest law firm, vs. J.R. Johnson in his official and individual capacities as Executive Director of the Texas Ethics Commission; Mary Kennedy, Chris Flood, and Richard Schmidt in their official capacities as commissioners of the Texas Ethics Commission; and*

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

Randall Erben, Chad Craycraft, Patrick Mizell, Joseph Slovacek, and Steven Wolens, in their individual and official capacities as commissioners of the Texas Ethics Commission, in the U.S. District Court for the Northern District of Texas, Fort Worth Division.

- iv. Cause No. PD-0310-23, *Ex Parte John Morgan Stafford*, in the Texas Court of Criminal Appeals.
- v. Cause No. 2023-DCL-01478, *Valleywide Pharmacy and DMI, Inc., vs. Texas Ethics Commission, by and through its Executive Director, J.R. Johnson, in his official capacity*, in the 445th Judicial District Court, Cameron County, Texas.
- vi. Civil Action 1:24-CV-500, *LIA Network v. J.R. Johnson, in his official capacity as Executive Director of the Texas Ethics Commission, et al.*, in the United States District Court for the Western District of Texas, Austin Division.
- vii. Cause No. 2024-DCL-03953, *Ruben Cortez, Jr. v. Texas Ethics Commission*, in the 404th Judicial District Court, Cameron County, Texas.
- viii. Cause Nos. PD-0522-21, PD-0523-21, PD-0524-21, & PD-0525-21, *Ex Parte Robbie Gail Charette*, in the Court of Criminal Appeals of Texas.

- B. Discussion of contemplated litigation and to seek legal advice regarding the collection of imposed penalties.
- C. Discussion to seek legal advice regarding Chapter 104 of the Texas Civil Practices and Remedies Code and possible action regarding the purchase of directors' and officers' liability insurance.
- D. Discussion to seek legal advice and about anticipated litigation regarding SC-3250370.
- E. Discussion and possible action related to the appointment of an executive director and general counsel.
- F. Confidential sworn complaint matters under Section 571.139 of the Government Code.
- G. Reconvene in open session.

- 3. Recess or continue to "Agenda 2" noticed for the same time and place as this agenda.

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.

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

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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1. Call to order; roll call.
2. Discussion and possible action related to the appointment of an executive director and general counsel.
3. Formal Hearing pursuant to Section 571.126, Government Code and Subchapters C-H, Chapter 2001, Government Code: In the Matter of Daysi Marin, SC-3240109.
4. Discussion regarding dates for next quarterly Commission meeting.
5. Approve minutes for the following meetings:
 - o Executive Session – March 11, 2025; and
 - o Public Agenda – March 11, 2025.

RULEMAKING

Rule Adoption

6. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register regarding an amendment and re-adoption of Chapter 10 of the TEC Rules, related to Ethics Training Programs.
7. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register regarding amendments to Chapter 12, related to sworn complaint procedures including default orders, proposed settlements before a preliminary review hearing, and discovery during a preliminary review or before a formal hearing.

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

8. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register regarding amendments to Chapter 18, related to the process to request a waiver or reduction for a civil penalty imposed for a late report and civil penalties imposed for making a substantial correction to 8-day pre-election reports.
9. Discussion and possible action on the adoption or proposal and re-publication in the Texas Register regarding amendments to 1 Tex. Admin. Code § 20.1(17), relating to the principal purpose of a political committee.

Rule Publication

10. Discussion and possible action related to the progress and next steps regarding the TEC's comprehensive rule review plan.
11. Discussion and possible action on the proposal and publication in the Texas Register regarding re-adoption of Chapter 34 of the TEC rules, related to regulation of lobbyists.
12. Discussion and possible action on the proposal and publication in the Texas Register regarding amendments to 1 Tex. Admin. Code § 18.31, regarding adjustments to reporting thresholds.

ADVISORY OPINIONS

13. Advisory Opinion Request No. AOR-724: A corporation may not finance fundraising efforts for its connected political committee except from its "members . . . or the families of its . . . members." Tex. Elec. Code § 253.100(d)(5). Who qualifies as a "member" of a nonprofit corporation for purposes of the Section 253.100(d)(5) corporate-funded solicitation exception?

This opinion construes Section 253.100 of the Election Code.

14. Advisory Opinion Request No. AOR-725: Whether certain communications to legislators and their staff about a political party's rules, platform, and legislative priorities require a legislative advertising disclosure statement.

This opinion construes Section 305.027 of the Government Code.

15. Advisory Opinion Request No. AOR-726: Whether the use of a logo created by a labor organization's political committee that resembles, but is different from, a city-created logo violates a law under the jurisdiction of the Texas Ethics Commission.

This opinion construes Sections 255.003 of the Election Code and 39.02 of the Penal Code.

16. Advisory Opinion Request No. AOR-727: May an incorporated out-of-state political committee that accepts corporate contributions contribute to Texas state and local candidates, including to a specific-purpose committee, provided it does so from a separate

account that only accepts contributions from individuals and that would otherwise come from permissible sources under Texas law?

Second, assuming the contributions described under the facts above are permissible, does it matter if the out-of-state political committee is controlled by a non-candidate officeholder?

Third, if control by a candidate leads to the conclusion that the out-of-state committee is prohibited from making the contributions described above, would it be permissible for the out-of-state committee to: (i) contribute to a Direct Campaign Expenditure Only Committee or (ii) make direct expenditures itself?

This opinion construes Sections 252.001(15), 252.003(a), 253.032, 253.097, 254.1581, of the Election Code.

17. Advisory Opinion Request No. AOR-729: Whether an employee of a state agency is subject to the Section 572.069 two-year waiting period before accepting employment for a particular employer after helping to select and purchase a software product from the potential employer.

This opinion construes Section 572.069 of the Government Code.

18. Advisory Opinion Request No. AOR-730: Whether a former employee of a state regulatory agency who worked on a schematic for a particular construction project may receive compensation from a private employer for services related construction management of the project.

This opinion construes Section 572.054 of the Government Code.

ADMINISTRATIVE WAIVER OF FINES, TREASURER TERMINATIONS AND REPORTS MORE THAN 30 DAYS LATE

19. Discussion and possible action on appeals of determinations made under 1 Tex. Admin. Code §§ 18.11, 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:

Staff Recommendation: Waiver

- A. Ait, Melissa Belaid, Campaign Treasurer, McKinney Area Democratic Club (00083522)
- B. Corner, Christopher (00088293)
- C. Crain, Garry D. (00082814)
- D. Garrett, George, Campaign Treasurer, San Jacinto Republican Party (CEC) (80082)
- E. Harvey, Alycia (00085965)
- F. Holguin, Eric (00083896)
- G. Levvis, Justin, Campaign Treasurer, UA Plumbers & Pipefitters Local 100 PAC Fund (00052939)

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

- H. Makany-Rivera, Tanya (00086457)
- I. Montfort, Angelica, Campaign Treasurer, All Hat No Cattle PAC (00087722)
- J. Porter, Deidra, Campaign Treasurer, Vote Yes Silsbee Kids (Dissolved) (00088142)
- K. Shelby, Tracie M. (00085976)
- L. Snowden, Tara D. (00060389)

Staff Recommendation: Reduction

- M. Bragg, Robert, Campaign Treasurer, Make More Room For Our Kids (00080744)
- N. Clemmer, Richard L. (00085917)
- O. Fisher, Jacquelyne A., Campaign Treasurer, San Antonio Republican Women (00015784)
- P. Miller, Kendall, Campaign Treasurer, Vote Yes Prosper (Dissolved) (00088038)
- Q. Sanders, Tricia, Campaign Treasurer, Funky East Dallas Democrats Political Action Committee (00084102)
- R. Saunders, Sean E., Campaign Treasurer, Galveston County Republican Party (CEC) (00060078)

Staff Recommendation: No Further Reduction or Waiver

- S. Bess, Danielle K. (00086211)
- T. Dekoning, Diane, Campaign Treasurer, Texas Tea Party Republican Women PAC (00031996)
- U. Peterson, Dean, Campaign Treasurer, El Paso County Republican Party (CEC) (00085813)
- V. Quarles, Aaron, Campaign Treasurer, Friends of Grayson College (00088747)

Good Cause Determination Required

- W. Childs, Staci (00086453)
- X. Hernandez, Laura, Campaign Treasurer, Our Fight, Our Future PAC (00087096)

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

Individuals

- 1. Ballantyne, Jr., Stephen P. (00081675)
- 2. Drake, Rusty W. (00088201)
- 3. Graves, James T. (00088216)

OTHER MATTERS

21. Briefing and discussion of legislation in the 89th Legislative Session, including status of Texas Ethics Commission legislative recommendations, the Sunset Advisory Commission report regarding the TEC, legislative outcomes related to the report, and actions taken or in-progress to implement recommendations made in the report.
22. Election of Chair and Vice Chair of the Texas Ethics Commission.
23. 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.

