

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

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

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

EXECUTIVE SESSION AGENDA

Date and Time: 1:00 p.m., Tuesday, August 31, 2021
Location: Room E1.014, Capitol Extension, Austin, Texas

1. Call to order; roll call.
2. **Executive session pursuant to Section 551.071, Government Code, Consultation with Attorneys, and Section 551.074, Government Code, Personnel Matters; Closed Meeting.**
 - A. Discussion of pending litigation to seek legal advice relating to the following:
 - i. Cause No. D-1-GN-17-001878: *Texas Ethics Commission v. Michael Quinn Sullivan*, in the 250th Judicial District Court in Travis County, Texas; Cause No. 03-17-00392-CV: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals at Austin, Texas; and Cause No. 18-0580: *Michael Quinn Sullivan v. Texas Ethics Commission*, in the Supreme Court of Texas.
 - ii. Cause No. D-1-GN-15-004455: *Texas Ethics Commission v. Empower Texans, Inc. and Michael Quinn Sullivan*, in the 345th Judicial District Court of Travis County, Texas; and related case, Cause No. 03-16-00872-CV: *Empower Texans, Inc., and Michael Quinn Sullivan v. Texas Ethics Commission*, in the Third Court of Appeals, Austin, Texas.
 - B. Discussion of personnel matters.
 - C. Reconvene in open session.
3. Adjourn.

For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.

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

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

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MEETING AGENDA

Date and Time: 9:00 a.m., Wednesday, September 1, 2021
Location: Room E1.014, Capitol Extension, Austin, Texas

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

https://www.ethics.state.tx.us/meetings/meetings_2020-2024.php#2021

1. Call to order; roll call.
2. Discussion regarding dates for next quarterly Commission meeting.
3. Approve minutes for the following meetings:
 - o Public Meeting – June 17, 2021.

ADMINISTRATIVE APPEALS OF FINES

4. Discussion and possible action on appeals of determinations made under Ethics Commission Rules §§ 18.25 and 18.26 relating to administrative waiver or reduction of a fine, for the following filers:
 1. Hill Country Caucus, Kyle Biederman, Chair (00067441)
 2. Manufacturing Caucus, Ed Thompson, Chair (00068983)
 3. Texas Dental Association PAC – DENPAC, Dr. Daniel O’Dell, Treasurer (00015960)
 4. Jennifer Ivey, Candidate for State Board of Education District 1 (00084512)
 5. Galveston County Republican Party County Executive Committee, Donald Pollock, Treasurer (00060078)

For more information, contact Anne Temple Peters, Executive Director, at (512) 463-5800.

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

Individuals

1. James A. Armstrong (00083954)
2. Michael Berlanga (00068114)
3. William J. Booher (00083619)
4. Sandra Crenshaw (00069780)
5. Randle C. Daniels (00084530)
6. Charlotte W. Eisenhower (00082456)
7. Adrian Garcia (00084025)
8. Richard Gonzales (00084126)
9. Stephen P. Gunnels (00084488)
10. Whitney D. Hatter (00084314)
11. Juan R. Hernandez (00084491)
12. Shawn W. Jones (00080592)
13. Claver T. Kamau-Imani (00084230)
14. Richard F. Melendrez (00055184)
15. Demetria Nelson-McNaulty (00084554)
16. Deborah L. Russel (00082543)
17. Karen Nicole Sprabary (00084547)
18. Angeanette Thibodeaux (00084543)

Political Committees

19. Texans for Ethical Leadership, Ryan Cagney, Treasurer (00084645)
20. Taylor County Democratic PAC (CEC), Kimberly K. Chavez, Treasurer (00016594)
21. Democrats Choice For The People's Voice, Sandra Crenshaw treasurer (00070005)
22. Texas Motion Picture Alliance PAC, Susan R. Fowler, Treasurer (00063437)
23. Black Women Attorneys PAC, Ashlei D. Gradney, Treasurer (00084649)
24. 1836 PAC, Cindy Jackson, Treasurer (00070233)
25. Black Firefighters United PAC, Lamonty S. Lott, Treasurer (00080045)
26. Team Donna 2020, Francisco Sanchez, Treasurer (00084847)
27. Texans Against Taxes, James Stewart, Treasurer (00084061)
28. CAFAPAC, Ward Tisdale, Treasurer (00082658)

ADVISORY OPINIONS

6. Draft Advisory Opinion No. AOR-642: Whether certain written communications, created by a political subdivision and related to the political subdivision's community outreach, constitute political advertisements for purposes of the Election Code's prohibition against using public funds for political advertising.

This opinion construes section 255.003 of the Election Code.

7. Draft Advisory Opinion No. AOR-643: Whether certain written communications, created by a political subdivision and related to the political subdivision's upcoming election regarding a home rule charter, constitute political advertisements for purposes of the Election Code's prohibition against using public funds for political advertising.

This opinion construes section 255.003 of the Election Code.

8. Draft Advisory Opinion No. AOR-650: Whether certain written communications, created by a political subdivision and related to the political subdivision's upcoming election regarding a home rule charter, constitute political advertisements for purposes of the Election Code's prohibition against using public funds for political advertising.

This opinion construes section 255.003 of the Election Code.

9. Draft Advisory Opinion No. AOR-646: Regarding a judicial officeholder's use of political contributions to seek a federal appointment.

This opinion construes Title 15 of the Election Code.

10. Draft Advisory Opinion No. AOR-649: Whether a judge may use political contributions to pay expenses related to home security systems and equipment.

This opinion construes section 253.035 of the Election Code.

11. Draft Advisory Opinion No. AOR-648: Whether the revolving door law in section 572.069 of the Government Code would prohibit a former employee of a state agency from providing certain services.

This opinion construes section 572.069 of the Government Code.

RULEMAKING

Rule Adoption

12. Discussion and possible action on the adoption or proposal and publication in the Texas Register of new 1 Tex. Admin. Code § 34.82, regarding modified reporting thresholds for lobbyists.
13. Discussion and possible action on the adoption or proposal and publication in the Texas Register of amended 1 Tex. Admin. Code § 18.17, regarding deceased or incapacitated filers.

Rule Publication

14. Discussion and possible action on the proposal and publication in the Texas Register of an amendment to 1 Tex. Admin. Code § 18.31, regarding the adjustments of reporting thresholds, and Ethics Commission Rules that are affected by the adoption of an amendment to 1 Tex. Admin. Code § 18.31, including §§ 20.62, 20.65, 20.217, 20.220, 20.221, 20.275, 20.301, 20.303, 20.313, 20.329, 20.333, 20.401, 20.405, 20.434, 20.435, 20.553, 20.555, 22.1, 22.7, 34.41, and 34.43.
15. Discussion and possible action on the proposal and publication in the Texas Register of new 1 Tex. Admin. Code § 22.37, regarding cryptocurrency contributions.
16. Discussion and possible action on the proposal and publication in the Texas Register of amended 1 Tex. Admin. Code § 20.59, regarding credit card reporting.

OTHER MATTERS

17. Discussion and possible approval of Final Orders in the following Formal Hearings:
 1. In the Matter of Robert L. “Bob” Hall, III, Respondent. Sworn Complaint No. SC-3180254 alleges violations of sections 254.031(a)(1) and (a)(6) of the Election Code.
 2. In the Matter of Stephen Pennington, Respondent. Sworn Complaint No. SC-32008160 alleges a violation of section 254.063(b) of the Election Code.

18. Recognition of Ethics Commission staff who have served over 10 years.
19. 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: Anne Temple Peters, 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:

AGENDA 3, ITEM 6

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ETHICS ADVISORY OPINION NO. _____

[DATE]

ISSUES

Whether an officer or employee of a political subdivision may use public funds to advertise and produce an event that uses the officer's title, such as "Mayor's Fun Run" or "Mayor's Unity Walk."

Whether an officer of a political subdivision may announce, at a public meeting of the political subdivision that is recorded and broadcast on an Internet website, that the officer will have a booth at the event where he or she will distribute merchandise purchased with personal funds.

Whether an officer or employee of a political subdivision may spend public funds—including the use of paid staff time—to set up tents and provide tables, chairs, and traffic control for a food distribution event at which public officials from other governmental entities are present and distributing personal campaign items purchased with their campaign funds. (AOR-642)

SUMMARY

Section 255.003(a) does not broadly prohibit political subdivisions from producing or advertising an event that uses an official's title in its name. However, such an event that otherwise entails the use of public funds to support or oppose a candidate or measure would violate section 255.003(a).

Section 255.003(a) does not prohibit discussion of matters pending before a governmental body. However, it does prohibit one or more members of a governmental body from arranging a discussion of a matter not pending before the governmental body in the hopes that broadcasts of the discussion would influence the outcome of an election.

An officer or employee of a political subdivision may not spend public funds to produce an event for the purposes of providing a place for public officials to distribute campaign items.

FACTS

The requestor, an employee of a city, asks several questions on behalf of both herself and several elected officials and other employees of the city, including its elected mayor and city councilmembers.

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First, the requestor seeks an opinion on whether the city may use city resources including staff to produce an event that uses the title of an elected official. Further, the requestor seeks an opinion on whether the city may use city resources to advertise the event. To that end, the requestor seeks an opinion on whether either of two particular written communications constitute “political advertising” for purposes of section 255.003(a) of the Texas Election Code. The first communication is a one-page advertisement for an event called “The Mayor’s Unity Walk,” and it includes: (1) the name of the event, (2) the name of the city’s elected mayor, (3) the time and place of the event, and (4) the city’s name and official logo. The second communication is identical to the first with the exception of an additional line of text with information about a city councilmember’s presence at the event. The requestor asks whether the city may use public resources to create and distribute these communications in advance of the event. The requestor asks whether the answer depends on whether there is a “pending election for the office after which the event is named,” whether the “incumbent has not announced his/her candidacy to run for office,” or whether “the event is not a regularly held event.”

Second, the requestor seeks an opinion on whether it would be a violation of section 255.003(a) for a member of the city council to announce, during a public meeting of the city, that he will have a booth at the event where he will distribute water bottles purchased with his private funds. The requestor asks whether it would violate section 255.003(a) if the public meeting was broadcast or rebroadcast over the subdivision’s cable channel, its website, or any of its social media platforms.

Finally, the requestor seeks an opinion on whether it would be a violation of section 255.003(a) for employees of a political subdivision to set up tents and provide tables, chairs, and traffic control for a “food distribution event” at which public officials from other governmental entities are present and passing out not only the food but also personal campaign items purchased with their campaign funds.

ANALYSIS

Legal Standard:

Section 255.003(a) of the Texas Election Code states that an officer or employee of a political subdivision may not spend public funds for political advertising. “Political advertising” is defined in part as a “communication supporting or opposing a candidate” or “public officer.” *Id.* at 251.001(16). Furthermore, oral communications may constitute “political advertising” if they are either broadcast by radio or television in return for consideration or appear on an Internet website. *Id.*

We have previously found that “the critical issue in determining whether an advertisement is ‘political advertising’” is, as relevant here, whether a communication supports or opposes a public officer. Tex. Ethics Comm’n Op. No. 102 (1992). Whether a communication supports or opposes a public officer is a “fact question that can be answered only when the communication is viewed as a whole.” Tex. Ethics Comm’n Op. No. 476 (2007).