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The draft meeting minutes will be available
on our website the day before the meeting, at
<https://www.ethics.state.tx.us/DraftMinutes>.

If you would like a copy of the draft minutes, please
provide your email address below, and return this sheet to
Ethics Commission staff at the meeting.

Email address:

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Text of Proposed Rules

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

TEXAS ETHICS COMMISSION RULES

CHAPTER 10. ETHICS TRAINING PROGRAMS

§10.1. Training Programs.

~~Upon approval of the commission, t~~The executive director shall establish a program to provide
training relating to the laws administered and enforced by the commission and related laws for:

- (1) members and members-elect of the legislature, to be held by January of each odd-numbered year;
- (2) state employees, in cooperation with state agencies; and
- (3) other persons and officials whose conduct is regulated by laws administered and enforced by the commission and related laws.

§10.3. Tuition Charges to Attendees of Training Programs.

Upon approval of the commission, the executive director may establish tuition charges for persons who attend training programs under §10.1(3) of this title (relating to Training Programs) to recover costs of the training.

1

2 **Text of Proposed Rules**

3 The proposed new language is indicated by underlined text.

4 The deleted language is indicated by ~~[strike through]~~ text.

5 **Chapter 12: SWORN COMPLAINTS**

6 **Subchapter C. Investigation and Discovery**

7 **§12.21. Response to Notice of Complaint.**

8 (a) The response required by section 571.1242 of the Government Code must:

9 (1) be in writing;

10 (2) admit or deny the allegations set forth in the complaint; and

11 (3) be signed by the respondent.

12 ~~[(b) If a respondent does not submit a response within the time period prescribed by~~
13 ~~section 571.1242 of the Government Code, the commission may issue an order imposing~~
14 ~~a civil penalty for failure to file a response.]~~

15 ~~[(c) If a respondent does not submit a response that satisfies the requirements of~~
16 ~~subsection (a) of this section, the commission may issue an order imposing a penalty for~~
17 ~~failure to file a complete response.]~~

18 **§12.22. Written Questions.**

19 (a) A complainant or respondent must respond to written questions not later than 15
20 business days after receiving the written questions.

21 ~~[(b) If the commission staff submits written questions to a respondent, the 120-day~~
22 ~~deadline for the commission to propose an agreement to the respondent or dismiss the~~
23 ~~complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning~~
24 ~~on the date the commission sends the written questions and resets on the date the~~
25 ~~commission receives the respondent's written response.]~~

26 **§12.23. Production of Documents During Preliminary Review.**

27

28 ~~[(d) If the commission staff applies to the commission for the issuance of a subpoena~~
29 ~~pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the~~

commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the commission for the subpoena and resets on either:

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

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

(3) the date the commission receives a final ruling on a person's failure or refusal to comply with a subpoena that is reported to a district court pursuant to section 571.137(e) of the Government Code.}]

§ 12.28 Discovery Control Plans, Application.

(a) As determined by the Executive Director from available information, a sworn complaint that appears to allege only technical or de minimis violations, as defined by Section 12.92 of this chapter, is governed by a Level 1 discovery control plan. All other sworn complaints are governed by a Level 2 discover control plan.

(b) Commission staff shall indicate in the written notice of a complaint provided to the respondent under Section 571.123, Government Code, whether the complaint is governed by a Level 1 or Level 2 discovery control plan

(c) The respondent or commission staff may file a motion requesting that the Executive Director modify a discovery control plan from Level 1 to Level 2, or vice versa, if the facts discovered after the initial determination of the Executive Director warrant the modification.

(d) The Presiding Officer may issue an order modifying the discovery period or scope of discovery for a sworn complaint.

(e) The terms "interrogatory," "request for admission," "deposition," and "request for production" have the same meaning as applied in the Texas Rules of Civil Procedure, except that an interrogatory and a request for admission is also considered a written question for purposes of Section 571.1242(f) of the Government Code and Section 12.22(a) of this Chapter.

12.30. Level 1 Discovery Control Plan

(a) Discovery in a preliminary review under a Level 1 Discovery Control Plan is subject to the limitation provided elsewhere in this Chapter and to the following additional limitations:

62 (1) All discovery during a preliminary review must be conducted during the
63 discovery period which begins when the initial response to the complaint is due and
64 continues for 90 days.

65 (2) The discovery period reopens on the date the commission sets the matter for a
66 formal hearing and continues for an additional 90 days.

67 (3) During a preliminary review, the respondent and commission staff may serve
68 on any other party no more than 5 written interrogatories, excluding interrogatories
69 asking a party only to identify or authenticate specific documents. If set for a formal
70 hearing, each party may serve 10 more interrogatories. Each discrete subpart of an
71 interrogatory is considered a separate interrogatory.

72 (4) During a preliminary review, the respondent and commission staff may serve
73 on any other party no more than 5 written requests for production. If set for a formal
74 hearing, each party may serve 10 more written requests for production. Each discrete
75 subpart of a request for production is considered a separate request for production.

76 (5) During a preliminary review, the respondent and commission staff may serve
77 on any other party no more than 5 written requests for admissions. If set for a formal
78 hearing, each party may serve 10 more requests for admissions. Each discrete subpart of a
79 request for admission is considered a separate request for admission..

80 **12.32. Level 2 Discovery Control Plan**

81 (a) Discovery in a preliminary review under a Level 2 Discovery Control Plan is subject
82 to the limitation provided elsewhere in this Chapter and to the following additional
83 limitations:

84 (1) All discovery during a preliminary review must be conducted during the
85 discovery period which begins when the initial response to the complaint is due and
86 continues for 120 days.

87 (2) The discovery period reopens on the date the commission sets the matter for a
88 formal hearing and continues until the earlier of 30 days before a formal hearing or six
89 months after the conclusion the preliminary review hearing.

90 (3) During a preliminary review, the respondent and commission staff may serve
91 on any other party no more than 10 written interrogatories, excluding interrogatories
92 asking a party only to identify or authenticate specific documents. If set for a formal
93 hearing, each party may serve 15 more interrogatories. Each discrete subpart of an
94 interrogatory is considered a separate interrogatory.

95 (4) During a preliminary review, the respondent and commission staff may serve
96 on any other party no more than 10 written requests for production. If set for a formal

97 hearing, each party may serve 15 more written requests for production. Each discrete
98 subpart of a request for production is considered a separate request for production.

99 (5) During a preliminary review, the respondent and commission staff may serve
100 on any other party no more than 10 written requests for admissions. If set for a formal
101 hearing, each party may serve 15 more written requests for production. Each discrete
102 subpart of a request for admission is considered a separate request for admission.

103 (6) If set for a formal hearing, the respondent or commission staff may request that
104 the discovery control plan allow for the taking of depositions, consistent with and subject
105 to the limits provided by Chapter 2001 of the Government Code.

106 **12.34. Requests for Disclosure.**

107 (a) The discovery rules of the Texas Rules of Civil Procedure requiring initial disclosures
108 without awaiting a discovery request do not apply to sworn complaint proceedings,
109 except as may be ordered or allowed by the presiding officer.

110 (b) A party may request disclosure of documents or information that the opposing party
111 has in its possession, custody, or control, including, but not limited to, the following:

112 (1) the correct names of the parties to the contested case; the name, address, and
113 telephone number of any potential parties;

114 (2) a general description of the legal theories and the factual bases of the
115 responding party's claims or defenses, if not already set forth in the notice of complaint,
116 response to a complaint, or document filed in the record of the proceeding.

117 (3) the name, address, and telephone number of persons having knowledge of
118 relevant facts, and a brief statement of each identified person's connection with the case;
119 the statement of any person with knowledge of relevant facts (witness statement)
120 regardless of when the statement was made; and

121 (4) a copy, or description by category and location, of all documents, electronic
122 information, and tangible items that the disclosing party has in its possession, custody or
123 control and may use to support its claims or defenses, unless the use would be solely for
124 impeachment. A request for disclosure made pursuant to this subsection is not considered
125 a request for production.

1

2 **Text of Proposed Rules**

3 The proposed new language is indicated by underlined text.

4 The deleted language is indicated by [~~striketrough~~] text.

5 **Chapter 12. SWORN COMPLAINTS**

6 **Subchapter F. RESOLUTIONS**

7 **§12.93. Default Proceedings.**

8 (a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242
9 or fails to appear for a formal hearing, the commission may, upon notice and hearing,
10 proceed on a default basis.

11 (b) A default proceeding under this section requires adequate proof of the following:

12 (1) the notice of hearing to the respondent stated that the allegations listed in the
13 notice could be deemed admitted and that the relief sought in the notice of hearing might
14 be granted by default against the party that fails to appear at the hearing;

15 (2) the notice of hearing satisfies the requirements of sections 2001.051 and
16 2001.052 of the Government Code; and

17 (3) the notice of hearing was:

18 (A) received by the defaulting party; or

19 (B) sent by regular mail or by certified mail, restricted delivery, return receipt
20 requested, to the party's last known address as shown by the commission's records.

21 c) In the absence of adequate proof to support a default, the presiding officer shall continue
22 the hearing and direct commission staff to provide adequate notice of hearing. If adequate
23 notice is unable to be provided, the commission may dismiss the complaint.

24 (d) Upon receiving the required showing of proof to support a default, the commission may
25 by vote deem admitted the allegations in the notice of hearing and issue a default decision.

26 (e) A respondent may file a motion to set aside a default decision under this section.

27 (1) A motion to set aside a default decision under this section shall set forth the
28 grounds for reinstatement or rehearing and must be supported by affidavit of the movant
29 or their attorney that:

30 (A) the respondent had no notice of the hearing;
31 (B) the respondent had no notice of the consequences for failure to appear;
32 or
33 (C) although the respondent had notice, its failure to appear was not
34 intentional or the result of conscious indifference, but due to reasonable mistake or
35 accident that can be supported by adequate proof; and
36 (D) a statement of whether the motion is opposed.
37 (2) Whether or not the motion is opposed, the presiding officer may rule on the
38 motion without setting a hearing or may set a hearing to consider the motion. If the
39 presiding officer finds good cause for the respondent's failure to appear or file a response
40 to a complaint, the presiding officer shall vacate the default and reset the case for a hearing.
41 The presiding officer may also present the motion to set aside the default decision for a
42 vote of the commission at the next meeting of the commission after the motion was filed.
43 A motion to set aside a default decision is denied by operation of law if not ruled on by the
44 presiding officer or by vote of the commission at the next regular meeting of the
45 commission after the motion was filed.
46 (3) A motion to set aside a default decision must be filed not later than the 14th day
47 after the respondent received the default decision.
48 (4) A default decision is final:
49 (A) if a motion to set aside the default decision is not filed on time, on the
50 expiration of the period for filing a motion to set aside the default decision;
51 (B) if a motion to set aside the default decision is timely filed, on the date the
52 commission denies the motion.

Text of Proposed Rules

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The deleted language is indicated by [~~strike through~~] text.

Chapter 18 GENERAL RULES CONCERNING REPORTS

§18.10. Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report.

(a) A corrected/amended 8-day pre-election report substantially complies with the applicable law and will not be assessed a late fine under §18.9 of this title (relating to Corrected/Amended Reports) if:

(1) The original report was filed in good faith and the corrected/amended report was filed not later than the 14th business day after the date the filer learned of the errors or omissions; and

(2) The only corrections/amendments needed were to correct the following types of errors or omissions:

(A) a technical, clerical, or de minimis error, including a typographical error, that is not misleading and does not substantially affect disclosure;

(B) an error in or omission of information that is solely required for the commission's administrative purposes, including a report type or filer identification number;

(C) an error that is minor in context and that, upon correction/amendment, does not result in changed monetary amounts or activity disclosed, including a descriptive change or a change to the period covered by the report;

(D) one or more errors in disclosing contributions that, in total:

(i) do not exceed \$7,500~~[\$3,000]~~; or

(ii) do not exceed the lesser of 10% of the total contributions on the corrected/amended report or \$20,000 ~~[\$10,000]~~;

(E) one or more errors in disclosing expenditures that, in total:

(i) do not exceed \$7,500~~[\$3,000]~~; or

(ii) do not exceed the lesser of 10% of the total expenditures on the corrected/amended report or \$20,000~~[\$10,000]~~;

(F) one or more errors in disclosing loans that, in total:

(i) do not exceed \$7,500~~[\$3,000]~~; or

(ii) do not exceed the lesser of 10% of the amount originally disclosed or \$20,000 ~~[\$10,000]~~; or

(G) an error in the amount of total contributions maintained that:

(i) does not exceed \$7,500~~[\$3,000]~~; or

(ii) does not exceed the lesser of 10% of the amount originally disclosed or \$20,000 ~~[\$10,000]~~.

(H) The only correction/amendment by a candidate or officeholder was to add to or delete from the outstanding loans total an amount of loans made from personal funds;

(I) The only correction/amendment by a political committee was to add the name of each candidate supported or opposed by the committee, when each name was originally disclosed on the appropriate schedule for disclosing political expenditures;

(J) The only correction/amendment was to disclose the actual amount of a contribution or expenditure, when:

(i) the amount originally disclosed was an overestimation;

(ii) the difference between the originally disclosed amount and the actual amount did not vary by more than the greater of \$7,500 or~~[\$3,000]~~ 10%; and

(iii) the original report clearly included an explanation of the estimated amount disclosed and the filer's intention to file a correction/amendment as soon as the actual amount was known; or

(K) The only correction/amendment was to delete a duplicate entry.

(b) If a corrected/amended 8-day pre-election report does not meet the substantial criteria under subsection (a) the executive director shall determine whether there is reason to believe the report was originally filed in bad-faith, with the purpose of evading disclosure, or otherwise substantially defeated the purpose of disclosure and therefore was filed as of the date of correction. [an 8-day pre-election report as originally filed substantially complies with applicable law by applying the criteria provided in this section.]

(c) A filer may seek a waiver or reduction of a civil penalty assessed under this subsection as provided for by this chapter.

(d)~~(e)~~ In this section, "8-day pre-election report" means a report due eight days before an election filed in accordance with the requirements of §20.213(d), 20.325(e), or 20.425(d) of this title (relating to a candidate, a specific-purpose committee, or a general-purpose committee,

respectively) and §254.064(c), 254.124(c), or 254.154(c) of the Election Code (relating to a candidate, a specific-purpose committee, or a general-purpose committee, respectively).

§18.21. Jurisdiction to Consider Waiver Request.

(a) A filer may ask the commission to waive or reduce 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 a written request to the Commission.

(b) The commission will not consider a request under subsection (a) of this section unless the filer, not later than 210~~60~~ days after the report or statement was due:

(1) submits the request in the manner prescribed by subsection (a) of this section;

(2) files all reports owed to the commission; and (3) pays all outstanding civil penalties owed to the commission that are not subject to a pending request for waiver or appeal.

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

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

(a) 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 (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties and Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of \$500 respectively), a “prior late offense” is any report for which a civil penalty for late filing was assessed, regardless of whether the civil penalty was waived or reduced. The term does not include:

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

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

~~[(b) 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.]~~

~~(b)~~^(e) A filer may appeal a determination made under §§18.25 or 18.26 of this title by submitting a request for appeal in writing to the commission within thirty (30) calendar days from the date of the letter informing the filer of the decision.

(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.

99 (2) The Executive Director may review the appeal and reconsider the determination made under
100 §§18.25 or 18.26 of this title or set the appeal for a hearing before the commission.

101 (3) After hearing a request for appeal, the commission may affirm the determination made under
102 §§18.25 or 18.26 of this title or make a new determination based on facts presented in the appeal

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3 **Text of Proposed Rules**
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5 The proposed new language is indicated by underlined text.

6 The deleted language is indicated by ~~striketrough~~ text.

7
8 **Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND**
9 **EXPENDITURES.**
10

11 **Subchapter A. GENERAL RULES.**

12 **§ 20.1. Definitions.**

13 ...
14 (17) Principal purpose--A group has as a principal purpose of accepting political
15 contributions or making political expenditures, including direct campaign expenditures,
16 when that activity is an important or a main function of the group.

17 (A) A group may have more than one principal purpose. When determining
18 whether a group has a principal purpose of accepting political contributions or
19 making political contributions, the Commission may consider the full range of
20 activities by the group and its members, including, but not limited to:

21 (i) public statements;

22 (ii) fundraising appeals;

23 (iii) government filings;

24 (iv) organizational documents; and

25 (v) the amount of political expenditures made and political contributions
26 accepted by the group and its members.