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Under most circumstances, the requestor's written communication and named event would not violate section 255.003:

Whether a political subdivision may spend public funds to produce and advertise an event is a fact-specific inquiry. Section 255.003(a) would prohibit an incumbent official from using public funds to pay for what amounts to a campaign event for his reelection. However, we do not believe that the mere use of an official's title in the name of an event—such as the “Mayor’s Unity Walk”—renders the event a political advertisement.

Section 255.003(a) may at times require a consideration of the circumstances surrounding the expenditure of public funds. For example, the timing of an event—particularly in relationship to an election date—may be relevant to whether the event amounts to political advertising. But, we again stress that the inquiry required by section 255.003(a) demands a holistic consideration of the facts and does not focus on any single factor. *See* Tex. Ethics Comm’n Op. No. 476 (2007).

Here, the requestor has asked whether surrounding circumstances are relevant, but did not provide the Commission with any specific circumstances to consider. We struggle to imagine any set of facts that would render either the event described in this request or the submitted advertisement for that event a political advertisement. In this instance, the one-page advertisement provided by the requestor features two lines of text that identify a public official: one with the title of the event (“The Mayor’s Unity Walk”) and the other with the name of the city’s Mayor. Neither mention is unduly conspicuous, and neither the instances of identification nor the flyer as a whole indicate that the purpose of the flyer is to support the incumbent. *See* Tex. Ethics Comm’n Op. No. 211 (1994) (concluding that a brochure describing the duties of a justice of the peace was not political advertising because its inclusion of the incumbent’s name was not “unduly conspicuous.”).

The requestor also asks whether using public funds to create and distribute a second, similar communication would violate section 255.003(a). This second communication is identical to the first with the exception of an additional line of text with information about a city councilmember’s presence at the event. We reach the same conclusion with respect to this communication. Standing alone and without the benefit of knowing the surrounding circumstances, the communication does not appear to be a political advertisement.

The test under section 255.003(a) is whether the expenditure of public funds would lead one to “reasonably believe” that the purpose of the expenditure was to support the incumbent. Tex. Ethics Comm’n Op. No. 560 (2020) (citing Tex. Ethics Op. No. 211 (1994)). Therefore, we cannot categorically say that there are *no* set of possible circumstances that would lead someone to reasonably believe that the purpose of this event or these advertisements was to support the incumbent mayor or city council member. For example, and without reaching any conclusion because it is outside the scope of this request, we believe the question would be more challenging if a “Mayor’s Unity Walk” was scheduled on election day and involved an organized walk to a polling place.

In summary, we conclude that under most circumstances section 255.003(a) would not prohibit officers or employees of political subdivisions from spending public funds to produce the

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communications or event in question. The requestor provides no information that would indicate that the timing of the event relative to an upcoming election, the potential candidacy of the elected official in that election, or whether the event is held regularly would make this particular communication or event impermissible under section 255.003(a). However, we believe it is possible for an elected official or political subdivision to use public funds to produce and promote an event that is deliberately timed and arranged to support or oppose a candidate or public official. Each case must be viewed as a whole.

Section 255.003 does not prevent public officers from discussing matters properly before their respective government bodies:

The requestor next asks whether a city councilmember may make remarks regarding their presence at a city event during a city council meeting that is broadcast online. As a threshold matter, oral communications that “appear on an Internet website” can constitute political advertising, provided the communication “[supports] or [opposes] a candidate” or “public officer.” Tex. Elec. Code §§ 251.001(16)(A), 255.003(a). And the use of city resources (*e.g.* cameras, computers, and bandwidth) to broadcast the meeting online would constitute an expenditure of public funds for purpose of section 255.003(a). Tex. Ethics Comm’n Op. No. 550 (2019) (“The ‘spending’ of public funds includes the use of a political subdivision’s employees work time or a political subdivision’s equipment or facilities.”). However, the Commission previously concluded—and at least one state court of appeals agrees—that section 255.003(a) was not intended to “inhibit discussion of matters pending before a government body.” Tex. Ethics Comm’n Op. No. 456 (2004); *In re Turner*, 558 S.W.3d 796, 800 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

As we have previously stated, whether a communication supports or opposes a candidate is a fact-specific inquiry. And in this particular instance, the requestor has not provided any information that would indicate the matter is, or is not, pending before the city council. However, assuming that the remarks relate to a matter pending before the council and are not made “with the hope that the discussion and its broadcast would influence the outcome of an election,” then there is no violation of section 255.003(a). *Id.* (“It is not possible, however, to state that comments by city council members at a recorded public meeting could never give rise to a violation of section 255.003 because we can imagine a situation in which one or more city council members might arrange a discussion of a matter not pending before the council with the hope that broadcasts of the discussion would influence the outcome of an election.”).

Spending public funds to facilitate the distribution of political advertising is spending public funds for political advertising:

Finally, the requestor asks whether the city may spend public funds to produce an event at which elected officials from other government entities are invited to distribute their own campaign materials. Under this request, no public funds are being spent to *create* the political advertisements. However, in our view, Section 255.003(a) prohibits officers and employees of political subdivisions from spending public funds to facilitate the distribution of political advertisements. The city’s production of an event deliberately designed to provide a platform for the dissemination of political advertising is therefore prohibited by section 255.003.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

September 1, 2021

ISSUE

Whether a written communication, created by a political subdivision and related to the political subdivision's special election, constitutes political advertising for purposes of the Election Code's prohibition against using public funds for political advertising. Tex. Elec. Code § 255.003(a). (AOR-643)

SUMMARY

The specific communication considered in this opinion is not political advertising for purposes of Section 255.003 of the Election Code because it is entirely informational and does not include any advocacy.

FACTS

The requestor is the legal representative of a town and its town secretary, who is an officer or employee of that political subdivision. The town called a special election to consider adopting a home rule charter. The requestor has asked the commission to consider "a draft cover letter that the Town Secretary plans to send to each registered voter of the Town forwarding a copy of the proposed Home Rule Charter document pursuant to the requirements of Texas Local Government Code 9.003(b)." The question presented to the commission is whether the written communication constitutes "political advertising" for purposes of the Election Code. *See* Tex. Elec. Code §§ 251.001(16); 255.003(a).

ANALYSIS

Legal Standard:

Under Section 255.003(a) of the Election Code, 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). “Political advertising” means, in relevant part, a communication *supporting or opposing* a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* at § 251.001(16) (emphasis added).

“The critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate or a public officer [or a measure].” Tex. Ethics Comm’n Op. No. 476 (2007) (citing Tex. Ethics Comm’n Op. No. 102 (1992)). Whether a particular communication supports or opposes a measure is a fact question. *Id.*

A significant factor “in determining whether a particular communication supports or opposes a public officer [or measure] is whether the communication provides information ... without promotion of the public officer [or measure].” Tex. Ethics Comm’n Op. No. 476 (2007). For example, in Ethics Advisory Opinion No. 211, we concluded that an informational brochure was not a political advertisement—despite identifying the incumbent in the letterhead—because it “merely describe[d] the duties” of the public office and did not reference the incumbent “in a way that would lead one to believe that the purpose of the brochure was to support the incumbent.” Tex. Ethics Comm’n Op. No. 211 (1994).

Section 255.003(a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. Tex. Elec. Code § 255.003(b).

When viewed in its entirety, the letter is informational and does not support or oppose any candidate or measure:

The cover letter contains factual information about the ballot measure, including the date the Home Rule Charter Commission was established, the date the Home Rule Charter Commission submitted the proposed Charter to the Town Council, the date the Town Council ordered a special election, and the date of the special election. The letter states the type of municipality the town is currently and the type of municipality it would be if the measure were to pass. The letter next includes the language of the proposition to adopt the Home Rule Charter with the words “FOR ()” or “AGAINST ()” as the language will appear on the ballot. Finally, the letter concludes with a statement from the town secretary that, by adoption of the election order, the town council directed her to mail a copy of the proposed charter to each registered voter in the town.

No matter how much factual information about the purposes of a measure election is included in a communication, *any amount* of advocacy is impermissible under Section 255.003(a). We have said that a communication includes “express advocacy” if it uses words or phrases such as “vote

for,” “support,” “vote against,” “defeat,” “reject,” or “cast your ballot for.” *See* 1 Tex. Admin. Code § 20.1(18). In our opinion, the inclusion of these or any similar words or phrases would also tend to indicate that a communication contains support or opposition for purposes of Section 251.001(16) of the Texas Election Code.

The cover letter considered in this opinion does not include any express advocacy, motivational slogan, or call to action. It describes the chronological sequence of events for voter approval of the home rule charter, the purpose of the charter, and language of the measure. Viewed as a whole, this letter is not a statement of support or opposition, but rather a factual description of the measure the voters will be presented with.

In conclusion, the cover letter considered in this request does not constitute political advertising and does not advocate passage or defeat of a measure. Consequently, Section 255.003(a) of the Election Code does not prohibit the town secretary, or any other officer or employee of the political subdivision, from using public funds to create and distribute the written communication.

AGENDA 3, ITEM 8

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ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUES

Whether section 255.003(a) of the Election Code prohibits officers and employees of a special purpose district from spending public funds to create and distribute certain written communications. (AOR-650)

SUMMARY

While section 255.003(a) applies to the requestor, a special purpose district, it does not prohibit the district's officers and employees from spending public funds to create and distribute the specific communications considered in this request because they are entirely informational and do not include any advocacy.

FACTS

The requestor is the legal representative of a special purpose district authorized by state law. The district has specific powers under state law, including the power to impose certain taxes and fees; to adopt and enforce reasonable rules and regulations for the administration and operation of the district and its properties and facilities, and to provide for public safety and security within the district. The district provides certain municipal types of services including parks, facilities, and recreation centers, but not other core services, such as law enforcement, transportation infrastructure maintenance, and water management services.

The district encompasses a geographic area with boundaries defined by law. It is governed by an elected board of governors, and every qualified voter within the district is eligible to vote in their elections. After being elected, the board of directors elect a chairman, a vice chairman, a secretary, and any other officers the board considers necessary.

The requestor states that the district's board of directors is considering whether to call an election to incorporate as a municipality.¹ In connection with that election, the district wants to provide certain educational materials to voters. The requestor has provided those materials to the

¹ The requestor states that the district has the authority to incorporate as a municipality. For purposes of this opinion, the Commission relies on that statement as true.

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Commission for review and asked for an advisory opinion addressing whether they contain political advertising for purposes of section 255.003(a) of the Texas Election Code.

ANALYSIS

As a political subdivision, the requestor may not spend public funds for political advertising:

The threshold question addressed by this opinion is whether Section 255.003(a) of the Texas Election Code applies to the district. That section prohibits officers and employees of political subdivisions from “knowingly spend[ing] or authoriz[ing] the spending of public funds for political advertising.” Tex. Elec. Code § 255.003(a). The requestor represents a special purpose district, and the Commission has never before issued an opinion addressing whether special purpose districts are political subdivisions for purposes of section 255.003(a).