27 (B) ~~[A group has as a principal purpose accepting political contributions if the~~
28 ~~proportion of the political contributions to the total contributions to the group is~~
29 ~~more than 25 percent within a calendar year. A contributor intends to make a~~
30 ~~political contribution if the solicitations that prompted the contribution or the~~
31 ~~statements made by the contributor about the contribution would lead to no other~~
32 ~~reasonable conclusion than that the contribution was intended to be a political~~
33 ~~contribution.]~~ A group is presumed to be a political committee if the proportion of
34 the group's political contributions to the total contributions to the group is 50
35 percent or more.

(C) The group may maintain specific evidence of contributions related only to political contributions or only to nonpolitical contributions. For example, the group may ask the contributor to make an indication when the contribution is made that the contribution is only a nonpolitical contribution.

(D) ~~[A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year.] A group is~~ presumed to be a political committee if the proportion of the group's political expenditures to the total expenditures of the group is 50 percent or more. The following shall be included for purposes of calculating the ~~threshold~~ proportion of a group's political expenditures to all other spending:

(i) the amount of money paid in compensation and benefits to the group's employees for work related to making political expenditures;

(ii) the amount of money spent on political expenditures; and

(iii) the amount of money attributable to the proportional share of administrative expenses related to political expenditures. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) with nonpolitical expenditures. (For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue-based newsletters and the third is a direct advocacy sample ballot, and there were no other ~~outside~~ expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include:

(I) fees for services to non-employees;

(II) advertising and promotion;

(III) office expenses;

(IV) information technology;

(V) occupancy;

(VI) travel expenses;

(VII) interest; and

(VIII) insurance

(E) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion

69 established by subparagraph (D)(iii) but allocated by the actual amount of the
70 expense.

71 (F) In this section, the term "political expenditures" includes direct campaign
72 expenditures.

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Text of Proposed Rules

3 The proposed new language is indicated by underlined text.

4 The deleted language is indicated by [~~striketrough~~] text.

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Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

7

Subchapter A. GENERAL RULES

8

§ 20.1. Definitions

9 ...

10 (20) Principal purpose--A group has as a principal purpose of accepting political
11 contributions or making political expenditures, including direct campaign expenditures,
12 when that activity is an important or a main function of the group.

13 (A) A group may have more than one principal purpose. When determining
14 whether a group has a principal purpose of accepting political contributions or
15 making political contributions, the Commission may consider any available
16 evidence regarding the activities by the group and its members, including, but not
17 limited to:

18 (i) public statements,

19 (ii) fundraising appeals,

20 (iii) government filings,

21 (iv) organizational documents; and

22 (v) the amount of political expenditures made and political contributions
23 accepted by the group and its members.

24 (B)[~~A group has as a principal purpose accepting political contributions if the~~
25 ~~proportion of the political contributions to the total contributions to the group is~~
26 ~~more than 25 percent within a calendar year. A contributor intends to make a~~
27 ~~political contribution if the solicitations that prompted the contribution or the~~
28 ~~statements made by the contributor about the contribution would lead to no other~~
29 ~~reasonable conclusion than that the contribution was intended to be a political~~
30 ~~contribution.] A group does not have a principal purpose of making political~~

31 expenditures if it can demonstrate that not more than 49% of its overall
32 expenditures are political expenditures.

~~[(D) A group has as a principal purpose making political expenditures, including direct expenditures, if the group expends more than 25 percent of its annual expenses to make political expenditures within a calendar year.]~~ The following shall be included for purposes of calculating the threshold proportion of a group's political expenditures to all other spending:

(i) the amount of money paid in compensation and benefits to the group's employees for work related to making political expenditures;

(ii) the amount of money spent on political expenditures; and

(iii) the amount of money attributable to the proportional share of administrative expenses related to political expenditures. The proportional share of administrative expenses is calculated by comparing the political expenditures in clause (ii) with nonpolitical expenditures. (For example, if the group sends three mailings a year and each costs \$10,000, if the first two are issue-based newsletters and the third is a direct advocacy sample ballot, and there were no other outside expenditures, then the proportion of the administrative expenses attributable to political expenditures would be 33%.) Administrative expenses include:

(I) fees for services to non-employees;

(II) advertising and promotion;

(III) office expenses;

(IV) information technology;

(V) occupancy;

(VI) travel expenses;

(VII) interest; and

(VIII) insurance

(E) The group may maintain specific evidence of administrative expenses related only to political expenditures or only to nonpolitical expenditures. Specifically identified administrative expenses shall not be included in the proportion established by subparagraph (D)(iii) but allocated by the actual amount of the expense.

(F) In this section, the term "political expenditures" includes direct campaign expenditures.

§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	<u>\$1,110</u> [\$1,080]
253.031(d)(2)	CEC: Amount of contributions or expenditures permitted before TA is required	\$25,000	<u>\$41,460</u> [\$40,330]
253.032(a)	Contribution by Out-of-state PAC: Threshold above which certain paperwork is required	\$500	<u>\$1,140</u> [\$1,110]
253.032(a)(1)	Contribution to Out-of-state PAC: Threshold above which certain contribution information is required	\$100	<u>\$230</u> [\$220]
253.032(e)	Contribution by Out-of-state PAC: Threshold at or below which certain information is required	\$500	<u>\$1,140</u> [\$1,110]
254.031(a)(1)	Contributions: Threshold over which more information is required	\$50	\$110
254.031(a)(2)	Loans: Threshold over which more information is required	\$50	\$110
254.031(a)(3)	Expenditures: Threshold over which more information is required	\$100	<u>\$230</u> [\$220]
254.031(a)(5)	Contributions: Threshold at or below which more information is not required	\$50	\$110
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required	\$100	<u>\$230</u> [\$220]
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required	\$100	\$140
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported	\$100	\$140
254.031(a)(11)	Investment Gain: Threshold over which more information is required	\$100	\$140
254.031(a)(12)	Contribution Gain: Threshold over which more information is required	\$100	\$140
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required	\$50	\$110
254.0311(b)(2)	Caucus, loans: Threshold over which more information is required	\$50	\$110

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.0311(b)(3)	Caucus, expenditures: Threshold over which more information is required	\$50	\$110
254.0311(b)(4)	Caucus, contributions and expenditures: Threshold at or below which more information is not required	\$50	\$110
254.0312	Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance	\$500	<u>\$870</u> [\$850]
254.036	Electronic Filing Exemption: Threshold at or below which a filer may qualify	\$20,000	<u>\$34,890</u> [\$33,190]
254.038(a)	Daily Reports by certain candidates and PACs: Contribution threshold triggering report	\$1,000	<u>\$2,290</u> [\$2,220]
254.039	Daily Reports by GPACs: Contribution threshold triggering report	\$5,000	<u>\$7,820</u> [\$7,600]
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates)	\$1,000/\$15,000	<u>\$2,290/\$34,330</u> [\$2,220/\$33,370]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required	\$50	\$110
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required	\$500	<u>\$1,140</u> [\$1,110]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required	\$500	<u>\$1,140</u> [\$1,110]
254.095	Local officeholders, contributions: Threshold under which reporting is not required	\$500	<u>\$1,140</u> [\$1,110]
254.151(6)	GPAC, contributions: Threshold over which more information is required	\$50	\$110
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies	\$20,000	<u>\$33,170</u> [\$32,240]
254.1541(b)	GPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$100	<u>\$230</u> [\$220]
254.156(1)	MPAC: Threshold over which contribution, lender and expenditure information is required	\$10	\$20

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.156(2)	MPACs that meet higher itemization threshold: Threshold over which more contributor information is required	\$20	<u>\$50</u> [\$40]
254.181, 254.182, 254.183	Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports	\$500	<u>\$1,140</u> [\$1,110]
254.261	DCE filers: Threshold over which a report must be filed	\$100	<u>\$170</u> [\$160]

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Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	Lobbyist, expenditures: Threshold over which registration is required	\$500, by 1 Tex. Admin. Code §34.41	<u>\$990</u> [\$970]
305.003(2)	Lobbyist, compensation: Threshold over which registration is required	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,990</u> [\$1,930]
305.004(7)	Lobbying for political party: Threshold at or below which registration is not required	\$5,000	<u>\$11,440</u> [\$11,120]
305.005(g)(2)	Lobbyist: Compensation threshold	\$10,000	<u>Less than \$22,890</u> [Less than \$22,240]
305.005(g)(3)	Lobbyist: Compensation threshold	\$25,000	<u>\$22,890 to less than \$57,220</u> [\$22,240 to less than \$55,610]
305.005(g)(4)	Lobbyist: Compensation threshold	\$50,000	<u>\$57,220 to less than \$114,430</u> [\$55,610 to less than \$111,220]
305.005(g)(5)	Lobbyist: Compensation threshold	\$100,000	<u>\$114,430 to less than \$228,870</u> [\$111,220 to less than \$222,440]
305.005(g)(6)	Lobbyist: Compensation threshold	\$150,000	<u>\$228,870 to less than \$343,300</u> [\$222,440 to less than \$333,660]
305.005(g)(7)	Lobbyist: Compensation threshold	\$200,000	<u>\$343,300 to less than \$457,730</u> [\$333,660 to less than \$444,880]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.005(g)(8)	Lobbyist: Compensation threshold	\$250,000	<u>\$457,738</u> to less than <u>\$572,160</u> [<u>\$444,880</u> to less than <u>\$556,100</u>]
305.005(g)(9)	Lobbyist: Compensation threshold	\$300,000	<u>\$572,160</u> to less than <u>\$686,600</u> [<u>\$556,100</u> to less than <u>\$667,320</u>]
305.005(g)(10)	Lobbyist: Compensation threshold	\$350,000	<u>\$686,600</u> to less than <u>\$801,030</u> [<u>\$667,320</u> to less than <u>\$778,540</u>]
305.005(g)(11)	Lobbyist: Compensation threshold	\$400,000	<u>\$801,030</u> to less than <u>\$915,460</u> [<u>\$778,540</u> to less than <u>\$889,760</u>]
305.005(g)(12)	Lobbyist: Compensation threshold	\$450,000	<u>\$915,460</u> to less than <u>\$1,029,890</u> [<u>\$889,760</u> to less than <u>\$1,000,980</u>]
305.005(g)(13)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,029,890</u> to less than <u>\$1,144,330</u> [<u>\$1,000,980</u> to less than <u>\$1,112,200</u>]
305.005(g-1)	Lobbyist: Compensation threshold	\$500,000	<u>\$1,144,330</u> or more [<u>\$1,112,200</u> or more]
305.0061(c)	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed	\$50	\$110
305.0061(e-1)	Lobbyist, food and beverage: threshold at or below which it is considered a gift and reported as such	\$50	\$110
305.0063	Lobbyist, annual filer: expenditure threshold at or below which filer may file annually	\$1,000	<u>\$2,290</u> [<u>\$2,220</u>]

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Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold	less than \$5,000	less than <u>\$11,440</u> [<u>\$11,120</u>]
572.022(a)(2)	PFS threshold	\$5,000 to less than \$10,000	<u>\$11,440</u> [<u>\$11,120</u>] to less than <u>\$22,890</u> [<u>\$22,240</u>]
572.022(a)(3)	PFS threshold	\$10,000 to less than \$25,000	<u>\$22,890</u> [<u>\$22,240</u>] to less than <u>\$57,220</u> [<u>\$55,610</u>]
572.022(a)(4)	PFS threshold	\$25,000 or more	<u>\$57,220</u> [<u>\$55,610</u>] or more

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.005, 572.023(b)(1)	PFS, retainer: Threshold over which filer with a substantial interest in a business entity must report more information	\$25,000	less than <u>\$11,440</u> [\$11,120]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: Threshold over which information must be reported	\$500	<u>\$11,440</u> [\$11,120] to less than <u>\$22,890</u> [\$22,240]
572.023(b)(5)	PFS, loans: Threshold over which information must be reported	\$1,000	<u>\$22,890</u> [\$22,240] to less than <u>\$57,220</u> [\$55,610]
572.023(b)(7)	PFS, gifts: Threshold over which information must be reported	\$250	<u>\$57,220</u> [\$55,610] or more
572.023(b)(8)	PFS, income from trust: Threshold over which information must be reported	\$500	<u>\$57,220</u> [\$55,610]
572.023(b)(15)	PFS, government contracts: Threshold of aggregate over which more information must be reported	Exceeds \$10,000	<u>\$1,140</u> [\$1,110]
572.023(b)(15)(A)	PFS, government contracts: Itemization threshold	\$2,500 or more	<u>\$2,290</u> [\$2,220]
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold	less than \$5,000	<u>\$570</u> [\$560]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$5,000 but less than \$10,000	<u>\$1,140</u> [\$1,110]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold	at least \$10,000 but less than \$25,000	Exceeds <u>\$12,560</u> [\$12,210]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold	\$25,000 or more	<u>\$3,140</u> [\$3,050] or more
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold	less than \$5,000	less than <u>\$6,280</u> [\$6,100]
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$5,000 but less than \$10,000	at least <u>\$6,280</u> [\$6,100] but less than <u>\$12,560</u> [\$12,210]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold	at least \$10,000 but less than \$25,000	at least <u>\$12,560</u> [\$12,210] but less than <u>\$31,410</u> [\$30,520]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold	\$25,000 or more	<u>\$31,410</u> [\$30,520] or more

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Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
302.014(4)	Speaker: Expenditures over which more information must be reported	\$10	\$20
303.005(a)(1) – (10)	Governor for a Day/Speaker’s Day: Threshold over which more information must be reported	\$50	\$110

2

Thresholds set by Title 1, Part 2, Tex. Admin. Code	Threshold Type	Original Threshold Amount	Adjusted Amount
20.62(a)	Staff Reimbursement	\$5,000	\$7,300
20.220	Comptroller: Additional disclosure	\$500	\$720

3

4 Figure 4: No change.

5 Figure 5: No change.

6 (b) The changes made by this rule apply only to conduct occurring on or after the effective date
7 of this rule.

8 (c) The effective date of this rule is January 1, 2026[~~2025~~].

9 (d) In this section:

10 (1) “CEC” means county executive committee;

11 (2) “DCE” means direct campaign expenditure-only filer;

12 (3) “GPAC” means general-purpose political committee;

13 (4) “MPAC” means monthly-filing general-purpose political committee;

14 (5) “PAC” means political committee;

15 (6) “PFS” means personal financial statement;

16 (7) “SPAC” means specific-purpose political committee; and

17 (8) “TA” means treasurer appointment.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

A corporation may not finance fundraising efforts for its connected political committee except from its “members . . . or the families of its . . . members.” Tex. Elec. Code § 253.100(d)(5).

Who qualifies as a “member” of a nonprofit corporation for purposes of the Section 253.100(d)(5) corporate-funded solicitation exception? (AOR-724)

SUMMARY

To be a member of nonprofit for purposes of Section 253.100(d)(5), an individual must 1) satisfy the requirements for membership as specified by the organization’s governing documents; 2) affirmatively accept the organization’s invitation to become a member; and 3) be conferred some rights in the organization.

FACTS

The requestor represents an entity organized as a nonprofit corporation (“the Nonprofit”) under Texas law and is a tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code.

The Nonprofit established and administers a Texas general-purpose political committee under Section 253.100 of the Election Code (the “Connected GPAC”).

Under the Nonprofit’s bylaws “any person interested in advancing the purposes of the organization may become a non-voting member of [the Nonprofit] by paying dues to support the general purpose of the organization or signing a statement in support of [the Nonprofit’s] goals.”

The requestor asks if the Nonprofit can use its corporate funds to solicit contributions and accept contributions for the Connected GPAC from an individual who is informed by the Nonprofit’s website of the Nonprofit’s goals, checks a box indicating support of the Nonprofit’s goals, and then provides contact information to the corporation.¹

¹ The requestor also asked under what circumstance the Connected GPAC may accept contributions from a non-member. However, the law provides no restrictions on accepting contributions from individuals who are non-members.

ANALYSIS

A corporation may make expenditures “to finance the establishment or administration of a general-purpose committee.” Tex. Elec. Code § 253.100(a). A corporation may also make expenditures to solicit contributions to that committee only from its “stockholders or members, as applicable, or the families of its stockholders or members.” Tex. Elec. Code § 253.100(d)(5). “The effect of this proviso is to limit solicitation by nonprofit corporations to those persons attached in some way to it by its corporate structure.” *Fed. Election Comm’n v. Nat’l Right to Work Comm.*, 459 U.S. 197, 202 (1982) (analyzing the federal analog to Section 253.100(d)).

A Texas nonprofit corporation does not have stockholders but may have members. Tex. Bus. Org. Code § 22.151; *see also* Tex. Ethics Comm’n Op. No. 447 (2003).

The relevant question for this request is who qualifies as a member of a nonprofit corporation eligible to be the subject of fundraising efforts for the corporation’s connected political committee.

A “member” of a nonprofit corporation is not defined in title 15 of the Election Code. However, the Texas Business Organizations Code defines a “member” of a nonprofit organization as “a person who has membership rights in the nonprofit corporation under its governing documents.” Tex. Bus. Org. Code § 1.002(53)(B). The TBOC provides a nonprofit wide discretion to define the rights of its members with its governing documents. *E.g.*, Tex. Bus. Org. Code §§ 22.151, .160 (allowing but not requiring members to have voting rights).