The Election Code defines “political subdivision” as “a county, city, or school district or *any other governmental entity that*: (A) embraces a geographic area with a defined boundary; (B) exists for the purpose of discharging functions of government; and (C) possesses authority for subordinate self-government through officers selected by it.” Tex. Elec. Code § 1.005(13) (emphasis added). The district, having the above-described powers, boundaries, and governance, satisfies each element of this three-part test.

The Commission therefore concludes that the district is a political subdivision for purposes of section 255.003(a) of the Election Code. Consequently, its officers and employees are prohibited from knowingly spending public funds for political advertising. “Political advertising” means, in relevant part, a communication *supporting or opposing* a measure that appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication. Tex. Elec. Code § 251.001(16) (emphasis added).

The materials submitted with the request do not contain political advertising:

The requestor submitted for review three one-page flyers and a 10-page “Public Education Summary.” The Commission has reviewed each of the documents and determined that none of them contain political advertising for purposes of section 255.003(a).

The three flyers describe: (1) the history of the district’s existence and governance; (2) the district’s roadmap for studying incorporation and calling an election; and (3) how the district might transition to a Home Rule City if and when the voters approve the district’s incorporation as a General Law City. All three flyers use colorful graphic designs, but, fundamentally, they all provide factual content without promoting the measure. For example, the second flyer primarily outlines the steps the district would take prior to calling an election, including retaining consulting firms, studying various issues related to incorporation, and providing public forums for residents to voice their support or opposition. To the extent that it also describes the consequences of incorporation, it does so using factual terms and appears to include both the advantages (*e.g.* expanded services) and disadvantages (*e.g.* higher taxes).

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The longer document summarizes the results of a study conducted by the district to consider the benefits and impacts of municipal incorporation. It describes how certain issues of governance, municipal services, and law enforcement would change if the district was to incorporate. For example, the document explains that as a special purpose district, municipal utility services are provided to residents through various Municipal Utility Districts (“MUD”), but if it was to incorporate, the district could enact an ordinance that assumes all assets, liabilities, and operations of the MUDs and begin operating as a city municipal utility. As another example, the document explains that the district is currently prohibited from directly hiring law enforcement personnel or creating a police department, but as an incorporated city it would be *required* to provide law enforcement services.

Each of the communications contain factual information that may affect whether voters will support or oppose the district’s incorporation. However, “[t]he Election Code does not prohibit political subdivisions from spending public funds to enable voters to make informed decisions.” Tex. Ethics Op. No. 559 (2021).

Instead, the critical issue in determining whether a particular communication supports or opposes a measure is whether it provides information “without promotion” of the measure. *Id.* (citing Tex. Ethics Op. No. 476 (2007)). “[W]hether a communication supports or opposes a measure is a fact question that can be answered only when the communication is viewed as a whole. Tex. Ethics Op. No. 476 (2007).

Here, as in some prior opinions, the communications do not include a “motivational slogan or call to action.” Tex. Ethics Op. No. 559 (2021). Nor do they include any “express advocacy” as defined by the Commission’s rules. *See id.* (citing 1 Tex. Admin Code § 20.1(18)). And when viewed as a whole, the Commission’s conclusion is that they do not support or oppose any candidate or measure. Consequently, section 255.003(a) of the Election Code does not prohibit the district from spending public funds to create and distribute the communications.

Patti Shannon

From: Monte Akers <monte@txmunicipallaw.com>
Sent: Friday, May 21, 2021 10:20 AM
To: Advisory Opinion Requests
Cc: Robin Cross; Karen Dempsey; jjones@thewoodlandstowship-tx.gov
Subject: The Woodlands Township; Request for Advisory Opinion Regarding TEC review of Communications Relating to a Measure, under Sec. 255.003(e), Elections Code and/or Sec. 571.091, Government Code
Attachments: Woodlands Cover letter.pdf; Woodlands Public Education - Incorporation - 052121.docx; Steps to Incorporation r 2021.pdf; Governance Timeline4_2021.pdf; Home Rule City_2021.pdf

Attached please find a cover letter and draft educational materials submitted as a request for an advisory opinion, if possible by the date of the Commission's next meeting in June.

Please let me know if there are questions or if additional information is desired.—Monte Akers (512)577-1928); monte@txmunicipallaw.com



MESSER ★ FORT ★ McDONALD

THE MUNICIPAL LAW FIRM

NORTH TEXAS | AUSTIN | ABILENE

May 21, 2021

Texas Ethics Commission
201 E 14th St #10
Austin, TX 78701

Via: opinions@ethics.state.tx.us

Re: The Woodlands Township; Request for Advisory Opinion Regarding TEC review of Communications Relating to a Measure, under Sec. 255.003(e), Elections Code and/or Sec. 571.091, Government Code

Dear sir or madam:

Messer Fort McDonald is representing The Woodlands Township regarding the potential calling of an election to incorporate the Township as a municipality. The election has not yet been ordered, but may be called for November 2021, and the Board of Directors of the Township desires to take advantage of Sec. 255.003(e), Elections Code in connection with educational materials and communications that will be provided to voters but which must not involve unlawful use of public funds for political advertising.

The Woodlands was founded in 1974 and was legislatively authorized as a special purposes district in 1993 with specific statutory powers, including the authority to incorporate as a municipality or other political subdivision. It is the only "township" in Texas, and it contains more than 100,000 inhabitants. The subject of incorporation has been the matter of discussion, public concern, regional planning, and additional legislation since 1993, and its Board of Directors is determined to fully inform the inhabitants about the incorporation process in an effective, legally compliant manner if the election is ordered.

Due to language in Sec. 255.003(e) limiting its application to "a political subdivision that has ordered an election on a measure," this request for an advisory opinion is also based on Sec. 571.091, Government Code, which does not contain a similar limitation. Assuming the election is called for November by the deadline for doing so in August, the time required to submit election materials and obtain an advisory opinion thereafter but prior to the election is likely to create difficulty in timely circulation of the materials to voters. Accordingly, if at all possible, please review the attached materials for the Commission's consideration at its next quarterly meeting in June.

Please let me know if additional information is desired. Thank you for your consideration.

Yours truly,

Monte Akers

cc: Jeff Jones, Robin Cross

“Draft” Public Education Summary

The Woodlands Township is a “Special Purpose” government district, authorized by state statute. The Township is unincorporated and its boundaries are within both Montgomery County and Harris County, the Extraterritorial Jurisdictions of the City of Houston and the City of Conroe, and primarily within the municipal utility boundaries of 11 Woodlands Municipal Utility Districts (MUDs).

Though the Township governance and administrative model has allowed it to offer municipal types of services, core service areas such as law enforcement and transportation infrastructure maintenance are delivered by county agencies. Water, wastewater, and stormwater management services are provided by multiple Municipal Utility Districts throughout The Woodlands. While the Township has entered into contracted arrangements with the county agencies to provide enhanced law enforcement services, the Township’s authority to direct those services is limited.

In 2018, The Township Board of Directors initiated a study to consider the benefits and impacts of municipal incorporation. This draft study has been completed and the Township Board of Directors is considering placing incorporation on a future general election ballot for consideration by the voters of The Woodlands.

The Township is developing factual public education materials for presentation to potential voters. The following draft summary has been developed to show changes in governmental responsibility and services that would occur with municipal incorporation of The Woodlands.

Government Authority

- **The Woodlands Township**
The Township is a special purpose government district with limited authority and can only establish and enforce rules on property it owns (Township parks, pathways, pools, facilities and recreation centers) in accordance with its enabling legislation.
- **City of The Woodlands**
The city will have municipal powers and authority as provided to a General Law City and can initiate and enforce rules for community standards through establishment of city ordinances (examples – animal control, fireworks, noise violations, tree preservation, street parking, road right of way and utility corridor management authority, law enforcement, etc.) as defined by State Law. If the City were to change to Home Rule, its authority and ordinance-making authority would be broader and defined by its voter-approved City Charter.

Regional Participation Agreement (RPA)

- **The Woodlands Township**

In 2007, The Woodlands Township entered into contractual Regional Participation Agreements (RPAs) with the Cities of Houston and Conroe, which provide that neither city will annex any part of The Township for 50 years. The RPAs were authorized by state statute and subsequently approved by The Woodlands voters who authorized the creation of the Township as it currently exists by approving the boundaries, approving an elected seven member Board of Directors and approving the implementation of an ad valorem property tax levy. Following the voter approval of creation of The Woodlands Township, by agreement, the Community Associations of The Woodlands were dissolved and all services and responsibilities transferred to the Township. The RPA agreements provide that at time of incorporation, the Cities of Houston and Conroe will release the property within The Woodlands Township boundaries from their respective ETJs, meaning that they could no longer annex The Woodlands.

- **City of The Woodlands**

At Incorporation, the Regional Participation Agreements provide that property located within the ETJs of the City of Houston and Conroe and within The Woodlands Township boundaries, would be released from the ETJs of the two cities and become part of the boundaries of the new City of The Woodlands. All properties within the new City of The Woodlands would no longer be subject to annexation by the City of Houston or the City of Conroe.

Uniformity of Local Government Services

- **The Woodlands Township**

Transportation, roadway maintenance, law enforcement, drainage, and development review within The Woodlands fall under the governmental authority of Montgomery County (Precincts 2, 3 and 4), Harris County (Precinct 4), the City of Houston ETJ, the City of Conroe ETJ and the 11 MUDs primarily operating within Township boundaries.

- **City of The Woodlands**

The direct authority for transportation, roadway maintenance and law enforcement is assumed by the city government at incorporation. The city council can, but is not required to, take action to abolish the MUDs and assume operations as a municipal utility at any time, following incorporation. In addition, the new city is removed from the ETJs of the cities of Houston and Conroe, and the role of the two counties is diminished.

Formal Recognition as the Local Government Representing The Woodlands

- **The Woodlands Township**
The Township is not officially recognized as the local government representing Woodlands residents by federal, state or regional planning organizations.
- **City of The Woodlands**
The city would be the recognized as the local government representing the interest of Woodlands residents to all levels of government (federal, state, county, cities and regional planning organizations).

Authority in Regional Planning Matters / Community Standing

- **The Woodlands Township**
With the exception of the Township's public transit services, the Township has no standing in regional planning matters, local roadway transportation planning and other matters such as water and sewer rates, groundwater pumping, subsidence, flooding and stormwater management.
- **City of The Woodlands**
The city would have standing in all of these matters, assuming the MUDs become part of city operations following incorporation. If the MUDs do not become part of city operations following incorporation, the city would still have standing in regional planning matters, local roadway transportation planning and other matters other than the water, sewer and related service provided by the MUDs.

Community Self Governance

- **The Woodlands Township**
Residents of the Township depend on numerous government entities to provide roadway infrastructure maintenance, law enforcement local services, municipal utility operations, develop long range transportation planning and provide development and plat review of projects.
- **City of The Woodlands**
Municipal Incorporation would allow consolidation of these local government services into the city with the exception of the municipal utility district operations. The assumption of municipal utility operations requires action (by ordinance) of the new City Council. The city would gain direct access to potential federal and state funds related to local government services.