Following the definition in the TBOC, to be a member of nonprofit for purposes of Section 253.100(d), an individual must 1) satisfy the requirements for membership as specified by the membership’s organizational documents; 2) affirmatively accept the organization’s invitation to become a member; and 3) be conferred *some* rights in the organization.

The Federal Election Commission took a similar approach to define “member” for purposes of the federal corporate solicitation statute. 11 CFR 114.1(e)(2)(i) through (iii); *see also* 11 CFR 100.134. In addition to requiring a person to satisfy the requirements for membership established in the membership organization’s governing documents and affirmatively accepting the organization’s invitation to become a member, a member must also have “direct participatory rights in the governance of the organization.” 11 CFR 100.134(f)(3). Such rights in the governance of the organization include:

- The right to vote directly or indirectly for at least one individual on the membership organization’s highest governing board;
- The right to vote directly for organization officers;
- The right to vote on policy questions where the highest governing body is obligated to abide by the results;
- The right to approve the organization’s annual budget; or
- The right to participate directly in similar aspects of the organization’s governance.

The restriction is specific to whom be the subject of corporate-funded solicitations for a political committee.

STAFF DRAFT. NOT FINAL UNLESS ADOPTED BY COMMISSION.

11 CFR 114.1(e)(2)(i) through (iii); *see also* 11 CFR 100.134. The federal approach has been criticized as too restrictive as it relates to requiring governance rights in an organization to confer membership. *Chamber of Commerce v. FEC*, 314 U.S. App. D.C. 436, 69 F.3d 600, 605 (1995) (finding a former, but similar version of the federal regulation too restrictive).

Under Texas law, any of the above-listed rights in governance are sufficient to be conferred some membership rights in the organization. But none of the specific rights listed in the FEC regulation are required to confer membership in an organization. Texas law does not prescribe a specific form of *governance* rights to be a member. Instead, a member must have “membership rights” prescribed by the organization’s governing documents. Therefore, any membership right conferred by governing documents is sufficient to confer membership for purposes of Section 253.100(d).

Under the bylaws of the Nonprofit, any person who signs a statement indicating the person’s support of the nonprofit’s goals may be a member. Therefore, the Nonprofit may use its general treasury funds to solicit political contributions to its Connected GPAC from individuals who check the box on its website, provided the check box indicates support for the Nonprofit’s goals and an affirmative assent to become a member. The organization’s governing documents must also provide some rights in the organization to a person for that person to be considered a member.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

Whether certain communications to legislators and their staff about a political party's rules, platform, and legislative priorities require a legislative advertising disclosure statement. (AOR-725)

SUMMARY

None of the communications subject to this request would require the legislative advertising disclosure statement.

FACTS

The requestor is the general counsel of a Texas political party and seeks an advisory opinion on behalf of the party and its leaders.

The party leaders include the party chair, vice chair, and two state executive committee members from each senate district. From time to time, particularly during the legislative session, the party's leaders and staff will communicate in writing with legislators and their staff. The party's leaders may testify on, for, or against legislation. The requestor asks for guidance when such communications would require a legislative advertising disclosure statement under Section 305.027 of the Government Code.

ANALYSIS

Certain communications made in support or against legislation require a legislative advertising disclosure statement. Tex. Gov't Code § 305.027. However, as explained below, none of the communications subject to this request would require the disclosure statement.

The law requires a person who knowingly enters into a contract or other agreement to print, publish, or broadcast legislative advertising to include a disclosure statement that indicates:

- (1) that the communication is legislative advertising;

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- (2) the full name of the individual who personally entered into the contract or agreement with the printer, publisher, or broadcaster and the name of the person, if any, that the individual represents;
- (3) in the case of advertising that is printed or published, the address of the individual who personally entered into the agreement with the printer or publisher and the address of the person, if any, that the individual represents.

Tex. Gov't Code § 305.027(a). Chapter 305 of the Government Code defines "legislative advertising" as a communication that supports, opposes, or proposes legislation and that:

- (1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
- (2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication.

Id. § 305.027(e).

The requestor asks whether written communication to legislators and their staff, and testimony at legislative hearings from leaders of the party to legislators would require a legislative advertising disclosure.

Testimony at a legislative hearing does not meet the definition of legislative advertising because providing testimony is not publishing a communication for consideration in a periodical or broadcasting by radio or television. Nor is it a communication similar to a pamphlet, circular, flier or sign.

Written communications with the legislators and their staff regarding legislation of the type at issue in this complaint also do not appear to meet the definition of political advertising. We assume from the request that the communications are either personal communications with individual lawmakers or targeted to groups of a lawmakers or their staff.

For a communication to meet the definition of a "legislative advertising" it must appear "in a pamphlet, circular, flier, billboard or other sign, bumper sticker, button, or similar form of written communication." Signs, circulars, fliers, and television or radio broadcasts are all fixed media that cost money to produce and meant for broad distribution.

A personal communication such as a letter to a friend or an individual legislator standing alone would not meet the definition of legislative advertising because its limited and personal nature makes it distinct from a similar communication to a pamphlet, circular, flier. This is true regardless of whether the communication is sent through the United States Postal Service or is an electronic communication.

The TEC interpreted the similarly defined term "political advertising" in the context of electronic communications through rule. In doing so, the TEC construed "political advertising" to exclude "an individual communication made by e-mail or text message but does include mass e-mails and text messages involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth." 1 Tex. Admin. Code § 20.1(11)(B). We apply the same construction to the term

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“legislative advertising.” Properly construed, none of the communications asked about in this request meet the definition of legislative advertising.

Even if a communication meets the definition of legislative advertising, a disclosure statement is not required unless a person “knowingly enters into a contract or other agreement to print, publish, or broadcast” the legislative advertising. Tex. Gov’t Code § 305.027.

Nothing in the request suggests that any communications will be made pursuant to a contract with another person and therefore would not require a legislative advertising disclosure statement.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

Whether the use of a logo created by a labor organization's political committee that resembles, but is different from, a city-created logo violates a law under the jurisdiction of the Texas Ethics Commission. (AOR-726)

SUMMARY

So long as the logo created by the political committee is not a resource of the city, its use by a city employee for political advertising would not violate a law under the TEC's jurisdiction.

FACTS

The requestor is a police officer and a member of a labor organization that established and maintains a general-purpose political committee.

The requestor asks if the political committee may use as its logo an image of a badge that resembles the official badge and logo of the city police department. Both images are in the shape of a badge, feature the United States and Texas flags, and have a prominent star in the center. The PAC logo has a smaller star and the initials of the police association rather than an image of the state seal in the city logo. The PAC logo also has the name of the city with the words "Police Association PAC" surrounding the badge rather than the name of the city and the words "Texas Police Officer" in the city logo.

ANALYSIS

The requestor asks whether he would violate any law or rule if the political committee uses the proposed logo in its political advertising and other communications. The TEC may issue an advisory opinion regarding only certain laws. Tex. Gov't Code § 571.091. The laws relevant to this request and under the TEC's advisory opinion jurisdiction are Chapter 39 of Penal Code and title 15 of the Election Code. This opinion is therefore limited to the consideration of this question as it relates to those laws.

Election Code Considerations

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code. § 255.003(a). Whether the requestor may use the proposed logo turns on whether the logo is a resource of the city or whether public funds were used in its creation.

The term “public funds” is not defined by the Election Code. However, we have held that “the spending of public funds” includes any use of a political subdivision’s resources for political advertising. Tex. Ethics Comm’n Op. No. 532 (2015) *citing* Tex Ethics Comm’n Nos. No. 443 (2002) (the prohibition applies to a school district’s use of its facilities to post political advertising in a restricted area of a school on work time), 45 (1992) (the prohibition applies to a school district’s use of employees’ work time and internal mail system equipment to distribute political advertising); *see also* Tex. Att’y Gen. Op. No. KP-0177 at 4 (2018) (“subsection 255.003(a) prohibits the use of school district staff, facilities, or other resources to advertise for or against a candidate or measure.”).

In EAO 532, the TEC held that an officeholder would violate Section 255.003 by using a modified city letterhead that included the city logo and slogan in political advertising because “both the original and the modified letterhead include the city logo and slogan that were paid for, in part, with city funds, and there is no indication that the city does not continue to maintain an ownership interest in the logo or slogan.” The TEC concluded the logo and slogan were “the city’s intellectual property and, as such, would constitute a city resource.” Consequently, an officer or employee of the city would violate Section 255.003 if he used or authorized the use of the modified slogan and logo for political advertising.