Municipal Utilities

- **The Woodlands Township**
Municipal utility services are currently provided to Woodlands residents primarily through 11 Municipal Utility Districts. The MUDs are independent government entities and The Township has no authority over water, wastewater and drainage services in The Woodlands.
- **City of The Woodlands**
Following incorporation, a City Council can opt to enact an ordinance that abolishes the MUDs and assumes all assets, liabilities and operations of the MUDs and operate as a city municipal utility.

Property Tax Freeze for Seniors and Disabled Individuals

- **The Woodlands Township**
The Township is not authorized by state statute to enact a property tax freeze for individuals who are disabled or over the age of 65.
- **City of The Woodlands**
The City Council has the statutory authority to enact a tax freeze for individuals who are disabled or over 65 years of age. The estimated annual cost of enacting this provision is included in the computation of the incorporation maximum initial tax rate.

Municipal Court

- **The Woodlands Township**
The Township does not have statutory authority to create a municipal court to adjudicate local violations. County JP courts handle all traffic violations and miscellaneous county violations and the counties collect revenues from fines and fees.
- **City of The Woodlands**
A city municipal court would adjudicate Woodlands local ordinance violations including traffic citations, and retain and collect fines and fees.

Local Ordinance Making Authority

- **The Woodlands Township**
The Township does not have the ability to create local laws affecting the broader community (ordinance making authority).
- **City of The Woodlands**
A general law city would have the ability to create local laws within the Statutes of the State of Texas (ordinance making authority) to address matters

of community wide concern, such as animal control, fireworks, noise, parking, etc.

Drainage and Flood Mitigation

- **The Woodlands Township**
The Township does not have authority over drainage and drainage planning in The Woodlands. This primary authority is with the two county governments and the Municipal Utility Districts.
- **City of The Woodlands**
The city can establish and enforce drainage standards within the community and initiate projects for drainage improvements. If the city abolishes and absorbs the MUDs, the city gains broader authority over these matters.

Land Use Planning and Plat Approval

- **The Woodlands Township**
The Township does not have authority over land use planning and plat approval for property within The Woodlands. The land area within The Woodlands lies within Montgomery County, Harris County and the Exterritorial Jurisdiction (ETJ) of the cities of Houston and Conroe. These counties and cities have the authority for planning and plat approval.
- **City of The Woodlands**
The city would have authority over land use planning and plat approval in The Woodlands.

Woodlands Covenant Management

- **The Woodlands Township**
The Development Standards Committee (DSC) currently provides covenant administration in The Woodlands and the Township provides staff services to support covenant enforcement.
- **City of The Woodlands**
Provided that The Woodlands does not adopt municipal zoning, the Township's covenant administration process can continue.

Law Enforcement

- **The Woodlands Township**
The Township is prohibited by state statute from directly hiring law enforcement personnel (or creating a police department). The Township chooses to provide

law enforcement services through Township funded contracts with Montgomery County under the supervision on the County Sheriff and Harris County through the Precinct 4 Constable's Office.

- **City of The Woodlands**

The city would be required to provide law enforcement services. The city can establish its own central police department and provide services within the two county areas of The Woodlands, which would allow for a consistent policing philosophy throughout the community. An option would be to create a police department and continue to contract for some law enforcement services.

Transportation Planning

- **The Woodlands Township**

With the exception of the Township's public transit services, the Township does not have authority for roadway transportation planning within the Township boundaries. This authority rests with the cities that have ETJ authority within The Woodlands (Houston and Conroe) and with the overlapping county governments.

- **City of The Woodlands**

The city would have authority for transportation planning within The Woodlands boundaries.

Roadways within The Woodlands

- **The Woodlands Township**

State and County governments have authority for management of the roadways and road right of way in The Woodlands, including roadway expansions and extensions.

- **City of The Woodlands**

The city would assume authority over and responsibility for roadways and rights of way within The Woodlands boundaries, except for SH 242/College Park Drive, which is a State Highway. The city would adopt its own thoroughfare plan.

Traffic Control and Management

- **The Woodlands Township**

County governments have authority for management of traffic lights and speed limits on roadways within The Woodlands, except for SH 242/College Park Drive, which is a State Highway managed by TxDOT.

- **City of The Woodlands**

The city would assume authority for traffic management and would have the ability to establish speed limits within The Woodlands boundaries and could

choose to continue to work with the County or change to local control of traffic light systems. SH 242 is under the authority of TxDOT, and could become subject to a "Municipal Maintenance Agreement" with the city.

Utility/Rights of Way Management

- **The Woodlands Township**
State and county governments have specific but limited authorities for management of the public road rights of way in The Woodlands including utilities in the right of way.
- **City of The Woodlands**
The city would assume authority for the management of the public road rights of way within The Woodlands boundaries and could collect fees from certain types of utilities. The city could pass a right of way management ordinance, which would provide more authority in managing construction and utility installation within the right of way.

County Services Provided in The Woodlands

- **The Woodlands Township**
The County governments determine the level of service to be provided in The Woodlands. County government maintains roadways and right of way within The Woodlands. The County Sheriff has the responsibility to provide law enforcement services in unincorporated areas. The Township pays for enhancements to these two basic county services. In addition, the County provides animal control, environmental health, fire marshal and permitting.
- **City of The Woodlands**
The city would determine and have local control over the level of service to be provided in The Woodlands. The cost of the services would be the responsibility of the city government.

Continuation of Township Services after Incorporation

- **The Woodlands Township**
The current level of service provided by the Township is expected to continue following incorporation.
- **City of The Woodlands**
The current Township services will continue to be provided by the city following incorporation and the city will assume additional responsibilities as a General Law City.

Community Master Planning

- **The Woodlands Township**
With the exception of the Township's public transit services, the Township does not have authority over transportation planning, roadways, water and sewer utilities and drainage. Long-range planning for these services in The Woodlands is the responsibility of various governments and MUDs with boundaries or ETJs that that overlap The Woodlands.
- **City of The Woodlands**
The city would have direct authority to master plan for mobility and transportation, and the ability to assume authority for utilities and drainage (if abolishing the MUDs).

Access to Federal and State Funding

- **The Woodlands Township**
Although the Township has received limited state and federal grant assistance in past years, the majority of state and federal grant programs for local government needs are directed to municipalities. An example is the recent federal funding for pandemic relief in the 2020 CARES Act and the 2021 American Rescue Plan, which was directed to municipalities, counties and state governments.
- **City of The Woodlands**
The city would be eligible to participate in all federal and state funding programs extended to municipalities.

Emergency Authority during Declared Disasters

- **The Woodlands Township**
The Township does not have community-wide emergency authority during declared disasters. Emergency authorities are vested in Federal, State, county and incorporated cities. The Township may participate in Mutual Aid.
- **City of The Woodlands**
The city would have the authority to declare and respond to a local disaster with limited exceptions.

Addressing Future Community Needs

- **The Woodlands Township**
The Township is dependent on at least 15 other entities to provide transportation planning, streets and right-of-way management; law enforcement services; utility services, drainage / flood mitigation; and address community subsidence issues. Changing service needs in The Woodlands

(whether funded by the Township or others) will require approval of the various government entities.

- **City of The Woodlands**

A city government has the statutory authority to act on behalf of the community to directly provide and manage these community service needs.

Plan Review and Building Inspection

- **The Woodlands Township**

The Township performs plan review and limited building inspections per the Covenants and Standards of The Woodlands. Montgomery County and Harris County, along with the City of Houston and City of Conroe through their ETJs, have authority for plan review and building inspections in their respective jurisdictions that overlap The Woodlands Township boundaries.

- **City of The Woodlands**

If the city adopts planning and zoning, the city will have direct authority for a building code including plan review, permitting and building inspections, but cannot directly enforce deed restrictions or covenants.

Enforcement of Community Standards

- **The Woodlands Township**

The Township does not have the authority to enact and enforce ordinances to reflect community standards for issues such as animal control, fireworks, noise violations, street parking, speed limits, tree preservation, right of way management, etc.

- **City of The Woodlands**

The city would have ordinance making authority as authorized for General Law Cities and would have a municipal court for enforcement of local ordinance violations.

Incorporation / Additional Revenue Sources

- **The Woodlands Township**

Township revenues sources include ad valorem property tax, sales tax, hotel occupancy (HOT) tax, cultural arts admissions tax, and user fees. In addition, the Township receives Federal grants for transit service.

- **City of The Woodlands**

Township revenues sources are expected to continue at existing levels. The city would have additional revenue sources such as the alcohol beverage tax, franchise fees, municipal court fees and fines, events admissions tax funding and potentially additional state and federal grant funding (examples: roadway

grants, coronavirus/pandemic relief funds, Community Development Block Grant funding).

Incorporation / Additional Cost to Residents

- **The Woodlands Township**

The current Township property tax rate is ____ cents per \$100 of value.

- **City of The Woodlands**

The maximum initial tax rate to fund additional services following incorporation is estimated to increase the Township tax by ____ cents per \$100 of value. The actual rate can be less but cannot exceed the maximum initial rate. On the average value home this would be approximately \$____ per month.

Steps to INCORPORATION

With the passage of Legislation in 2017, The Woodlands Township Board has the authority to place incorporation on an election ballot for consideration by the voters. Listed below are the steps that the Township Board will consider prior to placing incorporation on the ballot.

START HERE

1

Retain consulting firms



2

Complete law enforcement study



3

Complete road condition analysis and find how much roadways in the city cost to replace and maintain



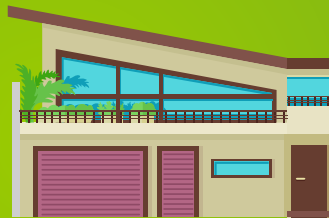
4

Review MUD water, sewer and drainage operations/ will MUDs become part of city

INCORPORATION

Should the Township incorporate, additional services may include the following:

- Law enforcement services
- Road maintenance
- Road construction
- Traffic management
- Water sewer storm drainage
- Zoning, planning and development services
- Municipal court services
- Public health services



5

Public forum for Township residents



6

Complete financial analysis and estimate cost of services for city operations



Incorporation

If approved by voters, Township becomes incorporated

10

If called by Board, residents will vote on incorporation and a maximum initial tax rate

7

Complete tax rate study / show impact on residents



8

Second public forum

9

Board to consider calling incorporation election



GOVERNANCE Timeline

Governance of The Woodlands has evolved over time as the area has grown from a small master-planned development to a thriving community with a population of 115,000.

1960s

George Mitchell purchases land to build The Woodlands, requests the City of Houston place these landholdings within the city's extraterritorial jurisdiction (ETJ) or annexation area

1974

Official opening of The Woodlands



1996

Kingwood annexed by City of Houston. Community leaders initiate governance discussions

1999

The Woodlands community enters annexation moratorium with City of Houston

2006

Community leaders negotiate deal with City of Houston and City of Conroe to avoid annexation but agreements require legislative changes



2007

Legislation is passed, and voters approve three propositions that enable the community to enter into Regional Participation Agreements (RPAs) with Houston and Conroe to allow The Woodlands to determine its own governance

2010

The Woodlands Township as it currently exists is created with combination of Community Associations of The Woodlands and Town Center Improvement District



2012

Township Board studies Future Governance but defers action

2014

First year voters may consider future governance per RPAs; no election held

2015

Township voters reject Road Bond with Woodlands Parkway Extension

2016

Major thoroughfares added

2017

Hurricane Harvey arrives in Texas

2018

Following Legislation in 2017, Township Board initiates year-long Governance/Incorporation Planning Study

2020

Study continues, but COVID-19 Pandemic hits and puts study on hold



2021

Township Board reopens study



Steps to HOMERULE CITY

From A General Law City



1 Township board assumes responsibility of general law city



Changes upon incorporation:

- Roadway and utility rights of way transfer to The Woodlands
- Become eligible for additional state, federal and grant funds (disaster mitigation funding)
- Authority to pass ordinances
- Law enforcement authority
- Becoming voting members of Houston-Galveston Area Council (Federal, state and regional funding board)
- Authority to freeze city taxes for residents 65 years and older and the disabled
- Authority to collect revenue sources as a city (example: municipal court system, fines related to ordinances, traffic tickets and others)
- Permanently ends Houston's and Conroe's rights to annex The Woodlands community

2

Elect initial city council/mayor



3

Home rule charter committee is formed and led by residents



Write home rule charter

4

Public forum to review home rule charter

NO



5

Voters ratify home rule charter

YES



General Law city

Has no authority to act unless the state legislature gives them the specific authority to do so.

Home Rule City

Derives its authority via a charter election by the voters and has authority to act on any matters unless specifically restricted by state constitution or state statute.



AGENDA 3, ITEM 9

DRAFT

ETHICS ADVISORY OPINION NO. _____

[DATE]

ISSUE

Whether a judge may use campaign contributions for consulting and travel expenses to seek an appointment to a federal judicial office. (AOR-646)

SUMMARY

A judge may use campaign contributions for consulting and travel expenses to seek an appointment to a federal judicial office.

FACTS

The requestor is a state judge who is seeking an appointment to a federal judicial office. He wishes “to use political contributions received in connection with election to a state judicial office to pay expenses, such as consulting and travel expenses, incurred in connection with seeking a federal appointment to another judicial office[.]”

ANALYSIS

Title 15 of the Texas Election Code prohibits candidates and officeholders from converting political contributions to personal use. Tex. Elec. Code § 253.035(a). “Personal use” is defined as “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.” *Id.* § 253.035(d).

The Commission has previously concluded that a federal judge may use political contributions accepted as a Texas judicial candidate or officeholder to make expenditures in connection with the federal office. Tex. Ethics. Comm’n Op. No. 445 (2002). In so holding, the Commission found that “an expenditure in connection with a federal office is no more a personal use than is an expenditure in connection with a state or local office in Texas.” *Id.* The Commission has also concluded that campaign contributions received in connection with campaigns for state office may be used to campaign for a different, federal office. Tex. Ethics. Comm’n Op. No. 317 (1996) (“As a general rule, the Texas Election Code does not prohibit the use of campaign contributions received in connection with one office to campaign for another office.”).

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Unlike in Ethics Advisory Opinion No. 445, this requestor does not yet hold the federal judicial office, so the expenditures would not be connected with the performance of duties or activities as a “holder” of a public office. Tex. Elec. Code § 253.035(d). Therefore, the question becomes whether the requestor is a “candidate” for the federal judicial office for purposes of Title 15. *See* Tex. Elec. Code § 253.035(d) (“Personal use” is “a use that primarily furthers individual or family purposes not connected with the performance of duties or activities *as a candidate for or holder of a public office.*”) (emphasis added).

Title 15 defines “candidate” broadly to mean any person “who knowingly and willingly takes affirmative action for the purpose of gaining *nomination or election* to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for *nomination or election.*” *Id.* at § 251.001(1) (emphasis added). The definition includes several examples of “affirmative action,” including “the filing of an application for *nomination* by convention” and “the seeking of the *nomination* of an executive committee of a political party to fill a vacancy.” *Id.* at §§ 251.001(1)(C), 251.001(1)(H) (emphasis added).

In our opinion, a person who knowingly and willingly takes affirmative action for the purpose of gaining an appointment to a federal judicial office—which necessarily involves being nominated first—is a “candidate” for that office under Title 15’s definition. Therefore, the requestor may use political contributions accepted as a Texas judicial candidate or officeholder to pay for ordinary and necessary expenses incurred in connection with seeking appointment to a federal judicial office.

AGENDA 3, ITEM 10

DRAFT

ETHICS ADVISORY OPINION NO. ____

[DATE]

ISSUES

Whether a judge may use political contributions to pay expenses related to home security systems and equipment. (AOR-649)

SUMMARY

A judge may use political contributions to pay ordinary and necessary expenses incurred in connection with ensuring their home security.

FACTS

The requestor is a judicial officer seeking guidance on the use of campaign funds to pay for home security measures recommended by the Texas Office of Court Administration. The requestor notes that judicial officers are provided some security when physically within the Courthouse, but are generally unprotected in most other settings, particularly at home. This lack of security can have terrible consequences. The requestor cites the shooting of a Travis County district judge in 2015 as an example of the danger that judicial officers face.

The requestor provides a personal security assessment created by the Texas Office of Court Administration. The assessment describes the requestor's home and its various vulnerabilities. The report makes many recommendations for improving security at the requestor's home, including: (1) motion sensing lights at entrances to the home, walkways around the home, and the home's garage, (2) new perimeter doors, (3) secure locks and strike plates on doors, (4) security storm doors, (5) garage shields, (6) locks on some utility boxes, (7) security cameras, (8) motion sensors, (9) gate locks, and (10) a safe.

ANALYSIS

Legal standard:

Section 253.035(a) of the Texas Election Code prohibits a candidate or officeholder from converting political contributions to "personal use." Tex. Elec. Code § 253.035(a). "Personal use" is defined as a use that "primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d).

DRAFT

In Ethics Advisory Opinion 555, the Commission considered whether a judge may use political contributions to fund the production of an educational podcast. Tex. Ethics Comm'n Op. No. 555 (2020). The Commission concluded that the contemplated podcast would be “connected to the judge’s performance of official duties and activities.” *Id.* As a result, “ordinary and necessary expenses” related to the creation of the podcast could be paid for with political contributions. *Id.*

In Ethics Advisory Opinion 547, the Commission found that a candidate could use political contributions to pay childcare expenses. Though this use did “further some individual or family purposes,” the Commission noted that a use was not prohibited simply because it “may have some incidental benefits to the individual candidate.” Tex. Ethics Comm'n Op. No. 547 (2018) (quoting Tex. Ethics Comm'n Op. No. 149 (1993)). Instead, the Commission focused on whether or not the expenses would have been incurred but for the individual’s status as a candidate, and concluded that they would not. *Id.* (“According to the facts presented, the candidate began paying for childcare services only after becoming a candidate, and the candidate’s stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign events.”).

The Federal Election Commission has also addressed similar questions. In Advisory Opinion 2021-03, the FEC determined that the use of campaign funds for “bona fide, legitimate, professional personal security personnel against threats arising from the members’ status as officeholders is a permissible use of campaign funds” That opinion also noted that the FEC had previously and repeatedly authorized “the use of campaign funds to protect against threats to officeholders' personal safety, on the grounds that the need for such expenses would not exist without their status as Members of Congress.”

Judicial officers may use political contributions to pay ordinary and necessary expenses incurred in connection with ensuring the security of their homes:

Here, like in Ethics Advisory Opinion 547, the requestor’s stated purpose for making the expenditures is connected to the performance of her official duties and would not be necessary but for her status as an officeholder. As the requestor notes, judicial officers’ performance of their official duties and activities can threaten their physical safety in their own homes. If the requestor were not a judicial officer, she would not be exposed to the same dangers. Further, a judicial officer’s reasonable fear that their safety might be threatened could impact the way in which they execute their duties. Consequently, ordinary and necessary expenses incurred in connection with ensuring a judicial officer’s security while at home are connected with the performance of the officer’s duties or activities. Tex. Elec. Code § 253.035(d).

Though home security may provide an incidental benefit to the judicial officer or their family, the primary function of the use of political contributions is connected to the requestor’s execution of their public duty. *See Id.* We therefore conclude that the requestor’s use of political contributions to defray ordinary and necessary expenses related to home security measures would not violate section 253.035.

We stress that political contributions may only be used to defray “ordinary and necessary expenses.” Tex. Ethics Comm'n Op. No. 555 (2020). We decline to offer an opinion on whether

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or not the specific home-security measures identified in Texas Office of Court Administration's assessment are ordinary and necessary. However, we would assume, in the absence of any countervailing evidence, that the Texas Office of Court Administration would not recommend something that is not ordinary or necessary.



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. XXX

September 1, 2021

ISSUE

Whether Section 572.069 of the Texas Government Code would prohibit a former employee of a state agency from providing certain services to a company that bid on procurements from the agency. (AOR-648)

SUMMARY

Section 572.069 of the Texas Government Code would not prohibit a former state employee from accepting employment to provide the described services to a company that bid on procurements from the agency because he did not participate in the procurements. The former state employee may obtain employment with the company before the second anniversary of the date on which the employee's service or employment with the state agency ceased.

FACTS

The requestor asks whether he may now accept employment at "Company X." He retired from employment at a state agency¹ on May 31, 2020. During his period of employment at the state agency, Company X bid on three "Shared Technology Services procurements." The requestor did not serve "on the procurement team," but "was a member of the agency leadership team that was informed by the procurement team with regard to project status." Within the structure of the state agency, "contracts were handled entirely and completely" by another organization, which was led by a peer who reported to the same director as the requestor.

In the prospective employment with Company X, the requestor would be "advising state governments in North America (USA and Canada) on how to successfully adopt cloud services into their IT modernization strategy." He states, "As a condition of my proposed employment with Company X, I would not participate in any manner with work associated with the State of Texas until May 2022, two years after my retirement[.]"

¹ The former employer is a "state agency" as defined by Section 572.002(10) of the Government Code.

DRAFT

ANALYSIS

Legal Standard:

Section 572.069 of the Government Code states:

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

Tex. Gov't Code § 572.069.

Section 572.069 does not define the term “participated.” However, the term is defined in Section 572.054 of the Government Code, a companion revolving door law, as “to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” Tex. Gov't Code § 572.054(h)(1). We rely on the meaning of “participated” in Section 572.054 when construing Section 572.069, and we therefore apply that meaning here. *See* Tex. Gov't Code § 311.011(b) (“Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”).

The former state employee did not participate on behalf of a state agency in a procurement or contract negotiation involving company X:

The first question is whether the former state employee participated on behalf of a state agency in a procurement or contract negotiation involving the prospective employer. We have held that a requestor participated in a procurement on behalf of a state agency by scoring and evaluating bid proposals for a contract to provide information technology services, even though the requestor did not participate any further in the request for proposal or participate in negotiation with vendors or the vendor selection. Tex. Ethics Comm'n Op. No. 545 (2017).

Here, during his period of employment with the state agency, the former state employee was informed of the status of the three procurements with Company X because of his position as a member of the agency leadership team, but he states that he did nothing additional with the procurements in that role. Having been informed of the status of the procurements is distinguishable from having taken action “through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” Tex. Gov't Code § 572.054(h)(1). Indeed, it appears that only staff in another organization within the state agency took any action on the three procurements.