Similar to EAO 532, we assume the city-created police badge logo is a resource belonging to the city. However, in EAO 532, the officeholder used an un-changed version of the city’s logo in his own political advertising. He only removed names from a letterhead. Unlike the logo in EAO 532, the requestor here made significant changes to the city logo. Importantly, it is clear from its face that the logo represents the city police association political committee—not the police department itself. Therefore, the use of the proposed political committee logo would not be a use of city resources.

It is not clear from the facts presented with the request how the proposed PAC logo was created. If the requestor, as an employee of the city, got access to digital version of the city logo that was not available to the public, it is conceivable that would constitute a violation of Section 255.003. However, if the requestor created a similar logo to the city’s without using the city logo or repurposed a publicly available logo, it would not be a violation of Section 255.003. *Cf.* Tex. Ethics Comm’n Op. No. 561 (2021) (repurposing publicly available government-created video recording is not a “misuse” of government property).

Penal Code Considerations

This request also raises the question of whether the use of a city logo violates a provision of Chapter 39 of the Penal Code, which generally prohibits a public servant from misusing government resources. The law states a public servant commits an offense if he intentionally or knowingly misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. Tex. Penal Code § 39.02(a)(2). The misuse must be done with intent to obtain a benefit or with intent to harm or defraud another to constitute a criminal offense. *Id.* § 39.02(a).

As discussed above, the logo designed by the political committee is not a resource of the city. However, the same caveat regarding its creation applies to the application of the Penal Code. If the requestor—who is a public servant—came into possession of a non-public digital version of the city logo by virtue of his employment and then modified it for PAC purposes, it could constitute a violation of Section 39.02(a)(2). However, if the requestor created a similar logo to the city's either without using the city logo or came into possession of the city logo in a manner that was not connected to his employment, it would not. Tex. Ethics Comm'n Op. No. 561 (2021).



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

May an incorporated out-of-state political committee that accepts corporate contributions contribute to Texas state and local candidates, including to a specific-purpose committee, provided it does so from a separate account that only accepts contributions from individuals and that would otherwise come from permissible sources under Texas law?

Second, assuming the contributions described under the facts above are permissible, does it matter if the out-of-state political committee is controlled by a non-candidate officeholder?

Third, if control by a candidate leads to the conclusion that the out-of-state committee is prohibited from making the contributions described above, would it be permissible for the out-of-state committee to: (i) contribute to a Direct Campaign Expenditure Only Committee or (ii) make direct expenditures itself? (AOR-727)

SUMMARY

The political committee may not make political contributions to Texas candidates because it accepts corporate contributions and is controlled by a Texas candidate and officeholder.

FACTS

The requestor is a politically-active organization that the requestor states meets the definition of a political committee (the Committee). The Committee incorporated for liability purposes only. The Committee is currently controlled by a non-federal Texas candidate and officeholder.

The Committee accepts corporate political contributions but maintains those contributions in a separate account from its non-corporate contributions. The Committee uses its corporate contributions to make direct campaign expenditures in states where corporate political contributions are prohibited and political contributions in states where corporate contributions are permitted.

The committee is not registered with the Federal Election Commission or any other state campaign finance regulator and files its regular contribution and expenditure reports with the Internal Revenue Service. The reports filed with the IRS disclose the committee's contributors.

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The committee makes political expenditures in states other than Texas. The out-of-state committee will maintain its out-of-state political committee status by not making political expenditures in Texas that would exceed 20 percent of its overall political spending.

The requestor states if it is permitted to contribute to Texas candidates and specific-purpose political committees, the out-of-state committee would comply with the reporting requirements an out-of-state committee has with the TEC and provide the recipient committee with information it needs to comply with 1 Tex. Admin. Code §§ 22.7 and 20.29.

ANALYSIS

The Committee may not make political contributions to Texas candidates because it accepts corporate contributions and is controlled by a Texas candidate and officeholder.

An out-of-state political committee is a political committee that makes political expenditures outside this state and in the 12 months immediately before making a political expenditure in Texas, makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Tex. Elec. Code § 251.001(15).

The rules found in Chapter 253 of the Election Code related to the restrictions on contributions and expenditures applicable to political committees apply to out-of-state political committees, unless expressly exempted. *Id.* § 251.005 (expressly exempting out-of-state committees from the reporting rules of Chapter 252 and 254 of the Election Code, but not the Chapter 253 restrictions); *see also* § 253.031(e) (expressly allowing out-of-state committees to make political expenditures without appointing a campaign treasurer).

Generally, corporations may not make political contributions in Texas.¹ However, a political committee that has as its only principal purpose accepting political contributions and making political expenditures that incorporates for liability purposes only is not considered to be a corporation. Tex. Elec. Code § 253.092. The Committee appears to meet these requirements. Therefore, its corporate structure is not an impediment to it making political contributions to Texas candidates or political committees.

Texas law also allows general-purpose political committees to become a “hybrid committee.” *See* Tex. Elec. Code § 252.003(a)(4); 1 Tex. Admin. Code §§ 20.1(22), 22.35. A hybrid committee shares attributes of both a conventional committee, which cannot accept corporate contributions but may contribute to candidates and officeholders and a direct campaign expenditure only committee, which may accept corporate contributions but may not contribute to candidates and officeholders. In essence, a hybrid committee is allowed to accept corporate contributions that it uses for direct campaign expenditures and keeps separate from its non-corporate contributions. *Id.*

Before a hybrid committee may accept a corporate contribution it must file an affidavit with its campaign treasurer appointment stating that “the committee is not established or controlled by a candidate or an officeholder,” and the committee will not use any political contribution from a

¹ The corporate contribution prohibition applies with equal force to labor organizations. Tex. Elec. Code § 253.094.

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corporation to make a political contribution to a candidate, officeholder, or a non-hybrid or direct-campaign expenditure only committee. Tex. Elec. Code § 252.003(a)(4). A corporation is similarly prohibited from contributing to a political committee unless it files its affidavit declaring it will operate as a hybrid committee (or a direct campaign only committee). Tex. Elec. Code § 253.097.

The Committee is controlled by a non-federal Texas candidate and officeholder. Therefore, it could not complete the required affidavit stating that it is not established or controlled by a candidate or an officeholder. Therefore, the Committee may not permissibly accept political contributions from corporations and also make contributions to candidates or other conventional committees. *See id.*

Since the Committee is controlled by a non-federal Texas candidate and officeholder, we do not reach the question of whether, if Committee was not candidate-controlled, whether an out-of-state committee must file a campaign treasurer appointment with the TEC to operate as an out-of-state hybrid political committee. Tex. Elec. Code § 253.097 (prohibiting a corporations from contributing to a political committee unless it files its hybrid committee affidavit “with the committee’s campaign treasurer appointment”).

The Committee may make direct campaign expenditures in Texas.

Although a corporation is prohibited from making contributions to candidates, officeholders, and certain political committees, it is free to make direct campaign expenditures. *Texans for Free Enter. v. Tex. Ethics Comm’n*, 732 F.3d 535, 538 (5th Cir. 2013) (*citing Citizens United v. FEC*, 558 U.S. 310, 340, 130 S. Ct. 876, 898 (2010)). However, we caution that an expenditure by a candidate-controlled committee to benefit the candidate that controls the committee is a campaign contribution to the candidate, not a direct campaign expenditure.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

Whether an employee of a state agency is subject to the Section 572.069 two-year waiting period before accepting employment for a particular employer after helping to select and purchase a software product from the potential employer. (AOR-729)

SUMMARY

Under the facts presented, the former state employee would not be able to work for the particular employer for two years after the contract was signed.

FACTS

The requestor is a current employee of a state agency who wishes to accept employment with a company that provides software solutions to the public and private sector.

As a state employee, the requestor was involved in the purchase of software licenses from the same vendor that is now offering employment to the requestor. The vendor will be referred to as "Vendor 1" to help ensure the confidentiality of the requestor under Section 571.093 of the Government Code.

The requestor states:

My role in the procurement was to participate in identifying [Vendor 1] as the final solution. The [state agency] had looked at Vendor 1 and other CRM [Customer Relations Management] solutions prior to my employment at the [state agency], but did not move forward with any procurement at that time. After joining the [state agency] we were notified that our existing CRM . . . was being discontinued . . . It was expressed to me that the prior procurement had paused because the [state agency] wished to enter into an agreement with a vendor who could consolidate CRM needs across all departments into a single solution rather than the niche solution in use...