In our opinion, the former state employee did not participate in a procurement on behalf of a state agency merely by keeping informed of the status of agency procurements. Accordingly, Section 572.069 of the Government Code would not prohibit the former state employee from accepting employment from the company that bid on the procurements before the second anniversary of the date the employee's employment with the state agency ceased.

AGENDA 3, ITEM 12

**§34.82. Modified Reporting Threshold.
Text of Proposed New Rule**

The proposed new language is indicated by underlined text.

1 **Chapter 34. REGULATION OF LOBBYISTS**

2 **Subchapter D. LOBBY ACTIVITY REPORTS**

3 **§34.82. Modified Reporting Threshold.**

4 For purposes of section 305.0063(d) of the Texas Government Code, expenditures shall include
5 all expenditures reportable under section 305.006, including all expenditures that are required to
6 be reported under subsections 305.006(b) and 305.006(c).

AGENDA 3, ITEM 13

§18.17. Report Must be Filed. Text of Proposed Amended Rule

The proposed new language is indicated by underlined text.

1 **Chapter 18. GENERAL RULES CONCERNING REPORTS**

2 **§18.17. Report Must be Filed.**

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

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

AGENDA 3, ITEM 14

Text of Proposed New Rules and Amendments

The proposed new language is indicated by underlined text.

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

Chapter 18. GENERAL RULES CONCERNING REPORTS

§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)	<u>PAC: Amount of contributions or expenditures permitted before TA is required</u> The amount of political contributions or political expenditures permitted by a political committee before a campaign treasurer appointment is required	\$500	<u>\$920</u> [\$910]
253.031(d)(2)	<u>CEC: Amount of contributions or expenditures permitted before TA is required</u> The amount of political contributions or political expenditures permitted by a county executive party of a political party before a campaign treasurer appointment is required	\$25,000	<u>\$34,220</u> [\$33,750]
253.032(a)	<u>Contribution by Out-of-state PAC: Threshold above which certain paperwork is required</u> Threshold of contributions accepted from an out-of-state political committee above which a certain written statement or a statement of organization is required	\$500	<u>\$940</u> [\$930]
253.032(a)(1)	<u>Contribution to Out-of-state PAC: Threshold above which certain contribution information is required</u> Threshold of contributions to an out-of-state political committee above which certain information regarding contributions must be included in the written statement required under section 253.032(a), Election Code	\$100	\$190
253.032(e)	<u>Contribution by Out-of-state PAC: Threshold at or below which certain information is required</u> Threshold of contributions accepted from an out-of-state political committee at or below	\$500	<u>\$940</u> [\$930]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	which certain information or a statement of organization must be included in a report		
254.031(a)(1)	Contributions: Threshold over which more information is required Threshold at which contributor information is required to be reported	\$50	\$90
254.031(a)(2)	Loans: Threshold over which more information is required Threshold at which lender information is required to be reported	\$50	\$90
254.031(a)(3)	Expenditures: Threshold over which more information is required Threshold at which information on the payee of a political expenditure is required to be reported	\$100	\$190
254.031(a)(5)	Contributions: Threshold at or below which more information is not required Threshold below which contributor information is not required to be reported	\$50	\$90
254.031(a)(5)	Expenditures: Threshold at or below which more information is not required Threshold below which payee information is not required to be reported	\$100	\$190
254.031(a)(9)	Interest, credits, refunds: Threshold over which more information is required Threshold at which the source of any credit, interest, return of deposit fee from political contributions or asset is required to be reported	\$100	\$120
254.031(a)(10)	Sale of political assets: Threshold over which proceeds must be reported Threshold at which the proceeds from sale of a political asset is required to be reported	\$100	\$120
254.031(a)(11)	Investment Gain: Threshold over which more information is required Threshold at which any gain from an investment purchased with political contributions is required to be reported	\$100	\$120
254.031(a)(12)	Contribution Gain: Threshold over which more information is required Threshold at which any other gain from political contribution is required to be reported	\$100	\$120
254.0311(b)(1)	Caucus, contributions from non-caucus members: Threshold over which more information is required Threshold at	\$50	\$90

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	which contributor information for contributions from non-caucus members is required to be reported by a caucus		
254.0311(b)(2)	<u>Caucus, loans: Threshold over which more information is required</u> Threshold at which lender information is required to be reported by a caucus	\$50	\$90
254.0311(b)(3)	<u>Caucus, expenditures: Threshold over which more information is required</u> Threshold at which payee information for expenditures is required to be reported by a caucus	\$50	\$90
254.0311(b)(3)	Threshold below which payee information for expenditures is not required to be reported by a caucus	\$50	\$90
254.0311(b)(4)	<u>Caucus, contributions and expenditures: Threshold at or below which more information is not required</u> Threshold below which contributor and payee information is not required to be reported by a caucus	\$50	\$90
254.0312	<u>Contributions, Best Efforts: Threshold under which filer is not required to request contributor information to be in compliance</u> Threshold at which the best efforts rule requires one to make a written or oral request for contributor information in order to be considered in compliance when contributor information is missing	\$500	<u>\$720</u> [\$710]
254.036	<u>Electronic Filing Exemption: Threshold at or below which a filer may qualify</u> Threshold of political contributions and political expenditures below which a filer qualifies for the electronic filing exemption, if certain conditions are met	\$20,000	<u>\$28,800</u> [\$28,420]
254.038(a)	<u>Daily Reports by certain candidates and PACs: Contribution threshold triggering report</u> Contribution threshold triggering a Special Report Near Election by Certain Candidates and Political Committees during the 9 days before election	\$1,000	<u>\$1,890</u> [\$1,860]
254.039	<u>Daily Reports by GPACs: Contribution threshold triggering report</u> Contribution threshold triggering Special Report Near Election by GPACs during the 9 days before election	\$5,000	<u>\$6,450</u> [\$6,370]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.039	Daily reports by GPACs: DCE expenditure thresholds (single candidate/group of candidates) Direct Campaign expenditure thresholds triggering Special Report Near Election by GPACs (\$1,000 for single candidate or \$15,000 for group of candidates) during the 9 days before election	\$1,000/\$15,000	<u>\$1,890/\$28,330</u> [\$1,860/\$27,950]
254.0611(a)(2)	Judicial candidates, contributions: Threshold over which more information is required Threshold at which principal occupation/employer information for contributors to judicial filers is required to be reported	\$50	\$90
254.0611(a)(3)	Judicial candidates, asset purchase: Threshold over which more information is required Threshold at which the disclosure of an asset purchased with political contributions is required to be reported by judicial filers	\$500	<u>\$940</u> [\$930]
254.0612	Statewide executive and legislative candidates, contributions: Threshold over which more information is required Threshold at which principal occupation/employer information for contributors to statewide executive and legislative candidates is required to be reported	\$500	<u>\$940</u> [\$930]
254.095	Local officeholders, contributions: Threshold over which reporting is not required Threshold of political contributions or political contributions below which a report is not required for officeholders who do not file with the Commission, unless also a candidate	\$500	<u>\$940</u> [\$930]
254.151(6)	GPAC, contributions: Threshold over which more information is required Threshold at which the principal occupation for GPAC contributors is required to be reported	\$50	\$90
254.1541(a)	GPAC, higher itemization threshold: Threshold under which it applies Threshold of political contributions and political expenditures below which a GPAC has a \$100 contribution itemization threshold, rather than \$50	\$20,000	<u>\$27,380</u> [\$27,000]

Campaign Finance Reports: Section of Election Code	Threshold Description	Original Threshold Amount	Adjusted Amount
254.1541(b)	<u>GPACs that meet higher itemization threshold: Threshold over which more contributor information is required</u> Contribution reporting threshold for GPACs qualifying under section 254.1541 set to \$100	\$100	\$190
254.156(1)	<u>MPAC: Threshold over which contribution, lender and expenditure information is required</u> Threshold at which contributor, lender, and payee information is required for a political contribution, loan, or expenditure, respectively, to an MPAC	\$10	\$20
254.156(2)	<u>MPACs that meet higher itemization threshold: Threshold over which more contributor information is required</u> Threshold at which contribution information for MPACs qualifying under section 254.1541 is set to \$20	\$20	\$40
254.181 254.182 254.183	<u>Candidate or SPACs, modified reporting: Contribution or expenditure threshold at or below which filers may avoid pre-election reports</u> Threshold of political contributions and political expenditures below which a candidate or SPAC may elect to avoid certain pre-election filing requirements (modified reporting)	\$500	<u>\$940</u> [\$930]
254.261	<u>DCE filers: Threshold over which a report must be filed</u> Threshold at which a person making direct campaign expenditures in an election must disclose the expenditures, including payee information	\$100	\$140

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.003(1)	<u>Lobbyist, expenditures: Threshold over which registration is required</u> Threshold of expenditures over which a person must register as a lobbyist	\$500, by 1 Tex. Admin. Code §34.41	<u>\$820</u> [\$810]
305.003(2)	<u>Lobbyist, compensation: Threshold over which registration is required</u> Threshold of compensation or reimbursement over which a person must register as a lobbyist	\$1,000, by 1 Tex. Admin. Code §34.43	<u>\$1,640</u> [\$1,620]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
305.004(7)	<u>Lobbying for political party: Threshold at or below which registration is not required</u> Threshold of expenditures and compensation below which a person lobbying on behalf of political party is excepted from the requirement to register as a lobbyist	\$5,000	<u>\$9,440</u> [\$9,320]
305.005(g)(2)	<u>Lobbyist: Compensation threshold</u> Threshold of category to report compensation less than \$10,000	\$10,000	<u>Less than \$18,890</u> [\$18,630]
305.005(g)(3)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$10,000 but less than \$25,000	\$25,000	<u>\$18,890 to less than \$47,220</u> [\$46,580]
305.005(g)(4)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$25,000 but less than \$50,000	\$50,000	<u>\$47,220 to less than \$94,440</u> [\$93,150]
305.005(g)(5)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$50,000 but less than \$100,000	\$100,000	<u>\$94,440 to less than \$188,890</u> [\$186,300]
305.005(g)(6)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$100,000 but less than \$150,000	\$150,000	<u>\$188,890 to less than \$283,330</u> [\$279,450]
305.005(g)(7)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$150,000 but less than \$200,000	\$200,000	<u>\$283,330 to less than \$377,770</u> [\$372,600]
305.005(g)(8)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$200,000 but less than \$250,000	\$250,000	<u>\$377,770 to less than \$472,220</u> [\$465,750]
305.005(g)(9)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$250,000 but less than \$300,000	\$300,000	<u>\$472,220 to less than \$566,660</u> [\$558,900]
305.005(g)(10)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$300,000 but less than \$350,000	\$350,000	<u>\$566,660 to less than \$661,100</u> [\$652,050]
305.005(g)(11)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report compensation of at least \$350,000 but less than \$400,000	\$400,000	<u>\$661,100 to less than \$755,540</u> [\$745,200]
305.005(g)(12)	<u>Lobbyist: Compensation threshold</u> Upper threshold of category to report	\$450,000	<u>\$755,540 to less than \$849,990</u> [\$838,350]

Lobby Registrations and Reports: Section of Government Code	Threshold Description	Original Threshold Amount	Adjusted Amount
	compensation of at least \$400,000 but less than \$450,000		
305.005(g)(13)	Lobbyist: Compensation threshold of category to report compensation of at least \$450,000 but less than \$500,000 Lobbyist: Compensation threshold ^{Upper} threshold of category to report compensation of at least \$450,000 but less than \$500,000	\$500,000	\$849,990 to less than \$944,430 [\$931,500]
305.005(g-1)	Lobbyist: Compensation threshold of compensation or reimbursement at which a registrant must report the exact amount Lobbyist: Compensation threshold ^{Threshold} of compensation or reimbursement at which a registrant must report the exact amount	\$500,000	\$944,430 or more [\$931,500]
305.0061(c)(3)	Lobbyist, legislative/executive branch member: Threshold over which gifts, awards and mementos must be disclosed Lobbyist, legislative/executive branch member: Threshold ^{Threshold} over which the name of a legislator who is the recipient of a gift, a description of the gift, and amount of the gift is required to be disclosed	\$50	\$90
305.0061(e-1)	Lobbyist, food and beverage: Threshold at or below which it is considered a gift and reported as such Lobbyist, food and beverage: Threshold ^{Threshold} at or below which it is considered a gift and reported as such	\$50	\$90
305.0063	Lobbyist, annual filer: Expenditure threshold at or below which filer may file annually Lobbyist, annual filer: Expenditure ^{Threshold} threshold at or below which filer may file annually ^{Threshold} of expenditures below which a registrant may file lobby activities reports annually instead of monthly	\$1,000	\$1,890 [\$1,860]

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.022(a)(1)	PFS threshold: Threshold of category to report an amount less than \$5,000 PFS threshold ^{Threshold} of category to report an amount less than \$5,000	less than \$5,000	less than \$9,440 [\$9,320]
572.022(a)(2)	PFS threshold: Threshold of category to report an amount of at least \$5,000 but less than \$10,000 PFS threshold ^{Threshold} of category to report an amount of at least \$5,000 but less than \$10,000	\$5,000 to less than \$10,000	\$9,440 [\$9,320] to less than \$18,890 [\$18,630]
572.022(a)(3)	PFS threshold: Threshold of category to report an amount of at least \$10,000 but less than \$25,000 PFS threshold ^{Threshold} of category to report an amount of at least \$10,000 but less than \$25,000	\$10,000 to less than \$25,000	\$18,890 [\$18,630] to less than \$47,220 [\$46,580]
572.022(a)(4)	PFS threshold: Threshold of category to report an amount of at least \$25,000 or more PFS threshold ^{Threshold} of category to report an amount of at least \$25,000 or more	\$25,000 or more	\$47,220 [\$46,580] 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: <u>Threshold over which filer with a substantial interest in a business entity must report more information</u> Threshold to disclose the source and category of amount of retainer received by a business entity in which the filer has a substantial interest; section 572.005 defines substantial interest, in part, as owning over \$25,000 of the fair market value of the business entity	\$25,000	<u>\$47,220</u> [\$46,580]
572.023(b)(4)	PFS, interest, dividends, royalties and rents: <u>Threshold over which information must be reported</u> Threshold over which income from interest, dividends, royalties, and rents is required to be reported	\$500	<u>\$940</u> [\$930]
572.023(b)(5)	PFS, loans: <u>Threshold over which information must be reported</u> Threshold over which the identity of each loan guarantor and person to whom filer owes liability on a personal note or lease agreement is required to be reported	\$1,000	<u>\$1,890</u> [\$1,860]
572.023(b)(7)	PFS, gifts: <u>Threshold over which information must be reported</u> Threshold of value over which the identity of the source of a gift and a gift description is required to be reported	\$250	\$470
572.023(b)(8)	PFS, income from trust: <u>Threshold over which information must be reported</u> Threshold over which the source and amount of income received as beneficiary of a trust asset is required to be reported	\$500	<u>\$940</u> [\$930]
572.023(b)(15)	PFS, government contracts: <u>Threshold of aggregate over which more information must be reported</u> if aggregate cost of goods or services sold under contracts exceeds \$10,000, PFS must identify each contract, and name of each party, with a governmental entity for sale of goods or services in amount of \$2,500 or more	Exceeds \$10,000	<u>Exceeds \$10,370</u> [\$10,220]
572.023(b)(15)(A)	PFS, government contracts: <u>Itemization threshold</u> itemization under (15) of contracts for sale of goods or services in the amount of \$2,500 or more to governmental entities	\$2,500 or more	<u>\$2,590</u> [\$2,560] or more

Personal Financial Statements: Section of Gov't Code	Threshold Description	Original Threshold Amount	Adjusted Amount
572.023(b)(16)(D)(i)	PFS, bond counsel fees paid to legislator: Threshold category of amount of bond counsel fees paid to legislator	less than \$5,000	less than <u>\$5,180</u> [\$5,110]
572.023(b)(16)(D)(ii)	PFS, bond counsel fees paid to legislator: Threshold category of amount of bond counsel fees paid to legislator	at least \$5,000 but less than \$10,000	at least <u>\$5,180</u> [\$5,110] but less than <u>\$10,370</u> [\$10,220]
572.023(b)(16)(D)(iii)	PFS, bond counsel fees paid to legislator: Threshold category of amount of bond counsel fees paid to legislator	at least \$10,000 but less than \$25,000	at least <u>\$10,370</u> [\$10,220] but less than <u>\$25,920</u> [\$25,550]
572.023(b)(16)(D)(iv)	PFS, bond counsel fees paid to legislator: Threshold category of amount of bond counsel fees paid to legislator	\$25,000 or more	<u>\$25,920</u> [\$25,550] or more
572.023(b)(16)(E)(i)	PFS, bond counsel fees paid to individual's firm: Threshold category of amount of bond counsel fees paid to individual's firm	less than \$5,000	less than <u>\$5,180</u> [\$5,110]
572.023(b)(16)(E)(ii)	PFS, bond counsel fees paid to individual's firm: Threshold category of amount of bond counsel fees paid to individual's firm	at least \$5,000 but less than \$10,000	at least <u>\$5,180</u> [\$5,110] but less than <u>\$10,370</u> [\$10,220]
572.023(b)(16)(E)(iii)	PFS, bond counsel fees paid to individual's firm: Threshold category of amount of bond counsel fees paid to individual's firm	at least \$10,000 but less than \$25,000	at least <u>\$10,370</u> [\$10,220] but less than <u>\$25,920</u> [\$25,550]
572.023(b)(16)(E)(iv)	PFS, bond counsel fees paid to individual's firm: Threshold category of amount of bond counsel fees paid to individual's firm	\$25,000 or more	<u>\$25,920</u> [\$25,550] or more

Speaker Election and Certain Ceremonial Reports: Section of Government Code	Threshold Type	Current Threshold Amount	Adjusted Amount
302.014(4)	Speaker: Expenditures over which more information must be reported Expenditure of campaign funds over \$10 must be disclosed, including	\$10	\$20

	payee's name and address and the purpose		
303.005(a)(1) – (10)	Threshold over which more information must be reported Governor for a Day/Speaker's Day: Thresholds applicable to contribution and expenditure disclosure requirements for a governor for a day or speaker's reunion day ceremony report	\$50	\$90

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

(c) The effective date of this rule is January 1, 2022[+].

(d) In this section:

- (1) “CEC” means county executive committee;
- (2) “DCE” means direct campaign expenditure-only filer;
- (3) “GPAC” means general-purpose political committee;
- (4) “MPAC” means monthly-filing general-purpose political committee;
- (5) “PAC” means political committee;
- (6) “PFS” means personal financial statement;
- (7) “SPAC” means specific-purpose political committee; and
- (8) “TA” means treasurer appointment.

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

Subchapter B. GENERAL REPORTING RULES

§20.62. Reporting Staff Reimbursement.

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$6,450 [~~\$6,370~~] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

- (1) the amount of political expenditures that in the aggregate exceed \$190 and that are made during the reporting period, the full name and address of the persons to

whom the expenditures are made and the dates and purposes of the expenditures;
and

(2) included with the total amount or a specific listing of the political expenditures of \$190 or less made during the reporting period.

(b) Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows:

(1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee;

(2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and

(3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.

§20.65. Reporting No Activity.

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File) even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

(1) special pre-election reports;

(2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than \$940 [~~\$930~~] in political contributions or make more than \$940 [~~\$930~~] in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

Subchapter C. REPORTING REQUIREMENTS FOR A CANDIDATE

§20.217. Modified Reporting.

- (a) An opposed candidate who does not intend to accept more than \$940 [~~\$930~~] in political contributions or make more than \$940 [~~\$930~~] in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.
- (b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.
- (c) To select modified filing, a candidate must file a declaration of intent not to accept more than \$940 [~~\$930~~] in political contributions or make more than \$940 [~~\$930~~] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.
- (d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.
- (e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.
- (f) If an opposed candidate exceeds either of the \$940 [~~\$930~~] limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).
- (g) If an opposed candidate exceeds either of the \$940 [~~\$930~~] limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.220. Additional Disclosure for the Texas Comptroller of Public Accounts.

- (a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed \$620 [~~\$610~~] during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12 month period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed \$620 [~~\$610~~] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12 month period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if:

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous campaign finance reports required to be filed under Title 15 of the Election Code filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

§20.221. Special Pre-Election Report by Certain Candidates.

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,890 [~~\$1,860~~] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, a candidate must file a special pre-election report so that the report is received by the commission no later than the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during that period, the candidate must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the candidate accepts the contribution.

(e) A candidate must file a special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, so that the report is received by the commission no later

than 5 p.m. of the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(f) A candidate must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(g) A candidate must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

Subchapter D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

§20.275. Exception from Filing Requirement for Certain Local Officeholders.

An officeholder is not required to file a semiannual report of contributions and expenditures if the officeholder:

- (1) is required to file with an authority other than the commission;
- (2) does not have a campaign treasurer appointment on file; and
- (3) does not accept more than \$940 [~~\$930~~] in political contributions or make more than \$940 [~~\$930~~] in political expenditures during the reporting period.

Subchapter E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

§20.301. Thresholds for Campaign Treasurer Appointment.

(a) A specific-purpose committee may not accept political contributions exceeding \$920 [~~\$910~~] and may not make or authorize political expenditures exceeding \$920 [~~\$910~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [~~\$910~~] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

- (1) a statewide office;
- (2) a seat in the state legislature;

- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

§20.303. Appointment of Campaign Treasurer.

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$920 [~~\$910~~] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.313. Converting to a General-Purpose Committee.

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission.

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

(1) occurs after the committee's change in status; and

(2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds \$920 [~~\$910~~] in political expenditures or \$920 [~~\$910~~] in political contributions as a general-purpose committee.

§20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than \$940 [~~\$930~~] in political contributions

or make more than \$940 [~~\$930~~] in political expenditures (excluding filing fees) in connection with any election in an election cycle.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than \$940 [~~\$930~~] in political contributions or make more than \$940 [~~\$930~~] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment.