We began investigation potential solutions, and [Vendor 1] appeared to be

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the best solution based on these needs and the flexibility of the solutions. I worked with [Vendor 1] to identify the number of licenses needed based on our existing solutions that would be replaced by [Vendor 1]. The procurement leveraged the existing state contract through [a reseller] and DIR

. . . The quote is on [Reseller's] letterhead but also contains [Vendor 1's] logo, states "[Vendor 1] Government at [Reseller]", and has links to [Vendor 1's] product descriptions, and [Reseller's] terms and conditions.

The contract was signed by representatives of the Reseller and the state agency. Neither the requestor nor Vendor 1 signed the contract.

The requestor has been part of the implementation team for Vendor 1's software after the contract was signed.

ANALYSIS

A former state officer or employee who "participated on behalf of a state agency in a procurement or contract negotiation" is prohibited from accepting employment from a person "*involved*" in that procurement or contract negotiation for two years after the contract is signed or the procurement is terminated or withdrawn. Tex. Gov't Code § 572.069.

Unlike the other Chapter 572 "revolving door" prohibitions, this provision applies to all former state employees and does not merely prohibit former state agency employees from working on particular matters in their new employment. *Compare id.* § 572.054, *with id.* § 572.069. Instead, it prohibits former state agency employees from accepting *any* employment from certain persons for two years, even if the private employment is unrelated to anything they worked on during their state service.

For the reasons stated below we find that the requestor participated in a contract that involved Vendor 1 as a state employee and therefore is barred from accepting employment from Vendor 1 for two years after the date the contract involving Vendor 1 was signed.

The purchase of Vendor 1's software products was a procurement.

The Government Code does not define procurement or contract negotiation. However, we have said a procurement involves an agency's acquisition of goods and services including "defin[ing] the business need," "select[ing] the vendor that provides best value to the State," and "ensur[ing] that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives." Tex. Ethics Comm'n Op. No. 571 (2022), *quoting* the State of Texas Procurement and Contract Management Guide.

The requestor stated that the decision to purchase Vendor 1's software began with a needs assessment to determine how to consolidate all of the agency's content management systems into one, unified content management solution. After the agency's needs were determined, the agency evaluated available products to select the one that would provide the best value to the state. Both the needs assessment and selecting the vendor that provides the best value to the state are parts of

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the procurement process identified in the Texas Procurement and Contract Guide. Ultimately, the agency entered into a contract for the purchase of Vendor 1's software.

That the software products purchased from Company A were procured through a pre-negotiated DIR Cooperative contract does not change the conclusion. DIR Cooperative contracts allow a state agency to take advantage of contracts with many terms pre-negotiated. These pre-negotiated contracts help the state leverage its buying power across agencies to receive a better price and help ensure that the contract complies with applicable procurement laws. However, the negotiation of some contractual terms is only one component of a procurement.

The requestor participated in the procurement.

Although Section 572.069 does not define the word "participated," we have previously applied the definition found in a companion revolving door law prohibition, Section 572.054. *See* Tex. Ethics Comm'n Op. Nos. 568 (2021), 586 (2023). "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). We apply that definition here.

The requestor stated he participated in evaluating the agency's needs, identified Vendor 1 as the best option for the agency, and worked directly with the vendor to determine the number of licenses needed.

The procurement involved Vendor 1.

The requestor is prohibited from accepting employments from Vendor 1 for two years after the contract was signed because the procurement that he participated in "involved" Vendor 1.

A contract involves a person identified in the contract as providing services under the contract even if the person is not a party to the contract. Tex. Ethics. Comm'n Op. No. 545 (2017).

Although the named party on the cooperative contract was Reseller, the contract was for products and or services provided by Vendor 1. Vendor 1 also actively participated in the procurement by negotiating the number of licenses to be purchased by the agency of its software. Therefore, the procurement involved Vendor 1.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

June 12, 2025

ISSUE

Whether a former employee of a state regulatory agency who worked on a schematic for a particular construction project may receive compensation from a private employer for services related construction management of the project. (AOR-730)

SUMMARY

The requestor's limited work on the schematic is too attenuated from the contract for the construction management of the project to say that he "participated" in the construction management contract as a state employee. Therefore, he may receive compensation for services rendered on behalf of his private employer for the construction management contract

FACTS

The requestor is a former Texas Department of Transportation (TxDOT) employee who now works at a private company that is interested in submitting a bid on a TxDOT project.

While employed by TxDOT, the requestor was involved with review of the schematic of a particular construction project. The requestor left TxDOT before the completion of the schematic and the development of the design plans. The proposal will be released for public bids in September 2025, more than three years after the requestor left TxDOT.

A schematic is "a general plan of a project, location of the roadway, bridges, utilities, etc.," according to the requestor. Construction design plans, on the other hand, are more detailed, to "show how the project is to be constructed, what type of pavement for roadway/s, the size, number, and kind of bridge elements, traffic control, phasing, etc."

As a TxDOT employee, the requestor's involvement in the project was limited to a "review of the schematic prior to finalization." He was in no way involved with the review or development of the design plans.

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The creation of the design plans are typically put to bid as a separate contract from construction management contract to avoid potential conflict with the construction management team. We assume that the design plans for this project were created pursuant to a separate contract from the construction management contract.

The requestor's current employer is planning on submitting a bid for the construction management contract and would like to list the requestor on the proposal. If awarded the contract, the requestor anticipates his "role during construction management would be constructability review, which will be primarily the bridges but will look at the entire project and how all disciplines (roadway, drainage, traffic control, bridges, phasing, etc.) relate and support each other."

ANALYSIS

The question presented is whether, under the Section 572.054(b) revolving door prohibition, the requestor may work for a private company on a construction management contract when he previously worked on the schematic for same project as a state employee.

The "revolving door" prohibition states:

A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

Tex. Gov't Code § 572.054(b). In short, this law prohibits a former state employee from working on a "matter" the former state employee "participated" in as an employee of the state agency.

"Participated" means "to have taken action as an officer or employee through decision, *approval*, *disapproval*, *recommendation*, *giving advice*, investigation, or similar action." *Id.* § 572.054(h)(1) (emphasis added).

"Particular matter" means "a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding." *Id.* § 572.054(h)(2).

A "particular matter" refers to a specific proceeding, including a contract, involving the exercise of discretion by an agency. *See, e.g.,* Tex. Ethics Comm'n Op. No. 397 (1998). "In circumstances in which two matters are interdependent pieces of a larger project, an agency employee's 'participation' in one of the matters would also constitute 'participation' in the other matter if the employee's work on the first matter is being reviewed or analyzed in the second matter." *Id.*; *see also* Tex. Ethics Comm'n Op. No. 337 (1996) (concluding that a redetermination proceeding regarding the results of a sales tax audit by the Comptroller would be a continuation of the audit because the redetermination proceeding was an appeal of the findings reached in the audit.). *But see* Tex. Ethics Comm'n Op. No. 477 (2007) ("bidding on a contract that utilizes the standard

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specifications the employee helped develop is not part of the same matter as the matter of writing the standard specifications.”).

Ethics Advisory Opinion No. 507 involved a similar fact pattern to this request. In EAO 507, the requestor participated in the creation of a schematic that was used to prepare detailed construction plans for a highway project. But he did not participate in the creation of the detailed construction plans. The project in EAO 507 was split into at least two separate contracts: one contract to come develop detailed design plans and provide construction services, and second contract to manage the construction as a general engineering consultant. The requestor in EAO 507 was involved in preparing request for proposals for the detailed design plans by helping to ensure the RPF documents matched the schematic. He was not directly involved in the second RPF.

We concluded that the two projects were “interdependent pieces of a larger project” to build a highway. Tex. Ethics Comm’n Op. No. 507 (2012). Therefore, if the employee’s involvement in the schematic “included any participation in creating the essential components of the final highway design” then “any subsequent review or analysis of those provisions” would be prohibited participation in the same particular matter. *Id.*

Just as in EAO 507, this requestor was involved in the creation of a schematic but not the detailed design plans. However, unlike the employee in EAO 507, this requestor did not participate in creating or reviewing any RFP documents.

We think the requestor’s limited review of the schematic is too attenuated from the RFP for a construction management project to say that he “participated” in the construction management contract as a state employee. The schematic that existed when the requestor left state employment was subject to further work, review, finalization, and then transformed into a detailed design plan in a separate contract. The RFP for the construction management contract will be prepared and published more than three years after the requestor left state employment.

Given the requestor’s limited involvement in the unfinished schematic, an intervening contract that transformed the schematic in design plans, and the remoteness in time between the requestor’s work and the actual bid for the contract, the requestor did not “participate” in the contract for the construction management contract. Therefore, he may receive compensation for services rendered on behalf of his private employer for the construction management contract.