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the \$940 [~~\$930~~] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the \$940 [~~\$930~~] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a special pre-election report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the \$940 [~~\$930~~] limits for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title (relating to Pre-Election Reports), in addition to any required special pre-election reports.

§20.333. Special Pre-Election Report by Certain Specific-Purpose Committees.

- (a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.
- (b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,890 [~~\$1,860~~] must file special pre-election reports.
- (c) Except as provided in subsection (e) of this section, the campaign treasurer of a specific-purpose committee must file a report so that the report is received by the commission no later than the first business day after the committee accepts a contribution from a person that triggers the requirement to file the special pre-election report.
- (d) If, during the reporting period for special pre-election contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during the period, the campaign treasurer for the committee must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the committee accepts the contribution.
- (e) The campaign treasurer of a specific-purpose committee must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.
- (f) A campaign treasurer of a specific-purpose committee must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, as applicable.

Subchapter F. REPORTING REQUIREMENTS FOR A GENERAL PURPOSE COMMITTEE

§20.401. Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.

- (a) A general-purpose committee may not accept political contributions exceeding \$920 [~~\$910~~] and may not make or authorize political expenditures exceeding \$920 [~~\$910~~] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [~~\$910~~] to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

§20.405. Campaign Treasurer Appointment for a General-Purpose [~~Political~~] Committee.

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$920 [~~\$910~~] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.434. Alternate Reporting Requirements for General-Purpose Committees.

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than \$27,380 [~~\$27,000~~] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

(b) The alternative reporting requirement in Election Code §254.1541 applies only to contributions.

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and

Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$190 instead of the threshold reporting amount of \$90 set out in §20.433(a)(11) and (a)(20)(B) of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$40 instead of the threshold reporting amount of \$20 set out in §20.433(a)(11) and (a)(20)(B) of this title.

§20.435. Special Pre-Election Reports by Certain General-Purpose Committees.

(a) In addition to other reports required by this chapter, a general-purpose committee must file a special pre-election report if the committee is involved in an election and if it:

(1) makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed \$1,890 [~~\$1,860~~] or a group of candidates that in the aggregate exceed \$28,330 [~~\$27,950~~] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed \$6,450 [~~\$6,370~~] during the reporting period for special pre-election reports.

(b) The period for special pre-election reports begins on the ninth day before election day and ends at noon on the day before election day.

(c) Except as provided by subsection (d) of this section, a report under this section must be received by the commission no later than the first business day after the contribution is accepted or the expenditure is made.

(d) A special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, must be received by the commission no later than 5 p.m. of the first business day after the contribution is accepted or the expenditure is made.

(e) Expenditures and contributions reported under this section must be reported again in the next applicable sworn report of contributions and expenditures.

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

§20.553. Campaign Treasurer Appointment Not Required for County Executive Committee Accepting Contributions or Making Expenditures under Certain Amount.

(a) A county executive committee accepting political contributions or making political expenditures totaling \$34,220 [~~\$33,750~~] or less in a calendar year is not required to:

(1) appoint a campaign treasurer before accepting political contributions or making political expenditures; or

(2) file the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee described in subsection (a) of this section is required to comply with §20.551 of this title (relating to Obligation To Maintain Records).

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter.

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed \$34,220 [~~\$33,750~~] in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under §253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the \$34,220 [~~\$33,750~~] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the \$34,220 [~~\$33,750~~] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the \$34,220 [~~\$33,750~~] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the \$34,220 [~~\$33,750~~] thresholds in the calendar year.

Chapter 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

§22.1. Certain Campaign Treasurer Appointments Required before Political Activity Begins.

(a) An individual must file a campaign treasurer appointment with the proper authority before accepting a campaign contribution or making or authorizing a campaign expenditure.

(1) An officeholder may accept an officeholder contribution and make or authorize an officeholder expenditure without a campaign treasurer appointment on file.

(2) An officeholder who does not have a campaign treasurer appointment on file may not accept a campaign contribution or make or authorize a campaign expenditure.

(b) A political committee may not accept political contributions exceeding \$920 [~~\$910~~] and may not make or authorize political expenditures exceeding \$920 [~~\$910~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [~~\$910~~] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

(2) a seat in the state legislature;

(3) a seat on the State Board of Education;

(4) a multi-county district office; or

(5) a judicial district office filled by voters of only one county.

(d) This section does not apply to the county executive committee of a political party except as provided in Chapter 20, Subchapter I of this title (relating to Rules Applicable to a Political Party's County Executive Committee).

§22.7. Contribution from Out-of-State Committee.

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than \$940, [~~\$930~~], the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed \$940 [~~\$930~~] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than \$190 to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed \$940. [~~\$930~~]

(d) A candidate, officeholder, or political committee that:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods; and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling \$940 [~~\$930~~] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the telephone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

(i) the individual's full name;

(ii) the individual's residence or business street address; and

(iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

Chapter 34. REGULATION OF LOBBYISTS
Subchapter B. REGISTRATION REQUIRED

§34.41. Expenditure Threshold.

(a) A person must register under Government Code, §305.003(a)(1), if the person makes total expenditures of more than \$820 [~~\$810~~] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code, §305.006(b), to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

(b) An expenditure made by a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state acting in his or her official capacity is not included for purposes of determining whether a person is required to register under Government Code, §305.003(a)(1).

(c) An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included for purposes of determining whether a person has crossed the registration threshold in Government Code, §305.003(a)(1), if the expenditure is made by a group that exists for the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than \$1,640 [~~\$1,620~~] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 40 hours for which the person is compensated or reimbursed during a calendar quarter engaging in lobby activity, including preparatory activity as described by §34.3 of this title.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other activities.

AGENDA 3, ITEM 15

§22.37. Cryptocurrency Contributions. Text of Proposed New Rule

The proposed new language is indicated by underlined text.

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

2 **§22.37. Cryptocurrency Contributions.**

3 (a) Candidates, officeholders, political committees, and legislative caucuses may accept
4 cryptocurrency contributions.

5 (b) Cryptocurrency contributions are considered “in-kind” contributions.

6 (c) Cryptocurrency may not be used to make expenditures. A candidate, officeholder, political
7 committee, or caucus must sell cryptocurrency and deposit the proceeds from the sale into an
8 account before making an expenditure from a cryptocurrency contribution.

9 (c) The value of a cryptocurrency contribution is the fair market value of the cryptocurrency
10 upon receipt.

11 (d) A candidate, officeholder, political committee, or caucus who accepts cryptocurrency
12 contributions has the obligation to determine the legality of the cryptocurrency contributions. For
13 a cryptocurrency contribution to be legal and eligible, a candidate, officeholder, political
14 committee, or caucus must obtain the following information:

15 (1) The contributor’s full name;

16 (2) The contributor’s physical address;

17 (3) The contributor’s current employer;

18 (4) An affirmation that the contributor is in-fact the owner of the cryptocurrency being
19 donated; and

20 (5) An affirmation that the contributor is not a foreign national who has not been granted
21 permanent residence in the United States.

AGENDA 3, ITEM 16

§20.59. Reporting Expenditure by Credit Card Text of Proposed Amended Rule

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

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

2 **Subchapter B. GENERAL REPORTING RULES**

3 **§20.59. Reporting Expenditure by Credit Card**

4 (a) A report of an expenditure charged to a credit card must be disclosed on the Expenditures
5 Made to Credit Card Schedule and identify the vendor who receives payment from the credit
6 card company.

7 (b) Political expenditures made by credit card must be reported in a single itemized list that states
8 by each financial institution issuing the credit card (“credit card issuer”):

9 (1) the name of the credit card issuer;

10 (2) for each expenditure made during the reporting period:

11 (A) the date, amount, purpose, and payee of each expenditure; and

12 (B) the amount that was repaid to the credit card issuer during the reporting
13 period or an indication that no amount was repaid during the reporting period;
14 and

15 (3) for any expenditures made during a previous reporting period and wholly or partly
16 repaid in the current reporting period, the total amount repaid to the credit card issuer
17 during the reporting period.

18 (c) Amounts repaid to a credit card issuer for political expenditures made by a credit card are
19 not considered to be or reported as additional political expenditures for the purpose of calculating
20 the total amount of all political expenditures made during a reporting period, except that any
21 amount repaid to a credit card issuer during a different reporting period from the reporting period
22 in which the expenditure by credit card was made must be reported on a subsequent report as
23 provided by subsection (b)(3) of this section.

24 (d) Multiple payments made to a credit card issuer during a reporting period may be reported as
25 a total amount paid on the date of the last repayment. [A report of a payment to a credit card
26 company must be disclosed on the appropriate disbursements schedule and identify the credit
27 card company receiving the payment.]

EXPENDITURES MADE BY CREDIT CARD

SCHEDULE F4

If the requested information is not applicable, **DO NOT** include this page in the report.

EXPENDITURE CATEGORIES FOR BOX 10(a)

Advertising Expense	Event Expense	Loan Repayment/Reimbursement	Solicitation/Fundraising Expense
Accounting/Banking	Fees	Office Overhead/Rental Expense	Transportation Equipment & Related Expense
Consulting Expense	Food/Beverage Expense	Polling Expense	Travel In District
Contributions/Donations Made By	Gift/Awards/Memorials Expense	Printing Expense	Travel Out Of District
Candidate/Officeholder/Political Committee	Legal Services	Salaries/Wages/Contract Labor	Other (enter a category not listed above)

The Instruction Guide explains how to complete this form.

1 Total pages Schedule F4:	2 FILER NAME	3 Filer ID (Ethics Commission Filers)
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4 TOTAL OF UNITEMIZED EXPENDITURES CHARGED TO A CREDIT CARD	\$
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5 CREDIT CARD ISSUER	(a) Name of issuing financial institution		
	Payment to credit card issuer from	Date	Amount (\$)
		
	(b) <input type="checkbox"/> Political contributions		
		
<input type="checkbox"/> No payment made to credit card issuer	(c) <input type="checkbox"/> Personal funds, reimbursement intended		
		
	(d) <input type="checkbox"/> Personal funds, no reimbursement intended		

ITEMIZED LIST OF CHARGES TO THIS CREDIT CARD:

6 Date	7 Payee name
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8 Amount (\$)	9 Payee address;	City;	State;	Zip Code
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10 PURPOSE OF EXPENDITURE	(a) Category (See Categories listed at the top of this schedule)	(b) Description
	(c) <input type="checkbox"/> Check if travel outside of Texas. Complete Schedule T. <input type="checkbox"/> Check if Austin, TX, officeholder living expense	

11 Complete <u>ONLY</u> if direct expenditure to benefit C/OH	Candidate / Officeholder name	Office sought	Office held
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Date	Payee name
------	------------

Amount (\$)	Payee address;	City;	State;	Zip Code
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PURPOSE OF EXPENDITURE	Category (See Categories listed at the top of this schedule)	Description
	<input type="checkbox"/> Check if travel outside of Texas. Complete Schedule T. <input type="checkbox"/> Check if Austin, TX, officeholder living expense	

Complete <u>ONLY</u> if direct expenditure to benefit C/OH	Candidate / Officeholder name	Office sought	Office held
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ATTACH ADDITIONAL COPIES OF THIS SCHEDULE AS NEEDED